

Federal Court



Cour fédérale

**Date: 20100317**

**Docket: IMM-3310-09**

**Citation: 2010 FC 303**

**Ottawa, Ontario, March 17, 2010**

**PRESENT: The Honourable Frederick E. Gibson**

**BETWEEN:**

**MASHHOUR SALEH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**Introduction**

[1] These reasons follow the hearing at Toronto on the 10<sup>th</sup> of February, 2010, of an application for judicial review of a decision of an Immigration Officer, dated the 15<sup>th</sup> of June, 2009, wherein the Immigration Officer determined the Applicant to be inadmissible to Canada under paragraphs 36(2)(a) of the *Immigration and Refugee Protection Act*<sup>1</sup> (“IRPA”) and paragraph 34(1)(f) of IRPA by reason, in the case of the first citation, the Applicant’s conviction in Canada on the 9<sup>th</sup> of March,

---

<sup>1</sup> S.C. 2001, c. 27.

2007 for theft under \$5,000 and, in the case of the second citation, for being a member of the General Union of Palestinian Students (“GUPS”), the Fatah faction of the Palestinian Liberation Organization (“PLO”) and the Popular Committee of the PLO, organizations which, in the view of the decision-maker, there are reasonable grounds to believe engaged, have engaged or will engage in acts of terrorism referred to in paragraph 34(1)(c) of IRPA.

[2] The portion of the decision under review consisting of a determination that the Applicant is inadmissible to Canada by reason of his conviction in Canada for theft under \$5,000 was not at issue on this application for judicial review.

[3] Prior to the hearing of this application for judicial review, the Respondent filed a motion pursuant to section 87 of IRPA seeking redaction of certain information on the Court File in this matter. In an Order dated the 1<sup>st</sup> of February, 2010, the Chief Justice recited that the information sought to be redacted “... is of little, if any, relevance to the outcome of this proceeding and that some of the redacted information is disclosed directly or indirectly in the non-redacted portion of the tribunal record”. In the result, he continued the Respondent’s motion *sine die*. The motion and the disposition thereof by the Chief Justice was not raised at hearing. In the result, the Respondent’s motion will be granted in the order herein.

## **Background**

[4] In his affidavit filed in support of this application, the Applicant attests in part:

...  
I was born on September 26, 1959 as a refugee in Ein-el-Halwe Camp in Lebanon. I am a stateless refugee in Lebanon. I left Lebanon in November 1993 and came to Canada and made a refugee claim. My refugee claim was denied in approximately 1996 but I

was determined by the Lebanese Embassy to not be able to return to Lebanon as I was born of Palestinian parents and do not have status there. I was thus a stateless person.

I remain single and have never married or had any children. My parents remain in the Palestinian refugee camps in Lebanon, but my siblings are now living as refugees in Syria, Abu Dhabi, Saudi Arabia and Qatar. None of them have [*sic*] any permanent status in these countries.

While in Lebanon, I was never actively involved with any Palestinian organizations or political parties. In 1979 I joined the General Union of Palestinian Students (GUPS) for the sole purpose of obtaining a student visa to study in Bulgaria. At that time it was the only way for me to be allowed to leave the Palestinian camp in Lebanon and be able to study abroad. I also joined Fatah in 1982 in order to receive a scholarship from them to continue my studies. [in fact, the Applicant received his scholarship from Bulgaria, apparently on the recommendation of Fatah].

I did not, however, have any active involvement with either of these groups or with any other faction of the PLO. I remained in Bulgaria as a student for nine years and then returned to Lebanon in 1989. Upon my return I had no association whatsoever with either the General Union of Palestinian Students (GUPS) or the Fatah faction of the PLO and I considered my membership with them to have terminated at that point.

I stated that once I returned to Lebanon in 1989 from Bulgaria I worked at a hospital in Lebanon and for two years volunteered with the Popular Committee which was a social branch of the PLO helping to regulate Palestinian affairs in the Lebanese camps.

At no time was I an active member of any Palestinian political organization. I took part in no activities of these groups and was certainly not involved in any violent actions. I merely joined in order to receive a student visa and scholarship to study in Bulgaria.

I have been residing in Canada since November 1993. Over the past 16 years I have been continuously employed. I established my own business, ... in July of 2000 which I continue to manage until today. I have remained a self-sufficient and contributing member of Canadian society from the time of my arrival.

...

[5] After the Applicant returned to Lebanon from Bulgaria, and until he left for Canada, he was employed in a refugee camp in Lebanon as an X-ray Technician.

### The Legislative Framework

[6] Section 33, the opening words of subsection 34(1) and paragraphs (c) and (f) of that subsection, and subsection 34(2) of IRPA, read as follows:

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.

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

...  
(c) engaging in terrorism;

...  
(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).

(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.

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.  
Sécurité

34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

...  
c) se livrer au terrorisme;

...  
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).

(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.

[7] The issue relevant to this application and that was before the decision-maker whose decision is here under review was whether the Applicant, before coming to Canada, was a member of an organization or organizations that there are reasonable grounds to believe engages, has engaged or will engage in terrorism. The Applicant's background and engagement with various organizations associated with the PLO was essentially not in dispute.

### **The Reasons for the Decision Under Review**

[8] The decision-maker concluded that the Applicant obtained benefit from his membership in GUPS and Fatah. He wrote:

The applicant had stated during the interview he joined GUPS and Fatah in 1979 and 1982, respectively, to be entitled to receive a scholarship. His name was presented by GUPS for approval to study in Bulgaria in 1980 or 1981. He stated permission was required from the liberation movement to study in Bulgaria; he added the movement fought for Palestinians. The movement was the Palestinian Liberation Organization (PLO) headed by Yasir Arafat. Yasir Arafat was the head of the PLO, though there were many factions. He studied at Sofia University, Bulgaria from 1981 to 1983, Burgas, Bulgaria from 1983 to 1985 and Marmalaiva Brodef, Bulgaria from 1984 or 1985 to 1987.

Mr. Saleh was asked why GUPS and the PLO selected him for a scholarship. He explained he was required to explain his economic situation to GUPS as part of the selection process. GUPS in turn prepared a list of scholarship candidates for ultimate selection by the PLO.

The applicant was asked directly why he received an academic scholarship from GUPS/PLO for six (6) years despite not completing his programs at two schools in Bulgaria because of his difficulties with the first two programs he was enrolled in. He responded saying the PLO was not the actual sponsor of his scholarship rather that the Bulgarian government paid for the scholarship. He explained a humanitarian program existed for Palestinian refugee students which was supported by Soviet Block countries, such as Bulgaria, Russia/USSR, Romania, East Germany/GDR, and Yugoslavia.

When questioned further about the scholarship arrangements he explained the Bulgarian government paid his tuition because he was presented to them by the PLO.

[9] With respect to the Fatah faction of the PLO, the decision-maker found:

The Fatah faction was founded in the late 1950s by Yasir Arafat and others. Its original doctrine was a rejection of the legitimacy of the State of Israel and it espoused violence to force Israelis out of greater Palestine. Fatah conducted covert Palestinian commando attacks against Israel. Fatah and the PLO relocated their operations to Lebanon after their expulsion from Jordan after September 1970 or commonly called 'Black September'. Fatah and the PLO operated in Lebanon until Israel's 1982 invasion of Lebanon forced the PLO and Fatah to relocate through out (*sic*) the Middle East and North Africa.

During the 1960s and 1970s Fatah offered training to several terrorist and insurgent groups in Europe, the Middle East, Asia and Africa. During the 1970s Fatah itself carried out a number of terrorist acts in both the Middle East and western Europe. Fatah launched its first attack on Israel in January 1965 from a PLO base in Lebanon. Notwithstanding efforts by Lebanese authorities to suppress Palestinian guerrilla groups operating in Lebanon during the 1960s; Lebanon became a centre for Palestinian guerrilla groups. Fatah emerged as the dominant Palestinian liberation group, led by Yasir Arafat, and starting in 1967 it organized an armed struggle against Israel's occupation of the West Bank.

Fatah served as Yasir Arafat's power base within the PLO. Fatah sanctioned violence against the state of Israel until the 1990s.

[10] As previously noted, the Applicant became a member of a Popular Committee of the PLO upon, or shortly after, his return to Lebanon from Bulgaria. With respect to the Popular Committees of which there were apparently a number, the Officer wrote:

The Popular Committees were a local function of the PLO operating as the political authority in Palestinian refugee camps in Lebanon. The Popular Committees were *de facto* municipal governments in Palestinian refugee camps by providing water, sanitation and electricity. The Popular Committee replaced the

traditional governing segment of village and family elders with local PLO activists. The Popular Committee had organized refugee camps in Lebanon and it coordinated military defenses of the camps during attacks in 1976, 1982 and 1985 to 1987.

The Popular Committee of the Ayn al-Huywah refugee camp in southern Lebanon condemned Syria's attempts in 1985 to confiscate guns and weapons from refugee camps in southern Lebanon. The Popular Committee argued its need for guns to protect Palestinians in the camps from outside forces. The Baghdad Voice of PLO in Arabic reported on July 22, 1985 about the Popular Committee and the maintenance of weapons.

*The Popular Committee warned against the eruption of a war against Palestinian camps in the Sidon area, similar to the war waged against Palestinian camps in Beirut.*

*The statement reiterated that the Palestinian masses rally around the PLO and its legitimate command and that the Palestinians remained committed to the gun as a guarantee safeguarding the lives of Palestinians in the camps.*

*The statement pointed out that Palestinian masses in the Ayn al-Hulwah camp are determined to defend themselves, that they will not put down their weapons, and that they will confront all conspiracies taking place under any false slogan.*

[italics in the original, variations in the spelling of the camp name in this quotation and in the quotation in paragraph [4] are as in the originals]

[11] The Officer noted that the Fatah faction of the PLO had been reported to have committed terrorist acts against airlines, airports, businesses, diplomatic missions, government facilities, military installations, media outlets and private citizens starting in 1968. He went on to outline certain of those acts and then noted that the PLO, as an organization, renounced terrorism in 1993, the same year that the Applicant left Lebanon for Canada, when it signed the Oslo peace accord.

[12] The Officer concluded that the Applicant had been a member of GUPS, the Fatah faction of the PLO and a Popular Committee of the PLO and this finding was not in dispute. The Officer further found that the Applicant obtained a “large material benefit”, his ability to study abroad, from his memberships in GUPS and the Fatah faction of the PLO. While acknowledging the Applicant’s statements that his involvement in both groups was minimal, he again returned to his concern that the Applicant received a very significant benefit deriving from his membership in both organizations. The Officer further concluded, and it was essentially not in dispute, that the Applicant had been a member of a Popular Committee of the PLO, as a volunteer, after returning to Lebanon from Bulgaria.

[13] Finally, the Officer concluded on the issue of “engaging in terrorism” that the Applicant’s limited activities in the GUPS, the Fatah faction of the PLO and the Popular Committee of the PLO, as a member of such organizations, constituted his membership in organizations that there are reasonable grounds to believe have engaged in terrorism.

### **The Issues**

[14] In the Memorandum of Argument filed on behalf of the Applicant, counsel identifies two issues on this application for judicial review, those being the following:

1. Did the Officer err in law by concluding that mere membership in the PLO would be determinative in a finding of inadmissibility pursuant to subsection 34(1) of IRPA? and
2. Did the Officer err in law by concluding that the Applicant’s membership in GUPS and the Popular Committee is determinative of his involvement in PLO groups that engaged in terrorism?



The question of standard of review of course remains and I will deal with it first and very briefly.

## Analysis

### *Standard of Review*

[15] In *Ugbazghi v. Canada (Minister of Citizen and Immigration)*<sup>2</sup>, Justice Dawson, then of this Court, wrote at paragraph [36] of her reasons:

The assessment of “membership” in paragraph 34(1)(f) of the Act has traditionally been reviewed on the reasonableness *simpliciter* standard. See: *Poshteh v. Canada (Minister of Citizenship and Immigration)*, [2005] 3 F.C.R. 487 (F.C.A.), at paragraph 23. This standard of review reflected the factual element present in questions of membership and the expertise that officers possess when assessing applications against the inadmissibility criteria contained in subsection 34(1) of the Act. In my view, following the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, deference remains appropriate and the applicable standard of review is reasonableness. See: *Dunsmuir*, at paragraphs 51 and 53.

[16] I adopt the foregoing brief analysis and conclusion as my own.

### “Membership” and Inadmissibility

*“Membership” in the PLO through membership in the Fatah faction of the PLO, membership in the GUPs and membership in a Popular Committee*

[17] The Applicant acknowledged his membership in the Fatah faction of the PLO, in GUPS and, following his return from Bulgaria, in a Popular Committee of the PLO, but at the same time he noted he had laudable motives for such memberships, his minimal involvement, at least in the Fatah faction of the PLO and GUPS, and his lack of any engagement in violence.

---

<sup>2</sup> [2009] 1 F.C.R. 454, May 30, 2008.

[18] Counsel for the Applicant urged that mere formal membership should not inevitably constitute “membership” for the purposes of paragraph 34(1)(f) of IRPA and cited in support of his position Justice Layden-Stevenson in *Khalil v. Canada (Minister of Citizenship and Immigration)*<sup>3</sup> where the learned Justice, then a member of this Court, wrote at paragraph [32] of her reasons that “... not all Palestinians are deemed inadmissible [to Canada] when they seek permanent residence in Canada ...” and that she had not been referred to a single example where a member of the Red Crescent Society, apparently a PLO member organization, had been determined inadmissible.

[19] With great respect to counsel for the Applicant, the burden of the jurisprudence of this Court and the Federal Court of Appeal appears to be to the contrary. In short, if one is a “member” then he or she is a “member” for the purposes of paragraph 34(1)(f) with all of the implications that that membership carries with it and with relief, if warranted, lying in the discretion of a Minister of the Crown under subsection 34(2) of IRPA and not in the discretion of Immigration Officers or this Court. An example of this interpretation is reflected in the reasons of my colleague, Justice de Montigny, who in *Tjueza v. Canada (Minister of Citizenship and Immigration)*<sup>4</sup> wrote at paragraph [31]:

Once again, I do not think that the ID [Immigration Division] erred in its interpretation of s. 34(1)(f) of the Act. That provision makes a foreign national inadmissible for membership in an organization; it does not require active participation. If active participation were necessary, then s. 34(1)(f) would be redundant, because active participation in subversion by force is a ground for inadmissibility under s. 34(1)(b) of IRPA. Paragraphs 34(1)(b) and 34(1)(f) are “discreet but overlapping grounds”: ...

[citations omitted]

---

<sup>3</sup> [2007] F.C.J. No. 1221, September 18, 2007.

<sup>4</sup> 2009 FC 1260, December 10, 2009.

I am satisfied that precisely the same might be said here of the decision of the Officer that is under review and the inter-relationship between paragraph 34(1)(f), paragraph 34(1)(c) on the one hand and subsection 34(2) of IRPA on the other.

[20] For the foregoing brief reasons, against a standard of review of reasonableness, I am satisfied that the decision of the Officer that is here under review was reasonably open to the Officer in the sense that it demonstrates the existence of justification, transparency and intelligibility within the decision-making process and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts underlying this matter and the applicable provisions of law.<sup>5</sup>

### **Conclusion**

[21] In the result, this application for judicial review will be dismissed.

### **Certification of a Question**

[22] At the close of hearing, counsel were advised of the Court's conclusion. At the request of counsel for the Applicant, an opportunity was provided for counsel to make written submissions on the issue of certification of a question. Counsel for the Applicant urged certification of the following question:

Is formal membership in an organization that has engaged in acts of terrorism determinative of whether a person is to be considered inadmissible pursuant to section 34(1)(f) of *IRPA*?

---

<sup>5</sup> *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph [47].

[23] Counsel for the Respondent urged against certification of the foregoing question on the ground that it does not meet the test or principles governing certification of a question set out in *Liyanagamage v. Canada (Minister of Citizenship and Immigration)*<sup>6</sup> and reiterated in *Carrasco Varela v. Canada (Minister of Citizenship and Immigration)*<sup>7</sup>.

[24] As noted above, opinion of this Court is somewhat divided. Justice Layden-Stevenson, now of the Court of Appeal, wrote that not all Palestinians are deemed inadmissible, even when they have been members of a PLO member organization. In contrast, Justice de Montigny, as quoted above in paragraph [19], has expressed the view, supported by a brief analysis and cited authorities, that mere formal membership in a component of an organization such as the PLO is sufficient to support inadmissibility whether or not there has been “active participation” on the part of the member.

[25] In the circumstances, the question proposed for certification by counsel for the Applicant will be certified.

---

<sup>6</sup> (1994), 176 N.R. 4 (F.C.A.).

<sup>7</sup> 2009 FCA 145 at paragraphs 22 to 29.

**ORDER**

**THIS COURT ORDERS that:**

1. The motion on behalf of the Respondent pursuant to section 87 of the *Immigration and Refugee Protection Act* seeking redaction of certain information on the Court File in this matter, that was continued sine die by Order of the Chief Justice, is granted in the terms applied for.
2. This application for judicial review is dismissed.
3. The following question is certified as a serious question of general importance that would be dispositive on an appeal from the decision herein:

Is formal membership in an organization that has engaged in acts of terrorism determinative of whether a person is to be considered inadmissible to Canada pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*?

“Frederick E. Gibson”

---

Deputy Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3310-09

**STYLE OF CAUSE:** MASHHOUR SALEH v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 10, 2010

**REASONS FOR ORDER  
AND ORDER:** Gibson D.J.

**DATED:** March 17, 2010

**APPEARANCES:**

Lorne Waldman

FOR THE APPLICANT

Marianne Zoric, Alex C. Kam

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