

Federal Court



Cour fédérale

Date: 20100727

Docket: IMM-4068-08

Citation: 2010 FC 781

Ottawa, Ontario, July 27, 2010

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

MUHAMMAD RIZWAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of the decision of N. Holden, Immigration Officer with Citizenship and Immigration Canada (CIC), dated August 28, 2008 wherein the applicant's request for permanent residence in Canada was refused.

[2] The application for permanent residence in Canada was refused as the immigration officer concluded that the applicant was a person described in paragraph 34(1)(f) of the IRPA and

consequently was inadmissible to Canada based on the applicant's admitted membership in the Muttahida Qaumi Movement (MQM-A), an organization for which there were reasonable grounds to believe has engaged in terrorist activities.

[3] These are my reasons for dismissing the application.

Background

[4] Mr. Muhammad Rizwan, the applicant, was born on March 7, 1975 in Karachi and is a citizen of Pakistan. He has been in Canada since February 22, 1996 and made a claim for refugee protection which was accepted on June 18, 1998. The applicant made an application for permanent residence on September 18, 1998.

[5] In March of 1999, approximately, the applicant was interviewed by a Canadian Security Intelligence Service (CSIS) Officer in Calgary. At the interview the applicant was asked about MQM activities while he was a political party worker in Pakistan. He was also asked if the MQM was involved in violence in any way. The applicant explained that it was not the MQM-A, but the MQM-Haqiqi that was involved in violence.

[6] The MQM-A is a legal political organization in Pakistan and has been on several occasions involved in government coalitions. Members of the MQM-A have been elected to the national senate and serve as cabinet ministers in Sindh province, where members of the MQM-A

predominate. As politics in Pakistan are often turbulent, there is evidence that some members of MQM-A may have engaged in violence.

[7] On November 29, 2001, at an interview with CIC, the applicant stated that he joined the MQM-A in August 1991 in Karachi. Mr. Rizwan further stated that in the 1993 elections he worked as a volunteer for the MQM-A in his own area. His duties apparently included the distribution of pamphlets, hanging banners and collecting donations.

[8] In a continuation of the CIC interview on December 11, 2001, the applicant stated that he had never witnessed any violence on the part of the MQM-A. He stated that following his arrival in Canada, he had given donations to the Calgary branch of the MQM but otherwise he had minimal contact with the organization.

[9] The applicant also stated that he had ceased to be a member of MQM-A before arriving in Canada and stated that during his short time with the MQM-A, he was part of Unit No. 132 and his duties included the distribution of flags and pamphlets and doing social work.

[10] On April 25, 2008, Mr. Rizwan was interviewed by Immigration Officer N. Holden. The interview required the use of an interpreter by telephone which resulted in some confusion. During this interview, the applicant stated that he joined the MQM-A at the age of sixteen in August 1991 and that he ceased to be a member after Operation Clean-up in June of 1992, which is said to have been conducted by the Pakistani government in conjunction with MQM-Haqiqi.

[11] The applicant provided a two-page written submission on May 26th 2008 in which he stated that he joined the MQM-A at the age of sixteen and that he was a member for only 10 months.

[12] The applicant is said to have been a member of MQM when it was led by Altaf Hussain. He was never a member of MQM-Haqiqi.

Decision Under Review

[13] The immigration officer concluded that the applicant is inadmissible to Canada on security grounds pursuant to paragraph 34(1)(f) of the IRPA for being a member of an organization that there are reasonable grounds to believe has engaged in terrorism as referred to in paragraph 34(1)(c) of the IRPA. The applicant was a member of the Mohajir Qaumi Movement – Altaf (MQM-A), and there are reasonable grounds to believe that the MQM-A is an organization that has engaged in terrorism while the applicant was its member.

Membership in the MQM

[14] The immigration officer found that the evidence indicated that Mr. Rizwan was a self-declared member of the MQM from August 1991 to the beginning of 1999.

[15] It was found that the applicant attempted to progressively diminish his involvement with the MQM and had shortened the duration of his membership in his communication with the CIC in 2008. Since the applicant noticeably changed his statements in 2008 and provided unsatisfactory explanations about such changes, the immigration officer was of the opinion that the statements

made during his interview with the CIC officer and in his May 2008 submissions were self-serving and intended to deliberately minimize his involvement with the MQM once he was advised that he may be inadmissible to Canada based on the existing evidence.

[16] Regarding the applicant's statement that he joined the MQM when he was 16 years old, the immigration officer noted that section 34 of the IRPA does not provide an exemption for minors. Although the applicant was 16 years of age when he joined MQM, there is no evidence that he was ever forced to join or that he could not have made an informed decision to join the organization.

[17] According to the applicant's own admissions, the immigration officer found that the applicant actively worked for the MQM immediately after becoming a member and he continued to participate in MQM activities during the 1993 election campaign when he was 18 and no longer a minor.

MQM has engaged in acts of terrorism

[18] Having regard to the totality of the evidence in this case, the immigration officer was satisfied that there are reasonable grounds to believe that the MQM-A is an organization that has engaged in terrorism during the applicant's self-declared period of membership. As a result, the applicant was found to be inadmissible to Canada pursuant to paragraph 34(1)(f) of the IRPA.

[19] The MQM was founded by Altaf Hussein in 1984 to represent the Urdu-speaking Muslim population of Pakistan that migrated from India after the 1947 partition of British India. In 1992, the MQM split into MQM-A, which continued to be lead by Altaf Hussein and MQM-H (Haqiqi). MQM-A changed its name to Muttahida Qaumi Movement in 1997. The immigration officer noted

that all publicly available information sources consulted in preparation of the current decision referred to the organization founded by Altaf Hussein as MQM-A or simply MQM.

[20] In the assessment of the MQM-A activities, the immigration officer relied on the definition of “terrorism” provided in *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] S.C.J. No. 3 wherein the Supreme Court of Canada set out both a functional and stipulative definition of the term “terrorism.”

[21] The immigration officer found that the evidence demonstrates that in order to achieve its political goal, the MQM-A consistently resorted to extreme violence during the period of the applicant’s membership, which included killings of civilians, policemen and army officers and torturing its rivals. The immigration officer found many examples in the evidence that demonstrated that the MQM-A violent activities often had deadly consequences for the civilian population.

[22] In the mid-1990s, the MQM-A was heavily involved in the widespread political violence that wracked Pakistan’s southern Sindh province, particularly Karachi, the port city that is the country’s commercial capital. MQM-A militants fought government forces, breakaway MQM factions, and militants from other ethnic-based movements.

[23] The immigration officer found that numerous documents and publications asserted that MQM-A proper was involved in brutalities leading to the death and torture of its opponents, intimidation of the local population, and that it pursued these violent tactics for many years.

[24] In the opinion of the immigration officer, the evidence of murder and torture of civilians and police officers under the known circumstances as well as the intention to intimidate the public, cause death or serious bodily injuries to those who disputed MQM-A's political stance, can be interpreted as acts of terrorism within the meaning of "terrorism" as stipulated in *Suresh*, above, at para. 98.

Issues

[25] The sole issue is whether the immigration officer's finding that the applicant was a person described in paragraph 34(1)(f) of the IRPA and consequent refusal of his application for permanent residency, was reasonable.

Legislative Framework

[26] The relevant provisions of section 34 of IRPA are the following:

s. 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

art. 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

engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).

[27] Section 33 of the statute provides a guide to interpretation of section 34 in these terms:

s. 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.

art. 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.

Analysis

[28] As recently explained by Justice O'Keefe in *Mohammad v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 51, [2010] F.C.J. No. 50, at para. 48:

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).

[29] I agree that the standard of review of a finding of inadmissibility pursuant to paragraph 34(1)(f) of the IRPA is reasonableness. I also agree with Justice O'Keefe's statement in *Mohammad*, above, at para. 49, that applying the reasonableness standard means the Court does not need to satisfy itself that reasonable grounds 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.

[30] The "reasonable grounds to believe" standard mandated by section 33 of the IRPA has been held to require more than mere suspicion, but less than the civil standard of proof on a balance of probabilities. It is said to be a *bona fide* belief in a serious possibility based on credible evidence: *Mohammad*, above, at para. 50; *Almrei (Re)*, 2009 FC 1263, [2009] F.C.J. No. 1579, at para. 100.

[31] I also note that what constitutes an act of terrorism is a matter of law. While the immigration officer responsible for the assessment 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: *Mohammad*, above, at para. 50, *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] S.C.J. No. 39, at para. 116.

[32] In *Suresh v. Minister of Citizenship and Immigration*, 2002 SCC 1, [2002] S.C.J. No. 3, at paragraph 98, the Supreme Court of Canada provided the following definition of terrorism:

In our view, it may safely be concluded, following the International Convention for the Suppression of the Financing of Terrorism, that "terrorism" in s. 19 of the Act includes any "act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to

abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". Particular cases on the fringes of terrorist activity will inevitably provoke disagreement. Parliament is not prevented from adopting more detailed or different definitions of terrorism. The issue here is whether the term as used in the Immigration Act is sufficiently certain to be workable, fair and constitutional. We believe that it is. [My Emphasis]

[33] In the case of Mr. Rizwan, I am satisfied that the immigration officer appropriately set out the definition of "terrorism" provided by the Supreme Court of Canada in *Suresh*, above, at para. 98, and then cited and discussed evidence of MQM-A activities that fell within that definition: *Mohammad*, above, at paras. 53 and 64.

[34] The immigration officer provided detailed and comprehensive reasons in concluding that the applicant was a person described in paragraph 34(1)(f) of the IRPA. I note that when the correct definition of terrorism is cited by the decision maker, as in the instant case, such extensive analysis is not always required: *Mohammad*, above, at para. 61; citing *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568, [2007] F.C.J. No. 763, at para. 34.

[35] Regarding the applicant's argument that the immigration officer erred by not referring to a manifesto or political platform of the MQM-A indicating that the organization does not encourage violence. Whether an organization engaged in terrorist acts is a factual determination based on the documentary evidence before the immigration officer: *Mohammad*, above, at para. 68; citing *Jalil*, above, at para. 38.

[36] It was not necessary for the immigration officer to find that the organization officially sanctioned acts of terrorism in order to arrive at the finding that it engaged in terrorism. While the MQM-A's leader might publicly advocate tolerance, democracy, non-violence and equal rights, the

immigration officer was entitled to take into account documentary evidence that the organization's actions were not consistent with the leader's public statements: *Daud v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 701, [2008] F.C.J. No. 913, at paras. 14-15; *Mohammad*, above, at para. 67.

[37] The applicant's affiliation with the MQM-A is not in dispute in this judicial review proceeding. In any event, the immigration officer's conclusion with respect to the applicant's membership in the organization was in my view reasonable.

[38] Regarding the applicant's argument that the immigration officer erred in law because she failed to properly identify the relevant time frame of the applicant's membership in MQM-A in relation to the documentary evidence before her, I am in agreement with the respondent that the immigration officer had ample reason to give more weight to the applicant's consistent early declarations relating to the length and quality of his membership in the MQM-A.

[39] I agree with the respondent that when the applicant realized that he might be found inadmissible by reason of his membership, he attempted to scale back the duration and quality of his partisan involvement. The record reveals that Mr. Rizwan's Application for Permanent Residence indicates that he was a political party worker of the MQM from August 1991 to that date. He then stated at the interview with CBSA in December 2001 that his membership ceased in February 1999. In April 2008, in a Client History Update, Mr. Rizwan indicated that he was a member from August 1991 to February 1996.

[40] Based on the facts of this case, and according to the record before the immigration officer at the time, I am satisfied that the immigration officer reasonably determined that the MQM-A is an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts of terrorism: *Mohammad*, above, at para. 79; *Jalil*, above, at para. 22; *Omer v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 478, [2007] F.C.J. No. 642, at para. 31.

[41] Whether the acts at issue were carried out by the MQM, MQM-A or MQM-H, the documentary evidence indicates that in Karachi, where the applicant was a member of the MQM-A, all factions were equally responsible for the acts of terrorism being committed, which included torture, abductions and killings: *Qureshi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 7, [2009] F.C.J. No. 3, at para. 30; citing *Memom v. Canada (M.C.I.)*, 2008 FC 610, [2008] F.C.J. No. 779, at para. 20.

[42] The immigration officer balanced the evidence of the MQM-A's stated purposes (through the statements of the leadership) and the applicant's evidence against the evidence of violence attributable to the MQM-A and determined that there were reasonable grounds to believe that the MQM-A had engaged in acts of terrorism.

[43] Accordingly, I find that this was a reasonable factual determination that falls well within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Mohammad*, above, at para. 71; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 at para. 47.

[44] I am satisfied that the immigration officer's decision in this case had the required justification, transparency and intelligibility. Accordingly, it is not open to this Court to intervene: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12, at para. 59.

[45] In view of the above, I must dismiss the application. No questions were proposed for certification.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed. There are no questions to certify.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4068-08

STYLE OF CAUSE: MUHAMMAD RIZWAN

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 10, 2010

REASONS FOR JUDGMENT: MOSLEY J.

DATED: July 27, 2010

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