| Federal Court |  | Cour fédérale |
|---|---|---|

**Date: 20100910**

**Docket: IMM-5641-09**

**Citation: 2010 FC 888**

**Ottawa, Ontario, September 10, 2010**

**PRESENT: The Honourable Mr. Justice Kelen**

**BETWEEN:**

**BASHEER KABLAWI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by an Immigration Officer dated November 5, 2009, that the applicant is inadmissible on the ground of membership in an organization that has engaged in acts of terrorism pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

**FACTS**

**Background**

[2] The sixty-one (61) year old applicant is a stateless Palestinian. He arrived in Canada on June 27, 1995 along with his family and was granted refugee protection on March 20, 1998.

[3] The applicant was born in the village of Tarshisha which is today located in the state of Israel. The applicant and his family fled to Lebanon shortly after the Israel's independence in 1948. The applicant was a member of the Syrian Socialist Nationalist Party (SSNP) from 1972 to 1991. The SSNP, which was founded in Lebanon in 1932, advocates the unification of a "Greater Syria", which would be comprised of a new secular state on the lands of present day Syria, Lebanon, Jordan, Israel, Iraq and Cyprus. Several acts of violence have been attributed to the SSNP over the years, particularly since the 1970's. The applicant supported the party and acted as a recruiter for new members. In August 1991 the applicant attended an SSNP meeting in Lebanon and spoke about corruption within the party. The next day he was shot at by assailants in a speeding car. He fled Lebanon, severed all ties with the SSNP, and successfully claimed refugee status in Canada. The applicant settled in London, Ontario, where he worked as an adult education teacher.

**Administrative history**

[4] The applicant applied for permanent residence under the protected person category, which was approved in principle on May 26, 1998. Since then the applicant has been subject to a number of immigration decisions which involved two Ministers, the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness. The first decision was

rendered on July 18, 2002 by a Senior Immigration Enforcement Officer who determined that the applicant was inadmissible pursuant to paragraph 34(1)(f) but recommended that he be allowed to remain in Canada pursuant to a Ministerial exemption. The reasons for that decision and the recommendation that the applicant be allowed to remain in Canada are found at pages 2-3 of the Officer's "Notes to File" dated April 23, 2002:

> …Mr. Kablawi vehemently opposed any violent actions or demonstrations to support the SSNP causes and principles. He genuinely did not seem aware of events that have been linked to violence and terrorist type activities with the SSNP as stated in the international compilation of terrorist organizations, violent political groups and issue-oriented militant movements supplied by NHQ/BCZ. Mr. Kablawi is a well-educated, well-spoken, intelligent individual, who by his own admission, admitted that he familiarizes himself on events and activities of SSNP via the Internet on a regular basis. To the best of his knowledge, he was not aware of such significant actions and activities that linked SSNP to possible terrorist acts and violence. Mr. Kablawi declared that he has ***never*** been involved in any acts and violence or terrorism and does not condone or support this type of action at any time, for any purpose.
>
> At the present time, Mr. Kablawi is working at the London Islamic School full-time as an Arabic Language teacher (since September 2001) with a monthly salary of approximately $2,000 per month. His wife is unemployed and his three daughters are attending Western University with the assistance of student loans. As well, his three daughters work part-time to help supplement the family income. Mr. Kablawi's only outside activity is attending the mosque every Friday to attend prayer period.
>
> After interviewing Mr. Kablawi and examining all the supporting documentation, I am satisfied that Mr. Kablawi was a member of SSNP for 23 years, which publicly available documentation provided by our Legal Services indicates that this group meets the criteria of a terrorist organization. **This being said, I find Mr. Kablawi to be inadmissible 19(1)(f)(iii)(b) however, I recommend that Mr. Kablawi not be directed to Immigration Inquiry and be afforded the opportunity to remain in Canada under the protection of his Convention Refugee Status.**

> There is no evidence to suggest that Mr. Kablawi poses a security threat to Canada and he has not been involved in any political activities or memberships with SSNP since his arrival to Canada in 1995 (7 years). Mr. Kablawi indicated emphatically throughout the interview that he wishes to distance & completely remove himself from any activities, meetings, and/or agendas with the SSNP. He does not wish to place himself or his family at any risk, and his sole purpose for fleeing to Canada was to escape the situation in Syria and start a new life for himself and his family. It was very evident throughout the interview that Mr. Kablawi's primary purpose and goal in life, is to protect his family, and ensure they are afforded every opportunity to make a better life for themselves, free from any danger or threats due to his past activities with SSNP.
>
> [Emphasis in original]

[5] The applicant did not seek judicial review of that decision. He instead chose to file on July 22, 2002 and September 28, 2005, a "Request to Seek the Opinion of the Minister" with respect to whether his inadmissibility under paragraph 34(1)(f) would not be detrimental to the national interest of Canada pursuant to subsection 34(2). While the applicant sought the opinion of the Minister of Citizenship and Immigration, applications for relief from inadmissibility decisions pursuant to paragraph 34(1)(f) require the opinion of the Minister of Public Safety and Emergency Preparedness who receives advice and recommendations by way of a briefing note from the Canada Border Services Agency (CBSA). This is a different department than Citizenship and Immigration Canada. On October 18, 2007, the Honourable Stockwell Day, Minister for Public Safety and Emergency Preparedness dismissed the application for relief, finding based on the CBSA's advice that the applicant's presence in Canada would be detrimental to the national interest. The Minister's decision was upheld on judicial review by Justice Barnes in *Kablawi v. Canada (MPSEP)*, 2008 FC 1011, 333 F.T.R. 300.

**Justice Barnes' decision with respect to the Minister's decision to deny Ministerial relief**

[6] In Reasons for Judgment and Judgment dated September 9, 2008, Justice Barnes held that it was reasonably open for the Minister to accept the Canadian Border Services Agency's recommendation, reproduced at paragraph 8 of the decision, which determined that it was improbable that the applicant was not aware of the SSNP's violent tendencies and that he was a longstanding and dedicated member of a violent organization:

> ¶8 …Mr. Kablawi maintained his membership in the organization for over 23 years. His duties while not violent were significant in that he was responsible for recruitment and was considered a "lecture leader" which afforded him the right to speak on behalf of the SSNP. This indicates that he was in direct contact with the leadership who would direct him on what information should be presented. This also indicates that he was in a position of trust within the organization.
>
> Mr. Kablawi has been described as a well educated, intelligent individual who keeps abreast of SSNP activities. Taking this, his family ties to the organization and his long term membership into consideration, it is unrealistic that he would have no knowledge that the SSNP engaged in violence to achieve its goals.
>
> While there are significant humanitarian and compassionate grounds to consider in this case, they do not negate the fact that Mr. Kablawi was a dedicated member of a violent organization. Allowing individuals with these types of allegiances who have engaged in these types of activities to remain in Canada is against our national interest. We are of the opinion that Mr. Kablawi has failed to demonstrate that his presence in Canada is not detrimental to the national interest. His membership and activities on behalf of the SSNP outweigh any national interest that would enable the CBSA to make a recommendation that Mr. Kablawi be granted Ministerial relief. Therefore, we recommend that he not be granted relief.

[7] Justice Barnes held at paragraph 23 that it was reasonably open to the Minister to heavily weigh national security considerations in dismissing the application for relief:

> ¶23 The assessment of what is in the national interest involves the exercise of broad discretion: see *Miller*, above, at para. 73. It is necessarily a multi-faceted task importing considerations over which the Minister has particular expertise including national security, international relations, and public confidence. I agree with Mr. Waldman that what is in the national interest is not determined solely by national security considerations. But it is not an error for the Minister to weigh national security considerations heavily in reaching a conclusion that an applicant has not met the evidentiary burden for relief.

[8] Justice Barnes further held that the Minister reasonably balanced the negative and positive considerations in dismissing the application for Ministerial relief. The application for judicial review of that decision was therefore dismissed.

[9] Following Justice Barnes' decision, on February 5, 2008, an Immigration Officer informed the applicant that his application for permanent residence was refused because he was inadmissible and the applicant had failed to satisfy the Minister of Public Safety and Emergency Preparedness that his presence in Canada would not be detrimental to the national interest as required by subsection 34(2) of IRPA. The applicant sought judicial review of that decision.

**Justice O'Reilly's decision with respect to the application for permanent residence**

[10] On October 8, 2008 Justice O'Reilly heard the applicant's application for judicial review from the February 5, 2008 decision by an Immigration Officer who dismissed his application for permanent residence and determined that he was inadmissible. On March 20, 2009 Justice O'Reilly allowed the application for judicial review in *Kablawi v. Canada (MCI)*, 2009 FC 283.

[11] Justice O'Reilly found that the Officer erred in relying on sources available over the internet, in particular materials posted on the website of the Anti-Defamation League and of the Library of Congress, after the applicant had submitted his written submissions. The Court held at paragraphs 13 and 14 of the decision that the Officer breached the duty of fairness by not granting the applicant an opportunity to respond to the Officer's reliance on the materials posted on the website of the Anti-Defamation League and the Library of Congress:

> ¶13 … However, it is unlikely that Mr. Kablawi was aware of those materials; nor could he have reasonably anticipated that the officer would conduct research on the Library of Congress website or seek out the views of the Anti-Defamation League about the SSNP. The materials specifically referred to activities of the SSNP and the officer substantially relied on them in arriving at his conclusion that there were reasonable grounds to believe that the SSNP was a terrorist organization.
>
> ¶14 In my view, given that he had no opportunity to respond to the evidence on which the officer relied, Mr. Kablawi was not given a fair chance to present his case.

[12] Justice O'Reilly referred the matter back for redetermination.

**Decision under review**

[13] On November 5, 2009 an Admissibility Decision was rendered by another Immigration Officer who determined that the applicant was a person described in paragraph 34(1)(f) of IRPA and therefore inadmissible to Canada. This decision was following Justice O'Reilly's decision that the February 5, 2008 decision be redetermined in accordance with the duty of fairness. Accordingly, the applicant received a fairness letter on April 20, 2009 indicating that his application for permanent residence may have to be refused because he is inadmissible pursuant to paragraph 34(1)(f) of IRPA. The letter contained a disclosure package of documents which purported to

demonstrate that the SSNP is an organization that has engaged in acts of terrorism. The applicant replied on June 15, 2009, attaching his statutory declarations, expert reports, written submissions, and a number of documents which questioned the accuracy and biases of the documents which are part of the Officer's disclosure package. The applicant attended an admissibility interview on August 21, 2009 which was conducted with the aid of an interpreter. The applicant filed further submissions on September 8, 2009 and September 18, 2009.

[14] On November 5, 2009, the Officer decided upon redetermination that that the applicant was inadmissible. The 22-page decision summarized in detail the results of the admissibility interview, the documentary evidence in the disclosure package, the applicant's documentary evidence, and the applicant's submissions. The Officer noted at page 15 that the applicant questioned the reliability and bias of several news reports but found that the occurrence of the events in question was not refuted:

> The submissions did not refute the news reports in the New York Times, the Los Angeles Times, The Times of London and the Economist where the SSNP took responsibility for suicide bombings and attack operations. The submissions responded to the western media reports of SSNP suicide bombings and attack operations stating that there was no clear information that the SSNP suicide bombings and attack operations were specifically targeting civilian populations.

The applicant submitted that several sources of information used a different definition of terrorism but did not question whether the incidents listed actually occurred. Except for one report from 1979 which was found to be incorrect, the Officer determined that the applicant's submissions accepted that other incidents of violence were perpetrated by the SSNP:

> The applicant's response provided information that the 1979 report was incorrect and not corroborated, in part because of confusion during the civil war about who the perpetrators were. However, the submissions did accept other incidents of SSNP bombing and attack operations were corroborated, though argued the SSNP's targets were legitimate.

[15] The Officer acknowledged that a number of articles on the SSNP may be biased, but determined that the actual facts in most articles were not altered and that the applicant was not able to refute the acts of violence which were attributed to the SSNP, especially when the SSNP took responsibility.

[16] The Officer relied on the definition of terrorism in *Suresh v. Canada (MCI)*, 2002 SCC 1, [2002] 1 S.C.R. 3, at paragraph 96:

> ¶96 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 determined that the SSNP engaged in terrorism for the following reasons:

1. the SSND acted as a non-uniformed militia in the Lebanese Civil War, attacking other Lebanese groups and Israeli soldiers with conventional weapons as well as suicide bombings;
2. in 1961 the SSNP unsuccessfully attempted a coup against the Lebanese government which included taking hostages;

3. SSNP members assassinated Lebanese President-elect Bachir Gemayel in 1982 and former Lebanese Prime Minister Riyad as Sulh in 1951. Despite the SSNP not taking responsibility for the 1982 assassination, the FBI believes that the SSNP was in fact responsible;
4. the SSNP took responsibility for suicide car bombings in Israel and Lebanon before and after the 1987 split. Once the SSNP split, the two factions began to attack each other; and
5. the SSNP's goal of creating a "Greater Syria" would not have been possible without resort to violence since all constituting states closely guarded their sovereignty.

The Officer acknowledged that the political situation in Lebanon during the Civil War was violent and confused, but determined that it was not within his authority to "grant a paragraph 34(1)(f) inadmissibility exemption because of the circumstances that an organization operated under. This was a matter for the Minister to weigh in a request for Ministerial relief."

[18] The Officer found that there was no dispute that the applicant was a committed and high level member of the SSND. The Officer therefore concluded that the applicant was inadmissible.

**LEGISLATION**

[19] Section 33 of the IRPA sets out the burden of proof required to demonstrate inadmissibility:

| | |
|---|---|
| 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. |

[20] Paragraph 34(1)(f) of the IRPA renders a foreign national or permanent resident inadmissible on security grounds while subsection 34(2) of the IRPA provides for a Ministerial exception:

| | |
|---|---|
| 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*). |
| (2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident | (2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au |

| | |
|---|---|
| or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest. | Canada ne serait nullement préjudiciable à l'intérêt national. |

**ISSUES**

[21] The applicant raises the following issues:

1. Did the Officer err in law by failing to consider and comment on an expert report which supported the applicant's position?;

2. Did the Officer err in law in failing to consider the applicant's submissions on the reliability of evidence and in relying upon evidence which was not credible?;

3. Did the Officer make an error of mixed fact and law in improperly attributing actions to the SSNP?;

4. Did the Officer err in law in his interpretation of the laws of war?;

5. Did the Officer make an error of mixed fact and law in determining that the SSNP was a terrorist organization?; and

6. Did the Officer mischaracterize the applicant's understanding of the SSNP?

[22] The Court has collapsed issues three through six into one issue which will be the third issue and titled as:

3. Was it reasonably open to the Officer to determine that the SSNP was an organization which engaged in acts of terror?

**STANDARD OF REVIEW**

[23] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question": see also *Khosa v. Canada (MCI)*, 2009 SCC 12, per Justice Binnie at para. 53.

[24] 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 s. 34(1)(f) is a question of fact based on the documentary evidence which is reviewable on a standard reasonableness: *Mohhamad v. Canada (MCI)*, 2010 FC 51, per Justice O'Keefe at para. 68; *Daud v. Canada (MCI)*, 2008 FC 701, per Justice Tremblay-Lamer at para. 6; *Kanendra v. Canada (MCI)*, 2005 FC 923, 47 Imm. L.R. (3d) 265, per Justice Marc Noël at para. 12.

[25] In reviewing the Officer's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, *supra*, at paragraph 47; *Khosa*, *supra*, at para. 59.

**ANALYSIS**

**Suicide bombings and the definition of terrorism in *Suresh, supra*.**

[26] At the hearing of this application, counsel for the applicant concluded in Reply that the "determinative and depositive" issue in this case has evolved to "whether suicide bombing by the SSNP come within the definition of terrorism as set out by the Supreme Court of Canada in *Suresh, supra*." While this was not a new issue, it appeared that the applicant focussed on it for the first time after hearing counsel for the respondent.

[27] In the decision under review, the Officer set out the correct definition of terrorism from *Suresh* which was drawn by the Supreme Court of Canada from the United Nations' International Convention for the Suppression of the Financing of Terrorism, and the Officer squarely held in his decision at page 26 in the Application Record:

> I do not accept the argument that suicide bombings of military targets in Lebanon or of Israeli forces in Southern Lebanon is not an act of terrorism.

The Officer stated that the SSNP's use of suicide bombers violates two rules of International Humanitarian law which prohibit "indiscriminate attacks" and "indiscriminate attacks …. which employ a method or means of combat the effects of which cannot be limited as required by International Humanitarian law". The Officer rationalized that suicide bombers are indiscriminate attacks whereby the suicide bomber dresses like a civilian and approaches the military amongst other civilians. In this way suicide bombers blend in with civilians and cannot effectively discriminate between civilians and the military when their suicide bomb is ignited. In fact, the

evidence before the Court in this case demonstrates that civilians have been injured or killed as a consequence of suicide bombings by the SSNP.

[28] Counsel for the applicant submitted that suicide bombings that are targeted toward military personnel are not intended to cause death or bodily injury to a civilian as set out in the definition of terrorism. However, part of the definition of terrorism also includes:

> … or to any other person not taking an active part in the hostilities in the 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 abstain from doing any act.

In my view, the Officer applied the facts before him to this definition and concluded that suicide bombing inevitably caused death or serious bodily injury to persons other than military combatants. This is clearly within the definition of terrorism.

[29] The Officer also found, in the Court's view, on a basis that was reasonably open to the Officer, that the SSNP's use of suicide bombers not wearing uniforms do not give warning to civilians that provide an unwilling cover for the suicide bombers who themselves pose as civilians.

[30] As Justice Lemieux held in *Fuentes v. Canada (Minister of Citizenship and Immigration)*, [2003] 4 F.C. 249 at paragraph 56:

> The definition of terrorism adopted by the Supreme Court of Canada focuses on the protection of civilians – a central element in International Humanitarian law …

The Court has no difficulty in recognizing that the use of suicide bombings targeted toward the military will inevitably cause serious injury or death to civilians. The *modus operatus* of a suicide bomber is to blend with civilians. Civilians will inevitably suffer death or serious bodily injury. For this reason, it was reasonably open to the Officer to find that suicide bombing fell within the definition of terrorism set out by the Supreme Court of Canada in *Suresh*.

[31] The Court will now proceed with its review of the three issues set out by the parties in their memoranda.

**Issue No. 1: Did the Officer err in law by failing to consider and comment on an expert report which supported the applicant's position?**

[32] The applicant submits that the Board erred in ignoring an expert report dated June 10, 2009 by Dr. Atif Kubrusi, an Economics Professor at McMaster University and former Undersecretary General of the United Nations and Executive Secretary, a.i, of UNESCWA in Beirut.

[33] In *Cepeda-Gutierrez v. Canada (MCI)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 (F.C.T.D.), Justice Evans (as he then was) held at paragraph 15 that the Court may infer that a finding of fact has been made without regard to the evidence if the Officer fails to mention an important piece of evidence:

> ¶15 The Court may infer that the administrative agency under review made the erroneous finding of fact "without regard to the evidence" from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency. Just as a court will only defer to an agency's interpretation of its constituent statute

> if it provides reasons for its conclusion, so a court will be reluctant to defer to an agency's factual determinations in the absence of express findings, and an analysis of the evidence that shows how the agency reached its result.

[34] Dr. Kubrusi briefly surveyed the origins of the SSNP and described its ideology and programs which he stated attracted the intelligentsia of the region. Dr. Kubrusi states at page 4 of his report that the SSNP was never involved in attacks against civilians during the Lebanese Civil War:

> Civil wars are ugly and troublesome, but the SSNP developed a very clean reputation of protecting civilians in need, in thwarting robberies, refraining from despicable acts and attacks on innocents and in salvaging their properties and homes. This can be ascertained quote easily from the oral traditions and even from the enemies of the party. Few Lebanese on any side would deny this.

[35] The Officer quoted the following excerpt from page 4 of Dr. Kubrusi's report at page 8 of the decision:

> During the war to liberate Lebanon from Israeli occupation (1982-2000), the SSNP operatives were on the forefront of this struggle. They fielded a suicide bomber, a young female by the name of Saana Mohaidaleh. It attacked Israeli soldiers. There has not been a single incident, I know of, in which the SSNP was involved in attacking civilians…

[36] The Officer determined that the applicant could not explain how he could not be aware that the SSNP sponsored violence when he proffered Dr. Kubrusi's report which acknowledges the SSNP's violent participation during the Lebanese Civil War.

[37] At the hearing, the applicant submitted that the reference by the expert to the suicide bomber attacking an Israeli soldier demonstrates that the respondent's expert did not understand the definition of terrorism as not including military targets. For the reasons explained above, suicide bombers inevitably cause serious injury or death to civilians because the suicide bomber must, by definition, blend in amongst civilians when proceeding to his or her target.

[38] The Officer's reference to the report and comments are sufficient to satisfy the Court that the Officer did not reach a finding of fact without regard to the evidence. The Officer clearly had Dr. Kubrusi's report in mind.

**Issue No. 2: Did the Officer err in law in failing to consider the applicant's submissions on the reliability of evidence and in relying upon evidence which was not credible?**

[39] The applicant submits that the Officer erred in relying on evidence from several sources which were challenged as unreliable. The applicant submits that at a minimum the Officer was required to consider the evidence by Dr. Lisa Given, an expert witness commissioned by the applicant to provide her expertise with respect to the quality of documentary evidence relied upon by the Officer.

[40] Dr. Given is an Associate Professor at the School of Library and Information Studies at the University of Alberta. She teaches courses on research methods to graduate students. Dr. Given shared her views on the documentary evidence about the SSNP in a statutory declaration dated

September 8, 2009. Dr. Given states that five best practices have developed over the years to assess internet based sources:

1. authority
2. accuracy
3. objectivity
4. currency
5. coverage

Dr. Given states that adherence of these criteria in evaluating an internet source is important in order to "filter" spurious or erroneous information away from quality material.

[41] Dr. Given states at paragraph 11 of her statutory declaration that source bias is an important element in judging the objectivity of sources which can indicate whether an author or organization can be trusted:

> ¶11 …If an organization that opposes anti-smoking legislation is funded, for example, by a tobacco company, that calls into question statements made by that organization and the individuals who author its publications. A reader must assess an author's/organization's stance (bias; personal agenda; etc.) in order to assess whether the information provided by that author / organization can be trusted…

Dr. Given further states at paragraph 22 that when authorship of a news report is not provided, independent verification of statements made should be undertaken to ascertain the veracity of the reports:

> ¶22 As noted previously, many newspaper reports rely on unnamed sources or present an initial "on-the-ground" view of events, which need to be verified independently in order to confirm any details provided on specific events or activities…When

> authorship is not provided, the reader has great difficulty in assessing source bias and objectivity in the reporting process. Similarly, when sources are not provided or are unnamed, it is very difficult to assess the veracity of these reports; independent verification of statements made is an important next step.
>
> [Emphasis added]

[42] Dr. Given made the following observation with respect to the documentary evidence:

1. the Global Terrorism Database (GTD) provides no original source data which would allow the researcher to corroborate the data compiled. This is true of the 11 terrorism "incidents" which involve the SSND;
2. attempts to access the source material or authorship from the GTD databases lead to internet "dead links" or attributions to various organizations which provide no source data or indicate that some source data has emerged from open source websites such as Wikipedia;
3. Daniel Pipes, who wrote on the SSND in 1988, has had his expertise questioned, as well as his anti-Muslim bias;
4. Ehud Ya'ari's article, "Behind the Terror", lacks references to corroborate his allegations against the SSNP; and
5. some newspaper articles in the disclosure package do not mention an author.

[43] Dr. Given's criteria were endorsed in *Almrei (re)*, 2009 FC 1263, 355 F.T.R. 222, a security certificate case recently decided by Justice Mosley. Justice Mosley described at paragraphs 340, 342, 345, and 347 Dr. Given's evidence in that case:

> ¶340 I found Dr. Given's evidence to be helpful, particularly her testimony about the five core criteria that are used in library and information science to determine the reliability of information: authority, accuracy, objectivity, currency and coverage. These criteria are simply a framework which anyone can use to assess the credibility and reliability of a document. They invite questions such as who has written the document, what are their credentials, what is their stance on the issues, do they have a bias or a particular agenda? What is the authority of those who are cited or quoted in the document itself? Can the factual content of the information be verified? Is the information current? Has new information come to light that may call into question an earlier report. Is the information complete or has an excerpt been pulled out of the context of the rest of the document?
> […]
> ¶342 For example, on-line organizations such as the "IntellCenter" provide little information about their methods or the people behind them. There is a circular citation pattern in which organizations such as this cite each other's reports. This may lead the reader to believe that their sources are authoritative or that they are reporting more information than is actually the case. The firm Global Security is said to have been founded by John Pike in 2007 but no details are provided about his educational background and credentials. Who funds the organization?
> […]
> ¶345 On cross-examination, Dr. Given acknowledged that the anonymity of a confidential source does not make the information inaccurate and that on-line sources such as Wikipedia can contain accurate information…
> […]
> ¶347 The point of this testimony, as Dr. Givens reiterated on re-direct examination, is that no one could assess the reliability of the Jasparro document from its presentation without more information. In many instances, the documents relied upon in support of statements in the public summary contain no detail about the source of the information.
>
> [Emphasis added]

I consider this decision to be instructive on the present issue, with the sole caveat that this Court, unlike Justice Mosley in *Almrei (re), supra*, is judicially reviewing an administrative decision, as

opposed to acting as the trier of fact. An Immigration Officer is similarly expected to filter unreliable evidence to arrive at a reasonable determination. The credibility of the documentary evidence is a factor the Court must consider in assessing the overall reasonableness of the conclusions reached by the Officer: *Jahazi v. Canada (MCI)*, 2010 FC 242, per Justice de Montigny at para. 61.

[44] The Officer acknowledged Dr. Given's evidence, but determined that the quality of the documentary evidence was sufficiently robust because it was procured through library databases of news reports. The Officer rejected the submission that documents that lacked authorship are biased or lacked objectivity, especially when they originate in reputable news sources such as the *New York Times, Los Angeles Times, The Times of London, The Economist*, and the *Washington Post*. While the Officer stresses the reliability of sources from recognizable news outlets mentioned previously, the overall conclusion of the Officer is that "the sources used in the assessment of the SSNP are valid and reliable to properly and reasonably assess the SSNP".

[45] A review of the documentary evidence indicates a great diversity of reliability and objectivity. The GTD incident reports fail to identify its sources or satisfactorily explain how its sources were gathered. It is unreasonable for the Officer to assign any weight to documentary evidence which lacks basic reliability such as the GTD: *Jalil v. Canada (MCI)*, 2007 FC 568, per Teitelbaum D.J. at para. 24-25. Such databases carry the risk of circular reporting which may or may not be correct: *Almrei (re)*, *supra*, at para. 342. The Officer relies on a number of news reports from the Foreign Broadcast Information Service (FBIS), which translates indigenous news stories

into English. The problem with the FBIS is that it does not filter unreliable news stories. The Officer in this case did not indicate whether corroboration of the individual FBIS news reports was sought. It is consequently impossible for this Court to determine whether it was reasonably open to the Officer to rely on the FBIS reports which where disclosed to the applicant.

[46] Despite the shortcomings of the FBIS and GTD sources, the Officer relied on a number of reputable news sources detailing specific activities of the SSND, which corroborate some reports of the GTD and FBIS. The reliable sources are partly listed below:

1. August 1, 1985, *New York Times* (from Associated Press), reporting an SSNP suicide car bomb killed three Israeli soldiers and five Lebanese civilians;
2. August 10, 1985, *The Economist* (no author listed), reporting that the August 1, 1985 suicide bombing was the fourth since April of that year committed by the SSNP and also reporting on the SSNP's failed coup in Lebanon in 1960 and alleged responsibility for the assassination of President-Elect Bechir Gemayel in 1982;
3. July 11, 1986, *The Times* (London), by Robert Fisk, reporting that the SSNP claimed joint responsibility with the Popular Front for the Liberation of Palestine (PFLP) for an attempted infiltration into Israel;
4. July 16, 1986, *The Times* (London), by Robert Fisk, reporting on a suicide car bomb in Jezzine, Lebanon, undertaken by the SSNP;
5. May 17, 1988, *New York Times*, by Neil A. Lewis, reporting on the capture of three SSNP members who attempted to smuggle explosives over the border with an intent to carry out a car bomb assassination as a part of a factional dispute; and

6. October 19, 1988, *New York Times*, by Joel Brinkley, reporting on an SSNP car bomb in Beirut which wounded at least two Lebanese civilians.

[47] The sources listed above are from reputable news sources which adhere to journalistic standard of objectivity and accuracy. While some of the authors may have some bias, there is no evidence that the numerous accounts of SSNP activity reported by these news sources were inaccurate. Upon review of the documentary evidence the Court must conclude that it was reasonably open to the Officer to determine that there was sufficient credible evidence to properly assess whether the SSNP engaged in acts of terrorism. This ground of review must therefore fail.

[48] The Court notes that the applicant acknowledged at the end of the hearing that the issue of the reliability of the evidence is not determinative of this case if suicide bombings with military targets fall within the meaning of "terrorism". In such a case, there is no issue between the parties that the SSNP did carry out suicide bombings with military targets, which did affect civilians.

**Issue No. 3: Was it reasonably open to the Officer to determine that the SSNP was an organization which engaged in acts of terror?**

[49] The applicant submits that the Officer erred in determining that the SSNP is a terrorist organization for the following reasons:

1. while members of the SSNP engaged in numerous terror plots, there is no evidence that the SSNP has engaged as an organization in acts of terror;
2. the SSNP's activities during Lebanon's Civil War were acts of war, not terror;

3. the Officer engaged in a faulty analysis of the SSNP's actions when it determined that the SSNP violated the rules of war; and
4. the Officer failed to differentiate between the applicant's beliefs now and his beliefs before 1991.

[50] At the hearing this issue evolved to one which turned on "the suicide bombings". However, I will deal with these other aspects of the issue raised by the applicant in his memorandum.

[51] For the reasons that follow, the Court finds that it was reasonably open to the Officer to determine that there was sufficient credible evidence to conclude that the SSNP has engaged in acts of terror.

[52] Paragraph 34(1)(f) of IRPA requires reasonable grounds to believe that the organization has, is or will engage in acts of terrorism. This is a factual decision based on the documentary evidence which involves an examination of the organization's statements and actions: *Daud*, *supra*, at para. 15. 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, but the officer need not provide evidence that the organization officially sanctioned acts of terrorism: *Mohammad v. Canada (MCI)*, 2010 FC 51, per Justice O'Keefe at paras. 65 and 69; *Daud*, *supra*, at para. 15. In *Al Yamani v. Canada (MCI)*, 2006 FC 1457, 304 F.T.R. 222, Justice Snider clarified at paragraphs 11 and 12 the lack of temporal limitation in paragraph 34(1)(f):

> ¶11 Quite simply, and contrary to the arguments made by Mr. Al Yamani, there is no temporal component to the analysis in s.

> 34(1)(f). If there are reasonable grounds to believe that an organization engages today in acts of terrorism, engaged in acts of terrorism in the past or will engage in acts of terrorism in the future, the organization meets the test set out in s. 34(1)(f). There is no need for the Board to examine whether the organization has stopped its terrorist acts or whether there was a period of time when it did not carry out any terrorist acts.
>
> ¶12 Membership by the individual in the organization is similarly without temporal restrictions. The question is whether the person is or has been a member of that organization. There need not be a matching of the person's active membership to when the organization carried out its terrorist acts.

[53] As stated above, the definition of terrorism which the Officer cited was set out by the Supreme Court of Canada in *Suresh*, *supra*, at paragraph 96:

> ¶96 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 definition of terrorism adopted by the Supreme Court of Canada focuses on the protection of civilians, which is a primary consideration in International Humanitarian Law: *Fuentes v. Canada (MCI)*, *supra*, per Justice Lemiuex at paras. 56 and 58. Whether a particular action is a legitimate form of armed struggle will depend on its impact on the civilian population.

[55] At the hearing, counsel for the respondent referred the Court to a news article as evidence of the SSNP involvement with terrorism. The *New York Times* article dated May 18, 1988 is about three members of the SSNP who tried to bring a bomb into the United States intended to assassinate

one of their opponents. The article reported that the FBI said that the SSNP was responsible for a variety of terrorist acts including the 1982 assassination of the Lebanese President-Elect Bashir Gemayel.

[56] An examination of the evidence demonstrates that the SSNP meets the test in paragraph 34(1)(f). The SSNP terrorized or attempted to terrorize civilians over the many years of its existence in the following circumstances:

1. the attempted coup against the Lebanese Government in 1961 whereby hostages were taken;
2. multiple suicide or car bomb attacks in the towns and cities of Lebanon during the Lebanese Civil War whereby civilians lost their lives alongside military personnel;
3. the assassination of the Lebanese leader in 1982; and
4. the attempted assassination of rival SSNP faction members by car bombs in the U.S. who are presumably civilians as well.

The Officer made reference to the above incidents and determined that they demonstrated that the SSNP has engaged in acts of terror.

[57] The above noted events are a sample from a long line of incidents where the SSNP caused terror amongst the civilian population by engaging in illegitimate forms of armed action. The fact that SSNP was an armed militia during the Lebanese Civil War does not excuse its attacks which affected civilians. The definition of terrorism in *Suresh*, *supra*, was intended to capture organizations that act in ways that “intended to cause death or serious bodily injury to a

civilian". Taking civilians as hostages, setting off car bombs in the vicinity of civilians in a town or city, and assassinating civilian leaders, are acts that fit squarely within the definition of terrorism. It was reasonably open to the Officer to determine that the SSNP engaged in terrorism during the period when the applicant was a member (1972 to 1991). It was also reasonably open to the Officer to find that it was improbable that the applicant was not aware of the SSNP's acts of violence during his membership. Whether the Officer failed to distinguish between the applicant's current and past knowledge of the SSNP's violent action does not change the fact that the organization he served for two decades can be reasonably determined to have engaged in acts of terror.

[58] Since the applicant did not contest the Officer's finding that he was a member of the SSNP, it follows that he is inadmissible to Canada because he was a member of an organization that was engaged in acts of terrorism. This ground of review must therefore fail.

**CERTIFIED QUESTION**

[59] The applicant submitted that this case raises the following serious question of general importance which ought to be certified for an appeal:

> Are suicide bombings against military targets acts of "terrorism" pursuant to section 34(1) of IRPA as a result of the interpretation given to the term in the jurisprudence in *Suresh* and *Fuentes*?

The parties do not agree upon the exact wording of the question. The above wording was submitted by counsel for the applicant one week following the hearing. The applicant submitted that this issue or question was not considered by the Supreme Court of Canada in *Suresh* and suicide bombings were not contemplated in the definition of terrorism. The respondent disagreed. The respondent

submits that suicide bombings, by their nature, inevitably cause death or serious bodily injury to civilians or other persons not taking an active part in the hostilities in a situation of armed conflict, and as such, squarely fall within the definition of terrorism set out by the Supreme Court of Canada in *Suresh*. The Court agrees. Suicide bombings are by their nature insidious terrorist acts which inevitably affect innocent civilians. Such activities are not acts of war among combatants. The suicide bombers do not wear military or army uniforms, nor do they follow the international rules or conventions of military combat or war.

[60] I have considered the post-hearing submissions from the parties with respect to the question for certification. In my view, the applicant's submission that the SSNP suicide bombings targeting the military are not acts of "terrorism" is clearly incorrect. Suicide bombings by definition cause death or serious bodily injury to civilians in the vicinity of the suicide bomber. The suicide bomber could not approach a military target except under civilian cover. The suicide bomber does not wear any uniform indicating that he or she is engaged in military combat. Since the Court is not prepared to certify the question proposed by the applicant, the Court need not consider the alternative wording for this question raised by the respondent in the alternative that the Court was prepared to certify this question.

[61] In any event, the Court finds that the response to such a question would not be determinative of this case because there was evidence of acts by the SSNP intended to cause death or serious bodily injury to civilians upon which the Immigration Officer reasonably relied. Such an act

clearly falls within the definition of terrorism. An example is the assassination of the Lebanese President-Elect in 1982. Accordingly, the Court will not certify this question.

## JUDGMENT

**THIS COURT ORDERS AND ADJUDGES that:**

The application for judicial review is dismissed.

"Michael A. Kelen"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-5641-09 |
| **STYLE OF CAUSE:** | ***Basheer Kablawi v. The Minister of Citizenship and Immigration*** |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | August 11, 2010 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | KELEN J. |
| **DATED:** | September 10, 2010 |

**APPEARANCES:**

| | |
|---|---|
| Lorne Waldman | FOR THE APPLICANT |
| Ada Mok | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Lorne Waldman<br>Barrister & Solicitor<br>Waldman & Associates | FOR THE APPLICANT |
| Myles J. Kirvan,<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |