

Federal Court



Cour fédérale

Date: 20100928

Docket: IMM-2275-08

Citation: 2010 FC 967

Ottawa, Ontario, September 28, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ARAB, ABBAS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] An immigration officer concluded that Abbas Arab was a member of the Iranian Revolutionary Guard Corps (or “IRGC”), an organization for which there were reasonable grounds to believe had engaged in terrorist activities. As such, the officer found that Mr. Arab was inadmissible to Canada.

[2] Mr. Arab seeks judicial review of the officer’s decision, asserting that the officer erred in failing to consider the fact that during the period in which he admittedly worked for the IRGC, his work was carried out under compulsion. The officer further erred, Mr. Arab says, in finding that his

involvement with the IRGC after the period of his compulsory military service was of a nature sufficient to qualify him as a “member” of that organization.

Background

[3] Mr. Arab is an Iranian citizen who completed his compulsory military service in that country between 1988 and 1990. Mr. Arab says that during this period he did office work in a military factory under the control of the “Sepah”. Mr. Arab acknowledges that “Sepah” is another name for the IRGC.

[4] After completing his compulsory military service, Mr. Arab left the military. However, he says that three or four months later, at the request of his former supervisor, he chose to begin working for an organization that he describes as “National Defence”. He says that he did this because he felt that he wanted to help his country, which was then engaged in military conflict with Iraq.

[5] According to Mr. Arab, after his return to military employment, he worked as a manager in the “Logistics Registry” at the Shahid Jolaei military base. He says that this department handled “the paperwork” for the seven sections below him, which included the propaganda unit, the emergency medical unit, the fire department, the communications and media unit, the kitchen, the transportation unit, and the Registry’s own support unit.

[6] According to Mr. Arab, the facility where he worked for the next five years was engaged in the manufacture of high-speed boats. Although Mr. Arab says that he was being paid by “the government”, he acknowledges that the factory was under the control of the IRGC, and that the boats were going to support that organization. He also acknowledges working alongside IRGC members throughout this period.

[7] Mr. Arab says that he was repeatedly asked to join the IRGC between 1990 and 1995, but that he never actually completed the paperwork so as to formally become a member of the organization. He says that he was afraid to do so, because once he joined the IRGC, “they would not let [him] resign”.

[8] According to Mr. Arab, it was only after he inadvertently participated in a political demonstration that he decided to leave his employment and come to Canada.

The Officer’s Decision

[9] The officer’s membership finding was based entirely upon information provided by Mr. Arab himself. The officer noted that although Mr. Arab never officially joined the IRGC, certain facts nevertheless demonstrated that he was a member of that organization.

[10] In particular, the officer identified the following facts as being indicia of membership:

- (i) Mr. Arab worked full-time for five years within the IRGC;

- (ii) He contributed to the on-going work of the organization;
- (iii) He associated with members of the organization;
- (iv) He had extensive knowledge of the organization having been responsible for communications between seven departments;
- (v) He had access to personnel files containing secure information;
- (vi) He knew that he was working alongside Ministry of Information and Security officers;
- (vii) He received intelligence information regarding bombings and killings;
- (viii) He had knowledge of the violent reputation and acts of terrorism conducted by the organization;
- (ix) He worked to further the organization's goals by drafting secret bulletins and passing along secret information;
- (x) He occupied a position of trust in the organization; and
- (xi) He received a salary for the position within the organization.

[11] The officer thus determined that Mr. Arab had contributed to the work of the IRGC for five years, despite being aware of the nature of their activities, and despite his claim not to have agreed with everything the organization did. The officer doubted Mr. Arab's stated intention to leave the organization, and concluded that it was only after he may have been observed inadvertently participating in the political demonstration that he decided to leave the IRGC.

[12] The officer also noted a number of discrepancies between Mr. Arab's original Personal Information Form (or "PIF"), his first interview in 2003, and his second interview in 2008. According to the officer, while Mr. Arab was able to explain some of these discrepancies, they were not clarified to any great extent. The officer thus concluded that these inconsistencies cast doubt on Mr. Arab's overall credibility.

[13] Based on the foregoing, the officer concluded that while there was no evidence that Mr. Arab ever personally participated in any acts of terrorism or violence, it was nonetheless reasonable to believe that his activities furthered the goals of the IRGC. As such, the officer concluded that Mr. Arab's activities with the IRGC "were not minimal or marginal and are sufficient to constitute membership."

[14] The remainder of the immigration officer's analysis was dedicated to demonstrating that there are reasonable grounds to believe that the IRGC is an organization that has engaged in acts of terrorism. I do not understand Mr. Arab to take issue with this latter finding.

The Section 87 Proceedings

[15] After the commencement of this application for judicial review, the Minister brought a motion for non-disclosure of certain limited portions of the Certified Tribunal Record, in accordance with the provisions of section 87 of the *Immigration and Refugee Protection Act*. The

Minister claimed that the disclosure of the redacted information would be injurious to national security or to the safety of any person.

[16] I carefully reviewed the redacted portions of the Certified Tribunal Record, as well as a secret affidavit filed in support of the motion. I also heard viva voce testimony from the deponent of the affidavit and oral submissions from counsel for the Minister in an *ex parte, in camera* hearing.

[17] I was satisfied that the disclosure of certain portions of the redacted information would indeed be injurious to national security or would endanger the safety of any person. However, I was not persuaded that the non-disclosure of other redacted information was justified. Consequently, by Order dated January 13, 2010, the Minister's application was granted in part, and certain additional information was provided to Mr. Arab.

Standard of Review

[18] Although Mr. Arab argues in his memorandum of fact and law that the "standard of review for error of fact is correctness", I understand the parties to agree that the officer's membership finding is reviewable against the reasonableness standard.

[19] The officer's factual findings are clearly entitled to deference, and given that what is in issue at this case is a question of mixed fact and law, I agree that reasonableness is the appropriate

standard of review: see *Poshteh v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, [2005] F.C.J. No. 381 at para. 24.

[20] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47, and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 59.

The Legislative Authority for the Decision

[21] Before turning to examine the arguments advanced by Mr. Arab, it is helpful to review the legislative framework governing inadmissibility findings such as this.

[22] The inadmissibility finding in this case was made under the provisions of paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, the relevant portions of which provide that:

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 :
...	...
(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 don=t 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).

Paragraph 34(1)(c) refers to organizations engaging in terrorism.

[23] In making a finding under section 34(1) of the Act, an immigration officer is also guided by section 33 of *IRPA*, which provides that:

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 or 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.
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The Legal Tests to be Applied in Assessing Admissibility under Paragraph 34(1)(f) of *IRPA*

[24] In order to conclude that Mr. Arab was inadmissible to Canada, the immigration officer had to find that he was, or had been, a member of an organization for which there are reasonable grounds to believe engages, has engaged or will engage in terrorism. There are three aspects involved in such a finding that require comment, namely the concept of “membership”, the “reasonable grounds to believe” standard, and the definition of “terrorism”.

[25] Insofar as the test for membership is concerned, it is clear that actual or formal membership in an organization is not required – rather the term is to be broadly understood: see *Chiau v. Canada (Minister of Citizenship and Immigration)*, [1998] 2 F.C. 642 at para. 34. Moreover, there will always be some factors that support a membership finding, and others that point away from membership: see *Poshteh* at para. 36.

[26] The Supreme Court of Canada described the “reasonable grounds to believe” evidentiary standard in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100, as requiring “something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities”. The Supreme Court went on to hold that reasonable grounds will exist “where there is an objective basis for the belief which is based on compelling and credible information”: at para. 114.

[27] As to the definition of terrorism, in this case, the officer adopted the definition from *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3, making reference as well to the *Criminal Code* definition of “terrorism”.

[28] With this understanding of the legal tests to be applied in assessing admissibility under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, I turn now to consider whether the immigration officer’s finding that Mr. Arab was inadmissible under paragraph 34(1)(f) of *IRPA* was reasonable.

Did the Officer Err in Concluding that Mr. Arab was a Member of the IRGC?

[29] Mr. Arab acknowledges having worked for the IRGC between 1988 and 1990, but says that he did so under compulsion. He also insists that he worked for “National Defence” in the years between 1990 and 1995, and that he did not work for the IRGC. Mr. Arab says that he was merely an office clerk who worked alongside members of the IRGC during this latter period.

[30] According to Mr. Arab, the officer's finding that he should be deemed to have been a member of the IRGC during this period was unreasonable.

[31] It should be noted at the outset that there were a number of inconsistencies and contradictions in the information obtained from Mr. Arab through his PIF and in the course of his various interviews. Moreover, Mr. Arab has acknowledged having lied to Canadian authorities on a number of occasions. As such, it was entirely reasonable for the officer to have had concerns with respect to his overall credibility.

[32] Insofar as the identity of his employer during the 1990-1995 period is concerned, Mr. Arab discussed his 1990 return to military work in his March 5, 2008 interview with immigration officials at some length. He acknowledged that the factory where he worked during the post-return period produced military equipment for the IRGC and further acknowledged that the factory was under the control of that organization.

[33] Mr. Arab also discussed his 1990 return to work in his February 3, 2003 interview. He did not suggest that he had a new employer, did not mention "National Defence" at all, and the discussion of the circumstances leading up to his return to work certainly suggested that he was returning to work for his previous employer, namely the IRGC.

[34] Mr. Arab stated that he worked alongside IRGC members in the position that he occupied after his return to work in 1990, and that he "had a lot of access" in that position. This included

access to highly sensitive information, including the personal files of intelligence officers posted at the facility.

[35] The officer noted that the documentary evidence indicated that the IRGC worked closely with members of the Ministry of Information and Security. By his own admission, Mr. Arab had access to the files of intelligence officers, and the officer found that the fact that he was given such access suggested that he was “well-connected within the IRGC”. This was a finding that was reasonably open to the officer on the record before her.

[36] That Mr. Arab had connections to well-placed members of the IRGC was also demonstrated by his explanation for why it was he never had to formally join the organization, despite having been repeatedly asked to do so. According to Mr. Arab, it was because he had influential friends within the IRGC who protected him.

[37] Mr. Arab also admitted to having had access to intelligence reports regarding IRGC activities, including at least one bombing, before they occurred. Once again, it was reasonably open to the officer to find that having access to such sensitive information indicated that Mr. Arab was in a position of confidence and trust within the organization.

[38] Similarly, it was reasonable for the officer to conclude that Mr. Arab, who admitted to having written at least one secret bulletin aimed at undermining a former Prime Minister, furthered the aims of the IRGC through his work. Given the legitimate concerns with respect to Mr. Arab’s

overall credibility, it was open to the officer to reject Mr. Arab's explanation that the preparation of this bulletin was really a form of "loyalty test", suggesting that the IRGC did not intend to use the bulletin against the politician in question.

[39] While there is no evidence that Mr. Arab himself participated in any terrorist activities during the approximately five years that he voluntarily worked with the IRGC, the evidence does show that he nevertheless occupied a position of trust within the organization. Moreover, Mr. Arab worked to further the organization's goals by drafting secret bulletins and passing along secret information, and otherwise contributed to the work of the IRGC through his day-to-day work at the Shahid Jolaei military base. In light of the foregoing, the officer's finding that Mr. Arab was a "member" of the IRGC was entirely reasonable.

[40] Mr. Arab has not challenged the officer's finding that there are reasonable grounds for believing that the IRGC was an organization that had engaged in terrorism. Consequently, he has not persuaded me that the officer erred in finding that he was inadmissible to Canada in accordance with the provisions of paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*.

Conclusion

[41] For these reasons, the application for judicial review is dismissed.

Certification

[42] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2275-08

STYLE OF CAUSE: ARAB, ABBAS v. MCI

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

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