

Federal Court



Cour fédérale

Date: 20111121

Docket: IMM-3767-10

Citation: 2011 FC 1332

Vancouver, British Columbia, November 21, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

NAWAL HAJ KHALIL

Applicant

and

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

Docket: IMM-3769-10

AND BETWEEN:

NAWAL HAJ KHALIL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
AND THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Nawal Haj Khalil has been denied permanent residence in Canada because an immigration officer found that she was a former member of Fatah, a group believed to have engaged in acts of terrorism. An immigration officer found her to be inadmissible to Canada under s 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (statutory references are set out in an Annex).

[2] Ms. Haj Khalil argues that the officer made a number of procedural and substantive errors. By way of this application for judicial review (IMM-3769-10), she asks me to order another officer to reconsider her application for permanent residence. Three previous decisions on the issue of Ms. Haj Khalil's inadmissibility to Canada were overturned by this Court.

[3] In addition, Ms. Haj Khalil seeks judicial review of a decision of the Minister of Public Safety and Emergency Preparedness denying her application for relief from the officer's inadmissibility finding. She submits that the Minister made a number of errors and infringed her rights under s 7 of the *Canadian Charter of Rights and Freedoms*. In this second application for judicial review (IMM-3767-10), Ms. Haj Khalil asks me to order the Minister to reconsider her request for relief.

II. Factual Background

[4] Ms. Haj Khalil was born in Syria in 1955. She arrived in Canada in 1994 with her two children. They claimed refugee protection on the basis that she had been detained and tortured in Syria.

[5] In her written narrative supporting her refugee claim, Ms. Haj Khalil explained that she had worked for a magazine associated with the Palestine Liberation Organization [PLO], called Filastin Al Thawra [FAT]. She also stated that she was a member of the PLO-Fatah. She and her children were recognized as Convention Refugees.

[6] In 1996, Ms. Haj Khalil applied for permanent residence in Canada. An officer with the Canadian Security and Intelligence Service [CSIS] concluded that she had been a member of and a journalist for the PLO, and that the PLO had engaged in terrorism during the time of her employment [1978-1993]. An immigration officer subsequently interviewed Ms. Haj Khalil and concluded that she was inadmissible to Canada. That conclusion was overturned on judicial review.

[7] A second officer also found that Ms. Haj Khalil was inadmissible because she had been a member of the PLO who was employed as a journalist for the PLO's official magazine. The officer took note that she had travelled with the head of the PLO, Yasser Arafat, on a number of trips overseas. Further, Ms. Haj Khalil continued to be in touch with her former editor and her husband, who was employed by the Palestinian Authority. The officer's conclusion was overturned on judicial review on consent of the Minister.

[8] A third officer found Ms. Haj Khalil inadmissible because she was a member of Fatah, not the PLO. In her role as a writer, she would have been aware of Fatah's ideology and must have agreed with it in order to become a trusted member of Yasser Arafat's press corps. That conclusion was also overturned on judicial review on consent of the Minister.

[9] Now, a fourth officer has found Ms. Haj Khalil to be inadmissible on the basis of her membership in Fatah. The officer applied a broad definition of "membership". This is the decision now under judicial review. The officer's reasoning is described in greater detail below.

[10] In 2002, Ms. Haj Khalil requested an exemption under s 34(2) of IRPA on the grounds that her presence in Canada was not detrimental to the national interest. Her request was refused. That decision was quashed on judicial review, with the Minister's consent. Ms. Haj Khalil's second request for an exemption was also turned down. The Minister's second decision is also the subject of the present application for judicial review and is set out in greater detail below.

III. The Officer's Decision on Inadmissibility

[11] The officer listed the materials considered in Ms. Haj Khalil's application for permanent residence. The officer did not interview Ms. Haj Khalil.

[12] The officer set out the test for inadmissibility pursuant to paragraphs 34(1)(c) and 34(1)(f) of IRPA, that is, whether there are reasonable grounds to believe that a foreign national is or was a member of an organization for which there are reasonable grounds to believe that it engages, has

engaged, or will engage in acts of terrorism. The officer noted that the applicable standard of proof is something more than mere suspicion but less than the balance of probabilities: “In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information”: *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at paras 114-16.

[13] The officer concluded that there were reasonable grounds to believe that Fatah had engaged in terrorist activities in furtherance of its political goals, and that these activities targeted civilians and caused civilian injuries and deaths. The officer also found that there were reasonable grounds to believe Ms. Haj Khalil was a member of Fatah. The officer’s analysis was divided into two sections: “Membership” and “Evaluation of the Palestine Liberation Organization (PLO)/Fatah Organization and Terrorism”.

(i) Membership

[14] The officer observed that the term “member” has been interpreted broadly. The Federal Court of Appeal stated in *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, at paras 27-29:

In interpreting the term "member" in the former Immigration Act, R.S.C., 1985, c. I-2, the Trial Division (as it then was) has said that the term is to be given an unrestricted and broad interpretation. The rationale for such an approach is set out in *Canada (Minister of Citizenship and Immigration) v. Singh* (1998), 151 F.T.R. 101 (F.C.T.D.), at paragraph 52 where Justice Rothstein held that:

The provisions deal with subversion and terrorism.
The context in immigration legislation is public
safety and national security, the most serious

concerns of government. It is trite to say that terrorist organizations do not issue membership cards. There is no formal test for membership and members are not therefore easily identifiable. The Minister of Citizenship and Immigration may, if not detrimental to the national interest, exclude an individual from the operation of subparagraph 19(1)(f)(iii)(B). I think it is obvious that Parliament intended the term "member" to be given an unrestricted and broad interpretation.

The same considerations apply to paragraph 34(1)(f) of the Immigration and Refugee Protection Act....

Based on the rationale in *Singh* and, in particular, on the availability of an exemption from the operation of paragraph 34(1)(f) in appropriate cases, I am satisfied that the term "member" under the Act should continue to be interpreted broadly.

[15] The officer also noted that the Federal Court of Appeal has equated a "member" with someone who "belonged to" an organization: *Chiau v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 297, at para 57.

[16] The officer relied on the following evidence:

- Ms. Haj Khalil self-declared her membership in Fatah in sworn documents submitted with her refugee and immigration applications. It was unnecessary to prove that she was a formal, card-carrying member.
- She was voluntarily employed for approximately 15 years as a journalist for FAT, which was the "official information organ of the PLO" and which was controlled by Fatah.
- She was paid out of the funding allotted to Fatah by the PLO (the "Fatah quota").

- She wrote over 200 articles for the magazine, articles that would have employed the rhetoric and accorded with the views of the PLO and Fatah. Even prior to her formal employment, she contributed written material to FAT.
- Finally, as a journalist, she accompanied PLO Chairman Arafat on multiple trips abroad.

[17] The officer also recognized the evidence of Professor Rex Brynen, who had been Ms. Haj Khalil's expert witness on the PLO and Palestinian society in the civil action she instituted in 2007. Professor Brynen stated that the FAT "was the central organ. It was the official magazine" of the PLO; it was engaged in "public information and public relations", "dominated by Fatah"; "[m]any of the attacks it would have lauded would have been terrorism."

[18] The officer concluded that Ms. Haj Khalil's later denials of her membership in Fatah were "self-serving". The officer accepted that Ms. Haj Khalil was a "member" of Fatah as she had originally stated. Further, the officer noted that Ms. Haj Khalil's denials of membership did not change the fact that her involvement and long-term association with Fatah brought her within the broad interpretation of membership.

(ii) Evaluation of the Palestine Liberation Organization (PLO)/Fatah
Organization and Terrorism

[19] Having found that Ms. Haj Khalil was a member of Fatah, the officer analysed the question whether Fatah was an organization engaged in terrorism. The officer noted that the definition of

“terrorism” is contained in the International Convention for the Suppression of the Financing of Terrorism, which the Supreme Court of Canada applied in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1:

98. ... “terrorism”...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”.

[20] In evaluating Fatah’s involvement in terrorism, the officer considered its mandate and involvement in acts intended to cause death or serious bodily injury to civilians, or to any other persons not taking an active part in armed conflict. First, the officer found that the mandate of the PLO was to establish an independent Palestinian state through armed struggle. A number of articles of the *Palestinian National Charter* [PLO Charter] explicitly advocated violence to achieve this goal (until the signing of the Oslo Accord in 1993). The Fatah Constitution embraced the same objective – the liberation of Palestine through armed struggle.

[21] Second, the officer considered Fatah’s involvement in violent acts. The officer recognized that not all acts of violence could be considered terrorism, but was satisfied that some of the acts committed by Fatah came within the definition of terrorism. The officer noted that both parties’ experts on the PLO during the civil trial agreed that Fatah and its constituent organizations had engaged in acts that would be considered terrorism. Ms. Haj Khalil would have been aware of the terrorist activities around her.

[22] The officer discussed specific examples of terrorist acts attributed to Fatah and its affiliated groups. These included acts aimed at killing or injuring tourists, diplomats, passengers, and non-combatants.

(iii) Conclusion

[23] Having found Ms. Haj Khalil to be a former member of Fatah, and having found Fatah to be an organization which there are reasonable grounds to believe has engaged in terrorist activities, the officer concluded that Ms. Haj Khalil was inadmissible to Canada pursuant to s 34(1)(f).

IV. The Minister's Decision Denying Relief

[24] Applications for ministerial relief are first assessed by a ministerial delegate within the Canadian Border Services Agency [CBSA] who issues a recommendation to the Minister of Public Safety and Emergency Preparedness. The final decision on the granting of ministerial relief is made by the Minister, who may either agree or disagree with the CBSA's recommendation.

[25] The CBSA first observed that the burden was on Ms. Haj Khalil to demonstrate that her presence in Canada would not be detrimental to the national interest (s 34(2)). The relevant factors are set out in the CIC "IP10 Manual". Factors pertaining to Ms. Haj Khalil's admission to Canada should be balanced against the stated objectives of IRPA and Canada's domestic and international interests and obligations.

[26] The CBSA's recommendation was organized under three headings: "Elements to Consider", "Considerations and Assessment", and "Recommendation".

(i) Elements to Consider

[27] As set out below, the CBSA considered the nature and extent of Ms. Haj Khalil's involvement with Fatah, her current circumstances, the degree of her establishment in Canada, and the impact of prior immigration proceedings on her.

[28] Ms. Haj Khalil, in her former capacity as a journalist for the PLO, was not personally involved in violence. She severed all ties with the organization in 1993, and there was no information to indicate that she has been involved with any terrorist organizations since her arrival in Canada in 1994. She no longer supports the use of terrorist tactics to achieve political ends. While Ms. Haj Khalil had submitted there was no evidence to indicate that FAT had advocated violence, it appeared that she had written an article describing the killing or wounding of Israeli citizens in sympathetic terms. However, she claimed that she had to write such articles to keep her job.

[29] Ms. Haj Khalil claims that she did not derive any benefit from her employment; she simply received a salary from doing her job. She also maintains that she had no special status in the community by virtue of being a journalist for the PLO. While she has not expressed remorse for her involvement, she contends that she did nothing other than report on events for the PLO, which was the entity representing the interests of the Palestinian people.

[30] Since coming to Canada, Ms. Haj Khalil has held one paid employment position. She says that finding employment has been difficult because her Social Insurance Number begins with a “9,” which identifies her as a person without permanent resident status. She now receives social assistance. Although she was once heavily involved in volunteer activities, Ms. Haj Khalil now suffers from depression, migraines and fibromyalgia and can no longer undertake such activities. She claims that her medical issues are due to the delayed resolution of her immigration matters. However, in the 2007 civil proceedings before the Court (*Khalil v Canada*, 2007 FC 923, aff’d 2009 FCA 69), Justice Carolyn Layden-Stevenson found no causal relationship between Ms. Haj Khalil’s immigration status and her health and employment difficulties. The CBSA found that, although not actively involved in Canadian society, Ms. Haj Khalil had made some efforts to integrate herself. It is also apparent that she has raised her children to be respectful and contributing members of Canadian society.

(ii) Considerations and Assessment

[31] The CBSA observed that the objectives of IRPA must be taken into account together with recently stated government priorities. The purposes of ministerial relief include:

- Economics;
- Public safety;
- National and global security; and
- International and bilateral relationships.

[32] In its recommendation, the CBSA summarized the following positive factors:

- Ms. Haj Khalil severed ties with the Fatah nearly two decades ago;
- The bulk of the evidence suggests that her activities did not extend beyond those of a journalist;
- There is no evidence that she engaged in violence, and her current views do not support the use of violence;
- She has established herself in Canada, has adopted Canadian democratic values and has successfully raised her children to be productive members of Canadian society.

[33] Nevertheless, the CBSA noted some concerns. In particular, the CBSA observed that Ms. Haj Khalil held a trusted position in an organization that, for the duration of her membership, routinely utilized terrorist tactics to advance its political goals. It also observed that Ms. Haj Khalil knowingly contributed to the propaganda efforts of the PLO, and glorified its use of violence. Moreover, in various proceedings since her arrival in Canada, Ms. Haj Khalil has presented inconsistent evidence regarding the nature of her involvement. The CBSA considered that these negative factors outweighed the positive ones and demonstrated that her presence in Canada would be detrimental to the national interest.

[34] The CBSA then briefly reviewed the “social, cultural and economic benefits to Canada” that a grant of ministerial relief might provide. After reviewing this evidence, the CBSA concluded that it was satisfied with Ms. Haj Khalil’s establishment in Canada and her adoption of Canada’s democratic values.

[35] The CBSA then considered the “safety and security of Canada, international and bilateral relationships and obligations”. The CBSA acknowledged that Ms. Haj Khalil had asserted that she was never a member of Fatah and that her earlier self-identification as a member was an error in translation. The CBSA concluded that these assertions were probably false. First, Ms. Haj Khalil had four translators during her refugee claim and it is unlikely they would all make the same mistake. Second, the evidence suggests that Ms. Haj Khalil was more than a journalist; rather, she was favoured by the upper echelons of the Fatah and the PLO. Third, she had lived with the fear of being discovered as a Fatah-quota employee during visits to Syria between 1982 and 1990, and she knew before she arrived in Canada that there was a distinction between members and non-members of Fatah. Finally, while she now denies membership, she had nonetheless chosen on more than one occasion to identify herself as a member of Fatah in sworn statements. Moreover, she had an opportunity to correct these statements during her refugee hearing and during interviews with immigration officials. The CBSA noted that she only retracted her evidence on this issue after she had been presented with her first inadmissibility finding in 2000. The CBSA found that her present denial of membership was an attempt to minimize her involvement with Fatah.

[36] The CBSA then reviewed expert testimony from the 2007 civil trial regarding Ms. Haj Khalil’s role in the organization. The CBSA concluded that she was a trusted and loyal *de facto* member of Fatah who knew about, and believed in, the PLO’s and Fatah’s goals and methods. The evidence indicated that Fatah would have been cautious about who was hired to fill positions with FAT. Someone hired under the Fatah-quota would be expected to be loyal, dedicated and treated like a Fatah member. The CBSA noted that during the relevant time period, the PLO and Fatah were essentially one organization with a single set of goals. Ms. Haj Khalil was employed

in the propaganda wing of the organization, which glorified the use of violent tactics to achieve political goals. Further, the evidence indicated that Ms. Haj Khalil's trips abroad with Yasser Arafat would have been "something quite special". The evidence indicated that Arafat was very security conscious; anyone traveling with him would have been deemed to be reliable and loyal.

[37] The CBSA pointed out that FAT was the major vehicle for the PLO's propaganda efforts and, as such, glorified the use of terrorist violence. As a writer for FAT, Ms. Haj Khalil authored about 200 articles. She stated that the magazine's editor defined the scope of the articles and the main ideas to be expressed, but that writers were free to present their articles in their own way and were not required to "toe" a corporate line. The CBSA noted, however, that in the 2007 civil trial proceedings, Ms. Haj Khalil testified that she was expected to use terms such as "Zionist," "martyrs," and "brave operation" when reporting terrorist attacks on civilian targets and that she had to write what she was told to preserve her job.

[38] The CBSA noted that there was no evidence that Ms. Haj Khalil objected to this form of editorial control or that her personal convictions were inconsistent with those of the organization. The CBSA observed that her initial statements indicated that she provided her own opinions in the articles she wrote, and that she agreed with the pre-Oslo Accord views of the organization, wherein the state of Israel was to be eradicated and its citizens were to be regarded as legitimate targets for attack. The CBSA concluded from this evidence that she had believed in the use of terrorist tactics to achieve political goals, and that her employment with FAT glorified the use of violence and served to propagate the organization's method and goals. The CBSA did note, however, that

Ms. Haj Khalil never participated in any violent acts; nor did she recruit members or participate in fundraising.

[39] The CBSA also found that Ms. Haj Khalil had expressed no remorse regarding her membership in Fatah. She had failed to acknowledge the character of both the PLO and Fatah during the period of her membership, or the terrorist tactics that were an open and integral part of their methodology at that time. She broke her ties to the PLO and Fatah only because she refused their request that she move to Iraq, not because she objected to the methods they used in achieving their goals. However, the CBSA also recognized that Ms. Haj Khalil now believes in the rule of law and does not support terrorism. Even if she rejoined Fatah, the impact on Canada's national interest would not be a negative one, as Fatah is now a legitimate political party.

[40] The CBSA then noted that a number of evidentiary inconsistencies have arisen in the course of Ms. Haj Khalil's immigration and civil proceedings in Canada. It briefly reviewed those inconsistencies and concluded that they demonstrate that Ms. Haj Khalil has not been entirely forthright and may have presented misleading information to achieve her goals.

[41] The CBSA acknowledged Ms. Haj Khalil's belief that immigration officials refuse to resile from their negative appraisal of her and of the PLO, regardless of the evidence and clarifications she has presented. She argues that she has been singled out by the Canadian government simply for having exercised her right to free expression and association as a journalist for the PLO, which is dedicated to achieving self-determination for Palestinians. She submitted that the grant of ministerial relief should not be a political determination, and that the previous recommendations

on her application reflected the political stance of the current government, which she characterized as “stridently pro-Israel from a Zionist Christian perspective”. In response, the CBSA stated that all applications for relief are considered individually and are assessed on their own merit. The decision to grant or deny relief is discretionary and rests solely with the Minister.

(iii) Recommendation

[42] The CBSA then conducted a “final balancing”. It reiterated that the test for ministerial relief involves a balancing of the factors surrounding an applicant’s admission against the stated objectives of IRPA, as well as Canada’s domestic and international interests and obligations.

[43] The CBSA concluded that Ms. Haj Khalil had not demonstrated that the positive considerations outweighed the negative ones in her case. It noted that her role as a journalist for FAT served to glorify the use of terrorist violence to achieve political goals. The CBSA also noted that the presence in Canada of an individual who had been involved with a terrorist group is contrary to Canada’s domestic and international interests of keeping good relations with international partners, and Canada’s obligations in the fight against terrorism. It found that Ms. Haj Khalil held a trusted role in the PLO at a time when it was heavily engaged in terrorist activity, and that questions remain as to the exact nature of her involvement. Thus, after a weighing and balancing of the relevant considerations, the CBSA found that Ms. Haj Khalil had failed to demonstrate that her presence in Canada would not be detrimental to the national interest.

[44] The Minister subsequently indicated his agreement with the CBSA's recommendation, and denied relief.

V. Was the Officer's Decision on Inadmissibility Unfair or Unreasonable?

(i) Fairness

[45] Ms. Haj Khalil submits that the officer treated her unfairly by failing to provide adequate reasons for his decision and by failing to interview her. In particular, Ms. Haj Khalil points out that the officer made adverse credibility findings against her, yet failed to explain why her sworn evidence about her association with the PLO and Fatah should not be believed. She submits that the officer simply found her evidence to be self-serving.

[46] Further, Ms. Haj Khalil maintains that the officer should have interviewed her before concluding that her evidence should not be believed. She specifically asked for an interview and, in any case, principles of fundamental justice required that an interview be held before making adverse credibility findings.

[47] In my view, the officer was not required to interview Ms. Haj Khalil. She had been interviewed by other officers who conducted earlier analyses of her evidence. The officer was entitled to rely on the evidence in the record. Ms. Haj Khalil was given ample opportunity to make her case; it was unnecessary to convene an additional interview.

[48] I am also satisfied that the officer gave sufficient reasons for rejecting Ms. Haj Khalil's evidence about her association with the PLO and Fatah. In making credibility findings, a decision-maker must give a clear basis for rejecting a person's evidence. A bold conclusion that a person's evidence is self-serving would be to state the obvious – applicants are expected to give evidence that supports their claims. To reject an applicant's version of events, a decision-maker must identify clear and specific grounds, such as discrepancies, inconsistencies or implausibilities, based on the other available evidence.

[49] In my view, however, the officer's reasoning is sufficiently intelligible and transparent. While the officer characterized as "self-serving" Ms. Haj Khalil's evidence distancing herself from her earlier statement that she was a member of Fatah, this was not the sole basis on which the officer made an adverse credibility finding. She made specific reference to the evidence before her. The officer referred to the fact that Ms. Haj Khalil had worked for 15 years as a journalist for the primary organ of the PLO; she was paid out of the Fatah quota; she wrote many articles giving a favourable account of the actions of the PLO and Fatah; and she accompanied Yasser Arafat on numerous foreign excursions. The officer also made explicit reference to the documentary and expert evidence before her.

[50] In short, the officer's reasons were adequate.

(ii) Reasonableness

[51] The Minister submits that the officer's conclusions that Ms. Haj Khalil was a member of Fatah, and that there were reasonable grounds for believing that Fatah was involved in terrorism, were reasonable on the evidence.

[52] The Minister points out that the definition of "membership" is broad and unrestricted, according to the case law: *Poshteh*, above. I accept that the definition of membership is broad, but it makes little sense to regard it as unrestricted. To do so would be to empty the term of all meaning.

[53] The question is whether there was evidence to support the officer's finding that Ms. Haj Khalil was a member of an organization believed on reasonable grounds to have engaged in terrorism. In my view, as set out above, the officer's conclusions were sufficiently supported by the evidence before her and, therefore, were reasonable.

[54] The officer considered Ms. Haj Khalil's own evidence about her involvement with Fatah, as well as documentary and expert evidence. Similarly, in respect of the question of Fatah's involvement in terrorism, the officer considered Fatah's objectives and its responsibility for violent acts carried out in pursuit of those objectives. Those acts included violence directed at tourists, civilians and diplomats.

[55] In my view, the officer's conclusion that there were reasonable grounds for believing that Fatah had been engaged in terrorism was reasonable on the evidence.

VI. Was the Minister's Decision Denying Relief Unreasonable or Contrary to the Charter?

[56] The proper considerations under s 34(2) were recently set out by Justice Denis Pelletier in *Canada (Minister of Public Safety and Emergency Preparedness) v Agraira*, 2011 FCA 103 [Agraira]. Justice Pelletier considered the legislative history relating to s 34(2) and concluded that “the principal, if not the only, consideration in the processing of applications for ministerial relief is national security and public safety, subject only to the Minister’s obligation to act in accordance with the law and the Constitution”. He also made clear that the exercise is not one of balancing an applicant’s contributions to Canadian national interests against potential detriments to those interests. National security and public safety are at the forefront. Factors that would be relevant to a humanitarian and compassionate analysis of an applicant’s circumstances are not relevant to an application for ministerial relief. Similarly, the Minister’s discretion does not involve consideration of Canada’s international obligations, given that a finding of inadmissibility does not necessarily result in an applicant’s removal from Canada.

[57] At the same time, the scope of ministerial exemptions is narrow. Justice Pelletier observed that an exemption would be available to persons whose association with a terrorist group was coerced or innocent (citing *Suresh*, above, at para 110). This is clearly not an exhaustive categorization; Justice Pelletier contemplated that there “may be other cases in which persons who would otherwise be caught by subsection 34(1) of the *IRPA* may justify their conduct in such a way as to escape the consequence of inadmissibility” (para 64).

[58] Clearly, the CBSA's analysis of Ms. Haj Khalil's application included factors Justice Pelletier regarded as irrelevant, namely considerations that would normally form part of an application for humanitarian and compassionate relief and matters relating to Canada's international relations. The CBSA considered the various positive contributions Ms. Haj Khalil has made to Canada (social, cultural, economic), and her degree of establishment here. It also weighed negative factors such as her lack of remorse, her inconsistent testimony and her criticism of immigration officials. The CBSA clearly took into account international and bilateral factors, and then balanced all factors, positive and negative to arrive at a recommendation. On the other hand, the question whether Ms. Haj Khalil's presence in Canada raised concerns about national security or public safety was not specifically addressed by the CBSA or the Minister. The evidence appeared to indicate that Ms. Haj Khalil did not pose any threat to Canada's security or safety. However, as the issue was not specifically addressed, it is impossible to predict how the CBSA or the Minister would have dealt with her application according to the approach laid down by Justice Pelletier. Accordingly, I must allow this application for judicial review. It is unnecessary to consider Ms. Haj Khalil's *Charter* arguments.

VII. Conclusion and Disposition

[59] I find that Ms. Haj Khalil was not treated unfairly by the officer who found her to be inadmissible to Canada. Nor did the officer render an unreasonable decision given the evidence before her. As such, I must dismiss the application for judicial review of that decision (IMM-3769-10).

[60] However, I must allow the application for judicial review of Ms. Haj Khalil's Ministerial relief (IMM-3767-10) and order the Minister to reconsider Ms. Haj Khalil's request for an exemption in accordance with the approach set out in *Agraira*, above.

[61] The parties requested an opportunity to make submissions regarding a question for certification. I will consider any submissions filed within 10 days of the issuance of this judgment.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review in IMM-3767-10 is allowed;
2. Ms. Khalil’s request for an exemption is returned to the Minister for reconsideration;
3. The application for judicial review in IMM-3769-10 is denied;
4. The parties may file submissions regarding a question for certification within 10 days of the issuance of this judgment;
5. As these reasons relate to Court File Numbers IMM 3767-10 and IMM 3769-10, the original version of the reasons will be filed in IMM-3769-10, and a copy will be placed in IMM-3767-10.

“James W. O’Reilly”

Judge

ANNEX

Immigration and Refugee Protection Act,
SC 2001, c 27

Loi sur l'immigration et la protection des
réfugiés, LC 2001, ch 27

Objectives — immigration

Objet en matière d'immigration

3. (1) The objectives of this Act with respect to immigration are

3. (1) En matière d'immigration, la présente loi a pour objet :

...

[...]

(i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks;

i) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;

...

[...]

Minister of Citizenship and Immigration

Compétence générale du ministre de la
Citoyenneté et de l'Immigration

4. (1) Except as otherwise provided in this section, the Minister of Citizenship and Immigration is responsible for the administration of this Act.

4. (1) Sauf disposition contraire du présent article, le ministre de la Citoyenneté et de l'Immigration est chargé de l'application de la présente loi.

...

[...]

Minister of Public Safety and Emergency
Preparedness

Compétence du ministre de la Sécurité publique
et de la Protection civile

(2) The Minister of Public Safety and Emergency Preparedness is responsible for the administration of this Act as it relates to

(2) Le ministre de la Sécurité publique et de la Protection civile est chargé de l'application de la présente loi relativement :

...

[...]

(d) determinations under any of subsections 34(2), 35(2) and 37(2).

d) à la prise des décisions au titre des paragraphes 34(2), 35(2) ou 37(2).

Designation of officers
Exception

Désignation des agents
Restriction

6. (3) Notwithstanding subsection (2), the Minister may not delegate the power conferred by subsection 77(1) or the ability to make determinations under subsection 34(2) or 35(2)

6. (3) Ne peuvent toutefois être déléguées les attributions conférées par le paragraphe 77(1) et la prise de décision au titre des dispositions suivantes : 34(2), 35(2) et 37(2)a).

or paragraph 37(2)(a).

...

Protected person

21. (2) Except in the case of a person described in subsection 112(3) or a person who is a member of a prescribed class of persons, a person whose application for protection has been finally determined by the Board to be a Convention refugee or to be a person in need of protection, or a person whose application for protection has been allowed by the Minister, becomes, subject to any federal-provincial agreement referred to in subsection 9(1), a permanent resident if the officer is satisfied that they have made their application in accordance with the regulations and that they are not inadmissible on any ground referred to in section 34 or 35, subsection 36(1) or section 37 or 38.

...

Rules of interpretation

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.

Security

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

- (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;
- (b) engaging in or instigating the subversion by force of any government;
- (c) engaging in terrorism;

[...]

Personne protégée

21. (2) Sous réserve d'un accord fédéro-provincial visé au paragraphe 9(1), devient résident permanent la personne à laquelle la qualité de réfugié ou celle de personne à protéger a été reconnue en dernier ressort par la Commission ou celle dont la demande de protection a été acceptée par le ministre — sauf dans le cas d'une personne visée au paragraphe 112(3) ou qui fait partie d'une catégorie réglementaire — dont l'agent constate qu'elle a présenté sa demande en conformité avec les règlements et qu'elle n'est pas interdite de territoire pour l'un des motifs visés aux articles 34 ou 35, au paragraphe 36(1) ou aux articles 37 ou 38.

[...]

Interprétation

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 :

- 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) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
- c) se livrer au terrorisme;

(d) being a danger to the security of Canada;

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or

(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).

d) constituer un danger pour la sécurité du Canada;

e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;

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).

Exception

(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.

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

...

Legal Rights

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Exception

(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.

Charte canadienne des droits et libertés, Partie I de la Loi Constitutionnelle de 1982, Édifiée comme l'annexe B de la Loi de 1982 sur le Canada, 1982, ch.11

1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

[...]

Garanties juridiques

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3767-10 and IMM-3769-10

STYLE OF CAUSE: NAWAL HAJ KHALIL v MPSEP

AND BETWEEN:

NAWAL HAJ KHALIL v MCI and MPSEP

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 11, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: November 21, 2011

APPEARANCES:

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