Federal Court  Cour fédérale

Date: 20130408

Docket: IMM-8035-12

Citation: 2013 FC 351

[REVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 8, 2013

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

FAZAA ALBERT

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, a citizen of Lebanon, is a long-time member of the Syrian Socialist Nationalist Party (SSNP). He arrived in Canada with his family in 2009 and made a refugee claim, alleging that he was at risk in Lebanon based on his membership in the SSNP. Under section 44 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA or the Act), the respondent referred to the Immigration Division of the Immigration and Refugee Board (the ID) an inadmissibility report against the applicant. In a decision dated July 27, 2012, the ID issued a

deportation order against the applicant, arguing that there were reasonable grounds to believe that the applicant had been a member of the SSNP and that the SSNP was a terrorist group. Therefore, it determined that the applicant was inadmissible under paragraphs 34(1)(*c*) and (*f*) of the IRPA.

[2] In this application for judicial review, the applicant argued that the decision of the ID should be set aside on the ground that its finding was unreasonable because the applicant was in no way complicit in any terrorist attack the SSNP was allegedly engaged in. Further, he argues that the finding that the SSNP is a terrorist organization is unreasonable, since the SSNP is and has always been a legitimate political party in Lebanon and that, to a certain extent, all the political parties in the country have had to engage in some form of terrorist activity in the long civil war.

[3] The respondent argued that the decision of the ID should be upheld, having been based on the appropriate test relating to section 34 of the IRPA. It argues that the ID's findings with respect to the nature of the SSNP and the applicant's membership in this organization are amply supported by the evidence before it.

[4] I agree with the respondent and, for the following reasons, I find that this application must be dismissed.

I. Applicable standard of review

[5] The standard of reasonableness applies to the judicial review of the ID's findings with respect to the existence of reasonable grounds to believe that a person is a member of an organization and that an organization is engaged, has engaged or will engage in terrorism. All these

findings are findings of fact or mixed fact and law (*Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, at paras 23-24).

II. The interpretation of section 34 of the IRPA by the ID is reasonable

[6] With respect to the interpretation of section 34 of the IRPA, it is evident from its wording that the concept of complicity has no impact on determining whether there are reasons to believe that a person is a member of a terrorist organization as part of an investigation relating to inadmissibility under this section. The concept of complicity comes into play only when it must be determined whether a person is a Convention refugee despite the provisions of section 98 of the IRPA, which incorporates into the Act the grounds for exclusion from the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can TS No 6 (the Convention). It is clear from the discrepancies in the wording used in the two sections.

[7] Sections 33 and 34 of the IRPA, which deal with inadmissibility, provide the following:

Rules of interpretation	Interprétation
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 reasonable grounds to believe qu'ils sont survenus, surviennent ou peuvent survenir.
Security 34. (1) A permanent resident or a foreign national is inadmissible on security grounds for	Sécurité 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 reasonable grounds to believe qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).
Exception	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.	(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.

[8] In contrast, section 98 and the relevant provisions of the Convention are worded as follows:

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a	98. La personne visée aux sections E ou F de section premier de la Convention sur

Convention refugee or a person in need of protection.	les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.
Article 1F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	Article 1F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;	a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un rime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;	b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.	c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

[9] This Court has repeatedly held that discrepancies in the wording of these two provisions means that the degree of participation in an organization's terrorist activities is not taken into account in investigations conducted under subsection 34(1) of the IRPA. (See *Miguel v Canada (Minister of Citizenship and Immigration)*, 2012 FC 802, at paras 22-31 (*Miguel*); *Saleh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 303, at para 19; *Ismeal v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 198, at para 23; *Tjiueza v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1260, at para 31; *Omer v Canada (Minister of Citizenship and Immigration)*, 2007 FC 478, at para 11.) Further, given the wording of subsection 34(1), the fact

that an inadmissible person was a member of the organization at the time when he engaged in terrorist acts is irrelevant (*Al Yamani v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1457, at para 12).

[10] Therefore, the applicant wrongly relied on case law dealing with complicity in the context of section 98 de la IRPA and on the statement that the applicant was not personally involved in terrorist acts committed by the SSNP; these concepts are completely irrelevant with respect to inadmissibility under paragraph 34(1) of the IRPA.

[11] Rather, what is relevant is whether the SSNP has engaged or will engage in terrorist acts and whether the applicant was a member of the SSNP. As the respondent rightly points out, section 33 of the IRPA submits that these facts are established if it is shown that there are reasonable grounds to believe that they have occurred, are occurring or may occur, which is a lighter burden of proof than the balance of probabilities (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at para 114; *Charkaoui v Canada (Minister of Citizenship and Immigration)*, 2007 SCC 9, at para 39).

[12] Therefore, the ID considered the correct questions, those of whether there were reasonable grounds to believe that the applicant was a member of the SSNP and that the SSNP is an organization that is engaged, has been engaged or will engage in a terrorist act.

III. <u>The findings of fact of the ID are reasonable</u>

[13] In this case, the applicant readily admitted that he was a member of the SSNP both to the Citizenship and Immigration Canada officer who examined him and to the ID in his testimony. In fact, he had been a member of the party for more than 45 years and he was still a member when he arrived in Canada. He confirmed that he supported the objectives of the party and admitted that he carried out several activities on its behalf over the years, e.g. by travelling for the party during the Lebanese civil war, by joining the Coalition Opposition Group under his name in Lebanon in 2008 and by acting as a co-ordinator in the party during the Lebanese elections of 2009. The ID was also amply justified in finding that the applicant was a member of the SSNP. Thus, this case differs from *Miguel*, on which the applicant relies, since Ms. Miguel was never a member of the terrorist organization at issue, whose objectives she merely supported.

[14] Thus, the ID's finding that there were reasonable grounds to believe that the applicant was a member of the SSNP is unassailable.

[15] In like manner, there is no reason to modify its finding that the SSNP engaged in terrorism. In fact, as the respondent points out, the applicant did not dispute this element before the ID: it was only before this Court that he raised the argument that the SSNP is not a terrorist organization.

[16] To arrive at the finding that the SSNP had engaged in terrorism, the ID applied the definition of terrorism set out by the Supreme Court in *Suresh v Canada* (*Minister of Citizenship and Immigration*), 2002 SCC 1, at para 98 (*Suresh*):

> 98 In our view, it may safely be concluded, following the International Convention for the Suppression of the Financing of Terrorism, that "terrorism" in s. 19 of the Act includes any "act intended to cause death or serious bodily injury to a civilian, or to

> any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". Particular cases on the fringes of terrorist activity will inevitably provoke disagreement. Parliament is not prevented from adopting more detailed or different definitions of terrorism. The issue here is whether the term as used in the Immigration Act is sufficiently certain to be workable, fair and constitutional. We believe that it is.

[17] The ID then pointed out that the evidence establishing that the SSNP had attempted a coup in 1961, kidnapped civilians in 1979, committed suicide bombings in the 1970s and 1980s in which Lebanese civilians and members of the Israeli armed forces died, used grenades in densely-populated areas in 2008 and killed many civilians. There was documentary evidence before the ID supporting these findings. In addition, although the applicant disputes this point, some evidence suggests the SSNP was allegedly responsible for the assassination of a former Syrian president.

[18] These activities fall within the definition of terrorism set out in *Suresh*. What is more, in *Kablawi v Canada* (*Minister of Citizenship and Immigration*), 2010 FC 888, this Court confirmed the reasonableness of the ID's decision that the SSNP engaged in terrorism. Paragraphs 55 and 56 of this decision apply in this case with equal force:

> 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.

[19] Thus, the ID's finding that there were reasonable grounds to believe that the SSNP had engaged in terrorism is reasonable.

[20] Consequently, this application for judicial review will be dismissed.

[21] At the hearing, counsel for the applicant, stating that he wanted to propose a question to be certified, was allowed to submit his question at the latest by March 18, 2013. He did not submit anything. The respondent is of the view that this case raises no question worth certifying. I agree with the respondent that this case does not raise any questions of general importance and, therefore, I will certify none.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed.

2. No question of general importance is certified; and

3. Without costs.

"Mary J.L. Gleason"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8035-12
STYLE OF CAUSE:	FAZAA ALBERT v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	March 14, 2013
REASONS FOR JUDGMENT AND JUDGMENT BY:	GLEASON J.
DATED:	April 8, 2013

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