

Date: 20070530

Docket: IMM-6140-06

Citation: 2007 FC 568

OTTAWA, Ontario, May 30, 2007

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

IFTIKHAR SHOAQ JALIL

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 of an immigration officer (the Officer), dated October 23, 2006, wherein it was determined that the applicant was inadmissible pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the Act).

BACKGROUND

[2] Iftikhar Shoaq Jalil, the applicant, is a citizen of Pakistan who came to Canada in 1996 and was recognized as a refugee on July 22, 1997.

[3] In December 1997, the applicant applied to become a permanent resident. After waiting seven years for a decision, he brought an application in this Court to compel Citizenship and Immigration Canada (CIC) to make a decision. CIC agreed to render a decision and in a decision dated January 17, 2005 the applicant was found to be inadmissible under paragraph 34(1)(f) of the Act because there were reasonable grounds to believe that the organization to which he belonged in Pakistan, the Muttahida Quami Movement (MQM-A), was an organization that engaged in terrorism.

[4] The applicant brought an application for judicial review of that decision. On February 24, 2006, Mr. Justice Mosley allowed the judicial review and ordered a re-determination of the applicant's permanent residence application.

[5] Mr. Jalil's application was examined by a different immigration officer. Before making a decision, the Officer provided the applicant with copies of three documents which she intended to use in her assessment and asked him for submissions on these documents. The first document, entitled *Muttahida Quomi Mahaz, Terrorist Group of Pakistan*, was taken from the website of an organization named the South Asia Terrorism Portal (SATP). The second document, entitled *Muttahida Qaumi Movement-Ataf (MQM-A)*, is from the website of Jane's World Insurgency and Terrorism. The final document is an Amnesty International report entitled *Human Rights Crisis in Karachi*. The applicant's counsel replied with submissions which included information about the MQM and letters from two "experts".

[6] The first letter is a statement from Gowher Rizvi, Director of the Ash Institute for Democratic Governance and Innovations at the Kennedy School of Government, Harvard University. Dr. Rizvi's field of research is the history and politics of South Asia. He states that while some members of MQM may have engaged in acts of violence that the MQM as an organization does not encourage or condone acts of violence. He also explains that the MQM has often resorted to 'direct actions' in which it has called for general strikes to demonstrate popular solidarity with the MQM and that during these general strikes MQM members frequently clash with government agents resulting in instances in violence and loss of life.

[7] The second letter is an affidavit from Dr. Lisa Given, an Associate Professor in the School of Library and Information Studies, Faculty of Education at the University of Alberta. Her affidavit discusses the use of internet resources and the criteria that librarians use to assess internet documents and her affidavit includes her assessment of the three documents relied on by the Officer. She notes that it is difficult to assess the quality of the Amnesty International report because it lacks independently corroborated evidence. She questions the reliability of documents on the SATP website because references are typically not provided to support the claims made on this site. Finally, she notes that she could not verify the reliability of the Jane's World report as it does not contain the name of its author and provides no references or other sources to support the claims made in the document. This notwithstanding the fact that the document ends with the note "© 2004 Jane's Information Group Paul Burton" (See page 43 of the Applicant's Application Record). She concludes that the reliability of all three documents is reduced because of the lack of source evidence, the use of phrases like "suspected" and "accused of," the lack of authorship and/or other

background details such as how the information was compiled and the mixing of reference to MQM-A and MQM.

DECISION UNDER REVIEW

[8] The Officer described the history of the MQM and noted that in 1992 the organization split into two rival groups: MQM-A and MQM-H. She noted that the founder of the MQM, Altaf Hussain, who subsequently became the leader of the MQM-A, claims not to subscribe to violence but that “there is overwhelming evidence and a consensus among observers in Karachi that some MQM party members have used violent means to further their political ends”.

[9] She then goes on to list instances of violence activity attributed to the MQM taken from the Jane’s World report and the SATP document. The list includes

- the killing of 90 people in various incidents believed to have been perpetrated by MQM following the forming of a coalition between the MQM and the Pakistan People’s Party in 1988;
- the murder of two police officers by MQM activists in 1989;
- the bombing of a prominent journalist’s house by MQM activists in 1991;
- the murder of a senior member of MQM-H by a suspected MQM-A cell in 1993;
- an attack on police and civilians with guns, rockets and bombs by MQM-A activists in 1995;
- a bomb attack killing 16 people which that police blame on the MQM-A in 2000; and,
- the sentencing of two MQM-A members to death for terrorist activities in 2001.

[10] The Officer then referred to the definition of terrorism provided in the *International Convention for the Suppression of the Financing of Terrorism* and concluded that the activities attributed to the MQM and MQM-A provide reasonable grounds to believe that that organization is one that engages in terrorism.

[11] The Officer noted the concerns of the applicant's counsel with respect to the reliability of the documents relied on by the Officer. She stated that both Jane's World Insurgency and Terrorism and Amnesty International are generally accepted as reliable sources by the Immigration and Refugee Board and by courts. She also found that because the documents refer to events that are far enough in the past and to groups that are secretive that it would be unreasonable to subject them to the same level of scrutiny as documents related to more recent events or less covert groups.

[12] The Officer noted that she was relying on three documents, which are generally consistent, increases the reliability of her finding. Finally, she stated that she also considered and used the evidence about the MQM set out in the letter from Dr. Rizvi in her assessment of the MQM but that she choose to give more weight to the Jane's World document and the Amnesty International document.

RELEVANT LEGISLATIVE PROVISIONS

[13] Section 34 of the Act reads as follows:

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

34. (1) Empovent interdiction de territoire pour raison de sécurité les faits

grounds for	suivants :
(c) engaging in terrorism;	c) se livrer au terrorisme;
[...]	[...]
(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).

ISSUE

[14] The issue before the Court is whether the Officer's finding that the MQM-A has engaged in acts of terrorism is reasonable.

ANALYSIS

Standard of review

[15] In *Jalil v. Minister of Citizenship and Immigration*, 2006 FC 246, the Court held that the applicable standard of review to the Officer's conclusion that there are reasonable grounds to believe that the MQM-A is an organization that has engaged in terrorism is the standard of reasonableness. The Court noted that the question was one of mixed fact and law, that immigration officers have a degree of expertise in determining admissibility on the basis of the criteria set out in section 34 of the Act, and the issue is one that involves the consideration of discreet indicia rather than a broad-based assessment. I agree with this analysis and note that this standard was applied in a

number of other cases (see *Omer v. Minister of Citizenship and Immigration*, 2007 FC 478 and *Naeem v. Minister of Citizenship and Immigration*, 2007 FC 123).

Was the Officer's finding that the MQM-A has engaged in acts of terrorism reasonable?

[16] To find a person inadmissible under paragraph 34(1)(f) of the Act there must be reasonable grounds to believe that the applicant is a member of an organization that has engaged in the acts referred to in (a), (b) or (c). Paragraph 34(1)(c) refers to acts of terrorism. The standard of proof required to establish reasonable grounds is “more than a flimsy suspicion, but less than the civil balance of probabilities” (*Alemu v. Minister of Citizenship and Immigration*, 2004 FC 997).

[17] The Supreme Court of Canada in *Mugesera v. Minister of Citizenship and Immigration*, 2005 SCC 40, discussed the issue of reasonable grounds in the context of a human rights violations inadmissibility case and stated the following:

When applying the “reasonable grounds to believe” standard, it is important to distinguish between proof of questions of fact and the determination of questions of law. The “reasonable grounds to believe” standard of proof applies only to questions of fact: *Moreno v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 298 (C.A.), at p. 311. This means that in this appeal the standard applies to whether Mr. Mugesera gave the speech, to the message it conveyed in a factual sense and to the context in which it was delivered. On the other hand, whether these facts meet the requirements of a crime against humanity is a question of law. Determinations of questions of law are not subject to the “reasonable grounds to believe” standard, since the legal criteria for a crime against humanity will not be made out where there are merely reasonable grounds to believe that the speech *could* be classified as a crime against humanity. The facts as found on the “reasonable grounds to believe” standard must show that the speech *did* constitute a crime against humanity in law. (para. 116)

[18] Applying *Mugesera* to the case at bar, the assessment of whether there are reasonable grounds to believe that an organization has engaged in acts of terrorism is a two-step analysis. First, a determination must be made whether there are reasonable grounds to believe the organization in question committed the acts of violence attributed to it. It is clear from *Mugesera* that this is a finding of fact. The second step involves determining whether those acts do constitute terrorist acts. The applicant submits that the Officer erred at both steps of the analysis and also challenges the decision on the ground that the Officer failed to consider whether the MQM-A as an organization engaged in acts of terrorism.

a) Did the Officer reasonably conclude that violent acts were attributable to the MQM-A?

[19] The applicant submits that there are no reasonable grounds to believe that the MQM-A committed the acts of violence attributed to it. He submits that the sources relied on by the Officer were unreliable and that the Officer erred by giving more weight to the documentary evidence than to the evidence provided by the applicant. The applicant submits that great caution must be had in relying exclusively or solely on internet sources of information that are not verifiable since there is no inherent truthfulness and accuracy in such sources of information.

[20] With specific reference to the Amnesty International report, the applicant submits that the information about acts attributed to the MQM-A was from the Pakistani government, the adverse party in the conflict. The applicant submits that a reasonable reader would conclude that it may likely be biased and lacks objectivity.

[21] The Amnesty International report states the following about how it obtained the information in the report:

Amnesty International has carefully monitored the Pakistani press, verified reports as far as possible with lawyers and human rights activists on the ground and spoken to a large number of victims and victims' families during a visit to Pakistan in December 1995. Many concerned residents in Karachi have directly approached Amnesty International to communicate their experiences, observations and fears.

[...]

During the period when the MQM held office, Amnesty International obtained testimonies from members of the PPP and smaller Sindhi parties that their members had been tortured and killed in the custody of the MQM(A). Reporters, editors and publishers reported that they had been threatened by MQM members to report favourably or to "face the consequences". In more recent times, too, individual cases of abuses by the MQM(A) and other political groups have been reported in the national press and to Amnesty International which strongly suggests that these armed opposition groups are indeed responsible for many cases of torture, hostage taking, abductions and deliberate and arbitrary killings reported in Karachi.

[22] Based on the explanation provided in the report about how the information contained in the document was gathered, based on Amnesty International's reputation for providing reports, I find it was reasonable for the Officer to rely on this document. I would add that one cannot take for granted everything that Amnesty International states in a report as the absolute truth but I am satisfied with their report in this case. Like Mr. Justice Blais, in the case of *Mohammed Kashif Omer*, 2007 FC 478, I accept, for the purposes of this case, the fact that it is reasonable or that there are reasonable grounds to believe that the MQM(A) is an organization that supports terrorist activities.

[23] The same cannot be said about the document from the SATP website. Dr. Given's concerns about this website seem to me to be well-founded. The document contains no footnotes and provides no explanation about how the information on the site was gathered. Moreover, the document does not indicate who its author is. The Officer noted in her decision that relying on three separate sources which are generally consistent increases the reliability of the finding. This would be true if each document gathered the information independently; however, since the SATP document contains no footnotes it is entirely possible that the information in that document was taken from the Jane's World report. Nevertheless, the Officer seems to have given this document limited weight as on the final page of the decision she states that she gave more weight to the Amnesty International report and the Jane's World Report than to Dr. Rizvi's statement.

[24] Many of the concerns raised by Dr. Given about the Jane's World document are valid, specifically that the Jane's World report does not contain any references or other sources to support the claims made in the document. Unlike the Amnesty International report, there is no indication about how the information was gathered. Dr. Given notes that it has no author but, as I have stated, there is a name on the final page of the document which is presumably the name of the author or the editor.

[25] Given the problems with the reliability set out in Dr. Given's affidavit, it was unreasonable for the Officer to give any weight to the SATP document. I find that it was not unreasonable for the Officer to find that based on the Amnesty International report and the Jane's World report there

were serious grounds to believe that the MQM-A was an organization that engaged in acts of terrorism.

[26] Finally, the applicant submits that the Officer erred by giving more weight to the documentary evidence than to the statement of Dr. Rizvi who is an expert and is unbiased and has no interest in the proceedings. It is well-established that an administrative decision-maker is entitled to prefer documentary evidence over the applicant's evidence although the decision-maker must explain in clear and unmistakable terms why it preferred the documentary evidence (*Okyere-Akosah v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 411 (F.C.A.)). Here the Officer explained that she took Dr. Rizvi's statement into consideration but that she chose to give more weight to the Amnesty International report and the Jane's World report because she found them to be more reasonable.

- b) Did the Officer reasonably conclude that the acts attributed to the MQM-A were terrorist acts?

[27] In *Suresh v. Minister of Citizenship and Immigration*, 2002 SCC 1, the Supreme Court of Canada provided the following definition of terrorism:

In our view, it may safely be concluded, following the *International Convention for the Suppression of the Financing of Terrorism*, that "terrorism" in s. 19 of the Act includes any "act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". Particular cases on the fringes of terrorist activity will inevitably provoke disagreement. Parliament is not prevented from

adopting more detailed or different definitions of terrorism. The issue here is whether the term as used in the *Immigration Act* is sufficiently certain to be workable, fair and constitutional. We believe that it is.
(para. 98)

[28] The parties agree that it is a reviewable error for an immigration officer not to use the definition of terrorism set out in the Supreme Court of Canada decision in *Suresh (Fuentes v. Minister of Citizenship and Immigration)*, 2003 FCT 379, also see *Alemu and Ali v. Minister of Citizenship and Immigration*, 2004 FC 1174).

[29] The Officer adopted the definition of terrorism from *International Convention for the Suppression of the Financing of Terrorism* which is the definition adopted in *Suresh*. Therefore, the Officer used the proper definition of terrorism.

[30] The applicant submits that there must be an evidentiary foundation to support a finding that an organization was engaged in acts of terrorism (*Fuentes, Jalil*) and submits that an immigration officer must identify specific acts carried out by the MQM-A that would meet the *Suresh* definition of terrorism (*Ali*). The applicant submits that in the case at bar the Officer's list of acts of violence attributed to the MQM is insufficient.

[31] Mosley J. upon review of the first decision on Mr. Jalil's application for permanent residence also allowed the application for judicial review on the ground that the immigration officer had failed to assess whether the acts attributed to the MQM-A were terrorist acts. At paragraph 31, he held that

The respondent may well be correct that the acts attributed to the MQM-A fall within the *Suresh* definition, or of the similar definition added to the *Criminal Code* by the *Anti-terrorism Act*, S.C. 2001, c. 41, but that is not apparent from a reading of the officer's notes or her decision letter. There is no indication as to what she means when she says that MQM-A is an organization that has engaged in "terrorism" other than through a listing of acts described as terrorist activities. Thus it is impossible to determine how the officer defined "terrorism" in assessing these acts. She has simply asserted that "MQM is a known organization that has participated in terrorist activities" without explaining how she understood and applied those terms.

[32] The applicant cites *Naeem* wherein the Court applied *Jalil* and held at paragraph 46 that

In my view, the officer's decision in the present case suffers from the same inadequacy. There is no indication as to how the officer understood and applied the definition of terrorism. The reasons do not set out the details and circumstances of the acts characterized to be terrorist acts. Acts such as kidnapping, assault and murder are undoubtedly criminal, but are not necessarily acts of terrorism. It was incumbent on the officer to explain why she viewed them to be terrorist acts. Her failure to do so leads to the conclusion that her reasons do not withstand somewhat probing scrutiny.

[33] The respondent submits that it is apparent from the Officer's reasons that the acts attributed to the MQM-A clearly fall within the *Suresh* definition of terrorism as all the cited activities involve violence perpetrated by the MQM-A for political purposes that caused death or serious bodily injury. Moreover, the respondent submits that the case at bar is distinguishable from *Naeem* and *Jalil* because in those cases the immigration officers did not provide any definition of the term "terrorism" or identify how they considered violent acts attributed to the MQM-A to be terrorist in nature.

[34] I agree with the respondent. Unlike in *Jalil* and *Naeem*, the Officer included a definition of terrorism in her decision. While she did not explicitly explain how she understood and applied this term, she implicitly did so when she held that "there is an overwhelming evidence and a consensus

among observers in Karachi that some MQM party members have used violent means to further their political ends” (emphasis added). This seems to me to indicate that the Officer considered the acts attributed to the MQM-A to more than criminal acts.

[35] While it would be desirable for the Officer to have provided a more detailed analysis of how the acts attributed to the MQM-A meet the definition of terrorism provided in *Suresh*, I am satisfied that her reasons stand up to a “somewhat probing examination” (*Canada (Director of Investigation and Research) v. Sotham*, [1997] 1 S.C.R. 748).

c) Did the Officer consider whether MQM-A as an organization engaged in acts of terrorism?

[36] The applicant also argued that the Officer’s decision was unreasonable because it failed to determine whether the MQM-A as an organization committed acts of terrorism. The applicant submits this issue is particularly important in this case as the MQM-A has repeatedly and consistently denied that it instigates, sanctions or is involved in acts of violence. The applicant submits that all the acts attributed to MQM-A in the Officer’s decision are acts committed by MQM members.

[37] The respondent submits that there is no legal basis for the applicant’s submission that there must be evidence that an organization has itself instigated, sanctioned and approved the terrorist acts perpetrated by its members for it to qualify under paragraph 34(1)(c) of the Act.

[38] While there is no legal requirement that there be evidence that an organization sanctioned or approved the terrorist acts, in making an assessment under paragraph 34(1)(f) of the Act, an immigration officer must determine whether there is enough evidence to establish that the organization sanctions the acts. The Officer made such an assessment in weighing the evidence that the leader of the MQM-A has stated that the MQM-A does not subscribe to violence against the evidence from the Amnesty International report and the Jane's World report that there is overwhelming evidence and a consensus among observers in Karachi that some MQM party members have used violent means to further their political ends. In my view, the Officer's determination in this regard is reasonable.

JUDGMENT

This application for judicial review is dismissed. No question was submitted for certification.

“Max M. Teitelbaum”

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

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