

Zarrin v. Canada (Minister of Citizenship and Immigration), 2004 FC 332 (CanLII)

Date: 2004-02-25

Docket: IMM-3348-02

URL: <http://www.canlii.org/en/ca/fct/doc/2004/2004fc332/2004fc332.html>

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Date: 20040225

Docket: IMM-3348-02

Citation: 2004 FC 332

Toronto, Ontario, February 25th, 2004

Present: The Honourable Mr. Justice Mosley

BETWEEN:

KAMRAN ZARRIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Kamran Zarrin has brought an application for judicial review in respect of a decision of immigration officer V.A. Malak (the "officer"), dated June 21, 2002. In that decision, the officer refused Mr. Zarrin's application for permanent residence in Canada on the basis that he was a person described in subsection 19(1)(f)(iii)(B) of the former *Immigration Act*, R.S.C. 1985, c. I-2 (the "former Act"). The applicant seeks an order setting aside the decision and an order referring this matter back to a different officer for determination in accordance with these reasons.

BACKGROUND

[2] Mr. Zarrin is a citizen of Iran, as is his spouse, Ms. Masoumeh Salemi and their young son, Houman Zarrin. They arrived in Canada in November 1998 and claimed Convention refugee status here. By notice dated January 12, 2000 they were found by the Immigration and Refugee Board, Convention Refugee Determination Division, to be Convention refugees. Their claim was based on Mr. Zarrin's and his family's connection to the Kurdish Democratic Party ("KDP") of Iran.

[3] Thereafter, in or around February 2000, the applicant and his family applied for permanent residence, or as it is often called, "landing" in Canada. The interview that is the subject of these proceedings was held on June 11, 2002. Prior to that occasion, the applicant had been interviewed by Canadian Security Intelligence Service officials.

The Officer's Decision

[4] By letter dated June 21, 2002 the officer determined that the applicant was inadmissible for landing in Canada pursuant to subsection 19(1)(f)(iii)(B) of the former Act. That letter stated, in part as follows:

... In the course of reviewing your file, it appeared that your application for landing could be refused due to your possible inadmissibility under section 19(1)(f)(iii)(b) of the Immigration Act. In this respect, you were scheduled to appear for an interview on June 11, 2002.

The information gathered during your interview and all the one [sic] on file have been carefully reviewed. As a result, it has been determined that your application for landing must be refused as you are a person described in sub-paragraph 19(1)(f)(iii)(b) of the *Immigration Act*...

[5] The officer's typewritten interview notes from June 11, 2002 were provided to this Court and the applicant, pursuant to Rule 9 of the *Federal Court Immigration and Refugee Protection Rules*, SOR/93-22, as amended, as the reasons for the officer's decision. These notes contain eight questions and answers related to Mr. Zarrin's involvement with the KDP. Mr. Zarrin attests that the interview lasted for three hours and that the officer recorded only a few of the questions and answers.

[6] Questions 1, 2 and 5 and the applicant's responses, as recorded in these notes, read as follows:

1. GOAL OF KDPI (kurdish democratic party of iran)

APPLICANT:

PROVIDE AUTONOMY AND RECOGNIZE THE CULTURE OF THE KURDS IN IRAN. PROVIDE THE BASICS FOR THE KURDS SUCH AS FOOD, CLOTHING, EMPLOYMENT & SHELTER.

TO HIS KNOWLEDGE, KDPI WAS NEVER INVOLVED IN ANY VIOLENT ACTIVITIES. THE "QUMALLEH" ANOTHER KURDISH EXTREMIST PARTY WAS KNOWN FOR ITS VIOLENT ACTIVITIES. THE "QUMALLEH" IS LOCATED IN IRAN & TURKEY.

2. WHEN DID YOU JOIN THE ORGANIZATION & FOR HOW LONG?

APPLICANT:

HE JOINED THE ORGANIZATION FORM 1988 TO 1997. HE CAME TO CANADA IN MAY 18, 1998.

...

5. YOUR SPECIFIC ACTIVITIES AT THE ORGANIZATION

HE WAS NOT A MEMBER. HE WAS A SYMPATHIZER. IN IRAN, HE PROMOTED THE KURDISH CAUSE BY PHOTOCOPYING/PRINTING PAMPHLETS FROM HIS XEROX SHOP & DISTRIBUTING THEM TO IRANIANS. THE PURPOSE OF HIS ACTIVITY WAS TO SPREAD THE WORD ABOUT THE BAD LIVING CONDITIONS OF THE KURDS SO PEOPLE WOULD HELP THEM OUT. IN 1993, WHILE IN JAPAN ON A WORKER VISA, HE PROMOTED THE KURDISH CAUSE BY DISTRIBUTING PAMPHLETS AMONG IRANIANS, IN BUILDINGS AND PARKS. THESE PAMPHLETS WERE SHIPPED TO HIM FROM SWEDEN. HE ALSO COLLECTED FUNDS ABOUT \$400/MONTHLY & TRANSFERRED THEM INTO AN

ACCOUNT IN TEHRAN THROUGH THE BANK OF TOKYO. HE WAS SATISFIED BY HIS ROLE, AS PEOPLE BECAME AWARE OF THE LIVING CONDITIONS OF THE IRANIAN KURDS. HE COMPARED THE KURDS LIVING CONDITIONS TO THE AFRICAN CHILDREN CONDITIONS AS BROADCASTED ON TV BY WORLD VISION. THE GOAL IS TO MAKE PEOPLE SENSITIVE AND AWARE OF THEIR WAY OF LIFE.

ANALYSIS

[7] While a number of grounds were advanced in support of this application in the applicant's written submissions, the hearing of this matter focussed almost exclusively on what I consider to be a "fatal flaw" in the officer's decision. Accordingly, at the conclusion of the hearing I advised counsel that I intended to grant the application on that ground alone and will confine these reasons to that issue.

[8] This application for judicial review involves a decision of inadmissibility made pursuant to subsection 19(1)(f)(iii)(B) of the former Act. That subsection read as follows:

19. (1) No person shall be granted admission who is a member of any of the following classes:	19. (1) Les personnes suivantes appartiennent à une catégorie non admissible:
...	...
(f) persons who there are reasonable grounds to believe	f) celles dont il y a des motifs raisonnables de croire qu'elles :
...	...
(iii) are or were members of an organization that there are reasonable grounds to believe is or was engaged in	(iii) soit sont ou ont été membres d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée :
...	...
(B) terrorism,	(B) soit à des actes de terrorisme,
except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;	le présent alinéa ne visant toutefois pas les personnes qui convainquent le ministre que leur admission ne serait nullement préjudiciable à l'intérêt national;

[9] In her reasons, the officer concluded that the KDP was an organization which engages or engaged in terrorism. The certified tribunal record provided to this court, pursuant to Rule 17 of the *Federal Court Immigration and Refugee Protection Rules*, reveals no evidence, documentary or otherwise, concerning the KDP's current or past activities, formation or history. It does, however, state that approximately twenty pages were not disclosed to the Court pursuant to sections 37 and 38 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5, as being exempt from disclosure due to a specified public interest. It is reasonable to assume that third party documentary evidence, detailing the nature of the KDP, in general, would not be subject to such exemption.

[10] In my view, in order for the officer in this case to have made her determination that there were "reasonable grounds" to believe that the KDP was a terrorist organization, which was a central part of the

subsection 19(1)(f)(iii)(B) decision, such evidence *must have* been considered by the officer, however, no such evidence was disclosed to the applicant. The applicant had no opportunity to review and respond to such evidence, and therefore, he was denied procedural fairness. In the alternative, in my opinion, if the officer failed to evaluate such evidence in coming to her inadmissibility finding, then such decision cannot be said to have been based on "reasonable grounds" and must be set aside on that basis.

[11] The officer's notes, provided as the reasons for decision in this case, provide no insight as to why she considered the KDP to be a terrorist organization and why she regarded the applicant as being involved in this organization^[1]. The interview notes represent, rather, a mere recantation of certain questions and the applicant's answers thereto, recorded at the interview. These notes do not represent adequate reasons for the inadmissibility decision. The obligation to provide adequate reasons is not satisfied by merely stating a conclusion: *Via Rail Canada Inc. v. National Transportation Agency*, 2000 CanLII 16275 (F.C.A.), [2001] 2 F.C. 25 (C.A.) at paragraph 22.

[12] The notes are silent as to any reason for finding that the KDP is a terrorist organization. Such analysis was a required part of the inadmissibility finding pursuant to subsection 19(1)(f)(iii)(B), and in the absence of an affidavit from the officer who made this decision, and any indication on the tribunal record that this issue was considered, I am of the view that the officer did not have "reasonable grounds" to determine the applicant inadmissible, as per the standard of proof set out at paragraph 27 in *Chiau v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9042 (F.C.), [1998] 2 F.C. 642 (T.D.), aff'd 2000 CanLII 16793 (F.C.A.), [2001] 2 F.C. 297 (C.A.), namely, "a *bona fide* belief in a serious possibility based on credible evidence".

[13] The applicant has also contended that these notes are not complete, as the officer asked him several other questions and at one point, the officer stopped typing notes into the computer. This evidence is uncontradicted in this proceeding, as the respondent has not filed an affidavit from the officer. Moreover, the applicant attests that the interview was at least three hours in length, with no break. Given the importance of the subject-matter of the interview, and the applicant's uncontradicted evidence in this area, I am persuaded that the typewritten interview notes do not represent a complete record of the interview. This error represents another way in which the reasons of the officer are inadequate, and also, unfair.

[14] The finding that the KDP is a terrorist organization is not grounded in any evidence that is in the record before this Court. There is no evidence at all, let alone analysis, on this issue contained in the tribunal record. In my view, pursuant to the Supreme Court of Canada's decision in *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 (CanLII), [2002] 1 S.C.R. 3, as well as the recent decision of this court, *Fuentes v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 379 (CanLII), [2003] 4 F.C. 249 (T.D.), the respondent's department now has judicial guidance, including particular criteria, that should be used in determining whether an organization is indeed one that engages or engaged in terrorism. Such reasoning should have formed part of the officer's decision. I note that the *Suresh* decision was rendered and released by a unanimous court on January 11, 2002, months before the officer's decision on June 21, 2002.

[15] Neither party has requested that a question be certified.

ORDER

THIS COURT ORDERS that this application for judicial review is allowed, the decision of the visa officer dated June 21, 2002 is set aside and the applicant's application for permanent residence shall be determined by a different officer, in accordance with these reasons. No question is certified.

"Richard G. Mosley"

J.F.C.

FEDERAL COURT

Names of Counsel and Solicitors of Record

DOCKET: IMM-3348-02

STYLE OF CAUSE: KAMRAN ZARRIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND

IMMIGRATION

Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 24, 2004

REASONS FOR ORDER

AND ORDER BY: MOSLEY J.

DATED: FEBRUARY 25, 2004

APPEARANCES BY:

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FOR THE APPLICANT

Mr. Ian Hicks

FOR THE RESPONDENT

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FEDERAL COURT

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REASONS FOR ORDER

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^[1] A memorandum found in the tribunal record, dated June 21, 2002, indicates the officer's analysis in regards to the applicant's involvement in the KDP, however, this memorandum lacks any description or reasoning as to why the officer considered the KDP to be a "terrorist organization".

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