Suresh (Re), 1997 CanLII 5797 (F.C.)

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IN THE MATTER OF a certificate in relation to Manickavasagam SURESH; AND IN THE MATTER OF the referral of a certificate to the Federal Court of Canada pursuant to paragraph 40.1(4)(c) of the *Immigration Act*, R.S.C. 1985, c. I-2

REASONS FOR ORDER

TEITELBAUM, J.:

[1] On August 29, 1997, after more than 50 days of hearing, I determined that reasonable grounds existed for the Solicitor General and the Minister of Employment and Immigration (Crown) to have issued a certificate pursuant to section 40.1 of the *Immigration Act* (*Act*).

[2] I think it necessary, for the purposes of this decision, to incorporate the entire section 40.1 of the *Act*.

40.1 (1) Notwithstanding anything in this Act, where the Minister and the Solicitor General of Canada are of the opinion, based on security or criminal intelligence reports received and considered by them, that a person, other than a Canadian citizen or permanent resident, is a person described in subparagraph 19(1)(*c*.1)(ii), paragraph 19(1)(*c*.2), (*d*), (*e*), (*f*), (*g*), (*j*), (*k*) or (*l*) or subparagraph 19(2)(*a*.1)(ii), they may sign and file a certificate to that effect with an immigration officer, a senior immigration officer or an adjudicator.

(2) Where a certificate is signed and filed in accordance with subsection (1),

40.1 (1) Par dérogation aux autres dispositions de la présente loi, le ministre et le solliciteur général du Canada peuvent, s'ils sont d'avis, à la lumière de renseignements secrets en matière de sécurité ou de criminalité dont ils ont eu connaissance, qu'une personne qui n'est ni citoyen canadien ni résident permanent appartiendrait à l'une des catégories visées au sous-alinéa 19(1)*c*.1)(ii), aux alinéas 19(1)*c*.2), *d*), *e*), *f*), *g*),

(*a*) an inquiry under this Act concerning the person in respect of whom the certificate is filed shall not be commenced, or if commenced shall be adjourned, until the determination referred to in paragraph (4)(*d*) has been made; and

(*b*) a senior immigration officer or an adjudicator shall, notwithstanding section 23 or 103 but subject to subsection (7.1), detain or make an order to detain the person named in the certificate until the making of the determination.

(3) Where a certificate referred to in subsection (1) is filed in accordance with that subsection, the Minister shall

(*a*) forthwith cause a copy of the certificate to be referred to the Federal Court for a determination as to whether the certificate should be quashed; and

(*b*) within three days after the certificate has been filed, cause a notice to be sent to the person named in the certificate informing the person that a certificate under this section has been filed and that following a reference to the Federal Court a deportation order may be made against the person.

(4) Where a certificate is referred to the Federal Court pursuant to subsection (3), the Chief Justice of that Court or a judge of that Court designated by the Chief Justice for the purposes of this section shall

(*a*) examine within seven days, in camera, the security or criminal intelligence reports considered by the Minister and the Solicitor General and hear any other evidence or information that may be presented by or on behalf of those Ministers and may, on the request of the Minister or the Solicitor General, hear all or part of such evidence or information in the absence of the person named in the certificate and any counsel representing the person where, in the opinion of the Chief Justice or the designated judge, as the case may be, the evidence or information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(*b*) provide the person named in the certificate with a statement summarizing such information available to the Chief Justice or the designated judge, as the case may be, as will enable the person to be reasonably informed of the circumstances giving rise to the issue of the certificate, having regard to whether, in the opinion of the Chief Justice or the designated judge, as the case may be, the information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(*c*) provide the person named in the certificate with a reasonable opportunity to be heard;

(*d*) determine whether the certificate filed by the Minister and the Solicitor General is reasonable on the basis of the

j), *k*) ou *l*) ou au sous-alinéa 19(*2*)*a*.*1*)(*ii*), signer et remettre une attestation à cet effet à un agent d'immigration, un agent principal ou un arbitre.

(2) En cas de remise de l'attestation visée au paragraphe (1) :

a) l'enquête prévue par ailleurs aux termes de la présente loi sur l'intéressé ne peut être ouverte tant que la décision visée à l'alinéa (4)*d*) n'a pas été rendue;

b) l'agent principal ou l'arbitre doit, par dérogation aux articles 23 ou 103 mais sous réserve du paragraphe (7.1), retenir l'intéressé ou prendre une mesure à cet effet contre lui en attendant la décision.

(3) En cas de remise de l'attestation prévue au paragraphe (1), le ministre est tenu :

a) d'une part, d'en transmettre sans délai un double à la Cour fédérale pour qu'il soit décidé si l'attestation doit être annulée;

b) d'autre part, dans les trois jours suivant la remise, d'envoyer un avis à l'intéressé l'informant de la remise et du fait que, à la suite du renvoi à la Cour fédérale, il pourrait faire l'objet d'une mesure d'expulsion.

(4) Lorsque la Cour fédérale est saisie de l'attestation, le juge en chef de celle-ci ou le juge de celle-ci qu'il délègue pour l'application du présent article :

a) examine dans les sept jours, à huis clos, les renseignements secrets en matière de sécurité ou de criminalité dont le ministre et le solliciteur général ont eu connaissance et recueille les autres éléments de preuve ou d'information présentés par ces derniers ou en leur nom; il peut en outre, à la demande du ministre ou du solliciteur général, recueillir tout ou partie de ces éléments en l'absence de l'intéressé et du conseiller le représentant, lorsque, à son avis, leur communication porterait atteinte à la sécurité nationale ou à celle de personnes;

b) fournit à l'intéressé un résumé des informations dont il dispose, à l'exception de celles dont la communication pourrait, à son avis, porter atteinte à la sécurité nationale ou à celle de personnes, afin de permettre à celui-ci d'être suffisamment informé des circonstances ayant donné lieu à l'attestation;

c) donne à l'intéressé la possibilité d'être entendu:

evidence and information available to the Chief Justice or the designated judge, as the case may be, and, if found not to be reasonable, quash the certificate; and

(*e*) notify the Minister, the Solicitor General and the person named in the certificate of the determination made pursuant to paragraph (d).

(5) For the purposes of subsection (4), the Chief Justice or the designated judge may, subject to subsection (5.1), receive, accept and base the determination referred to in paragraph (4)(*d*) on such evidence or information as the Chief Justice or the designated judge sees fit, whether or not the evidence or information is or would be admissible in a court of law.

(5.1) For the purposes of subsection (4),

(*a*) the Minister or the Solicitor General of Canada may make an application, in camera and in the absence of the person named in the certificate and any counsel representing the person, to the Chief Justice or the designated judge for the admission of information obtained in confidence from the government or an institution of a foreign state or from an international organization of states or an institution thereof;

(*b*) the Chief Justice or the designated judge shall, in camera and in the absence of the person named in the certificate and any counsel representing the person,

(i) examine that information, and

(ii) provide counsel representing the Minister or the Solicitor General of Canada with a reasonable opportunity to be heard as to whether the information is relevant but should not be disclosed to the person named in the certificate on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(*c*) that information shall be returned to counsel representing the Minister or the Solicitor General of Canada and shall not be considered by the Chief Justice or the designated judge in making the determination referred to in paragraph (4)(d), if

(i) the Chief Justice or the designated judge determines

(A) that the information is not relevant, or

(B) that the information is relevant and should be summarized in the statement to be provided pursuant to paragraph (4)(b) to the person named in the certificate, or

(ii) the Minister or the Solicitor General of Canada withdraws the application; and

(*d*) if the Chief Justice or the designated judge determines that the information is relevant but should not be disclosed to the person named in the certificate on the grounds that the disclosure would be injurious to national security or to the safety of persons, the information shall not be summarized in the statement provided pursuant to paragraph (4)(b) to the person named in the certificate but may be considered by the

d) décide si l'attestation est raisonnable, compte tenu des éléments de preuve et d'information à sa disposition, et, dans le cas contraire, annule l'attestation;

e) avise le ministre, le solliciteur général et l'intéressé de la décision rendue aux termes de l'alinéa d).

(5) Pour l'application du paragraphe (4), le juge en chef ou son délégué peut, sous réserve du paragraphe (5.1), recevoir et admettre les éléments de preuve ou d'information qu'il juge utiles, indépendamment de leur recevabilité devant les tribunaux, et peut se fonder sur ceux-ci pour se déterminer.

(5.1) Pour l'application du paragraphe (4) :

a) le ministre ou le solliciteur général du Canada peuvent présenter au juge en chef ou à son délégué, à huis clos et en l'absence de l'intéressé et du conseiller le représentant, une demande en vue de faire admettre en preuve des renseignements obtenus sous le sceau du secret auprès du gouvernement d'un État étranger, d'une organisation internationale mise sur pied par des États étrangers ou de l'un de leurs organismes;

b) le juge en chef ou son délégué, à huis clos et en l'absence de l'intéressé et du conseiller le représentant:

(i) étudie les renseignements,

(ii) accorde au représentant du ministre ou du solliciteur général la possibilité de lui présenter ses arguments sur la pertinence des renseignements et le fait qu'ils ne devraient pas être communiqués à l'intéressé parce que cette communication porterait atteinte à la sécurité nationale ou à celle de personnes;

c) ces renseignements doivent être remis au représentant du ministre ou du solliciteur général et ne peuvent servir de fondement à la décision visée à l'alinéa (4)*d*), si:

(i) soit le juge en chef ou son délégué détermine que les renseignements ne sont pas pertinents ou, s'ils le sont, devraient faire partie du résumé mentionné à l'alinéa (4)*b*),

(ii) soit le ministre ou le solliciteur général retire sa demande;

d) si le juge en chef ou son délégué décide qu'ils sont pertinents mais que cette communication porterait atteinte à la sécurité nationale ou à celle de personnes, les

Chief Justice or the designated judge in making the determination referred to in paragraph (4)(d).

(6) A determination under paragraph (4)(*d*) is not subject to appeal or review by any court.

(7) Where a certificate has been reviewed by the Federal Court pursuant to subsection (4) and has not been quashed pursuant to paragraph (4)(*d*),

(a) the certificate is conclusive proof that the person named in the certificate is a person described in subparagraph 19(1)(*c*.2), (*d*), (*e*), (*f*), (*g*), (*j*), (*k*) or (*l*) or subparagraph 19(2)(*a*.1)(ii); and

(b) the person named in the certificate shall, notwithstanding section 23 or 103 but subject to subsection (7.1), continue to be detained until the person is removed from Canada.

(7.1) The Minister may order the release of a person who is named in a certificate tht is signed and filed in accordance with subsection (1) in order to permit the departure from Canada of the person, regardless of whether the Chief Justice or the designated judge has yet made the determination referred to in paragraph (4)(*d*).

(8) Where a person is detained under subsection (7) and is not removed from Canada within 120 days after the making of the removal order relating to that person, the person may apply to the Chief Justice of the Federal Court or to a judge of the Federal Court designated by the Chief Justice for the purposes of this section for an order under subsection (9).

(9) On an application referred to in subsection (8) the Chief Justice or the designated judge may, subject to such terms and conditions as the Chief Justice or designated judge deems appropriate, order that the person be released from detention if the Chief Justice or designated judge is satisfied that

(*a*) the person will not be removed form Canada within a reasonable time; and

(*b*) the person's release would not be injurious to national security or to the safety of persons.

(10) On the hearing of an application referred to in subsection (8), the Chief Justice or the designated judge shall

(*a*) examine, *in camera*, and in the absence of the person making the application and any counsel representing that person, any evidence or information presented to the Minister in relation to national security or the safety of persons;

(*b*) provide the person making the application with a statement summarizing the evidence or information available

renseignements ne font pas partie du résumé mais peuvent servir de fondement à la décision visée à l'alinéa (4)*d*).

(6) La décision visée à l'alinéa (4)*d*) ne peut être portée en appel ni être revue par aucun tribunal.

(7) Toute attestation qui n'est pas annulée en application de l'alinéa (4)(*d)* établit de façon concluante le fait que la personne qui y est nommée appartient à l'une des catégories visées au sous-alinéa 19(1)*c*.1)(ii), aux alinéas 19(1)*c*.2), *d*), *e*), *f*) *g*), *j*), *k*) ou *l*) ou au sous-alinéa 19(2)*a*.1)(ii) et l'intéressé doit, par dérogation aux articles 23 ou 103 mais sous réserve du paragraphe (7.1), continuer d'être retenu jusqu'à son renvoi du Canada.

(7.1) Le ministre peut ordonner la mise en liberté de la personne nommée dans l'attestation afin de lui permettre de quitter le Canada, que la décision visée à l'alinéa (4)(*d*) ait ou non été rendue.

(8) La personne retenue en vertu du paragraphe (7) peut, si elle n'est pas renvoyée du Canada dans les cent vingt jours suivant la prise de la mesure de renvoi, demander au juge en chef de la Cour fédérale ou au juge de cette cour qu'il délègue pour l'application du présent article de rendre l'ordonnance visée au paragraphe (9).

(9) Sur présentation de la demande visée au paragraphe (8), le juge en chef ou son délégué ordonne, aux conditions qu'il estime indiquées, que l'intéressé soit mis en iberté s'il estime que:

a) d'une part, il ne sera pas renvoyé du Canada dans un délai raisonnable;

b) d'autre part, sa mise en liberté ne porterait pas atteinte à la sécurité nationale ou à celle de personnes.

(10) À l'audition de la demande visée au paragraphe (8), le juge en chef ou son délégué:

a) examine, à huis clos et en l'absence de l'auteur de la demande et du conseiller le représentant, tout élément de preuve ou d'information présenté au ministre concernant la sécurité nationale ou celle de personnes;

b) fournit à l'auteur de la demande un résumé des éléments de preuve ou d'information concernant la sécurité nationale ou celle de personnes dont il dispose, à l'exception de ceux

to the Chief Justice or designated judge in relation to national security or the safety of persons having regard to whether, in the opinion of the Chief Justice or the designated judge, as the case may be, the evidence or information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons; and

(*c*) provide the person making the application with a reasonable opportunity to be heard.

(11) For the purposes of subsection (10), the Chief Justice or the designated judge may receive and accept such evidence or information as the Chief Justice or the designated judge sees fit, whether or not the evidence or information is or would be admissible in a court of law.

personnes dont il dispose, à l'exception de ceux dont la communication pourrait, à son avis, porter atteinte à la sécurité nationale ou à celle de personnes;

c) donne à l'auteur de la demande la possibilité d'être entendu.

(11) Pour l'application du paragraphe (10), le juge en chef ou son délégué peut recevoir et admettre les éléments de preuve ou d'information qu'il estime utiles, indépendamment de leur recevabilité devant les tribunaux.

[3] On August 29, 1997, I stated:

> A Certificate based on a Security Intelligence Report prepared by CSIS indicating that Mr. Suresh is inadmissible to Canada under Sections 19(1)(e)(iv)(C), 19(1)(f)(ii)(B) of the Immigration Act was signed by the Solicitor General of Canada on August the 1st, 1995 and by the Minister of Citizenship and Immigration on September the 11th, 1995. Pursuant to Section 40.1(1) of the Immigration Act, the Respondent, Mr. Suresh, was detained on October the 18th, 1995. On the same day, notice of the Section 40.1 proceedings was served on Mr. Suresh, according to Subsection 40.1(3)(b) of the Act.
>
> On October 23rd, 1995, in accordance with Subsection 40.1(4)(a) of the Act, I convened an in camera hearing at which hearing I considered the Security Intelligence Report and additional evidence submitted on behalf of the Ministers. I then, pursuant to Subsection 40.1(4)(b) of the Act, ordered that a summary of the report and evidence be served on Mr. Suresh and that Mr. Suresh be given an opportunity to be heard.
>
> The summary of the report and evidence was served on Mr. Suresh on October 27th, 1995. The hearing wherein Mr. Suresh was given the opportunity to be heard commenced on March the 19th, 1996. More than 50 days of hearings have taken place.
>
> I am satisfied that the issue that I have to decide and that I have decided is, as stated by the Applicant in their submission, the Certificate naming Mr. Suresh as an inadmissible person under Section 19(1)(e)(iv)(C), 19(1)(f)(ii) and 19(1)(f)(iii)(B) of the Act are reasonable on the basis of the evidence and information made available to me in both the public and in camera hearings held before me.
>
> The hearings held before me are directed solely and exclusively to determining the reasonableness of the Ministerial Certificate identifying Mr. Suresh as a member of an inadmissible class of persons. I can do no better than to quote Mr. Justice Denault in the case of Baroud where he states:
>
> "... The role of this Court is not to substitute its decision for that of the Minister and the Solicitor General, nor is it to find that they were correct in their assessment of the evidence presented to them, but rather, to find whether or not, based on the information and evidence presented to this Court, the Minister's Certificate is a reasonable one ..."
>
> I would add that it is, as well, not the function of this Court to solve political issues that exist between groups of peoples in another country. It is not my function as a judge of the Federal Court of Canada, and I have said this many times, to determine, based on the evidence before me, whether the Tamil people in Sri Lanka should or should not be granted their own homeland or even to express an opinion on that subject. That is a political question to be determined by the people of Sri Lanka, together with the help of the United Nations and other nations of goodwill.

> I can say and I do say that, based on the evidence made before me, the Tamil people of Sri Lanka suffer from discrimination, and, based on some of the evidence made before me, may have suffered, in certain specific cases, from what may be considered persecution. As I have stated, I am here to determine whether there exists sufficient evidence for me to conclude as to the reasonableness of the Certificate signed by the Ministers. It is not to determine whether the Ministers were correct in their assessment of the evidence.
>
> > From the evidence presented to me, I cannot but come to any other conclusion than that, based on the evidence presented both in the in camera hearings and in the public hearings, it was reasonable for the Ministers to conclude that Mr. Suresh is a person inadmissible into Canada.
>
> It is my intention to release more detailed Reasons at a later date. I have decided to release my Decision without detailed Reasons at this time because of the fact that Mr. Suresh has been detained since October of 1995, and because, pursuant to Section 40.1(7), Mr. Suresh will continue to be detained until removed from Canada. I believe this should be done as quickly as possible so as to avoid Mr. Suresh remaining in detention unnecessarily, and to avoid lengthy proceedings pursuant to Subsection 40.1(8) of the Act.

[4] I think that it is most important to emphasize that the issue that was before me for which I handed down judgment on August 29, 1997 was to determine if the certificate naming Mr. Suresh as an inadmissible person under sections 19(1)(e)(iv)(C), 19(1(f)(ii) and 19(1)(f)(iii)(B) of the *Act* is reasonable on the basis of the evidence and information available to the Federal Court.

[5] I can do no better than to quote Madam Justice McGillis in *Ahani v. The Queen* (1995) 100 F.T.R. 261 at 268 where she states "the proceedings under section 40.1 of the *Immigration Act* are directed solely and exclusively to determining the reasonableness of the ministerial certificate identifying the named person as a member of certain inadmissible classes of persons".

[6] The evidence and information that was made available to me was presented to me in public and *in camera* hearings. Suresh was represented by counsel at the "public" hearings. He was not represented at the in camera hearings held pursuant to subsection 40.1(4) of the *Act*.

[7] As subsection 40.1(4) states, I hear evidence *in camera* and not in the presence of the person named in the certificate nor in the presence of his counsel. This subsection, as the whole of section 40.1, has been determined to be constitutionally valid (see *Ahani* (*supra*)). Nevertheless, the fact that evidence and the "sources" of this evidence is given out of the presence of the person named in the certificate and out of the presence of his or her counsel puts the named person at a serious disadvantage.

[8] I do not mean to say that it is unreasonable to have a section in the law as subsection 40.1(4) as, at issue, is Canada's national security but nevertheless, the person named in the certificate and his or her counsel are at a serious disadvantage as they are unable to know the sources of the information and/or evidence so as to enable counsel for the named person to make evidence as to the bias of the source or the unreliability of the source of the evidence presented.

[9] In any event, and as I have said, the sole issue for me is to determine whether or not, on the basis of the information and evidence placed before me, it was reasonable for the Crown as being the Solicitor General and the Minister of Employment and Immigration, to have issued the certificate. As I have stated, on August 29, 1997 when I handed down my judgment I stated, quite clearly, that I was satisfied that on the evidence placed before me, it was reasonable for the Crown to have issued a section 40.1 certificate.

[10] On August 29, 1997, in my judgment, I also stated that I would issue more detailed reasons for my deciding as I did. I also stated I intended to issue detailed reasons to cover most, if not all, of the issues that were presented to me by Suresh's counsel.

[11] I have now reviewed the evidence and the submissions made by the parties and I can state that most of the issues raised by counsel for the respondent need not be dealt with. I say this because most of the evidence was irrelevant to the issue before me. I refer to the reams of evidence made as to the treatment of Tamils in Sri Lanka. As I have stated in my judgment of August 29, 1997, the evidence clearly shows that the Tamil population is

discriminated against by the policies of the Sri Lankan authorities. The evidence also disclosed that Tamils arrested by the Sri Lankan authorities are badly mistreated and in a number of cases, I would consider the mistreatment as to border on torture. I base this statement on evidence made before me by a witness who described his treatment at the hands of the Sri Lankan authorities.

[12] I repeat, I say all of the above based on the evidence made before me. I must also state that this evidence made before me was made by witnesses, on the most part, who are Tamil. I do not mean to say these persons were not telling the truth. They were under oath. They were not cross-examined by anyone representing the Sri Lankan government as the Sri Lankan government was not made a party to these proceedings.

[13] I also state that much evidence was made before me to attempt to show that the LTTE (Liberation Tamil Tigers of Eelam) are freedom fighters fighting to establish their own homeland and thus cannot be considered "terrorists" or be considered to have caused "terrorist acts".

[14] I will deal with the issue, briefly, of who may be considered a "terrorist" or what is a "terrorist act" later in these reasons but I will now state that the need for the Tamils to establish their own homeland is an irrelevant issue as it relates to the one issue before me, the reasonableness of the certificate issued pursuant to section 40.1 of the *Act*. The issue of a homeland, as I stated on August 29, 1997, is a political issue not one to be determined by a Federal Court of Canada judge sitting in Canada and conducting a hearing pursuant to section 40.1 of the *Act* and this, with respect, notwithstanding the opinion of a law professor who believes that I have the jurisdiction to express such an opinion and which opinion would carry "weight" in the international forum.

[15] I ask myself how I could express such a view without hearing from the Sri Lankan government, even if I had the jurisdiction to do so, which I do not.

[16] It is extremely difficult for me to write detailed reasons and to refer to the evidence in this case. A great deal of the evidence made before me by the respondent was made during in camera sessions and, in a number of instances, it could, I was told, be dangerous if it were known that certain specific persons gave evidence for and on behalf of the LTTE or the Tamil cause. When I say "dangerous", I refer as "dangerous" for the witness or for his or her family still living in Sri Lanka.

[17] For this reason, I have decided not to name witnesses, expert or otherwise, except that I will speak of the respondent Manickavasagam Suresh (Suresh).

Membership

[18] As I have stated, in my judgment of August 29, 1997, it is not necessary for me to find that Suresh was or is a member of the LTTE but only find if there is evidence of this fact upon which the Crown could reasonably conclude that Suresh is or was a member of the LTTE (see decision of Denault J. in *Farahi-Mahdavieh* (1993) 63 F.T.R. 120).

[19] Suresh denies that he was ever a member of the LTTE. The evidence is such that Suresh never took an oath and he thus claims that unless he took an oath administered by the LTTE he could not become a member.

[20] The evidence before me was that when Suresh became involved with the LTTE no oath was required to establish membership in the organization. I am also satisfied that there were reasonable grounds to believe that Suresh was and is a member as he, from the time of his being very young, partook in LTTE activities, such as, posting of posters, collecting food and then, becoming part of the LTTE executive and finally, at the request of the LTTE, travelled to various countries, including Canada, to head the World Tamil Movement which, it can reasonably be concluded, is part of the LTTE organization or is, at the very least, an organization that strongly supports the activities of the LTTE.

[21] I am satisfied that one can reasonably conclude that an individual is a "member" of an organization if one devotes one's full time to the organization or almost one's full time, if one is associated with members of the organization and if one collects funds for the organization. This is the case of Suresh. He is known to the leadership of the LTTE and has continual contacts with them. Whether he took an oath administered by the LTTE or not or whether he carries with him a cyanide tablet is immaterial. An oath may be required today for a person

who joins the LTTE for the purpose of "fighting" for the LTTE with guns and ammunition but one can still be considered a member without taking an oath or carrying on his or her person a cyanide tablet.

[22] Membership cannot and should not be narrowly interpreted when it involves the issue of Canada's national security. Membership also does not only refer to persons who have engaged or who might engage in terrorist activities.

[23] With regard to this issue of membership, I cannot but totally agree with the statement of the Crown found on page 18 of their written submissions:

> Mr. Suresh's denial of membership is not persuasive in light of all the evidence and information including the nature of his activities in support of the organization and his own admission of his close association with the LTTE. He has been a dedicated and trusted member, in a leadership position with the LTTE.

Credibility of Suresh

[24] After listening to Suresh and after reviewing certain documents put before me, I can only conclude that Suresh lacks total credibility. I believe I need say no more than that I am satisfied that Suresh obtained his refugee status in Canada "by wilful misrepresentation of facts" aggravated by the fact that he lied under oath before the Immigration and Refugee Board, swearing that the information contained in his Personal Information Form (PIF) was all accurate (see Exhibit C-25). In reviewing the written documentation submitted by Suresh in order to obtain his refugee status. I am convinced that little, if anything, written by Suresh was true.

Terrorism

[25] Much was made of the fact that the word "terrorism" is not defined by the international community. It has been suggested that "terrorism" does not exist. It is suggested that what is generally referred to as "terrorism" is a "criminal act" or an "act of war" or a "war crime".

[26] I am satisfied that there is no need to define the word "terrorism". When one sees a "terrorist act" one is able to define the word. When one sees a bomb placed in a public market frequented by civilians and the bomb causes death and injury, one is able to see a "terrorist act" or what is referred to as "terrorism". The word need not be defined. In the case of *McAllister v. Canada* (1996) 108 F.T.R. 1 at 12, Mr. Justice McKay states:

> "This third ground argued on behalf of the applicant is that the provisions here applied by the Minister include terms that are not defined in the Act or otherwise, including "terrorism" in s. 19(1)(f)(iii)(B) and "public interest" in s. 46.01(1)(e))(ii)."
>
> (...)
>
> It is suggested the word "terrorism" is so imprecise, vague and ill-defined that the applicant is incapable of knowing in advance with a high degree of certainty what conduct constitutes "terrorism". In my opinion that is not an issue raised in the circumstances of this case. The applicant acknowledges his membership in the INLA, an organization about which there is evidence in news articles of its activities, at least in recent years, evidence that was before the inquiry and subsequently before the Minister and which was not apparently disputed as evidence of terrorist activity of the organization.
>
> "Terrorism" is defined by dictionaries, and a definition from Webster's dictionary is included in written submissions in support of Mr. McAllister's application for judicial review. It is there defined as "using terror and violence to intimidate, subjugate, etc. especially as a political weapon or policy.
>
> In an era when much attention on the international level, and within many countries, has been and continues to be given to containing, restricting and punishing acts of terrorism, I am not persuaded that the word can be considered so vague as to be devoid of sufficient certainty of meaning, or that application of the provision would present uncertainty. The word is recognizable to individuals, as it apparently was to Mr. McAllister in this case, and to those concerned with applying the *Act*."

[27] These words apply most aptly to Suresh. The evidence made before me as to the conduct of Suresh in

Canada and elsewhere for and on behalf of the LTTE is most convincing as to his knowledge of the acts of the LTTE.

[28] I agree with the words of Mr. Justice Denault in the case of *Baroud* (1996) 98 F.T.R. 99 at 109 where he states:

> Turning now to the question of whether there are reasonable grounds for believing that Fatah and Force 17 are or were engaged in terrorism. I am mindful of the fact that the terms "terrorism" and "terrorist" are not defined in the *Act*. Counsel for the Ministers affirms in her written memorandum that "Like beauty, the image of a terrorist is, to some extent, in the eye of the beholder". While I accept this statement in general terms, it cannot prevent this court from examining whether, in the circumstances of this case, there are reasonable grounds to believe that a person or organizations have engaged in terrorism."
>
> (...)
>
> As Parliament did not define the term "terrorism" with respect to the *Immigration Act*, it is not incumbent upon this court to define it. However, for the purposes of this case, I must determine whether there are reasonable grounds to believe that the two organizations in question have engaged in terrorism. According to Dr. Graff, one method of defining "terrorism" would be to examine every act alleged to be terrorist and determine whether the objective, the use of violence and the targets are legitimate or not. Although Dr. Graff's concerns regarding the labelling of an organization as terrorist are legitimate, it is not within the purview of these proceedings to define the word "terrorism" in those terms.
>
> I am of the view that the purpose of ss. 19(1)(f)(ii) and 29(1)(f)(iii) of the *Act*, in very general terms, is to prevent the arrival of persons considered to be a danger to this society. The term "terrorism" must therefore receive an unrestrictive interpretation and will unavoidably include the political connotations which it entails. (*our emphasis*)

[29] Counsel for Suresh submits that I should determine the content of the term "terrorist" or "terrorist act" as it is referred to in section 19 of the *Act*. I do not believe it necessary to do so. As I have stated, one can see a "terrorist act" and, I am satisfied, the "act" must be seen through the eyes of a Canadian for the purposes of a section 40.1 application. The term "terrorism" or a "terrorist act", I am satisfied must receive a wide and unrestricted interpretation for the purposes of a section 40.1 application.

[30] I do not intend to list the incidents the LTTE is said to have committed. One need only refer to Appendix "B" where some 140 incidents are mentioned starting with the alleged LTTE's assassination of Alfred Duraippah, the pro-government mayor of Jaffna on July 27, 1975 to the incident on September 10, 1995 when the LTTE is alleged to have killed seven soldiers who, it is alleged, were part of a road clearing patrol.

[31] Witnesses called by Suresh denied most of these incidents as being "terrorist" in nature as, it is alleged, the LTTE can be considered freedom fighters, and therefore have the "right" to shoot at soldiers or persons who do not support the LTTE and their aims.

[32] With respect, I disagree. Even if it were so, the LTTE's assassination of the mayor of Jaffna on July 27, 1975 solely on the basis of his pro-government leaning is to me an act that one may consider "terrorist" in nature. The execution of a police constable on February 14, 1977 gives rise to a reasonable conclusion that a "terrorist act" has taken place. The shooting of a member of parliament, who later died, is a "terrorist act". The blowing up of a civilian aircraft is a "terrorist act". Attacks on civilians are, as I have said "terrorist acts" whether the attack is on a fishing village or on farms. The May 14, 1985 LTTE attack and massacre where 138 to 146 civilians at Anuradhapura in Sri Lanka were killed can be considered a "terrorist act".

[33] I could go on and on. I am satisfied that there are reasonable grounds to believe the LTTE to have committed "terrorist acts" no matter how one would define "terrorism" or a "terrorist act".

Alleged Acts of Violence of the LTTE not put to the Ministers

[34] In cross-examination of a number of witnesses called on behalf of Suresh, reports by Amnesty

International about alleged incidents purportedly attributed to the LTTE were put to the witnesses. Counsel for Suresh objected as these "incidents" of alleged terrorist acts were not put to the Ministers before they signed the certificate pursuant to section 40.1 of the *Act*.

[35] I allowed the production of these reports. I agree with counsel for Suresh that the incidents described in those reports cannot be used as evidence going to the reasonableness of the certificate issued by the Ministers. These documents can only be used to determine the weight to be given to a witness' evidence in the event the report contradicts what the witness has stated.

[36] For the above reasons and for the reasons given by me on August 29, 1997, I am satisfied the certificate issued pursuant to section 40.1 of the *Act* is valid.

"Max M. Teitelbaum"

J.F.C.C.

OTTAWA, ONTARIO

November 14, 1997