Almrei v. Canada (Minister of Citizenship and Immigration), 2005 FC 355 (CanLII)

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Docket: IMM-8537-03

Citation: 2005 FC 355

BETWEEN:

HASSAN ALMREI

Applicant

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION and

THE SOLICITOR GENERAL OF CANADA

Respondents

REASONS FOR ORDER

Blanchard J.

INTRODUCTION

[1] Mr. Hassan Almrei, (the "Applicant"), applies for judicial review of the decision of Debra Normolye, the Minister's Delegate (the "Delegate"), dated October 23, 2003. She determined that the Applicant is not at risk if returned or refouled to Syria so as to preclude his removal pursuant to subsection 115(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA") and, alternatively, determined that the Applicant poses such a danger to the security of Canada that he may, pursuant to paragraph 115(2)(*b*), be returned to Syria.

[2] The Applicant asks this Court to quash the decision of the Delegate and remit his case to the Minister of Citizenship and Immigration for reconsideration by another Ministerial Delegate.

BACKGROUND FACTS

[3] The Applicant, a Syrian national, arrived in Canada on January 2, 1999, using a false United Arab Emirates passport. He filed a refugee claim on June 6, 1999, which was granted by the Convention Refugee Determination Division ("CRDD") of the Immigration and Refugee Board on June 2, 2000.

[4] On October 16, 2001, the Minister of Citizenship and Immigration (the "Minister") and the Solicitor General of Canada (the "Solicitor General") signed a security certificate pursuant to section 40.1 of the *Immigration Act*, R.S.C. 1985, c. I-2, now repealed, stating that they were of the opinion that the Applicant was inadmissible to Canada for grounds cited within section 40.1. The opinion was certified by the Ministers to have been based upon a Security Intelligence Report ("SIR") received and considered by them. The SIR expressed the belief of the Canadian Security Intelligence Service ("CSIS" or the "Service") that the Applicant is a member of the inadmissible classes described in subparagraphs 19(1)(*e*)(iii), 19(1)(*e*)(iv)(C), 19(1)(*f*)(ii) and 19(1)(*f*)(iii)(B) of the *Immigration Act*. The SIR sets out the Service's grounds to believe that Hassan Almrei:

a) is a person who there are reasonable grounds to believe has engaged in or will engage in terrorism;

b) is a member of the Osama Bin Laden Network, an organization that there are reasonable grounds to believe will engage in terrorism or was engaged in terrorism.

[5] The Applicant was detained on October 19, 2001, pursuant to the October 16, 2001, security certificate, and has been in detention since that time.

[6] The matter was referred to the Federal Court of Canada for a determination as to the certificate's reasonableness pursuant to subsection 40.1(4) of the *Immigration Act*. On November 23, 2001, Madam Justice Tremblay-Lamer, a designated judge of the Federal Court of Canada, found the certificate to be reasonable and concluded that:

[t]he confidential information strongly supported the view that Mr. Almrei is a member of an international network of extremist individuals who support the Islamic extremist ideals espoused by Osama Bin Laden and that Mr. Almrei is involved in a forgery ring with international connections that produces false documents. *Almrei (Re)* 2001 FCT 1288 (CanLII), 2001 FCT 1288; [2001] F.C.J. No. 1772, online: QL.

[7] On December 5, 2001, the Applicant received notice that the Minister would be seeking an opinion that the Applicant was a danger to the security of Canada which, if rendered, would permit the removal of Mr. Almrei to Syria. On February 11, 2001, following an inquiry, the Applicant was found to be inadmissible for engaging in terrorist activities. Deportation was ordered on that date.

[8] The Applicant was notified on January 15, 2003, that a Delegate of the Minister had rendered a decision to *refoule* him to Syria. The Applicant sought leave to have the decision judicially reviewed. An application on behalf of the Applicant to stay his imminent removal was withdrawn on the undertaking of the Minister of Citizenship and Immigration not to remove the Applicant until the judicial review application was dealt with. On April 23, 2003, with consent of the Minister, leave was granted and the application for judicial review was allowed. The Applicant's case was therefore referred back to the Minister for reconsideration.

[9] On July 28, 2003, the Applicant received notice that the Minister would make a further determination as to whether he should be removed from Canada on the basis that he poses a danger to the security of Canada. On October 23, 2003, the Minister's Delegate determined that the Applicant is not at risk of torture if returned to Syria and, in the alternative, that his removal to torture is justified because of the danger he poses to the security of Canada.

[10] On November 21, 2003, affidavit evidence was filed indicating that the removal date had been selected. It was scheduled to occur within two and one-half weeks. The specific date for removal was not disclosed for security reasons. Upon the Applicant's application, I granted a stay of the removal order on November 27, 2003, pending the disposition of the within judicial review application. *Almrei* v. *Canada (Minister of Citizenship and*

Immigration), 2003 FC 1394 (CanLII), 2003 FC 1394; [2003] F.C.J. No. 1790, online: QL (*Almrei (2003)*).

[11] On March 19, 2004, I dismissed, with reasons, the motion for statutory release from detention: *Almrei* v. *Canada (Minister of Citizenship and Immigration)*, 2004 FC 420 (CanLII), 2004 FC 420; [2004] F.C.J. No. 509, online: QL (*Almrei (2004)*). That decision was appealed to the Federal Court of Appeal. The appeal was dismissed on February 8, 2005. (*Almrei v. Canada (Minister of Citizenship and Immigration)* 2005 FCA 54 (CanLII), 2005 FCA 54; [2005] F.C.J. No. 213, online: QL).

[12] The Applicant did not wish to attend the hearing of his judicial review application and, as a consequence and upon the request of his counsel, an Order was issued revoking an earlier Order providing for his attendance before the Court. The hearing was held in Toronto on November 16 and 17, 2004, after which the Court reserved its decision.

[13] Upon application dated October 27, 2004, on behalf of the Respondents pursuant to section 87 of the IRPA, for the non-disclosure of secret information (the "secret information"), considered by the Delegate in her decision, a hearing was held *in camera* and in the absence of the Applicant and his counsel to consider the application. During the *in camera* hearing, I reviewed a secret affidavit and heard the submissions from and questioned counsel for the Respondents on the secret affidavit and the submissions made. The secret affiant was present at the hearing. On November 16, 2004, in open Court, the Applicant was provided an opportunity to make submissions with respect to the section 87 application. Upon being satisfied that disclosure of the secret information would be injurious to the national security or to the safety of any person, save for certain information which had already been disclosed to the Applicant, I granted the application.

[14] On December 20, 2004, I ordered that a second *in camera* hearing be held in the absence of the Applicant and his counsel for the purpose of having the CSIS deponent of the confidential affidavit attend with counsel to answer further questions from the Court on the confidential affidavit. The hearing was held on January 6, 2005. During the course of the hearing it became evident that the confidential information, which is the only information before the Minister's Delegate that is not contained in the tribunal record, consists only of the narrative portion of the original SIR dated October 15, 2001, and not the appendices which contained information that supported or accompanied the security intelligence report. Accordingly, I issued an Order affording an opportunity for the parties to file further submissions on this new information. Further submissions were filed by the parties on this new information, and on judgments from the Federal Court of Appeal, the House of Lords and the New Zealand Supreme Court which had issued since the hearing of the application for judicial review. The Applicant's supplementary submissions were filed on January 20, 2005, and the Respondents' supplementary submissions were filed on January 28, 2005.

STATUTORY FRAMEWORK

[15] When the security-related proceedings began in the present case, they were governed by the *Immigration Act*. The security certificate was issued and referred to this Court under section 40.1 of that Act. On June 28, 2002, the *Immigration Act* was repealed and replaced by the IRPA. The relevant provisions of both the *Immigration Act* and the IRPA in respect of the "reasonableness" proceedings are reproduced in annex "A" to these reasons.

[16] Pursuant to section 327 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"), a security certificate issued and determined to be reasonable under the *Immigration Act* is deemed to be a reasonable security certificate under the IRPA. As was the case under the *Immigration Act*, under the IRPA, the designated judge, on the basis of the information and evidence available, is required to determine whether the certificate is reasonable and whether the decision on the application for protection, if any, is lawfully made (subsection 80(1) of the IRPA).

[17] Subsection 115(1) of the IRPA prohibits the return of a protected person, including a Convention refugee, to a country where he or she would be at risk of persecution or torture or cruel and unusual treatment or punishment. One of the exceptions to this rule of general application is found in paragraph 115(2)(*b*) which provides that subsection 115(1) of the IRPA does not apply if the named individual represents a danger to the security of Canada.

[18] Section 115 of the IRPA is as follows:

115. (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	**115.** (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels ou inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.
(2) Subsection (1) does not apply in the case of a person	(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire :
(*b*) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.	(*b*) pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée si, selon le ministre, il ne devrait pas être présent au Canada en raison soit de la nature et de la gravité de ses actes passés, soit du danger qu'il constitue pour la sécurité du Canada.

IMPUGNED DECISION

[19] In making her decision, the Delegate considered both secret evidence and evidence which may be publicly disclosed.

[20] The secret evidence consisted of the narrative portion of the SIR upon which the Ministers based their opinion which led to the issuance of the security certificate. The Delegate did not have before her the secret appendices which contained information that supported or accompanied the SIR.

[21] In addition to the secret evidence, the Delegate also had before her open-source evidence, that is to say public information. The following documentary evidence was before the Delegate: a memorandum to the Minister's Delegate from Louis Dumas, Director of Security Review; the Applicant's solemn declarations dated February 3, 2002, and November 10, 2002, his Personal Information Form (PIF) submitted in the course of his refugee status claim; transcripts of the hearing before the CRDD; transcripts of his July 2003 interview with the Service; the Applicant's submissions; Professor Kingston's statement dated August 18, 2003; a solemn declaration from a professor sworn November 8, 2002, (the first professor); a statement dated September 22, 2003, from a professor (the second professor) along with his curriculum vitae; a letter from Amnesty International dated November 7, 2002; documents relating to the security certificate process; country conditions reports and texts;

articles from news services and organizations. A detailed list of the documents adduced before the Delegate is attached to these reasons as Annex "B". For ease of reference, I have regrouped the numerous documents in certain categories.

[22] In her decision, the Delegate was guided by the analysis set out by the Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship and Immigration*, 2002 SCC 1 (CanLII), [2002] 1 S.C.R. 3, ("*Suresh*"). Her decision was divided in three sections: the risk to the Applicant if returned to Syria, the danger to the security of Canada, and the weighing of the risk to the Applicant against the danger to the security of the country.

(1) Risk to the Applicant if returned to Syria

[23] The Delegate noted that the threshold question in a decision as to whether a Convention refugee can be *refouled*, notwithstanding the claim that he may face a risk of torture in the country of return, is whether the refugee can establish that there is a substantial risk of torture or death. The Delegate states that the human rights record of the home state and the personal risk faced by the refugee are elements to be considered in applying this test.

[24] According to the Delegate, the evidence objectively reveals a poor human rights record in Syria where detention and torture are common occurrences. However, the Delegate found the evidence pertaining to the personal risk faced by the Applicant less conclusive. The Delegate did not accept the Applicant's argument that he is at risk due to his links to the Muslim Brotherhood. She found that, although certain relatives of the Applicant are members of the organization, the Applicant is not.

[25] Relying on the decision of the Federal Court of Appeal in *Suresh*, the Delegate considered whether, in the present case, there was a personal and present risk of torture or cruel or unusual punishment or treatment facing the Applicant: *Suresh* v. *Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17101 (F.C.A.), [2000] 2 F.C. 592 ("*Suresh (Court of Appeal)*"). Although she acknowledged the difficulty in quantifying the level of risk, the Delegate concluded that, in the present case, the Applicant was not at a substantial risk if returned to Syria and that, consequently, subsection 115(1) of the IRPA did not preclude his removal.

(2) Danger to the security of Canada

[26] Due to the serious implications of concluding that the Applicant was not at a substantial risk of torture, and recognizing the difficulty inherent in making such a decision, the Delegate considered it prudent to continue her analysis and to consider, in the alternative, whether the Applicant posed a danger to the security of Canada.

[27] In her reasons, the Delegate found there to be considerable evidence relevant to the issue of whether Mr. Almrei poses a danger to the security of Canada. She based her conclusion on Mr. Almrei's membership in an organization whose aims and tactics are a danger to Canada's security and his involvement in the production and distribution of fraudulent travel documents. On the totality of the evidence, the Delegate concluded that Mr. Almrei poses a substantial danger to the security of Canada.

(3) Weighing the risk to the Applicant against the danger to Canada

[28] The Delegate noted that any decision which would have the effect of allowing Mr. Almrei to be deported to a country where he faces a risk of torture is one which can be taken only where the danger to Canada is extraordinary. The Delegate found that the danger posed by Mr. Almrei "puts Mr. Almrei squarely within the exceptional circumstances envisioned by the Supreme Court that would allow the danger to outweigh the risk." In the result, the Delegate concluded that Mr. Almrei poses a direct and exceptional threat to Canada.

[29] In accordance with the principle established in *Suresh*, the Delegate concluded that even if the Applicant were at a substantial risk of torture if returned to Syria, the extraordinary danger he poses to the security of Canada requires that he not be allowed to remain in the country.

ISSUES

[30] The following issues are raised in this judicial review application:

(1) Whether the Delegate erred in concluding that the Applicant does not face a substantial risk of torture, death, cruel or unusual treatment or punishment if returned to Syria.

(2) Whether the Delegate erred in concluding that the Applicant is a danger to the security of Canada.

(3) Whether the Delegate erred in concluding that exceptional circumstances exist in the present case warranting the return of the Applicant to Syria.

STANDARD OF REVIEW

[31] The Court's task on judicial review is to determine whether the Minister has exercised her decision-making power within the constraints imposed by Parliament's legislation and the Constitution.

[32] The Delegate's decisions that Mr. Almrei does not face a substantial risk of torture, death, cruel or unusual treatment or punishment if returned to Syria and that he is a danger to the security of Canada are, essentially, fact driven inquiries. The Court must therefore adopt a deferential approach and intervene to set aside the Delegate's decision only if it is patently unreasonable. This means that, for the Court to intervene in a Minister's discretionary decision, it must be shown to be "...made arbitrarily or in bad faith, it cannot be supported on evidence, or the Minister failed to consider the appropriate factors. The Court should not reweigh the factors or interfere merely because it would have come to a different conclusion." See *Suresh*, at paragraphs 29, 39 and 41.

ANALYSIS

Decision on the Detention Review

[33] At the outset, I think it useful to make the following observations in respect to my involvement in the Applicant's detention review. At paragraph 13 of the Applicant's reply memorandum of fact and law dated January 27, 2004, counsel on behalf of the Applicant stated:

Further, contrary to the Minister's assertions that Justice Blanchard did not have the evidence before the Minister's delegate, it is noted that he was privy to the confidential information as he is the designated judge on the release application brought by Mr. Almrei to the Federal Court : he likely had more information than the Minister's delegate did.

[34] On March 19, 2004, I rendered a decision following a detention review application on behalf of the Applicant, pursuant to subsection 84(2) of the IRPA. In the detention review proceeding my task was to determine, on the evidence, whether Mr. Almrei will be removed from Canada within a reasonable time and if not, then to determine whether his "release will not pose a danger to national security or to the safety of any person". I determined that the Applicant had not established that he would not be removed from Canada within a reasonable time, and alternatively, that the evidence before the Court in the public summaries and the confidential security intelligence reports, "...grounds an objectively reasonable belief that Mr. Almrei's release would pose a danger to national security".

[35] In view of the above-cited submission made on behalf of the Applicant, I thought it necessary to clearly state that I propose to treat the evidence in this proceeding in a manner which is consistent with the Court's role in any judicial review application. I will conduct my inquiry and render my decision based on the evidence that was before the delegate, the decision maker, and not on consideration of the evidence that was before me on

the detention review.

(I) Whether the Delegate erred in concluding that the Applicant does not face a substantial risk of torture, death, cruel or unusual treatment or punishment if returned to Syria.

[36] Subsection 115(2) of the IRPA requires that the Applicant initially establish that there are substantial grounds upon which to believe that, if removed to Syria, he would be at risk of persecution on a Convention ground or at risk of torture, death, or cruel or unusual treatment or punishment. If the risk is not established, there is no need to pursue the analysis since the applicant is not entitled to the protection afforded by subsection 115(1) of the IRPA. This risk must be assessed on grounds that go beyond "mere theory" or "suspicion" but something less than "highly probable". This risk of torture must be "personal and present". The threshold to be met has been recast by asking whether *refoulement* will expose a person to a "serious" risk of torture. See *Suresh (Court of Appeal)*, at paragraphs 150-152.

Position of the Parties

[37] With respect to the threshold issue of whether there are substantial grounds upon which to believe that, if removed to Syria, the Applicant would be at risk of torture, death, or cruel or unusual treatment or punishment, the Applicant raises a number of arguments. First, the Applicant argues that the Delegate's decision ignores or rejects the evidence provided by Mr. Almrei without explaining why it was rejected or ignored. Second, the decision is patently unreasonable since the Delegate failed to take into account documentary evidence directly relevant to the Applicant's personal circumstances. Finally that the Delegate breached the duty of fairness by taking into account evidence that was never disclosed to the Applicant.

[38] The Applicant claims that he is at risk by reason of his links to the Muslim Brotherhood, that he has been publicly identified as a refugee claimant and publicly linked to a terrorist organization.

[39] The Respondents submit that Mr. Almrei was not able to establish that he faced a present and personal risk of torture. The fact that he was previously found to be a Convention refugee is not sufficient to establish present risk. See *Jeyarajah* v. *M.C.I.* (1999), 236 N.R. 175; [1999] F.C.J. No. 198, online: QL.

[40] The Respondents contest Mr. Almrei's arguments and submit that there is considerable material in the record casting doubt on Mr. Almrei's story and demonstrating that "he is totally lacking credibility both with respect to the risk he asserts he faces upon return to Syria and the danger he poses to the security of Canada." The Respondents framed their arguments in support of their position as follows:

- in his PIF, Mr. Almrei stated that his brother had been forced to stay under house arrest in Syria since 1995, but at the refugee hearing he testified that, in fact, his brother was not under house arrest;

- Mr. Almrei claimed that he is likely to be tortured upon his return to Syria due to his father's links with the Muslim Brotherhood, but at the refugee hearing he testified that his father had obtained a visa to work in Saudi Arabia, leaving the country legally and not by being forced into exile;

- Mr. Almrei did not allege that his mother was subjected to torture when she returned to Syria in 1995;

- Mr. Almrei was found, by the designated judge, to be associated with Al Qaeda.

The Respondents contend that the reasoning in *Ahani v. Canada (M.C.I.)* 2002 SCC 2 (CanLII), [2002] 1 S.C.R. 72 at 75, where credibility was at the heart of the matter, applies in the present case.

[41] Finally, the Respondents argue that in the context of the decision in *Almrei* v. *M.C.I.*, 2003 FC 1214, the Court was dealing with an application for an order banning publication of portions of affidavits and an order permitting Mr. Almrei to testify *in camera*. The Court was not making findings that were determinative of Mr.

Almrei's risk, an issue that the Delegate had to decide. Further, when that prior decision was made, the Court did not have the benefit of all the material that was before the Delegate when she rendered her decision.

[42] It is useful to review, in detail, the Delegate's reasons because this case turns to a large degree on its facts and the particular decision of the Delegate.

The Delegate's reasons

[43] The Delegate accepted that certain members of the Applicant's family were members of the Muslim Brotherhood, though he was not. The Delegate, citing reports from Amnesty International, also accepted that the human rights record of Syria is poor and that detention and torture are not uncommon. She concluded, however, that the evidence before her on the personal risk faced by the Applicant is less conclusive. In her findings, the Delegate states that the evidence suggest that members of the Applicant's family, including those member of the Muslim Brotherhood, were the subject of official scrutiny from Syrian authorities, but not torture. She also states that the Applicant's evidence is that his relatives have been able to leave Syria.

[44] The Delegate acknowledged that the Applicant was found to be a Convention refugee in need of protection by the CRDD. She found, however, upon reviewing the transcript of the refugee hearing, that the evidence presented by Mr. Almrei supports a risk of persecution generally rather than a specific risk. She also noted that she had before her information that was not before the CRDD which suggested inconsistencies in Mr. Almrei's evidence. She cited his evidence at the refugee hearing that his brother is unable to leave Syria, while he later indicated to an immigration officer that his brother was indeed allowed to leave Syria with his family.

[45] In respect of the Applicant's allegation that he is at greater risk because he has now been publicly identified as a refugee claimant in Canada with links to a terrorist organization, the Delegate states that there is evidence on the record suggesting that Syria's participation in the war against terrorism is largely illusory. She concludes that the totality of the evidence is inconclusive as to Syria's treatment of persons suspected of involvement in terrorism. In reaching this conclusion, the Delegate notes the evidence in respect of others, "particularly Mr. Arar", suspected of involvement in terrorist organizations and returned to Syria where they are alleged to have been tortured, killed or have been detained indefinitely without charge.

Amnesty International letter to Applicant's counsel, dated November 7, 2002

[46] A letter dated November 7, 2002, from Amnesty International was produced by Mr. Almrei. It was one of a number of documents that dealt specifically with the Applicant's personal circumstances. The letter expresses the opinion of Amnesty International (Canadian Section) with respect to the risk to Mr. Almrei should he be returned to Syria. The opinion is said to be based on information about his case obtained from the Internet which reveals that Mr. Almrei was granted refugee status after he came to Canada, was subsequently declared a threat to national security and was ordered deported. He is said to be a devotee of Osama Bin Laden and he once operated a honey business in Saudi Arabia, the same business allegedly used by Al Qaeda to transfer illicit goods. The Internet information also indicates that intelligence sources believe Mr. Almrei is linked to Nabil Al-Marabh who is being detained in the United States in connection with September 11 terror attacks.

[47] Based on the above information, the accuracy of which is not disputed, Amnesty International opines as follows:

Our international office advises us that given this background, Mr. Almrei will be at grave risk of being detained, tortured and ill-treated should he be returned to Syria. This concern is based on the fact that Mr. Almrei's father is believed to be a member of the Muslim Brotherhood, his convention refugee status in Canada and his suspected ties with al-Qaeda.

The letter further states:

Our International research team Informs us that members of the Muslim Brotherhood and those affiliated to them are subject to the death penalty under Syrian law 40. In recent months several people connected to Muslim Brotherhood were detained and held incommunicado despite the fact that they went back home with the consent to the authorities after having lived as exiles since the early 1980's. One of these detainees died in custody in March 2002 while being held incommunicado.

The letter goes on to express concern about removals to Syria following the removal of Mr. Maher Arar, a Canadian citizen detained by U.S. authorities and interrogated about possible links with Al Qaeda and eventually deported to Syria from the United Stated. The letter states that, at that time, Mr. Arar was reportedly being held in a secret location in Syria. The events that have unfolded since the issuance of the letter in November 2002 in respect of the Maher Arar case are widely reported. The tribunal record reveals numerous reports and articles which document the Maher Arar case and the circumstances of his detention in Syria where he was allegedly tortured by Syrian authorities. Indeed, a public inquiry into Canada's involvement into the matter is ongoing at the present time.

[48] The November 7, 2002, letter from Amnesty International makes the following observations in respect to asylum seekers:

...our international office informs us that Syrians seeking political asylum are perceived as government opponents. The very fact of leaving the country with the intention of demanding asylum abroad is perceived to be a manifestation of opposition to the Syrian government. If the asylum-seeker has been affiliated with an unauthorized political party or group, he or she risks arrest and torture upon return to Syria, in an attempt by the authorities among other things to extract information about the group and its members. According to recent reports, torture in Syria continues to be systematic.

[49] I note that in the narrative portion of the Applicant's PIF, filed at the time of his refugee claim, he wrote that his father was an active member of the Muslim Brotherhood and that in 1978 the Syrian government began persecuting members. He wrote that he was informed by his mother that both his father and uncle were arrested on many occasions and beaten and tortured by Syrian authorities.

[50] The U.S. Department of State "Country Reports on Human Rights Practices - 2002" also confirms that members of the Muslim Brotherhood have recently been targeted by Syrian authorities. At page 843 of the tribunal record, the report reads: "In 1999 and 2000, there were large-scale arrests, and torture in some cases, of Syrian and Palestinian Islamists affiliated with the Muslim Brotherhood and the Islamic Salvation Party."

Reports from the three Professors

[51] Three other reports in the tribunal record are fact specific to the Applicant's circumstances, namely:

1. Statement by Paul Kingston, Associate Professor, Political Science, University of Toronto, dated August 18, 2003;

2. Solemn declaration, by a professor (the first professor), whose name is withheld for security reasons, declared November 8, 2002;

3. Letter from a professor (the second professor), whose name is withheld for security reasons, dated September 2003.

[52] These reports all conclude that the Applicant would be at serious risk of torture if returned to Syria. Although the Applicant's counsel portrayed the reports as "expert reports", it is not disputed that the authors of the reports were not qualified as expert witnesses before the Court. For this reason, the Respondents maintain that the

opinions expressed in the respective reports cannot be received as expert opinions and that their probative value should be weighed accordingly. I will briefly review the evidence of the three professors.

[53] The first professor outlines, in his solemn declaration at page 730 of the tribunal record, the problem of state repression in Syria. Although he acknowledges that restrictions were somewhat lessened by the new regime in 2000, he maintains that there is, in fact, no change between the past and present government. With respect to the specific circumstances of Mr. Almrei's case, the professor writes that a return to Syria would put him at risk because of his Islamist activities in Pakistan and Afghanistan, the public allegations that he is a supporter of Al Qaeda and the fact that he did not complete his compulsory military service in Syria. The professor submits that Mr. Almrei faces certain detention and torture, and likely execution in Syria. Finally, he claims that it is plausible for Mr. Almrei to have obtained passports through the Muslim Brotherhood and that he joined the war effort in Afghanistan due to the government's encouragement for young Syrian men to participate.

[54] For his part, Professor Kingston provides, at page 22 of the tribunal record, a background analysis as to the present state of affairs in Syria and submits that, despite the change in regime, the fundamental political make-up has not been altered. Syria has a history of human rights abuses. Where Mr. Almrei's case is concerned, Professor Kingston concludes that he is at risk due to his association to the Muslim Brotherhood, which remains illegal, and his involvement in Islamist activities.

[55] At page 35 of the tribunal record, the second professor also reports that torture is prevalent in Syria and that Islamists, such as Mr. Almrei, form the main domestic opposition to the Baath-run Syrian government. With respect to Mr. Almrei's personal situation, the professor concludes that, "on the basis of his Islamist profile and the entrenched practices of Syria's multiple security services, Mr. Almrei would face a significant risk of torture if he were returned to Syria."

[56] The problematic aspect of the opinions expressed in these letters and statements lies in the fact that they appear to be based essentially on information provided by Mr. Almrei's counsel and, in some cases, each other's opinions. Further, I accept the Respondents' contention that these opinions cannot be accepted as expert evidence since the professors were not qualified before this Court as experts to give opinion evidence on the issue. As a result, they ought to be afforded less probative weight than would otherwise be the case, had the opinions been those of properly qualified experts based on information obtained from independent sources. The reports were nevertheless before the Delegate, made specific reference to Mr. Almrei's particular circumstances, and were not dealt with by the Delegate in her reasons. It would have been preferable for the Delegate to have expressly dealt with this evidence in her reasons and explain what probative weight, if any, she would have given these reports. The question to consider then, is by failing to do so, did she commit a reviewable error. Later in these reasons, I review jurisprudence of this Court concerning that failure to mention specific probative evidence which appears squarely to contradict a decision maker's findings of fact may lead to an inference that the decision maker overlooked the evidence and as a result committed a reviewable error.

Court's treatment of the evidence on risk

[57] In the circumstances, failure by the Delegate to expressly deal with the opinions of the three professors, alone, may not have been sufficient to set the decision aside. However, quite apart from the reports of the three professors, the Delegate also failed to expressly consider in her reasons the Amnesty International letter of November, 2002. This letter, reviewed earlier, provided significant documentary evidence, which dealt with Mr. Almrei's particular circumstances, and which pointed to a conclusion different than that reached by the Delegate in respect to the Applicant's risk. The risk assessment in the letter was supported by a detailed analysis of independently sourced evidence upon which the opinion was based. The Delegate failed to deal with the opinion expressed or to comment on the risk assessment in any way.

[58] The Applicant argues that this evidence is not merely generic but rather fact specific and must be addressed by the decision-maker. I am in agreement with the Applicant's submission not only because it is fact specific to the Applicant's case, but also because it is information that, if believed, would have significant

probative value. It is evidence that should have been expressly considered by the delegate in her reasons, and was not.

[59] In *Cepeda-Gutierrez* v. *Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425, online: QL (*Cepeda-Gutierrez*), Justice Evans (then on the Federal Court of Canada, Trial Division) held that a statement by the decision-maker that the totality of the evidence was considered in making his finding of fact is not always sufficient. At paragraphs 16 and 17 of his reasons, the learned judge wrote:

A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its finding of fact.

However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains* v. *Canada (Minister of Citizenship and Immigration)*, (1993), 63 F.T.R. 312. In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent in the evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[60] The Federal Court of Appeal later held in *Ozdemir* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 (CanLII), 2001 FCA 331 at para. 10; [2001] F.C.J. No. 1646, online: QL, that much will depend on the significance of the evidence when it is considered in light of the other material on which the decision is based.

Nor will a reviewing court infer from the failure of reasons for decision specifically to address a particular item of evidence that the decision-maker must have overlooked it, if the evidence in question is of little probative value of the fact for which it was tendered or if it relates to facts that are of minor significance to the ultimate decision, given the other material supporting the decision.

[61] In the present circumstances, it cannot be said that the Amnesty International letter of November 7, 2002, is evidence of little probative value or relates to facts that are of minor significance to the ultimate decision. The Delegate relied specifically on reports from Amnesty International, among others, to assess the general conditions in Syria. On this evidence, she concluded "...that the human rights record of Syria is poor and that detention and torture are not uncommon." The letter at issue, from the same organization, deals with circumstances that are specific to the Applicant. It was important evidence which points to a conclusion that is contrary to that of the Delegate on the threshold issue. The Delegate had an obligation to explain why she rejected this evidence. Having failed to mention this evidence or deal with it in any way in her reasons, I am left to conclude that the Delegate overlooked this important and contradictory evidence when making her findings of fact, and in consequence committed a reviewable error.

[62] As a result, it is unnecessary to consider the other arguments raised by the Applicant in this application with respect to the threshold issue. In deciding that the Applicant is not at a substantial risk if returned to Syria and that, consequently, subsection 115(1) of the IRPA did not preclude his removal, the Delegate rendered a decision based on erroneous findings of fact that she made in a perverse manner and without regard to the material before her. In consequence, the Delegate erred in concluding that the Applicant would not be at risk of torture or cruel and unusual treatment or punishment if returned to Syria.

[63] The Delegate proceeded to make an alternative finding, namely that "...even if Mr. Hassan Almrei

were to be at substantial risk, I am of the opinion, pursuant to paragraph 115(2)(*b*) of the IRPA, that he should not be allowed to remain in Canada on the basis of danger to the security to Canada." I will now consider this alternative finding.

(ii) Whether the Delegate erred in concluding that the Applicant is a danger to the security of Canada.

[64] The Supreme Court of Canada, in *Suresh*, stated that "danger to the security of Canada" must be interpreted flexibly and that, while direct proof that the danger targets Canada specifically is not required, there must be evidence of a serious threat to national security before returning a refugee to torture. At paragraph 90 of its reasons, the Supreme Court defined the threat as follows:

These consideration lead us to conclude that a person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security on one country is often dependent on the security of other nations. The threat must be "serious", in the sense that it must be grounded in objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible.

[65] In *Suresh*, the Supreme Court also stated that the law does not suggest that Canada may never deport a person to torture. The Court left for future cases the determination of the "ambit of an exceptional discretion to deport to torture, if any". Such a determination is to be made by balancing the following competing interests: the real possibility of an adverse effect on Canada if the individual remained in Canada and the possible injustice to the individual if deported.

The Delegate found that the Applicant's presence in Canada poses a direct danger to the lives of Canadians, the lives of citizens of Canada's allies, and international security as a whole. In consequence, the Delegate found Mr. Almrei to be a direct and exceptional threat to Canada.

[66] The Delegate based these findings on Mr. Almrei's links to Al Qaeda, an organization that, in the Delegate's view, has shown little hesitation in causing horrific loss of life in order to advance its aims. In the final page of her decision, the Delegate reasoned as follows:

It [Al Qaeda] continues to attack civilian targets around the world. The threat to Canada is not academic or speculative; the organization has publicly identified Canada as a target. Its stated aims and the goals with which it seeks to attain them are in fundamental opposition to Canadian values and society. The organization poses a direct, tangible and ongoing threat to these values.

Mr. Almrei is linked to an organization whose aims, methods, and history render it an exceptional danger to the security of Canada.

Mr. Almrei is not a mere passive supporter of this organization. He directly facilitates the organizations's activities by furnishing travel documents that could allow Al Qaeda operatives access to target countries and to move internationally without detection. He has expressed solidarity of purpose and ideology with the organization. He has attended camps run by persons linked to this organization and received military training.

[67] Before considering whether the "ambit of an exceptional discretion to deport to torture, if any", is present in the circumstances of this case, I must first consider whether there is evidence that reasonably supports the Delegate's finding of danger to the security of Canada.

Evidence on danger considered by the Delegate in her reasons

[68] The Delegate found there to be considerable evidence before her relevant to a determination of whether Mr. Almrei poses a danger to the security of Canada. In her reasons, she considered evidence regarding Mr. Almrei's membership in an organization whose aims and tactics are a danger to Canada's security and his involvement in the production and distribution of fraudulent travel documents.

[69] In respect to Mr. Almrei's membership in an organization whose aims and tactics are a danger to Canada's security, the Delegate considered the following evidence:

1. The Security Certificate issued by the Ministers on the basis that Mr. Almrei was inadmissible because of involvement in terrorist activities and the subsequent ruling by the Designated Judge that the Certificate was reasonable;

2. Mr. Almrei's links to Al Marabh and to Ahmed Al Kaysee, both of whom have been implicated in the Bin Laden network (Al Qaeda);

3. The large number of photographs of members of Al Qaeda, Bin Laden, weapons and identification instruments found on Mr. Almrei's computer;

4. Mr. Almrei's involvement in the international trading of honey, which trade has been identified as a vehicle which provides cover and funds for the Bin Laden network;

5. Mr. Almrei's attendance at training camps in Afghanistan run by Sayyaf and Khattab, both of whom have been linked to Bin Laden;

6. Mr. Almrei's involvement with Al Haramin, an organization dedicated to various charitable works, including setting up of schools. Al Haramin had been infiltrated by Al Qaeda and Mr. Almrei had received significant funds from this organization for the purpose of setting up a girls' school in Tajikistan;

7. The fact that Mr. Almrei was not originally forthcoming about his visits to a number of countries in which Al Qaeda and Bin Laden were active. In particular, the Applicant acknowledges that he was deliberately evasive about Afghanistan and Tajikistan because of fears of being labelled a terrorist.

[70] On the basis of the evidence before her, viewed in its entirety, the Delegate was satisfied that Mr. Almrei has links to the Bin Laden network.

[71] In respect to Mr. Almrei's involvement in the production and distribution of fraudulent travel documents, the Delegate points to Mr. Almrei's admission that he procured fraudulent travel documents for a number of persons, that he had been able to obtain more than one false passport for himself, and that he was evasive about the existence and his possession of false passports.

[72] The Delegate found that, due particularly to his links to the Bin Laden network, Mr. Almrei's activities in respect to fraudulent travel documents were a direct and serious threat to Canada's security.

[73] On the totality of the evidence, the Delegate concluded that Mr. Almrei poses a substantial danger to the security of Canada.

Applicant's submissions on the evidence considered by the Delegate

[74] Counsel on behalf of the Applicant argues that the Delegate's decision that Mr. Almrei poses a danger to the security of Canada is patently unreasonable. Counsel argues that the Delegate's conclusions are not supported by the evidence before her and that she failed to consider a number of relevant factors. The Delegate did not take into account that the allegations against Mr. Almrei do not include actual involvement in "terrorism" or that he is not said to have "committed" any acts particularly severe as to warrant a refusal to protect from torture, or even sufficiently serious and well-founded to support the laying of criminal charges.

[75] Central to the Applicant's argument is that the Delegate's conclusion that "Mr. Almrei has links to the Bin Laden network" improperly conflates his alleged membership in a terrorist movement with "danger to the

security of Canada". It is argued that the Supreme Court in *Suresh* required something more than just "a person described in s. 19" of the former Act or, in other words, more than a person inadmissible on security grounds. The Applicant contends that there is no evidence of "something more" than a mere association with the Bin Laden network.

[76] Further, the Applicant contends that the factors relied on are insufficient for the delegate to conclude that he has links with the Bin Laden network. It is Mr. Almrei's contention that he has explained his involvement with Mr. Al Marabh, Al Haramin, and the photographs and materials on his computer. He also argues that he offered plausible explanations for having misled authorities about his travels and his attendance at camps run by Sayyaf and Khattab in Afghanistan, and his involvement in the honey trade which he considered a legitimate business. Further, he denies being involved in an international forgery ring.

[77] The Applicant contends that the Delegate's decision that Mr. Almrei is a danger to the security of Canada is also based on discriminatory assumptions, namely that as a Muslim teenager participating in the *jihad* against communist Afghanistan, he now represents a danger to the security of Canada.

[78] In his supplementary submissions, Mr. Almrei argues that the Delegate erred in law in reaching a conclusion on danger without having reviewed all of the relevant secret evidence upon which the security risk was based to be able to properly determine the strength of the case against Mr. Almrei and weigh it against the risk of torture he faces in return to Syria.

Submissions of the Respondents on the evidence considered by the delegate

[79] The Respondents argue that even if the SIR did not include the secret appendices such a finding would be insufficient to set aside the decision of the Minister's Delegate that Mr. Almrei constitutes a danger to the security of Canada. The Respondents contend that there is overwhelming evidence upon which it can be said that Mr. Almrei constitutes a danger to the security of Canada. According to the Respondents, the record is replete with information that would have allowed the Delegate to form an independent assessment that Mr. Almrei poses a substantial danger to the security of Canada.

[80] The Respondents acknowledge that the decision of the Designated Judge on the reasonableness of the certificate is not determinative of whether Mr. Almrei constitutes a danger to the security of Canada. The Respondents contend, however, that the material placed before the Delegate for the purpose of assessing the danger Mr. Almrei may pose to the security of Canada need not be an exact replication of material placed before the Designated Judge.

[81] The Respondents point to new information provided by Mr. Almrei that was not before the Designated Judge when the security certificate was determined to be reasonable, in particular, the Respondents point to new information in Mr. Almrei's declaration of November 10, 2002, which was before the Delegate. First, that Mr. Almrei admitted misleading CSIS about being in Afghanistan; second, that he withheld information about the help he provided to Nabil Al Marabh in obtaining a false passport; third, that he disclosed for the first time that he had received funds from the Al Haramin organization, which is shown to have links to Al Qaeda, to establish a girls' school in Tajikistan,; and, fourth, that Mr. Almrei admits he mislead his own lawyer with respect to his activities.

[82] Central to the Respondents' case is that the Applicant has not been truthful and forthcoming on certain fundamental aspects of his case and, as a result, the Delegate was justified in rejecting his explanations and denials.

Court's consideration of the evidence on Mr. Almrei's danger to the security of Canada

[83] In her reasons, the Delegate cited the security certificate outstanding against Mr. Almrei and the basis

upon which it was issued, namely, "...that he was inadmissible to Canada because of involvement in terrorist activity/organizations and criminality." The Delegate then proceeded to cite the following passage from Madam Justice Tremblay-Lamer's reasons (*Almrei (Re)* 2001 FCT 1288 (CanLII), 2001 FCT 1288; [2001] F.C.J. No. 1772, online: QL) where the learned judge found the security certificate to be reasonable:

The confidential information, which I am unable to disclose, strongly supports the view that Mr. Almrei is a member of an international network of extremist individuals who support the Islamic extremist views espoused by Osama Bin Laden and that Mr. Almrei is involved in a forgery ring with international connections that produces false documents.

On the basis of the **evidence I heard *in camera* on October 24**, I had no hesitation in concluding that the certificate signed by the Minister of Citizenship and Immigration and the Solicitor General is reasonable. [My emphasis]

[84] The Delegate then concluded, "upon reviewing the evidence before me, including the submissions of Mr. Almrei, I see no reason to differ from the conclusions of the Federal Court that Mr. Almrei poses a danger to the security of Canada." But, significantly, the Federal Court did not conclude that Mr. Almrei poses a danger to the security of Canada. Justice Tremblay-Lamer concluded, rather, that the certificate signed by the Ministers is reasonable. At paragraph 9 of her reasons for order, Justice Tremblay-Lamer wrote:

It is now well accepted that the sole issue in proceedings pursuant to paragraph 40.1(4)(d) is whether the certificate filed by the Minister and the Solicitor General is reasonable on the basis of the information available to the designated judge. As McGillis J. said in Ahani, supra at p. 268, "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. This section of the legislation does not deal with the question of deportation. [My emphasis]

[85] The security certificate is issued on the basis of the SIR. Neither the SIR nor the decision of Justice Tremblay-Lamer were directed primarily to assessing the nature or extent of the risk to national security posed by Mr. Almrei. Neither was directed to assessing the seriousness of the danger to Canadian security that Mr. Almrei may present. The learned judge was tasked with considering the existence of reasonable grounds for the Minister's belief and made no decision as to the nature or extent of the risk Mr. Almrei poses to Canada's security. In consequence, her decision is evidence that there exist reasonable grounds to believe certain facts and not that those facts do exist. The Delegate could not, then, rely on the SIR, the ensuing security certificate and Madam Justice Tremblay-Lamer's decision to conclude that Mr. Almrei poses a danger to Canada. The SIR, the ensuing security certificate and Madam Justice Tremblay-Lamer's decision are certainly factors that may be considered in assessing danger, but do not constitute evidence that Mr. Almrei is a danger to Canada. The Supreme Court in *Suresh, supra*, clearly stated that "danger to the security of Canada" means something more than that a person is described in subsection 19(1) of the *Immigration Act*. Therefore, the Delegate could not conclude that Mr. Almrei poses a danger to the security of Canada on the sole basis of the security certificate and the "reasonableness" decision.

[86] The SIR and the summary of that report, which was provided to Mr. Almrei, were both before the Delegate. As noted earlier in these reasons, the decision-maker, the Delegate, did not have before her the confidential reference appendices to the security intelligence report that set out the detailed information relied on by CSIS in the preparation of the SIR. It is upon this information that the Service based its opinions and beliefs in respect to Mr. Almrei. To the extent to which the Delegate relied on the SIR and the summary of the SIR provided to Mr. Almrei to base her conclusion that Mr. Almrei poses a danger to the security of Canada, her conclusion cannot be said to be based upon an independent and proper assessment of the reports' underlying secret evidence. In the result, reliance solely on the reports cannot be determinative on the danger issue. Without this secret information, it is difficult to see how the Delegate could independently and properly assess the degree to which Mr. Almrei poses a threat to the security of Canada.

[87] The Delegate also had before her the detailed memorandum prepared by Mr. Louis Dumas, Director of

Security Review. The Respondents argue that the materials referenced in Mr. Dumas' report form a salient part of the documentary evidence which established that Mr. Almrei represents a danger to the security of Canada independently from the Appendices referenced in the SIR. Mr. Dumas' report referred extensively to the SIR prepared by CSIS in respect to its belief regarding the Applicant's common bonds to the members of the Bin Laden network, specifically his time in camps and on the battlefields fighting in the *jihads* under leaders that were or are associated with, or sponsored by, Osama Bin Laden. The report is based also on CSIS's belief that Mr. Almrei is associated with individuals connected to the Bin Laden network who have lived or are living in Canada and that he continues his association with, and support of, a number of Arab Afghans also associated with the Osama Bin Laden network. This evidence is central to Mr. Dumas' recommendation to the Delegate in respect to the danger opinion. Further, Mr. Dumas, as did the Delegate, relies on the ruling of Madam Justice Tremblay-Lamer and on secret information which was not before the Delegate. This is evident from the last paragraph of his report which reads:

In view of the **confidential information provided by CSIS and contained in the SIR, the conclusions of Justice Tremblay-Lamer in her decision**, the agenda of the Bin Laden Network and the methods that the organization uses to attain its objectives, we recommend that you form the opinion that Mr. Almrei should not be allowed to remain in Canada because he constitutes a danger to the security of Canada. [My emphasis]

[88] The Delegate cannot adopt the conclusions expressed by Mr. Dumas without having first considered the secret evidence upon which those conclusions were based. Mr. Dumas is not the decision-maker. Mr.Dumas' report must therefore be considered for what it is worth, a recommendation, rather than direct evidence of the danger Mr. Almrei may pose to the security of Canada.

[89] The Respondents contend that even if the confidential reference appendices were not before the Delegate, the record is replete with information that would allow her to form an independent assessment that Mr. Almrei poses a substantial danger to the security of Canada. The Respondents point to the following evidence considered by the Delegate:

- evidence in respect of Mr. Almrei's links to Al Marabh and to Al Kaysee and their alleged implication with the Bin Laden network;

- the photographs and materials found on Mr. Almrei's computer;

- Mr. Almrei's involvement in the international honey trade;

- Mr. Almrei's attendance at training camps in Afghanistan run by Sayyaf and Khattab, both alleged to have been linked to Bin Laden;

- Mr. Almrei's involvement with Al Haramin a charitable organization, headquartered in Saudi Arabia, allegedly infiltrated by Al Qaeda;

- Mr. Almrei's travels to Afghanistan and other countries in which Al Qaeda and Bin Laden were active, information which he initially kept from the authorities.

[90] The difficulty with the Delegate's consideration of the above evidence is that she appears to have also based her findings in respect to that evidence and, in particular, her findings in respect to Mr. Almrei's links to the Bin Laden network, on information she did not have before her. In her reasons, the Delegate stated that she relied on the totality of the evidence to conclude that Mr. Almrei has links to the Bin Laden network. The Delegate therefore considered the beliefs of the Service expressed in the SIR, the security certificate which was based on the information found in the SIR and on the reasonableness decision of Madam Justice Tremblay-Lamer, all of which she reviewed extensively in her reasons. These factors were essentially based on secret evidence which was not considered by the Delegate, namely, the secret appendices which formed the basis of the SIR. By basing her decision on the totality of the evidence and relying on the above factors, it is clear that the Delegate relied on

information which was based on evidence she did not independently assess, since that evidence was not before her. It is not for me to speculate as to what the Delegate would have found had she confined her analysis to only the evidence referred to by the Respondents. A reviewing court must consider the entire evidentiary basis upon which a decision is made. In the instant case, the Delegate in making her decision relied on factors which were essentially based on evidence she did not see.

[91] In her reasons, the Delegate repeatedly expresses agreement with rulings of the Federal Court. With respect to Madam Justice Tremblay-Lamer's ruling on the reasonableness of the security certificate, the Delegate stated, "Upon reviewing the evidence before me, including the submissions by Mr. Almrei, I see no reason to differ from the conclusions of the Federal Court that Mr. Almrei poses a danger to the security of Canada." [As discussed earlier in these reasons, this finding misrepresents the Court's ruling. The Court ruled that it found the security certificate to be reasonable and expressed no opinion on the danger Mr. Almrei may pose to Canada's security.] In respect to Mr. Almrei's links with Mr. Al Marabh and Mr. Al Kaysee, the Delegate wrote, "As the Federal Court accepted and on the basis of the evidence before me, Mr. Almrei has links to Al Marabh and to Ahmed Al Kaysee, both of whom have been implicated in the Bin Laden network.". Further, in discounting Mr. Almrei's explanations of inconsistencies in his evidence on his business activities, the number and source of the passports in his possession and his visits to Afghanistan, the Delegate wrote, "...I see no reason to differ from the Federal Court's conclusion that Mr. Almrei is linked to an international network of Islamist extremists."

[92] Expressing agreement with the beliefs of the Service or a ruling of the Federal Court is not, in and of itself, problematic as long as this reliance does not form the basis for the danger opinion. I am satisfied, from a comprehensive review of the Delegate's reasons, that her conclusion was, to a significant extent, based on opinions of others formed from information that was not before her. The recommendation of Mr. Dumas, the beliefs of the Service expressed in the SIR upon which is based the security certificate and the reasonableness ruling of the Designated Judge are essentially founded on secret information which was not before the Delegate and which she did not independently assess.

[93] A reviewing court must be able to know and assess the evidentiary basis upon which findings are made in order to determine if they are properly based on the evidence. In the instant case, the Delegate based her finding in respect to Mr. Almrei's links to "the Bin Laden network" on "...the evidence before [her]" which included the beliefs, opinions, recommendations and rulings made by others which, in turn, were based on secret evidence not considered by the Delegate. In making her decision, the Delegate could not substitute the beliefs of the Service, the recommendations of Mr. Dumas, or the opinions of the Designated Judge for her own. As decision-maker, she must not only independently consider and assess all of the evidence upon which she relies relating to the danger posed to Canada's security, she must be in a position to weigh the factors which go to the reliability, cogency and value of that information. I am left to conclude that the Delegate's findings were based on information that she did not have before her. The decision was therefore made without regard to the evidence. As a result, the Delegate was not in a position to properly articulate the nature of the danger posed in order to properly balance the competing interests at the final stage of the analysis.

[94] I have reviewed the "new evidence" and its treatment by the Delegate in her reasons. This "new evidence" consists essentially of the Applicant's solemn declarations adduced subsequent to the reasonableness decision. The Delegate relied on this information and disbelieved Mr. Almrei's explanations concerning his involvement with the Al Haramin organization and Al Qaeda. She rejected Mr. Almrei's explanation of the inconsistent information about his involvement with Al Marabh and other persons linked to Bin Laden. These findings alone, though they may have been reasonably open to the Delegate on the evidence, do not support the Delegate's conclusion as to the nature of the threat posed by Mr. Almrei to Canada's security.

CONCLUSION AND CERTIFICATION OF A QUESTION

[95] For the above reasons, I conclude that the Delegate's decision in respect to the danger Mr. Almrei

poses to the security of Canada is not supported on the evidence before the decision-maker. As a result, the decision is patently unreasonable. Without a proper foundation for the danger alleged to be posed by Mr. Almrei, the Delegate could not properly balance the competing interests. In consequence, the entire decision must be set aside.

[96] This application for judicial review will therefore be allowed, the matter will be remitted for redetermination before another delegate of the Minister and in accordance with these reasons.

[97] The Applicant argues that allowing this application for technical reasons only would delay a resolution of the ultimate issue, which is whether Canada can *refoule* Mr. Almrei to a substantial risk of torture, or cruel and unusual treatment or punishment in Syria. The Applicant contends that all of the substantial issues before the Court should be decided, including the constitutional issues, in order to avoid any further and new litigation on this issue.

[98] In view of my conclusion on the application for judicial review, I am of the view that it would not be advisable to deal with the constitutional issues raised by Mr. Almrei in this case.

There is not, before me, a proper evidentiary record which would support the determination of the constitutional issues. The Delegate committed reviewable errors in assessing both Mr. Almrei's risk of return and the danger he poses to the security of Canada. Both errors are based on the Delegate's appreciation of the factual evidence before her. The Supreme Court has stated that constitutional issues are to be decided on a proper evidentiary record. See *Phillips* v.*Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, 1995 CanLII 86 (S.C.C.), [1995] 2 S.C.R. 97, at paragraphs 6 to 12; and *R.* v. *Mills*, 1999 CanLII 637 (S.C.C.), [1999] 3 S.C.R. 668, at paragraph 38. In the circumstances, a proper factual foundation is essential to inform the assessment of exceptional circumstances and the danger said to be posed to Canada, as contemplated by the Supreme Court in *Suresh*.

[99] In *Mohamed Zeki Mahjoub* v. *The Minister of Citizenship and Immigration and the Solicitor General of Canada*, 2005 FC 156 (CanLII), 2005 FC 156, Madam Justice Dawson was recently seized with an application for judicial review of a decision made pursuant to paragraph 115(2)(*b*) of the IRPA. In that case, the Minister decided that the Applicant should be removed to Egypt notwithstanding that he could be at substantial risk of ill-treatment and human rights abuses such that it would preclude his removal based on subsection 115(1) of the IRPA. The application was allowed on the basis that the Delegate's conclusion as to the danger posed by Mr. Mahjoub was not supported on the evidence before the decision-maker. Madam Justice Dawson had before her the same constitutional issues that are before me in this case. She declined to deal with the constitutional issues raised by Mr. Mahjoub for essentially the same reasons that I have in this case.

[100] The learned judge did however acknowledge the importance of the issue raised. At paragraph 64 of her reasons, she wrote:

I acknowledge an issue of importance has been raised which I do not decide: whether circumstances would ever justify deportation to face torture. The Supreme Court of Canada has left the issue open by not excluding the possibility that, in exceptional circumstances, such deportation may be justified, either as a consequence of the balancing process required by section 7 of the Charter or under section 1 of the Charter. There are, however, powerful indicia that deportation to face torture is conduct fundamentally unacceptable; conduct that shocks the Canadian conscience and therefore violates fundamental justice in a manner than can not be justified under section 1 of the Charter. Those indicia were canvassed by the Supreme Court in *Suresh* and include: Canadian domestic law prohibits torture; section 12 of the Charter prohibits cruel and unusual treatment or punishment (reflecting that, within Canada, torture is seen to be so repugnant that it can never be an appropriate punishment); extraditing a person to face torture has been found to be inconsistent with fundamental justice; and, a strong argument exists that international law prohibits deportation to torture, even where national security interests are at stake.

[101] Madam Justice Dawson aptly summarized the Supreme Court's assessment of the *indicia* in respect to deportation to torture both from a Canadian and international perspective. I would add to Madam Justice Dawson's

comments that further useful guidance was provided by the Supreme Court in *Suresh*. The threshold that must be met before Canada can constitutionally deport a person to torture, if at all, includes consideration of the following factors as articulated by the Supreme Court and which should serve to inform the Minister responsible in balancing the danger posed to the security of Canada by an individual, against the possible injustice to the individual if deported:

1. while the Act leaves open the possibility of deportation to torture, the Minister should generally decline to deport refugees where on the evidence there is a substantial risk of torture;

2. while the ambit of exceptional discretion to deport to torture, if any, remains undefined, the Supreme Court predicts that the outcome of the balancing process will rarely be struck in favour of expulsion to torture;

3. in exceptional circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by section 7 of the Charter or under section 1, but only in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics and the like.

(See *Suresh* at paragraphs 77 and 78.)

[102] The onus is on the Minister to establish that such special circumstances and conditions are present before deporting to torture. There is little doubt that the Supreme Court envisaged a high threshold before Canada can constitutionally deport an individual to torture.

[103] I will allow counsel the opportunity to review these reasons before making submissions about the certification of any serious question of general importance. Accordingly, counsel for the Respondents may serve and file correspondence proposing certification of a question within seven days of receipt of these reasons. Thereafter, counsel for Mr. Almrei will have seven days from receipt of the Respondents' correspondence to serve and file a responsive submission. A reply submission, if any, may be served and filed by counsel for the Respondents within five days of receipt of Mr. Almrei's submissions.

[104] Following consideration of these submissions, an order will issue allowing the application for judicial review, remitting this matter for redetermination in accordance with these reasons by another delegate of the Minister, and dealing with the issue of certification of a question.

"Edmond P. Blanchard"

Judge

Ottawa, Ontario

March 11, 2005

ANNEXE

"A"

Immigration Act, R.S.C. 1985, *c. I-2/Loi sur l'immigration,* L.R.C. 1985, c. 1-2Sections 19, 40.1(1)...(3)/Articles 19, 40.1(1)...(3)

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 :

(e) persons who there are reasonable grounds to believe

(iii) will engage in

terrorism, or

(iv) are members of an organization that there are reasonable grounds to believe will

(C) engage in terrorism;

(f) persons who there are reasonable grounds to believe

(ii) have engaged in terrorism, or

(iii) are or were members of an organization that there are reasonable grounds to believe is or was engaged in

(B) terrorism,

except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;

(e) celles dont il y a des motifs raisonnables decroire qu'elles :

(iii) soit commettront des actes de terrorisme,

(iv) soit sont membres d'une organisation dont il y a des motifs raisonnables de croirequ'elle :

(C) soit commettra des actes deterrorisme;

f) celles dont il y a des motifs raisonnables de croire qu'elles :

(ii) soit se sont livrées à des actes de terrorisme;

(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) soit à des actes de terrorisme,

le présent alinéa ne visant toutefois pas les personnesqui convainquent le ministre que leur admission ne serait nullement préjudiciable à l'intérêt national;

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 (1) or subparagraph 19(2)(a.1)(ii), they may sign and file a certificate to

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.l)(ii), aux alinéas 19(l)c.2), d), e), f), g), j), k) ou 1) 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.

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

(a) forthwith cause a copy of the certificate to be referred to the Federal Court for a determinationas 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 thata 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.

(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.

Immigration and Refugee Protection Act, S.C. 2001, c. 27, **sections** 34, *78*, *80* and *87*/*Loi sur l'immigration et la protection des réfugiés, L.C. 2001, c. 27,* articles 34, *78*, *80* et *87*

34. (1) A permanent resident or a foreign national isinadmissible 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 inCanada;

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

(c) engaging in terrorism; *(cl)* being a danger to the security of Canada;

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

(f) being a member of an organization that there are reasonable grounds to believe engages, has

34. (1) Emportent interdiction de territoire pourraison 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 oÿ 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;

a) constituer un danger pour la sécurité du Canada;

a) être l'auteur de tout acte de violence 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)*.

j) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou

that effect with an immigration officer, a seniorimmigration officer or an adjudicator.

sera l'auteur d'un acte visé aux alinéas a), *b), ou* c).

78. Les règles suivantes s'appliquent à l'affaire :

a) le juge entend l'affaire;

b) le juge est tenu de garantir la confidentialité des renseignements justifiant le certificat et des autres éléments de preuve qui pourraient lui être communiqués et dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

c) il procède, dans la mesure oÿ les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et selon la procédure expéditive;

d) il examine, dans les sept jours suivant le dépôt du certificat et à huis clos, les renseignements et autres éléments de preuve;

e) à chaque demande d'un ministre, il examine, en l'absence du résident permanent ou de l'étranger et de son conseil, tout ou partie des renseignements ou autres éléments de preuve dont la divulgation

porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

j) ces renseignements ou éléments de preuve doivent être remis aux ministres et ne peuvent servir de fondement à l'affaire soit si le juge décide qu'ils ne sont pas pertinents ou, l'étant, devraient faire partie du résumé, soit en cas de retrait de la demande;

g) si le juge décide qu'ils sont pertinents, mais que leur divulgation porterait atteinte à la sécurité nationale ou à celle d'autrui, ils ne peuvent faire partie du résumé, mais peuvent servir de fondement à l'affaire;

h) le juge fournit au résident permanent ou à l'égranger, afin de lui permettre d'être suffisasmment informé des circonstances ayant donné lieu au certificat, un résumé de la preuve ne comportant aucun élément dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

engaged or will engage in acts referred to in paragraph (a), *(b)* or (c).

78. The following provisions govern the determination:

(a) the judge shall hear the matter;

(b) the judge shall ensure the confidentiality of the information on which the certificate is based and of any other evidence that may be provided to the judge if, in the opinion of the judge, its disclosure would be injurious to national securityor to the safety of any person;

(c) the judge shall deal with all matters as informally and expeditiously as the

circumstances and considerations of fairness and natural justice permit;

(d) the judge shall examine the information and any other evidence in private within seven daysafter the referral of the certificate for determination;

(e) on each request of the Minister or the Solicitor General of Canada made at any time during the proceedings, the judge shall hear all or part of the information or evidence in the absence of the permanent resident or the foreigh national named in the certificate and their counsel if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;

(f) the information or evidence described in paragraph *(e)* shall be returned to the Minister and the Solicitor General of Canada and shall notbe considered by the

judge in deciding whether the certificate is reasonable if either the matter is withdrawn or if the judge determines that the information or evidence is not relevant or, if it is relevant, that it should be part of the summary;

(g) the information or evidence described in paragraph *(e)* shall not be included in the summary but may be considered by the judge in deciding whether the certificate is reasonsable if the judge determnines that the information or evidence is relevant but that its disclosure would be injurious to national security or to the safety of any person;

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(h) the judge shall provide the permanent resident or the foreign national with a summary of the information or evidence that enables themto be reasonably informed of the circumstances giving rise to the certificate, but that does not include anything that in the opinion of the judge would be injurious to national security or to the safety of any person if disclosed;

(i) the judge shall provide the permanent resident or the foreign national with an opportunity to be heard regarding their inadmissibility; and

(j) the judge may receive into evidence anything that, in the opinion of the judge, is appropriate, even if it is inadmissible in a court of law, and may base the decision on that evidence.

80. (1) The judge shall, on the basis of the

information and evidence available, determine whether the certificate is reasonable and whether the decision on the application for protection, if any, is lawfully made.

(2) The judge shall quash a certificate if the judge is of the opinion that it is not reasonable. If the judge does not quash the certificate but determines that the decision on the application for protection is not lawfully made, the judge shall quash the decision and suspend the proceeding to allow the Minister to makea decision on the application for protection.

(3) The determination of the judge is final and may not be appealed or judicially reviewed.

87.(1) The Minister may, in the course of a judicial review, make an application to the judge for the non-disclosure of any information with respect to information protected under subsection 86(1) or information considered under section 11, 112 or 115.

(2) Section 78, except for the provisions relating to the obligation to provide a summary and the time limit referred to in paragraph 78(d), applies to the determination of the application, with any modifications that the circumstances require.

i) il donne au résident permanent ou à l'étranger la possibilité d'être entendu sur l'interdiction de territoire le visant;

j) il peut recevoir et admettre en preuve tout élément qu'il estime utile - même inadmissible en justice - et peut fonder sa

décision sur celui-ci.

80. (1) Le juge décide du caractère raisonnable du certificat et, le cas échéant, de la légalité de la décision du ministre, compte tenu des renseignements et autres éléments de preuve dont il dispose.

(2) Il annule le certificat dont il ne peut conclure qu'il est raisonnable; si l'annulation ne vise que la décision du ministre il suspend l'affaire pour permettre au ministre de statuer sur celle-ci.

(3) La décision du juge est définitive et n'est pas susceptible d'appel ou de contrôle judiciaire.

87.(1) Le ministre peut, dans le cadre d'un contrôle judiciaire, demander au juge d'interdire la divulgation de tout renseignement protégé au titre du paragraphe 86(1) ou pris en compte dans le cadre des articles 11, 112 ou 1i5.

(2) l'article 78 s'applique à l'examen de la demande, avec les adaptations nécessaires, sauf quant à l'obligation de fournir un résumé et au délai.

ANNEX **"B" Documents relating to the** delegate's **decision**

p. 1 : Reasons for decision of the Minister's Delegate pursuant to paragraph 115(2)(b),IRPA

p. 62 : Memorandum to the Minister's Delegate from Louis Dumas, Director of SecurityReview dated

The Applicant's evidence

p. 254: Almrei's Personal Information Form (PIF) dated October 8, 1999

p.267 : Transcript of hearing before the Immigration and Refugee Board dated May 25, 2000

p. 352 : Almrei's application for permanent residence

p. 392: Almrei's solemn declaration sworn on February 3, 2002

p. 688 : Almrei's solemn declaration sworn November 10, 2002

p. 916: Unofficial transcript of the interview held with Mr. Almrei dated July 10-11, 2003

The Applicant's submissions

p. 12 : Almrei's submissions dated August 18, 2003, sent to the Delegate

p. 32 : Almrei's submissions dated September 24, 2003, sent to the Delegate

p. 382: Almrei's submissions dated January 28, 2002

p. 680: Almrei's submissions dated November 12, 2002

p. 1040 : Almrei's submissions on his travels, dated July 28, 2003

Statements **from professors and Amnesty International**

p. 22 : Professor Kingston's Expert Witness Statement dated August 18, 2003

p. 35 : Second professor's Statement dated September 22, 2003 and his *curriculum vitae*

p. 703 : First professor's solemn declaration sworn November 8, 2002

p. 707: Amnesty international letter dated November 7, 2002 to Alrnrei's counsel

Documents relating to the security certificate process p. 80 : Security certificate

p. 83 : Deportation order

p. 84 : Statement summarizing pursuant to section 40.1(1) of the Immigration Act

p. 243 : Judgment of Tremblay-Lamer J. on the reasonableness of the security certificate

p. 396: Federal Court hearing transcript for security certificate proceedings dated November19, 2001

Country conditions reports and texts

p. 42 : Text from the United States Embassy, "Text : State Dept. Report Cites Seven State-Sponsors of Terrorism"

p. 50 : Syrian Human Rights Committee, "Syria Annual Report - 2003 : Unlawful detentions files"

p. 57 : Syrian Human Rights Committee, "SHRC Annual Report - 2003 : Torture and Abuse: Oppressive Methods to Punish Dissidents"

p. 59 : Syrian Human Rights Committee, "SHRC Annual Report - 2003: Prisons, detentionand interrogation centres : the most widespread and the most terrifying"

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p. 532: Derechos Human Rights report, "The ACIJLP's commentary on the Arab Agreementagainst terrorism"

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Terrorism a serious threat to human rights" dated 2002

p. 601 : Human Rights Watch World Report 2002, "Syria"

p. 631 : Amnesty International Report 2001, "Saudi Arabia"

p. 636: Human Rights Watch World Report 2002, "Saudi Arabia"

p. 710: Human Rights Watch World Report 2002, "Syria"

p. 714: Amnesty International Report 2002, "Syria"

p. 742: American University School of Public Affairs Senior Honours Thesis, "A study of Afghanistan : the case for Taliban legitimacy and US Responsibility" by Mary Elizabeth Roads dated May 2001

p. 835 : US Department of State Report on Syria dated 2002

p. 851: Human Rights Watch World Report 2003, "Syria"

p. 1051: Federal Document Clearing House Congressional Testimony dated September 18,2002, testimony by Matthew A. Levitt, senior fellow in terrorism studies

p. 1069: Federal Document Clearing House Congressional Testimony, dated September 18,2002, testimony by Matthew A. Levitt, senior fellow in terrorism studies

Other

p. 105: RCMP photo book

p. 496: Questions to the Minister of Citizenship and Immigration during Question Period onAlmrei case, no date provided

Articles from news services and organizations

p. 28 : Newspaper article on Maher Arar, source unknown, dated August 8, 2003, "Is myhusband still alive? Wife of jailed Canadian asks"

p. 29 : Toronto Star editorial, dated August 9, 2003, "Ottawa fails citizens held in foreigncountries" by Haroon Siddiqui

p. 38 : Amnesty International article, "Syria/USA : compromising justice" (pertaining toArar case)

p. 41 : Article from Wikipedia, the free encyclopedia, "Maher Arar"

p. 46 : Article on Maher Arar, source unknown, no title

p. 47 : Article from Globe and Malcom, "Syria to charge Ottawa man"

p. 49 : Article dated September 16, 2003, source unknown, "Deportation fears ended : return to Syria nixed at last minute"

p. 358: Article from International New York Times website, "Al Qaeda - Trade in honey issaid to provide money and cover for bin Laden" by Judith Miller and Jeff Gerth

p. 361: Article from BBC News website, "Bin Laden's honey connection" dated October 11,2001

p. 363: Newsweek article, "Al Qaeda strikes again" by Mark Hosenball and Michael Isikoffdated May 26, 2003

p. 367 : Los Angeles Times article, "At least 24 die in bombings : blasts rock Casablanca, Morocco, in multiple attacks that are blamed on `international terrorism'. No US facilities are targeted" by Josh Meyer and Greg Miller dated May 17, 2003

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p. 373: Los Angeles Times article, "US, Saudis block assets of charity" by Josh Meyer datedMarch 12, 2002

p. 375 : Intelligence Newsletter article, "Who really wants to stop bin Laden?" dated March16, 2000

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p. 459 : Article, source unknown, "Al-Qaeda operatives in Canada"

p. 464: Newsmax.com article, Analysis : Bin Laden's Ho Chi Minh trail in Canada" dated December 5, 2001

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p. 472: Toronto Sun article, "We had warning : documents show feds knew risks posed byrefugees" by Tom Godfrey dated November 6, 2001

p. 474: America Corresponds News article, "Toronto man linked to Osama bin Laden's network Canadian government says" by Tom Cohen dated October 31, 2001

p. 476: Chicago Tribune article, "Canada links terror suspect to Chicago-area detainee"

bySam Roe dated October 31, 2001

p. 478: Toronto Sun article, "US border control : Toronto a hotbed for Osama's cells, terrorprobe stunned by activity here" by Tom Godfrey dated October 30, 2001

p.480 : HindustanTimes.com article, "Canada seeks to deport man suspected of Osama links:report" dated October 27, 2001

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p. 484: New York Times article, "Czechs confirm Iraqi agent met with terror ringleader"

p. 485 : Associated Press article, "EgyptAir says it will provide passenger list to US customs"

p. 486 : Guardian article, "The elite force who are ready to die"

p. 487: The Star article, "Anger over killing of innocents"

p. 488 : Washington Post article, "Prism on Palestine"

p. 233: Washington Post article, "US cites 6 nations in report on religious intolerance"

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p. 491 : Arabic News article, "Saudi Arabia and the US bases"

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p. 498 : Torna all'Indice article, "Americhe :Cresce l'allallne terrorismo" by Cristiano de Florentiis

p. 501 : Arabic News.com article, "Syria's co-operation with the US in its war against terrorism" dated October 29, 2001

p. 502 : Article, source unknown, "Syria cracks down on bin Laden supporters"

p. 247: SHRC article, "Follow-up on the case of Hussein Dawood" dated January 20, 2002

p. 248: SHRC article, "Request to uncover the circumstances of the death of the detainee Muhammad Mustafa Snoon" dated August 15, 2001

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Names of Counsel and Solicitors of Record

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