Federal Court  Cour fédérale

Date: 20160628

Docket: IMM-5609-15

Citation: 2016 FC 729

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 28, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RABIA BEGUM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] This Court has, on several occasions, determined that it was reasonable for the Immigration Division (ID) to conclude that the MQM and/or the MQM-A were terrorist organizations, within the meaning of paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27 (*NK v. Canada (Public Safety and Emergency*

Preparedness), 2015 FC 1377 at paragraph 80 [*NK*]; *Naeem v. Canada (Citizenship and Immigration)*, 2010 FC 1069 [*Naeem*]; *Mohiuddin v. Canada (Citizenship and Immigration)*, 2010 FC 51 [*Mohiuddin*]). Engaging in promotional activities in order to attract new adherents, or recruiting for such an organization, in itself, makes an individual complicit in the activities of such an organization.

> [34] As was stated in *Catal v. Canada (M.C.I.)*, 2005 FC 1517, at para. 8, the test for complicity is personal and knowing participation in a common purpose shared with the organization:
>
> > A. if the organization is one with a brutal and limited purpose, then membership in that organization deems the member to be complicit in its crimes; or
> >
> > B. if the organization is one whose commission of crimes are incidental to some other, primary purpose, complicity is determined by a fact-driven case-by-case analysis, having regard to the following factors adopted by Hughes J. in *Bedoya v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1092:
> >
> > 1. The Nature of the Organization
> >
> > 2. The Method of Recruitment
> >
> > 3. Position/rank within the Organization
> >
> > 4. Length of time in the Organization
> >
> > 5. The Opportunity to Leave the Organization
> >
> > 6. Knowledge of the Organization's Atrocities
>
> (As specified by Mr. Justice Mandamin in *Qureshi v. Canada (Citizenship and Immigration)*, 2009 FC 7 [*Qureshi*])

II. Introduction

[2] This is an application for judicial review under subsection 72(1) of the IRPA against a decision rendered by the ID of the Immigration and Refugee Board regarding the validity of an inadmissibility report drafted in accordance with subsection 44(1) of the IRPA.

III. Facts

[3] The applicant, Rabi Begum (70 years old), is a citizen of Pakistan.

[4] The applicant states in her affidavit that after the separation of the MQM and the MQM-A, she became a member of the MQM-A in 1992. While she supported this organization, she allegedly mainly did charity work for women. In 2006, she allegedly received threats from MQM-H members that she would be harmed unless she ceased her involvement with the MQM. In January 2013, the applicant was allegedly stabbed by MQM-H members. Following this assault, she lost the use of one kidney. On September 14, 2014, the applicant arrived in Canada and filed a claim for refugee protection. In January 2015, a report under section 44 of the IRPA was drafted against the applicant, in which it was determined that the applicant was inadmissible under paragraph 34(1)(*f*) of the IRPA. Following this report, the minister referred the matter to the ID, and, in a decision dated November 26, 2015, the ID also determined that the applicant was inadmissible.

IV. Contested decision

[5] In order to determine if the applicant was inadmissible under paragraph 34(1)(*f*) of the IRPA, the ID applied the standard of "reasonable grounds to believe," as stated in section 33 of the IRPA.

[6] The ID proceeded with a two-step analysis in order to determine whether the applicant was a member of an organization that there were reasonable grounds to believe engages, has engaged or will engage in acts of terrorism—namely the MQM and the MQM-A. First, the ID determined that there were reasonable grounds to believe that the applicant was a member of the MQM and/or the MQM-A. The ID, based on the evidence in the record, concluded that the applicant, in addition to being involved in charity work, was also involved politically with these organizations, since she had gone door-to-door and had promoted the MQM's electoral platform. In addition, a letter dated November 2014 and signed by an MQM representative indicated that the applicant was a permanent member of the MQM and had worked for the organization since 1992. Furthermore, the applicant, in her refugee claim, identified herself as a senior MQM employee from January 1992–September 2014, without making any distinction between the MQM and the MQM-A. Consequently, the ID determined that the applicant was a member of both the MQM and the MQM-A.

[7] Second, the ID determined, based on the definition of an act of terrorism in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3, 2002 SCC 1 [*Suresh*], that there were reasonable grounds to believe that the MQM and/or the MQM-A were involved in

acts of terrorism, even though the MQM is not a listed terrorist entity within the meaning of the *Anti-terrorism Act*, S.C. 2001, chapter 41. In summary, the ID determined that the applicant was inadmissible to Canada under paragraph 34(1)(*f*) of the IRPA.

V. Issues in dispute

[8] The Court is of the opinion that the issues are as follows:

1. Was it reasonable for the ID to conclude that the applicant was a member of the MQM?
2. Was it reasonable for the ID to conclude that there were reasonable grounds to believe that the MQM and the MQM-A engage, have engaged or will engage in acts of terrorism?

VI. Parties' positions

[9] The applicant is of the opinion that the ID wrongly concluded that she was an MQM member. She argues that she was not involved in the MQM's political activities and that she only did charity work. She was never sworn into the MQM and never completed the tasks required to become a member. Furthermore, it was after the split from the MQM that the applicant became a member of the MQM-A. With regard to the second point, the applicant maintains that the ID erred in its assessment of the acts committed by the MQM, the MQM-A and the MQM-H. The documentary evidence does not show which faction of the MQM actually committed the alleged acts of terrorism. The MQM-A is not on the list of terrorist organizations in the United States. The applicant claims that the ID therefore erred in failing to distinguish between the different

factions of the MQM, as well as in failing to state which specific acts committed by the MQM-A would be included under the definition of an act of terrorism pursuant to *Suresh*, above.

[10] The respondent argues that the ID made a reasonable determination when it concluded that the applicant was an MQM member, and, that the MQM is a terrorist organization within the meaning of paragraphs 34(1)(*c*) and 34(1)(*f*) of the IRPA. First, it was reasonable for the ID to find that the applicant was a member of the MQM. The evidence shows that the applicant was, by her own admission, a member of the MQM-A. In addition, the definition of a member under paragraph 34(1)(*f*) must be interpreted in the broadest sense (*Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 FCR 297 [*Chiau*]) – the fact of not having sworn allegiance is not a determining factor in itself (*Qureshi*, above). Second, it was reasonable for the ID to determine that the MQM is a terrorist organization. The evidence in the record does not support the applicant's argument that she was a member of the MQM-A only. The ID did not need to make a distinction between the activities of the MQM and those of the MQM-A (*Qureshi*, above, at paragraphs 28–29). In addition, the ID, basing its decision on the definition of terrorism in *Suresh*, above, at paragraph 98, reasonably concluded, based on objective documentary evidence, that the MQM had committed acts of terrorism. Furthermore, this Court has already determined in several decisions that it was reasonable for the ID to conclude that the MQM is a terrorist organization within the meaning of paragraph 34(1)(*f*) of the IRPA (see, for example, *Memon v. Canada (Citizenship and Immigration)*, 2008 FC 610; *Uddin Jilani v. Canada (Citizenship and Immigration)*, 2008 FC 758). Lastly, it is irrelevant that the MQM is not on the lists of terrorist organizations in the United States and the United Kingdom.

VII. Analysis

[11] The ID's conclusions—that the applicant is a member of the MQM and/or the MQM-A, and that the MQM and MQM-A are organizations that there are reasonable grounds to believe are and were engaged in acts of terrorism—must be analyzed using the standard of reasonableness (*Kanagendren v. Canada (Citizenship and Immigration)*, 2015 FCA 86 [*Kanagendren*].

[12] The applicant maintains that it was not reasonable for the ID to conclude that she was a member of the MQM under paragraph 34(1)(*f*) of the IRPA since she simply helped individuals in need in Pakistan and was not involved in the MQM's political activities.

[13] It is important to reiterate that the applicable standard in determining whether the applicant was a member of the MQM is that of "reasonable grounds to believe" (see section 33 of the IRPA; *Kanagendren*, above). The purpose of paragraph 34(1)(*f*) being to address issues of national security (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, [2013] 2 SCR 559, 2013 SCC 36 at paragraphs 76 and 78), membership in an organization must be defined in the broadest sense (*Kanagendren*, above, at paragraph 27; *Nassereddine v. Canada (Citizenship and Immigration)*, 2014 FC 85 at paragraph 49). Thus, the word "member" in paragraph 34(1)(*f*) of the IRPA does not require actual or formal membership in an organization (*Chiau v. Canada (Minister of Citizenship and Immigration)*, [1998] 2 FCR No. 642, affirmed by *Chiau*, above at paragraph 57). In her submissions, the applicant maintains that she should not be considered an MQM member since she did not demonstrate a level of commitment consistent

with that which the MQM expects of its members, and that she was not a full member, having not sworn an oath to become a member. However, in both her Basis of Claim Form (BOC) and her interview with a Canada Border Services Agency (CBSA) officer, the applicant voluntarily admitted that she was a "senior" employee of the MQM, and that she participated in the MQM's political activities by going door-to-door, distributing pamphlets and encouraging people to get out and vote during election periods. It was therefore reasonable, in light of the evidence in the record, for the ID to come to the conclusion it did.

[14] In the alternative, the applicant maintains that the ID erred in concluding that the MQM is an organization that has committed acts of terrorism. The applicant claims that the ID erred in failing to distinguish between those acts committed by the MQM, the MQM-H and the MQM-A that would fall under the definition of terrorism stated in *Suresh*, above. Nevertheless, as was stated by the respondent, the evidence in the record shows that the applicant admitted to being involved in both the MQM and the MQM-A. It was therefore unnecessary for the ID to make a distinction between the acts committed by the MQM and the MQM-A.

[15] In addition, it is evident from the reasons for decision that the ID studied the objective documentary evidence, and, based on these documents, it arrived at the conclusion that both the MQM and the MQM-A had committed acts of terrorism, as defined in *Suresh*, above. In this case, given that the applicant admitted—in her BOC Form as well as in her interview with the CBSA officer—to having been involved in MQM and MQM-A activities, it was not necessary for the ID to state in its reasons which terrorist activities were attributed to each organization. An administrative decision-maker is not required to make an explicit finding on each constituent

element of reasoning leading to its final conclusion (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 at paragraph 16; *Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Association et al.*, [1975] 1 SCR 382, page 391). The Court also concurs with the argument of the respondent, which maintains that this Court has, on several occasions, concluded that it was reasonable for the ID to determine that the MQM and/or the MQM-A were terrorist organizations, within the meaning of paragraph 34(1)(*f*) of the IRPA (*NK*, above at paragraph 80; *Naeem*, above; *Mohiuddin*, above). Furthermore, this Court has acknowledged that the mere fact that an organization is not on the list of terrorist entities within the meaning of the *Anti-terrorism Act*, although relevant, is not in itself sufficient grounds to conclude that this entity is not a terrorist organization within the meaning of paragraph 34(1)(*f*) of the IRPA (*Anteer v. Canada (Citizenship and Immigration)*, 2016 FC 232 at paragraphs 43–47).

VIII. Conclusion

[16] The Court finds that the Immigration Division's decision is reasonable. Consequently, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT IS that the application for judicial review be dismissed.

There is no question of importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5609-15
STYLE OF CAUSE:	RABIA BEGUM v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 16, 2016
JUDGMENT AND REASONS:	SHORE J.
DATED:	JUNE 28, 2016

APPEARANCES:

Claude Whalen	FOR THE APPLICANT
Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claude Whalen Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT