Federal Court  Cour fédérale

Date: 20160719

Docket: IMM-1388-15

Citation: 2016 FC 826

Ottawa, Ontario, July 19, 2016

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

SUKHVINDER SINGH AND RUPINDER KAUR DHALIWAL GILL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a March 9, 2015 decision of a Senior Immigration Officer [the Officer]. In that decision, the Officer found the Principal Applicant, Mr. Sukhvinder Singh, inadmissible to Canada under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Officer found that the Principal Applicant

was a member of the International Sikh Youth Federation Damdami Taksal [ISYF-DDT], a splinter group of the International Sikh Youth Federation [ISYF], and that there were reasonable grounds to believe the ISYF "engages, has engaged or will engage in acts of terrorism".

[1] For the reasons that follow, this application for judicial review is dismissed.

II. Background

[2] This matter has a long and complicated history involving three countries – India, Switzerland, and Canada – and spanning three decades.

[3] In or around 1988, the Principal Applicant arrived in Switzerland from India. In 1994, he was convicted in Switzerland for his involvement in a plan to abduct the former Indian Ambassador to Romania. The Principal Applicant's version of events is that he drove some friends to a train station in Zurich. Two of those friends ultimately made their way to Budapest where they attempted, and failed, to abduct the former Ambassador. Those two individuals were then convicted of conspiracy and received longer sentences of imprisonment than the Principal Applicant, who received a sentence of 3 years and who later acquired an expungement from Swiss authorities (similar to a pardon or record suspension in Canada).

[4] On October 12, 1998, he arrived at Pearson International Airport in Toronto and was granted entry as a visitor. He claimed refugee status in Montreal one week later.

[5] On November 23, 1999, the Principal Applicant submitted an application for permanent residence [PR] as a spouse under the family class on humanitarian and compassionate [H&C] grounds (the Spouse or Common-Law Partner in Canada class did not yet exist). It is this application that is at issue in the present judicial review.

[6] In the PR application, the Principal Applicant indicated that he had been a member of the ISYF from April 1989 to July 1990.

[7] On February 2, 2000, an admissibility hearing was held as a result of the Principal Applicant's 1994 convictions in Switzerland. At this hearing, he was found inadmissible to Canada under subparagraph 19(1)(c.1)(i) of the *Immigration Act*, RSC 1985, c I-2 (now paragraph 36(1)(b) of the Act) on grounds of serious criminality. The Principal Applicant did not challenge this decision.

[8] On October 20, 2000, the Principal Applicant was found to be a Convention refugee.

[9] Shortly thereafter, the Principal Applicant submitted a new application for PR as a member of the Convention refugee class.

[10] On January 25, 2007, the Convention refugee PR application was denied on grounds of serious criminality pursuant to paragraph 36(1)(b) of the Act. The Principal Applicant's application for judicial review of that decision (IMM-6221-12) was dismissed at the leave stage on November 12, 2013. The same officer who denied this application then closed the Principal

Applicant's first PR application (the one at issue in this judicial review). The officer attempted to send a refund cheque to the Principal Applicant for the closed application but it was apparently sent to the wrong address.

[11] In 2009, the Principal Applicant was interviewed by a Canada Border Services Agency [CBSA] officer, Officer Fox, to determine whether he was inadmissible to Canada on security grounds. An inadmissibility report under section 44 of the Act was prepared on November 2 of that year.

[12] In 2012, the Principal Applicant sought a *mandamus* order in the Federal Court to compel the Respondent to render a decision on his outstanding 1999 PR application. The Respondent agreed that the officer erred by closing that application in 2007 and began processing it on a priority basis. Given this agreement, on October 8, 2013, the Federal Court dismissed the *mandamus* application for mootness and ordered the Respondent to render a decision by November 26, 2013 (IMM-8192-12).

[13] The Principal Applicant's PR application was ultimately refused because he was found inadmissible for membership in a terrorist organization under paragraph 34(1)(f) of the Act. However, the Officer refused the application without considering an H&C exemption.

[14] The Principal Applicant sought judicial review of that refusal (IMM-7886-13). The Respondent agreed that there was an improper failure to consider an H&C exemption to his

inadmissibility. The Respondent thereafter commenced a redetermination of the Applicant's spousal sponsorship application.

[15] The Principal Applicant then brought an application in Federal Court for a permanent stay of the "admissibility proceedings", commenced in 2009, in the context of his spousal sponsorship (IMM-5762-14). Justice Shore dismissed that application at the leave stage.

[16] With respect to the redetermination of the spousal sponsorship application, three procedural fairness letters were sent to the Principal Applicant, who in turn sent three responses.

[17] The Officer rendered the present decision under review on March 9, 2015. On March 23, 2015, the Principal Applicant filed his Notice of Application for leave and for judicial review of this decision.

[18] Finally, it should also be noted that a section 42.1 ministerial relief application, distinct from the other applications mentioned above, remains outstanding.

III. Impugned Decision

[19] In the March 9, 2015 decision, the Officer identified the key concern as the Principal Applicant's self-declared membership in the ISYF/ISYF-DDT. The Officer noted that the ISYF has been on Canada's list of terrorist entities under subsection 83.05(1) of the *Criminal Code*, RSC 1985, c C-46 since 2003 and that the ISYF-DDT was a splinter group of the ISYF. The Officer also noted the Principal Applicant's criminal convictions for the attempted kidnapping of

the Indian ambassador to Romania, which the Officer found was organized by an allegiance of Sikh extremists.

[20] Ultimately, the Officer found that there were reasonable grounds to believe that the Principal Applicant, through his membership in the ISYF-DDT, was a member of the ISYF, a terrorist organization within the meaning of paragraph 34(1)(f) of the Act. The Officer concluded:

> I find reasonable grounds to believe that Mr. Singh was a member of the International Sikh Youth Federation, as a member of the splinter group ISFY DDT. The ISYF is a group that is considered to have engaged in terrorism, and has figured on Canada's list of terrorist entities since 2003. I am satisfied that Mr. Singh is inadmissible to Canada under Section 34(1)(f) of the Immigration and Refugee Protection Act for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts of terrorism under Section 34(1)(f) of the Immigration and Refugee Protection Act. (Certified Tribunal Record at 14 [CTR])

[21] The Officer concluded by noting that the inadmissibility finding does not alter the Principal Applicant's protected person status in Canada. The Officer also noted that H&C considerations might exempt the Principal Applicant from the requirements of the Act in respect of his inadmissibility. As a result, the Officer forwarded the matter to the Case Management Branch [CMB] to "decide if a waiver of this inadmissibility is appropriate" (CTR at 2). That determination is still pending.

IV. Positions of the Parties

[22] The Applicants raise four grounds for review: (1) there was no evidence to support the Officer's factual finding that the Principal Applicant was a member of a terrorist organization; (2) the Officer's reliance on the Principal Applicant's Swiss criminal convictions was erroneous and unfair; (3) it was unfair for the Officer to rely on and then not disclose interview notes from the Principal Applicant's 2009 CBSA interview; and (4) it was unfair to deny the Principal Applicant an oral hearing.

[23] The Respondent, on the other hand, opposes a finding for the Applicants on any of these four grounds, and in addition raises a procedural objection on prematurity.

a. No evidentiary basis to find membership in a terrorist organization

[24] The Applicants submit that the Officer erred in finding the ISYF and the ISYF-DDT are one in the same: membership in a splinter group does not equate with membership in the parent group. The Applicants contend that the Officer failed to analyse or point to any documentary evidence confirming that the ISYF-DDT is indeed the same group as or even related to the ISYF.

[25] The Applicants rely on both *Ali v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1174 at paras 65-66 [*Ali*] and *Dirar v Canada (Public Safety and Emergency Preparedness)* 2011 FC 246 at paras 25-29 [*Dirar*] for the proposition that there must be direct evidence tying an impugned group to a terrorist entity. According to the Applicants, as in *Ali* and *Dirar*, the Officer here failed to properly consider whether the ISYF-DDT was responsible for

any terrorist activity since there was no evidence that the splinter group had committed any specific acts of terrorism in Switzerland. The Applicants also submit the Officer failed to conduct any analysis, or refer to any supporting documentary evidence, which would establish that specific acts of the ISYF-DDT met the definition of "terrorism" in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1.

[26] The Respondent counters that the Principal Applicant himself listed, on two of his immigration application forms, that he was member of the ISYF. The Respondent also points out that the Principal Applicant's own description of an initial meeting of the ISYF-DDT in Switzerland indicates that the group was formed as a faction of the ISYF and not as a separate and distinct entity.

[27] The Respondent further submits that even if found to be separate and distinct from the ISYF, the ISYF-DDT is itself a terrorist organization. As such, the Respondent submits there were reasonable grounds to believe that the ISYF-DDT engaged in acts of terrorism.

b. The Swiss criminal convictions

[28] The Applicants object to the Officer's reliance on his criminal convictions in Switzerland as evidence of his paragraph 34(1)(f) inadmissibility. Specifically, the Officer cited the Principal Applicant's positive refugee decision, wherein reference was made to two other Sikh extremist groups, the IDSCF and the Khalistan Commando Force, in the conspiracy to kidnap the ambassador of India to Romania.

[29] The Applicants submit that this information was not disclosed to the Principal Applicant and that he was not provided any notice in the procedural fairness letters that the Officer intended to rely on the his alleged membership in the IDSCF or the Khalistan Commando Force. As a result, the Principal Applicant did not know the case he had to meet. Furthermore, he states that the evidence does not establish that either of these groups were involved in the attempted kidnapping, and in any event, the Officer failed to consider whether he was in fact a member of either group.

[30] The Respondent counters that the Principal Applicant was found inadmissible based on his membership in the ISYF-DDT. No finding was made in respect of his membership in the IDSCF or the Khalistan Commando Force. Rather, the Officer simply noted that he was found guilty in a conspiracy involving members of various Sikh extremist groups.

c. Non-disclosure of interview notes

[31] The Applicants contend that the Officer relied upon the typed notes of CBSA Officer Fox, who interviewed the Principal Applicant in 2009. According to the Applicants, these were not the actual notes taken, because Officer Fox wrote out his notes by hand. As such, these typed notes did not reflect what the Principal Applicant said during his interview with Officer Fox and contained several discrepancies. The Officer failed to confirm that Officer Fox's typed notes were an exact copy of the handwritten notes or at minimum an accurate reflection of what he said during the interview. The Applicants also rely on *Harkat v Canada (Citizenship and Immigration)*, 2012 FCA 122 at para 143 for the proposition that the failure to disclose these handwritten notes breached his right to procedural fairness.

[32] The Respondent argues that no procedural unfairness arises since the Officer did not rely on Officer Fox's notes.

d. Lack of an oral hearing

[33] According to the Applicants, it was incumbent on the Officer to hold a hearing to assess his credibility. As the Principal Applicant advised Citizenship and Immigration Canada in writing that he was not a member of the ISYF but rather a member of the ISYF-DDT, the Officer's finding that he "had self-declared membership in the International Sikh Youth Foundation" constituted a negative credibility finding. The Applicants cite *Freeman v Canada (Citizenship and Immigration)*, 2013 FC 1065 at para 52 for the principle that while "visa applicants have no general entitlement to an interview, there may be an obligation to interview an applicant where there are issues with respect to the applicant's credibility".

[34] The Respondent counters that there is no absolute requirement that an applicant be afforded an interview. Beyond that, the Principal Applicant was pointed to specific evidence giving rise to the Officer's concerns regarding his membership in the ISYF and ISYF-DDT. The Principal Applicant was given the opportunity to respond to these concerns and was granted an extension of time to do so. Therefore, the Respondent submits that the Principal Applicant was afforded a meaningful opportunity to present his case and thus no procedural unfairness arises.

e. Prematurity

[35] Finally, the Respondent argues that this judicial review is premature because the Principal Applicant's PR application is still in process. The Officer, although finding the Principal Applicant inadmissible, nonetheless sent the application to the CMB to consider whether an H&C exemption is justified. The Respondent therefore takes that position that no final decision has been rendered. Should the sponsorship ultimately be granted, this judicial review will have been a waste of resources. Conversely, if the PR application is ultimately refused, the Principal Applicant will be free to challenge the refusal and make arguments concerning inadmissibility at that point. Otherwise stated, the inadmissibility finding is an interlocutory decision. The Principal Applicant must await the final determination of his H&C application before seeking judicial review. At that point, he can challenge an inadmissibility finding as part of the negative H&C review.

[36] The Applicants strongly oppose this view, arguing that admissibility determinations are discrete findings under the Act which carry with them significant and highly prejudicial consequences for any applicant, including Mr. Singh and his family.

V. Issues and Standard of Review

[37] The various points raised by the parties and outlined above can be synthesized into three distinct issues: first, whether the application is premature; second, whether the process afforded to the Principal Applicant was procedurally fair; and third, whether the underlying decision was reasonable.

[38] As far as the standard by which this Court will review the second two issues, procedural fairness questions, including those that arise in the context of inadmissibility decisions, should be reviewed on a correctness basis (*Shahzad v Canada (Citizenship and Immigration)*, 2015 FC 1245 at para 8). An attack on the merits of an inadmissibility finding, on the other hand, attracts a reasonableness review (*Tareen v Canada (Citizenship and Immigration)*, 2015 FC 1260 at para 15; *Kojic v Canada (Citizenship and Immigration)*, 2015 FC 816 at para 15).

VI. Analysis

a. Is the application premature?

[39] In *Mohammed v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1412 [*Mohammed*], this Court, referring to *Ali*, rejected the notion that a judicial review of an inadmissibility finding must wait until the end of the permanent residence application process. This is because even in the event of a successful application, the applicant is left with the underlying inadmissibility finding. As Justice MacTavish found in *Ali* at para 46:

> A finding by the Minister under sub-section 34(2) that Mr. Ali's continued presence in Canada would not be detrimental to the national interest would allow Mr. Ali to be granted permanent residence, which is, after all, what he is seeking. However, Mr. Ali would still be left with the finding that there are reasonable grounds for believing that he is a member of a terrorist organization. This is a very serious finding, and one which may well have ramifications for Mr. Ali in the future.

[40] The reasoning in *Ali* and *Mohammed* is applicable in this case for two reasons. First, even if ultimately granted permanent residence on H&C grounds, the Principal Applicant would still bear the burden of the underlying inadmissibility finding. Second, in postponing a challenge to

the inadmissibility finding until the ultimate conclusion of the H&C application, the Principal Applicant risks running into the procedural issue that was identified in *Ali*:

> [51] There is a further difficulty that I see with the respondent's position. The respondent says that if Mr. Ali is dissatisfied with the decision of the Minister under subsection 34(2) of [the Act], it would be open to him to seek judicial review at that point in the proceedings, with respect to both the decision of the Minister, and the decision of the immigration officer. However, if Mr. Ali were to attempt to review the findings of the immigration officer at the same time that he sought judicial review of the decision of the Minister not to grant relief pursuant to subsection 34(2), he would potentially run afoul of rule 302 of the *Federal Court Rules*, 1998 [SOR/98-106]. That is, it could be argued that Mr. Ali was seeking to review two decisions, made by two different individuals, in a single application for judicial review.

[41] The Respondent cites no authority for the proposition that an inadmissibility finding is an interlocutory decision in this context. Nor does the Respondent provide any authority for the proposition that a subsequent positive H&C decision would afford the Principal Applicant with an adequate alternative remedy to the inadmissibility finding or that the H&C decision would otherwise incorporate the inadmissibility finding such that it could be challenged together with the H&C determination in a single application for judicial review. On the contrary, it would appear that H&C outcome is similar to a positive ministerial relief outcome under section 42.1 of the Act (the current equivalent of subsection 34(2) upon which *Ali* and *Mohammed* were decided). It would not overturn the inadmissibility finding but only exempt the Principal Applicant from its consequences under the Act.

[42] I therefore conclude that *Mohammed* and *Ali* are analogous to the case at bar. In my view, the pending H&C decision, even if it can be characterized as one step of a single continuous application for permanent residence, does not provide an adequate alternative remedy to the

Applicants' challenge to the inadmissibility finding. Thus, this judicial review application is not premature.

[43] Even if I am wrong and the inadmissibility decision is properly characterized as interlocutory, it is in the interests of justice to entertain the application for judicial review anyway. This Court retains the discretion to entertain an application for judicial review of a non-final decision in exceptional circumstances (*Almerei v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1002 at para 60; *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 30-33). With that discretion in mind, this application for permanent residence dates back almost two decades to 1999. Since then, the Principal Applicant sought a *mandamus* order to have the application determined (IMM-8192-12) and has brought an application for judicial review once already (IMM-7886-13). He succeeded in that application because the deciding officer refused him on grounds of inadmissibility and failed to consider H&C considerations, an assessment that is not dissimilar to the one before the Court in this matter. As such, these are exceptional circumstances, and it would be contrary to the interests of justice to allow this application to persist any longer than necessary by declining to make a decision now.

b. Was the decision fair?

[44] The Applicants allege three breaches of procedural fairness: (1) relying on the evidence of the Principal Applicant's Swiss criminal convictions; (2) failing to disclose interview notes; and (3) denying an oral hearing. I do not find that the Principal Applicant's right to procedural fairness was breached on any of these grounds.

i. The Swiss Criminal Convictions Evidence

[45] The Applicants' fairness argument here rests on the erroneous premise that the Officer found that the Principal Applicant was a member of the IDSCF or the Khalistan Commando Force. However, no such finding was made. All that occurred was that the Officer "placed weight" on the fact that the Principal Applicant was found guilty for his involvement in a plot to kidnap the former Indian ambassador.

[46] Furthermore, in my view, it cannot be reasonably said that the Principal Applicant was unaware that his Swiss criminal convictions would not be at issue in the determination of his inadmissibility on security grounds since those convictions had already derailed his application for PR under the Convention refugee class.

[47] While the fairness letters sent to the Principal Applicant concerned his involvement in the ISYF and the ISYF-DDT, the Swiss convictions were a fact in the Principal Applicant's immigration record which could be taken into consideration by an officer in a determination on the paragraph 34(1)(f) ground of inadmissibility, in spite of the expungement of that record. Furthermore, the convictions were only one element that gave rise to the Officer's conclusion that the Principal Applicant was a member of a terrorist organization caught by the "membership" inadmissibility ground contained in paragraph 34(1)(f). The convictions were by no means the determinative evidence in the inadmissibility conclusion and I am satisfied they could be used as one element in a determination on that larger issue of membership.

[48] It must be kept in mind that here, unlike during the processing of the Principal Applicant's refugee claim, the ground of inadmissibility at issue was membership in a group linked to terrorism and not serious criminality on the basis of the criminal activities themselves. This distinction is discussed in greater detail below with respect to the reasonableness of the decision.

ii. Officer Fox's Notes

[49] On this point it is sufficient to say that there is no indication that the Officer, in coming to the decision, relied on the handwritten notes of Officer Fox. As noted in the decision, the Officer considered the Principal Applicant's request for disclosure of these notes but rejected it:

> Mr. Singh disputed information from Officer Fox's notes, and Counsel requested that I produce the handwritten notes, which I had not "to date stated do not exist". I did not respond to this request, as I had not seen any handwritten notes from Officer Fox's interview. In addition, the Privacy Request from October 2014 and the Certified Tribunal Record from the court proceedings in 2013/2014 would have given Mr. Singh a copy of everything that was on file. (CTR at 9; emphasis added)

[50] The Officer further noted that in "completing this assessment, although I have referred to Officer's [sic] Fox's notes and his Section 44 Report, they are not a key part of my decision. I have placed much greater weight on the applicant's own statements and writings" (CTR at 15; emphasis added).

[51] The failure to disclose notes which the Officer does not possess, which the Officer did not rely on, and which may no longer exist, does not give rise to any reviewable breach of procedural fairness. While the Applicants object to the accuracy of the typed interview notes of

Officer Fox, I note that the Officer simply referenced these notes in finding the Principal Applicant had self-declared his membership in various immigration forms at different times. There is no real dispute on this point, even though I recognize that the Principal Applicant now claims that his self-declared membership in the ISYF-DDT is distinct from membership in the ISYF, which he had previously written in his immigration applications.

iii. Oral Hearing

[52] Turning to the final argument by the Applicants on procedural fairness, I find that the Officer was under no obligation to afford the Principal Applicant an oral hearing. An interview may be required where there are issues with respect to an applicant's credibility (*Freeman v Canada (Citizenship and Immigration)*, 2013 FC 1065 at para 52), but the inadmissibility finding in this case did not rest on credibility. Rather, the finding rested on the Principal Applicant's self-declared membership and the documentary evidence, including prior findings by the Convention Refugee Determination Division regarding the Principal Applicant's Swiss convictions. As a result, in my view, the concerns raised by the Applicants do not justify setting the decision aside on fairness grounds.

[53] I note too that the case law on the right to an oral interview in the PR context is clear that procedural choices reside with the officer and there is no inherent right to a hearing in these applications (see, for example, *Sinnathamby v Canada (Citizenship and Immigration)*, 2011 FC 1421 at para 25; *Ghasemzadeh v Canada (Citizenship and Immigration)*, 2010 FC 716 at para 27; and *Kandasamy v Canada (Citizenship and Immigration)*, 2012 FC 266 at paras 46-48). As

Justice L'Heureux-Dubé wrote for the Supreme Court in the seminal case of *Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 81:

> [33] However, it also cannot be said that an oral hearing is always necessary to ensure a fair hearing and consideration of the issues involved. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations. The Federal Court has held that procedural fairness does not require an oral hearing in these circumstances: see, for example, Said, supra, at p. 30.
>
> [34] I agree that an oral hearing is not a general requirement for H & C decisions. An interview is not essential for the information relevant to an H & C application to be put before an immigration officer, so that the humanitarian and compassionate considerations presented may be considered in their entirety and in a fair manner.

[54] Here, the Principal Applicant was provided with sufficient opportunity to respond to the central issues in dispute, in writing, on more than one occasion. The Officer was also entitled to take into consideration his refugee decision. Subject to being challenged or set aside on judicial review, such a decision forms an important part of any applicant's immigration record as a decision that itself stems from a process rooted in procedural fairness protections.

c. Was the decision reasonable?

[55] I am of the view that the decision was reasonable. There was evidence to suggest that the ISYF and ISYF-DDT were not separate and distinct organizations, and this evidence was considered and relied upon appropriately by the Officer (see below).

[56] Furthermore, the mere fact that an organization is a splinter group of a parent organization, without more to establish its distinct identity, is insufficient to escape a finding of

inadmissibility. As Justice Strickland noted in *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85:

> [44] In my view, it cannot be that an applicant who admits to membership in a terrorist group may then escape inadmissibility simply by asserting that he or she is a humanitarian who operated within a non-violent faction of that terrorist organization absent documentary or other evidence to support this assertion. The existence of the faction, its distinct identity and its operations must be objectively established. If an applicant is unable to establish this, then he or she may still seek the potential relief available pursuant to subsection 42.1(2) (formerly subsection 34(2)). (Emphasis added)

[57] In other words, absent an evidentiary basis that the ISYF-DDT was distinct in identity and operations from the ISYF, the Officer's conclusion that the Principal Applicant was a member of a splinter group or faction of the ISYF reasonably supports an inadmissibility finding under paragraph 34(1)(f).

[58] In this case, there was evidence available that these organizations were not distinct. Importantly, much of this evidence came from the Principal Applicant himself. For example, he repeatedly stated in his various immigration forms that he was a member of the ISYF, with no reference to the ISYF-DDT:

A. In his application for PR (dated November 23, 1999), the Principal Applicant declared membership in the International Sikh Youth Federation, which he qualified as a religious organization (CTR at 709);

B. In his application for PR under the Convention refugee class, the Principal Applicant declared twice that he was a member of the International Sikh Youth Federation (CTR at 764);

C. In his updated application for PR under the Convention refugee class, the Principal Applicant again declared membership in the International Sikh Youth Federation and again qualified the organization as religious (CTR at 776).

[59] Elsewhere, where the Principal Applicant did refer to the ISYF-DDT, he himself conflated the two organizations:

A. In an October 2009 letter to the CBSA the Principal Applicant describes himself as a member of the ISYF-DDT, but then proceeds to explain why he became a member of the ISYF (CTR at 558); and

B. In an October 2013 supplement to his PR application, the Principal Applicant classified ISYF-DDT as a "wing" and not a distinct entity as he is now claiming (CTR at 394).

[60] In light of the above, I cannot conclude that the Officer's finding under paragraph 34(1)(f) of the Act was unreasonable.

[61] I do agree with the Applicants that his criminal convictions in Switzerland do not necessarily ground his inadmissibility. While it was not unfair for the Officer to take those convictions into account, the Officer did not explain how the facts underlying those convictions provide evidence that the ISYF or the ISYF-DDT was involved in that crime and/or that the group of individuals the Principal Applicant was convicted of aiding and abetting constituted an organization within the meaning of paragraph 34(1)(f) of the Act.

[62] That said, the bottom line is that this aspect of the decision was superfluous since the Officer's finding that the Principal Applicant falls under paragraph 34(1)(f) of the Act was otherwise reasonable.

[63] For the same reason, while I agree with the arguments made by the Applicants with respect to the Officer's finding that the Principal Applicant was found guilty of being in a conspiracy, they do not render the decision unreasonable. Technically, the Principal Applicant

was linked to a conspiracy, but only those with whom he was associated were actually convicted of that act. Instead, he was convicted of aiding and abetting. However, as mentioned above, this application is not a challenge to a finding of inadmissibility on the basis of criminality. Rather, this application challenges a finding that the Principal Applicant was a member of a terrorist group, and the Principal Applicant's linkages to the Swiss plot were only one element to which the Officer gave weight in making that finding. It was not the only factor or even the determinative one, given the Principal Applicant's own admissions of membership in the ISYF-DDT, and, previously, in the ISYF. As such, I find the decision to be reasonable.

[64] In short, while another decision-maker might have come to another conclusion regarding the Principal Applicant's membership in the ISYF, I cannot find that this Officer's conclusion was outside the range of reasonable outcomes or was otherwise unjustifiable, unintelligible, or non-transparent.

VII. H&C Considerations

[65] The Officer noted that the inadmissibility finding does not alter the Principal Applicant's protected person status in Canada and that H&C considerations might exempt the Principal Applicant from the requirements of the Act. The Officer forwarded the case to the CMB to decide if a waiver of the paragraph 34(1)(f) inadmissibility is appropriate to ensure that the same mistake in Court File IMM-7886-13, was not repeated, i.e., a refusal of the permanent residence application without a proper consideration of H&C factors.

[66] While I am not the primary examiner of all the facts and do not have certain details of the file before me (including certain sensitive case details), the facts that I do have before me paint the picture of a family man who has raised three daughters, who is an active member of his community, and who recognizes his past mistakes in getting involved with undesirable people abroad.

[67] Furthermore, there are no allegations before me of illicit association or conduct in the nearly two decades that the Principal Applicant has lived in Canada. While not in any way fettering the future consideration of any decision-makers, I will just finish by saying that, at least, on the basis of materials placed before this Court, which I recognize may not be the totality of the evidence, this is a matter where H&C considerations ought to be carefully considered.

VIII. Conclusion

[68] The application for judicial review is dismissed. No costs will be ordered.

IX. Certified Question

[69] The Applicants request certification of a question relating to the Respondent's prematurity objection. They propose the following question:

> Is it premature to seek judicial review of an inadmissibility finding under paragraph 34(1)(f) of the Act in the context of a permanent residence application when the inadmissibility may be waived under section 25?

[70] Alternatively, the Applicants propose a question similar to the one noted in *Mohammed* at para 19, replacing "an application for Ministerial relief under sub-section 34(2)" with "an application for H&C relief under section 25":

> Is a determination under paragraph of the Act a judicially reviewable decision if an application for H&C relief under section 25 is outstanding and no decision has been made on the application for landing?

[71] The Respondent opposes the proposed question for certification on the basis that it is not a question of general importance.

[72] Since this issue was answered in the Applicants' favour, it is not dispositive of the outcome in this case and thus shall not be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There are no costs ordered;

3. There are no certified questions.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1388-15
STYLE OF CAUSE:	SUKHVINDER SINGH AND RUPINDER KAUR DHALIWAL GILL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 12, 2016
JUDGMENT AND REASONS:	DINER J.
DATED:	JULY 19, 2016

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