Federal Court Cour fédérale

Date: 20181023

Docket: IMM-5189-17

Citation: 2018 FC 1063

Ottawa, Ontario, October 23, 2018

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MAJID MOHAMMADI MOGHADDAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review application against a refusal to grant the applicant a permanent residence visa because he is inadmissible under paragraph 34(1)(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA]. The judicial review application was made pursuant to section 72 of IRPA.

I. The facts

[2] The applicant is a citizen of Iran who is in his mid-fifties. He lives in his country of citizenship with his wife and daughter. He is also the father of a son who is a Canadian citizen by birth; he studies at the Vancouver Island University.

[3] The applicant served in the Iranian military (as a soldier/technical engineer) from July 1983 to September 1983, September 1988 to September 1989 and November 1989 to September 1990. However, his service was conscripted and the government has not relied on that service in its decision to consider the applicant to be inadmissible.

[4] The applicant is an engineer. He has studied in Iran and also in Canada. He completed a degree in mechanical engineering in Iran at the Sharif University of Technology [SUT] in November 1988.

[5] He applied for and received a six-year full scholarship from the Iranian Ministry of Culture and Higher Education to pursue a Master’s degree of Engineering and a Ph.D. program abroad. The Master’s program was successfully completed at McGill University, where he studied in the Department of Mechanical Engineering. We are told that while at McGill, the applicant’s research was in the area of legged locomotion within the field of robotics. He also worked at the ambulatory robotic laboratory at McGill University.

[6] The Ph.D. degree was pursued at the University of Toronto. His studies centered on robust control in the field of robotics. The applicant graduated in 1997.

[7] It was a requirement of his scholarship that the applicant would return to Iran to serve as a university faculty member for an equal amount of time as the period of study covered by the scholarship. Accordingly, his commitment was for 6 years. Following some applications, the applicant ultimately chose the Tarbiat Modares University [TMU]. It appears that the applicant was of the view that he would have a better chance of expanding and pursuing his research goals in the areas of robotics and control if he were to join TMU. At the beginning, he was a faculty member in the sub-division of applied design, which is within the broader Department of Mechanical Engineering at TMU.

[8] His area of interest has been throughout within the field of robotics. He became an associate professor of mechanical engineering in 1997 and has been a professor throughout his career. His curriculum vitae also shows an interest in doing consultancy, including in Toronto in 2000-2001.

[9] From 2006 to 2008, the applicant became Head of the Department of Mechanical Engineering at TMU, before he took a two-year sabbatical to become a Visiting Research Scholar of Mechanical and Aero Engineering at Carleton University, in Ottawa.

[10] The applicant applied for permanent resident status, under the Federal Skilled Workers Program [FSWP], in this country in August 2008. However, it appears that he was interviewed

for that purpose only a few years later, long after he had returned to Iran. On February 10, 2015, a so-called procedural fairness letter [*PFL*] was sent to the applicant in which the concern was raised that he is inadmissible pursuant to paragraph 34(1)(d) of IRPA due to his work in fields said to be of dual-use. A reply to the PFL was sent. The reply to the PFL emphatically denied that the background on the area of research have any relation with sensitive subjects and the applicant claimed not to have any knowledge of this area.

[11] The applicant also made an application for a temporary residence visa in September 2015 and, once again, a procedural fairness letter raised the officer's concerns. Indeed, the PFL incorrectly identified TMU as an entity listed under the Canada's Special Economic Measures (Iran) Regulations.

[12] The post involved in the vetting of the applicant acknowledged its error on November 13, 2015. However, the concern was then stated as follows:

> What we had intended to mention was that Iran Watch, Wisconsin Project on Nuclear Arms Control http://www.iranwatch.org/iranian-entities notes that Behzadkar Co. Ltd., an entity of concern re: missile-related procurement activities, lists your university as one of its customers and that is a concern relevant to the security of Canada.

The applicant replied.

[13] The application for a temporary residence visa was refused on the basis of paragraph 34(1)d). The applicant continued his efforts by including an additional reply, in May 2016, concerning the alleged relationship between TMU and Behzadkar Co.

[14] The application for permanent residence under the FSWP was denied on October 5, 2017.

II. Section 87 Motion

[15] Once leave was granted, the Government made an application pursuant to section 87 of IRPA for some portions of the Certified Tribunal Record [CTR] to be redacted. In spite of the fact that the applicant chose not to contest the application, the Court conducted a hearing for the purpose of ascertaining that the redactions did not include any information that could be of benefit to the applicant in his application for a permanent residence visa or judicial review. Having reviewed the matter carefully, the Court issued an Order on June 28, 2018 granting the redactions as claimed by the Minister.

III. Decision under review

[16] The application for permanent residence under the FSWP was made in December 2008. The procedural fairness letter of February 2015 indicated that the immigration officer had concerns about the admissibility of the applicant pursuant to paragraph 34(1)(d) of IRPA. More specifically, the PFL stated :

> […] You are a long time Faculty Member at Tabiat Modares University (TMU), and your CV (found online on the Tabiat Modares University website) specifies that you are an Associate Professor in the Applied Design Division, and Head Departmental of Mechanical Engineering, Tarbiat Modares University with a speciality in Robotics and Robust Control.
>
> Acquiring permanent residence in Canada could potentially facilitate the transfer of controlled goods and/or information to Iran. This could lead to providing technical assistance in the expansion of Iran's weapons programs, which constitutes a significant risk to the security for Canada.

[17] The response came swiftly. At the end of February 2015, a five-page letter detailing the applicant's academic and professional background and interests, his history at TMU, his time studying in Canada, and his past positive experiences in Canada, including of course the birth of the applicant's first child, were detailed. The letter focussed somewhat on his claim that his area of research is centered on robotics and control theory, and that his time working with the aerospace division of the Mechanical Engineering Department at TMU was as a result faculty shortages. The following passage from the letter appears to me to be of significance:

> […] the aerospace division of the Dept. had only two faculty individuals and the head of the dept. asked us to compensate the shortcoming […] The papers that I have published in this area are from the students that I've supervised them. […] I've never been interested in military or weapon systems and the papers that I have published in the area of the aerospace are theoretical and simulation based and no application at all.
>
> [sic throughout]

[18] As indicated before, while the permanent residence visa application was being processed, the applicant sought to receive a temporary residence visa but was denied as being inadmissible under section 34. In his responses to various procedural fairness letters, the applicant tried to show the difference between TMU and SUT. Thus, in his response letter of September 30, 2015, the applicant wrote:

> […] I am a faculty member in the faculty of Mechanical Engineering at Tarbiat Modares University (TMU), and not affiliated to Sharif University of Technology (SUT). Even though I've been graduated from Sharif University of Technology with a B.Sc. degree about 25 years ago, I have had no contact with that university since my graduation. I noticed that you still perceive me as a faculty member at SUT and take it to the assumption that I am one of the people who are possibly involved in the nuclear programs. A clue of this is shown in your letter paragraph 3 […].
>
> I referred to the Canada's Special Economic Measures (Iran) Regulations and found that […] Tarbiat Modares University has

> not been listed there, while SUT is included. TMU has no department or program in this area and to the best of my knowledge has nothing to do with this matter.
>
> [sic throughout]

[19] As indicated before, the post switched gears and then referred to Iran Watch to establish some relation between TMU and the company involved in some fashion in missiles, which would list TMU as one of its customers. The applicant claimed to have conducted his own research in the matter and responded on May 28, 2016:

> Regarding your concern about the company (Behzadcar Co. Ltd.), […] it must be said that I had never heard of this company before. I asked a few of my colleagues about this company and none of them knew and had any information about it, whatsoever. However, I then became curious to find what the TMU might have bought from that company. Following the matter through the purchasing department of the TMU, I found that the company had sold a European « Skin Hardness and Elasticity Measurement Device », a civil device, to the department of Physiology in School of Medecine at TMU about fifteen years ago, in 2000. The system is still being used in health related research works for tests and verifications of the theoretical results.

[20] The decision of October 5, 2017 refusing the application for permanent residence was made on the basis of paragraph 34(1)(d) of IRPA. Indeed, it has been the same concern expressed from the very beginning and the various procedural fairness letters were all referring to this particular paragraph. It seems that the decision is encapsulated in the following two paragraphs taken from the decision letter of October 5, 2017:

> In particular, there are reasonable grounds to believe that you are a member of the inadmissible class of persons described in section 34(1)(d) of the Immigration and Refugee Protection Act (IRPA) due to your academic history and research in fields with dual use applications and your long time employment and positions as Head

> of Mechanical Engineering Department and Head of Applied Design Division with Tarbiat Modares Uniersity.
>
> Acquiring permanent residence in Canada could potentially facilitate the transfer of controlled goods and/or information to Iran. This could lead to providing technical assistance in the expansion of Iran's weapons programs, which constitutes a significant risk to the security for Canada. There are therefore reasonable grounds to believe that you are inadmissible to Canada under section 34(1)(d) of the IRPA.

IV. The position of the parties

[21] The applicant argues that the process was procedurally unfair and that the decision to deny him a permanent residence visa is unreasonable. It is not a matter of dispute that a violation of procedural fairness is to be controlled on a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12; [2009] 1 SCR 339, [*Khosa*] at para 43; *Mission Institution v Khela,* 2014 SCC 24, [2014] 1 SCR 502, [*Khela*] at para 79).

[22] As for the determination of inadmissibility for security reasons, this involves questions of fact and law and is therefore presumptively reviewable on a reasonableness standard.

[23] The applicant acknowledges that the facts that will support the determination with respect to 34(1)(d) require more than mere suspicion, but less than the standard in civil proceedings (*Chiau v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 297 [*Chiau*]; *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 39, [2005] 2 SCR 91 [*Mugesera*]). To quote from *Chiau*, at para 60, reasonable grounds "connotes "a bona fide belief in a serious possibility based on credible evidence."" Section 33 of IRPA requires merely that the decision maker has reasonable grounds to believe that the facts that constitute inadmissibility

have occurred, are occurring or may occur. Thus, the facts do not need to be established on a balance of probabilities; it suffices that there be reasonable grounds to believe they occurred or may occur. It will remain however that the facts must satisfy the requirement that the foreign national be a danger to the security of Canada. Thus, the facts established on reasonable grounds must lead to the conclusion that the person poses a danger to the security of Canada for the decision to be reasonable.

[24] As for the issue of reasonableness, the applicant contends that there is no support for the proposition that this applicant poses a danger to the security of Canada. The association with an organisation or a university cannot be sufficient to establish the danger because that would suggest guilt by association. The applicant relies heavily on this passage taken from the decision *Hosseini v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 171 [*Hosseini*] :

> [39] It is difficult to conceive how a person could represent a danger to Canada's security without evidence that the person had actually done, or was expected to do, something that could be considered a threat to Canadians. The fact that s 34(1)(d) permits a finding of inadmissibility for a person "being a danger to the security of Canada" does not mean that a person is inadmissible without evidence that he or she has done something, or might do something, that supports the conclusion on dangerousness.

[25] For the applicant, there is nothing in his past to support the view that he may pose a danger to the security of Canada. It is, on the part of the Minister, conjectures. They are based on the following. TMU is a cause for concern; TMU was listed on the Iran Watch webside as a customer of Behzadkar Co. Ltd., which is itself listed as entity of concern for missile-related procurement activities; and the applicant has co-authored several publications which, it is claimed, may have a military application. According to the applicant, Iran Watch has been

discredited and has not even been updated since 2010. The connection between TMU and Behzadkar reported by Iran Watch is at best tenuous, according to the applicant's own research, and, at any rate, has not been substantiated anywhere other than on the web page of Iran Watch.

[26] The applicant argues that the dual-use that could be made of his research is at best speculative and "it is unclear there were any efforts made to understand the content of these papers or whether they did, in fact, have military or "dual use" applications" (Applicant's further memorandum of argument, para 8).

[27] Finally, the applicant faults the decision maker for not engaging further when the applicant repeated his denial of having any involvement in non-civil research.

[28] The applicant also argued that procedural fairness was breached. As I understand the argument, the applicant argues that a CBSA brief was not disclosed to the applicant in order to allow him to respond to the specific concerns listed in that brief. The applicant seems to posit his argument as being denied the ability to know the case to be met. I note however that to the extent that the brief was not used, it is not a matter that needed to be discussed further as the case to be met is that which was put before the applicant. No more.

[29] The respondent takes of course the opposite view. Relying on the case of *Hadian v Canada (Citizenship and Immigration)*, 2016 FC [*Hadian*], the Minister takes the position that the decision was reasonable. There must be a fair and liberal interpretation to be given to the words "danger to the security of Canada" and the threat does not have to be direct: it can be

indirect. Thus, the threshold to be met under paragraph 34(1)(d) of IRPA is low because reasonable grounds to believe that facts have occurred or may occur will suffice.

[30] In *Hadian*, and also other case law, it has been recognized by this Court that contributing to Iran's weapons of mass destruction and the nuclear procurement program constitutes a danger for the security of Canada. Iran Watch is a source of information that can be used in the case at hand and it has referenced other credible entities (the US Department of Treasury's Office of Foreign Asset Control and the German government). In the view of the respondent, it was reasonable to conclude that the applicant's weapons based research posed a danger to the security of Canada. In support of that contention, the respondent seems to rely exclusively on the applicant's CV to claim that the research conducted could have dual-use as it could be applied to the production of missiles and other weapons. At paragraph 31 of the further memorandum of argument of the respondent, it is listed a number of items which are said to refer to "launchers, missiles, remotely piloted vehicles, unmanned air vehicles, satellites, and flight maneuvering and landing systems" about which the applicant had knowledge or on which he worked . The factum goes as so far as to claim that "the applicant's research could be applied to the production of missiles and other weapons". Quite frankly, nothing of the sort is found in the various decisions and procedural fairness letters that were supplied in this case.

[31] The Minister then goes on to fault the applicant for having minimized his involvement in dual-use technologies because the applicant, repeatedly, denied any involvement with any non-civil application of mechanical engineering.

[32] Finally, the respondent is grasping at straws in referring the Court to the military service of the applicant in spite of the fact that it is not even alluded to by the decision maker. The respondent argues that it is possible to supplement the reasons given in support of an administrative decision. The respondent fails to note that the military service was conscripted 30 years ago.

V. Analysis

[33] As noted, the applicant brings two arguments in this judicial review application. I will deal with them one after the other.

A. *Procedural fairness*

[34] It is claimed that procedural fairness was breached because the CBSA brief was not disclosed to the applicant. The said brief is a document which is part of the CTR; it is the document about which redactions were sought by the Crown and on which the Court ruled on June 28, 2018.

[35] The decision letter of October 5, 2017 relies on the academic history and the research conducted in fields considered to be of dual-use applications (i.e. civilian as well as military application). Because of this, it is said permanent residence “could potentially facilitate transfer of controlled goods and/or information to Iran” (decision of October 5, 2017). The link is made thereafter to Iran’s weapons programs.

[36] The applicant argues that he should have been confronted with the scientific articles he authored which are listed in the CBSA brief, especially in view of the fact that they represent a small portion of the 90 articles published throughout his career, and with the comment made in the brief that "[i]t is difficult to believe that research centering on missiles, UAVs or satellites does not have military and dual-use applications." (the "UAVs" refers to unmanned air vehicles).

[37] Moreover, he contends that he should have been confronted in person.

[38] These contentions are met by the respondent by arguing that there is no breach of procedural fairness if are disclosed the facts that underpin the inadmissibility concern. I agree. That is how the law has been understood in this Court.

[39] Immigrating to Canada is not an unqualified right (*Canada (Minister of Employment and Immigration) v Chiarelli,* [1992] 1 SCR 711 [*Chiarelli*]; *Medovarski v Canada (Minister of Citizenship and Immigration)*; *Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 SCR 539, para 46). It is perhaps in *Kindler v Canada (Minister of Justice)*, [1991] 2 SCR 779, at p. 834, that one finds the clearer articulation for the principle:

> The Government has the right and duty to keep out and to expel aliens from this country if it considers it advisable to do so. This right, of course, exists independently of extradition. If an alien known to have a serious criminal record attempted to enter into Canada, he could be refused admission. And by the same token, he could be deported once he entered Canada. […]
>
> […]
>
> If it were otherwise, Canada could become a haven for criminals and others whom we legitimately do not wish to have among us. […]

[40] The Supreme Court put it in unambiguous terms in *Chiarelli* (supra) that an immigration policy can take into account conditions for gaining access to Canada:

> Thus Parliament has the right to adopt an immigration policy and to enact legislation prescribing the conditions under which non-citizens will be permitted to enter and remain in Canada. It has done so in the *Immigration Act*. Section 5 of the Act provides that no person other than a citizen permanent resident, Convention refugee or Indian registered under the *Indian Act* has a right to come to or remain in Canada. The qualified nature of the rights of non-citizens to enter and remain in Canada is made clear by s. 4 of the Act. Section 4(2) provides that permanent residents have a right to remain in Canada except where they fall within one of the classes in s. 27(1).[…]
>
> (pp. 733-734)

[41] The person who seeks to become a permanent resident is not deprived of her right to know why she is denied. But she is not entitled to the full panoply of procedural rights as if there was a criminal trial to be conducted, such as a generous right to disclosure (*R. v Stinchcombe*, [1991] 3 SCR 326).

[42] In *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, [2002] 2 FC 413, the Court of Appeal spoke in these terms:

> [30] Again, it is important to remember that the duty of fairness prescribes minimum standards of procedural decency, and that the content of the duty varies according to context: *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, at paragraphs 21-28. Several factors tend to reduce the content of the duty of fairness owed to visa applicants, some of which were considered in *Chiau v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16793 (FCA), [2001] 2 F.C. 297 (C.A.), at paragraphs 35-36, a case where a visa had been refused on a very different ground, namely, suspected membership in a criminal organization.
>
> [31] The factors tending to limit the content of the duty in the case at bar include: the absence of a legal right to a visa; the imposition on the applicant of the burden of establishing eligibility

> for a visa; the less serious impact on the individual that the refusal of a visa typically has, compared with the removal of a benefit, such as continuing residence in Canada; and the fact that the issue in dispute in this case (namely, the nature of the services that Abdullah is likely to require in Canada and whether they would constitute an excessive demand) is not one that the applicant is particularly well placed to address.
>
> [32] Finally, when setting the content of the duty of fairness appropriate for the determination of visa applications, the Court must guard against imposing a level of procedural formality that, given the volume of applications that visa officers are required to process, would unduly encumber efficient administration. The public interest in containing administrative costs and in not hindering expeditious decision making must be weighed against the benefits of participation in the process by the person directly affected.

[43] Very relevant to our case is paragraph 14 of *Fouad v Canada (Citizenship and Immigration)*, 2012 FC 460:

> [14] The content of the duty of procedural fairness owed by the visa officer in this case was at the lower end of the spectrum. The Federal Court of Appeal has held that inadmissibility determinations give rise to a lesser duty of fairness where they involve the refusal of a visa to a person outside Canada. The interests at stake in such cases are less serious, and the visa applicant always bears the burden of proving admissibility: *Chiau v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16793 (FCA), [2001] 2 F.C. 297, [2000] F.C.J. No. 2043 (QL) at para. 54 (F.C.A.); *Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 (CanLII), [2001] F.C.J. No. 1699 (QL) at para. 30; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 (CanLII), [2005] 2 S.C.R. 539 at para. 46.

[44] Procedural fairness in the context of someone who seeks to become a permanent resident requires that the information the government relies on be made available to the applicant, and

that she be able to respond. In *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883, 438 FTR 163, the issue is nicely articulated:

> [22] That being said, the principles of procedural fairness require that an applicant be provided with the information on which a decision is based so that the applicant can present his or her version of the facts and correct any errors or misunderstandings. This duty of fairness can be met without always having to furnish all the documents and reports the decision-maker relied on. This will be the case, in particular, where a document is protected by privilege based on national security or on the solicitor-client relationship. Ultimately, the concern will always be to ensure that the applicant has the opportunity to fully participate in the decision-making process by being informed of information that is not favourable to the applicant and having the opportunity to present his or her point of view: see, in particular, *Dasent v Canada (Minister of Citizenship and Immigration)* (TD), 1994 CanLII 3539 (FC), [1995] 1 FC 720 at para 23; *Mekonen v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1133 (CanLII), at para 12 and ff.; *Nadarasa v Canada (MCI)*, 2009 FC 1112 (CanLII) at para 25, [2009] FCJ No 1350 (QL). The greater the impact of the impugned decision, the stricter this requirement will be: *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817, at para 31‑33. In this case, the decision to reject the applicant's application for permanent residence because there were reasonable grounds to believe that he was inadmissible for misrepresentation and for being a member of a terrorist organization could have significant repercussions if he were deported to his country of origin.
>
> [23] After reading the entire record as well as the information that was excluded on the ground of national security, I have concluded that the officer did not breach her duty to respect the principles of procedural fairness. The officer called the applicant in for an interview and indicated that she had concerns about the inadmissibilities for misrepresentation (IRPA, s 40) and security (IRPA, s 34). The call-in letter stated the purpose of the interview as follows:
>
> [TRANSLATION]
>
> The purpose of the interview is for us to share our concerns with you and to give you the opportunity to respond. Among other things, we will discuss your activities and your contacts in Canada, past and present. We will examine your immigration history in

> general and, in particular, the inconsistent statements you made in your application for permanent residence.

[45] Similarly, one reads at paragraph 33 of *Karahroudi v Canada (Citizenship and Immigration)*, 2016 FC 522, [2017] 1 FCR 167[*Karahroudi*] :

> [33] As Justice Judith Snider pointed out in *Gebremedhin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 380 (CanLII), at para 9, each case must turn on its facts. Not every document considered by an immigration officer must be disclosed. The relevant question is whether the Applicant had the opportunity to meaningfully participate in the decision-making process: *Bhagwandass v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 49 (CanLII), at para 22.

[46] Even more recently, *Azizian v Canada (Citizenship and Immigration)*, 2017 FC 379 reached the same conclusion:

> [28] I agree with the Respondent that the Officer was not required to disclose the CBSA report itself. Comparing the CBSA report and the Officer's procedural fairness letter reveals that the Officer disclosed all of the pertinent facts to the Applicant concerning the allegations which underpinned the inadmissibility concerns. As noted in S N, what is important is: "that the information contained in the CBSA report is communicated to the applicant… the document itself does not need to be tendered" (at para 27). Similarly, in *Fallah v Canada (Citizenship and Immigration)*, 2015 FC 1094 (CanLII) at para 9, [2015] FCJ No 1106, the Court found that the duty of procedural fairness did not require a visa officer to disclose a CBSA inadmissibility assessment because the procedural fairness letter outlined that it was the applicant's senior employment relationship with "an internationally sanctioned entity that …was the potential basis for a refusal decision." So too in this case. The Applicant was well aware of the allegations and the Officer was not required to further disclose the CBSA report.
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> [my emphasis]

[47] There is no doubt in my view that the applicant was given a fair opportunity to respond to the general concerns raised in this case, as far as they go: indeed the exchange of letters following procedural fairness letters makes the point vividly. The applicant provided extensive responses to the concerns raised. The applicant is not entitled to the CBSA brief: he is entitled to knowing what the officer considers to be the pertinent facts relevant to the concern raised. I would add this. If the officer had other concerns, which are more specific and which were not disclosed, he cannot seek to rely on them later in order to bolster the reasonableness of a decision to declare someone inadmissible.

[48] The CBSA brief articulates concerns in significant details, details that were not shared with the applicant. The decision maker is limited however to the matters he has raised. As I will show, the decision is not reasonable because of the failure to demonstrate that this applicant poses a danger to the security of Canada. The CBSA brief, which seeks to articulate a concern, cannot be used to establish reasonableness. The government should not try to have it both ways. Either the CBSA brief is disclosed, after redactions, thus allowing for an even fuller response, or it is not and it cannot be relied on to claim that the decision is reasonable. The failure to show how articles written by the applicant may pose a danger to the country’s security may not be bolstered by that which was not disclosed.

B. *Reasonableness of the decision*

[49] In my estimation, this case must be sent back to a different officer for the purpose of a new determination.

[50] A decision is said to be reasonable if it falls within "a range of possible, acceptable outcomes which are defensible in respect of the fact and the law" (*Dunsmuir v New Brunswick,* 2008 SCC 9; [2008] 1 SCR 190 [*Dunsmuir*], para 47). It is unclear in this case if the outcome falls within the range because the second half of the *Dunsmuir* proposition is not satisfied: "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Khosa*, at para 59).

[51] Here, the officer was satisfied that the applicant poses a danger to the security of Canada, pursuant to paragraph 34(1)(d) of the IRPA. The facts must be established on the basis of reasonable grounds to believe they have occurred, are occurring or may occur (s. 33 of the IRPA). In other words, it is the existence of the facts that must be established, not on a balance of probabilities but merely on reasonable grounds. The facts have been established. They are beyond suspicion, and that is not disputed (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100). The applicant is a mechanical engineer who taught in an Iranian university and has written close to one hundred scientific articles. There may even be reasonable grounds to believe the Iranian university did some unspecified business with a company involved in missile-procurement. What is missing in my view is the link that would make these facts such that the applicant represents a danger to the security of Canada. To put it differently, it is reasonable to conclude that the facts have been established on reasonable grounds to believe, but those facts must establish a danger to the security of Canada posed by the applicant. It is the conclusion that those facts constitute a danger to the security of Canada which does not meet the reasonableness standard of *Dunsmuir* and *Khosa* (supra).

[52] The officer relies exclusively on the facts that the applicant is a faculty member of TMU, his academic history and research which he claims, without much, being research that could have civilian as well as military applications. I have not found any evidence to support such conclusion and the decision maker does not articulate how the conclusion is reached.

[53] What constitutes a “danger to the security of Canada”? In *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3, the Court noted the difficulty in defining it (para 85). But it also stressed that it is fact-based. Thus, the Court is satisfied that “support for terrorism abroad raises a possibility of adverse repercussions on Canada’s security” (para.87). I have no doubt that the participation in a nuclear armament program or a program of development of weapons of mass destruction, for instance, would fall in the same category as support for terrorism abroad being a “danger to the security of Canada”. But there remains that there must be proof of the participation to a potentially serious threat, even if one gives “danger to the security of Canada” the fair, large and liberal interpretation that is consonant with the protection of our security. To put it succinctly, it does not suffice to say the words “Iran’s weapons programs”. It must be possible to connect the activities with such programs, even if such connexion is based only on reasonable suspicions based on evidence. Hence, the Supreme Court found:

> 90 These considerations 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 of one country is often dependent on the security of other nations. The threat must be “serious”, in the sense that it <u>must be grounded on objectively reasonable suspicion based on evidence</u> and in the sense that the threatened harm must be substantial rather than negligible.
>
> [my emphasis]

[54] I find myself in agreement with colleagues who have concluded that an association with a university will not suffice (*Hadian,* para 23), nor will suffice mere employment in a corporation, (*Hosseini*, para 36; *Hosseini v. Canada (Citizenship and Immigration)*, 2018 FC 160, at para 9 and 10).

[55] In cases where the applicant could have played a role in advancing Iran's program of weapons of mass destruction, our Court has found him to be inadmissible (*Hadian*, *Karahroudi*). I agree with the comment of O'Reilly J. in *Hosseini* (supra) which is already reproduced at paragraph 24 of these reasons. There is a need for evidence that the person has done something or might do something that would support the conclusion on dangerousness. Short of evidence we remain in the world of conjectures. The existence of scientific articles the ambit of which is unknown falls short of the mark.

[56] In this case, the conclusion that the applicant poses a danger to the security of Canada is based on the fact that he is an engineer who has taught for many years at an Iranian university. The area of expertise is taken from the applicant's CV. It appears that without more, the decision maker concluded that the expertise constitutes an area of dual application. In my view, this "fact" never rises to a level beyond mere suspicion held by the decision maker. It cannot lead to an objectively reasonable suspicious based on evidence. It is not shown that the decision maker has any expertise allowing such a conclusion based on some article titles and no such expertise was sought.

[57] As the Supreme Court found in *Khela*:

> [74] As things stand, a decision will be unreasonable, and therefore unlawful, if an inmate's liberty interests are sacrificed absent any evidence or on the basis of unreliable or irrelevant evidence, or evidence that cannot support the conclusion, although I do not foreclose the possibility that it may also be unreasonable on other grounds. Deference will be shown to a determination that evidence is re liable, but the authorities will nonetheless have to explain that determination.

[58] Being a scientist teaching in a university does not justify on its own a conclusion that someone poses a danger to the security of the country. And in order to establish facts that may allow for an inference, suspicions about the use that may be made of expertise does not suffice.

[59] In order to make the finding reasonable, more and better involvement of the applicant in activities that pose a threat to the security of Canada is needed. If academic papers are said to offer dual application (relating to military use), one would expect that fact to be established even on reasonable grounds. The conjectures of a visa officer who has not indicated having the background for such judgment falls short of the mark. From the evidence, the threat can be inferred as long as it is an objectively reasonable suspicion (*Suresh*, para 90; supra, at para 53). Instead the evidence, at its highest, is that the view taken was on the basis of scientific article titles by someone without expertise. Drawing negative inferences concerning scientific issues may well be suspect (*Alijani v Canada (Citizenship and Immigration)*, 2016 FC 327, paras 23-24). The evidence concerning said papers has to be more robust than what has been disclosed in this case. Going through a list of papers in a CV without having expertise and an adequate analysis will not do. Inferences drawn without adequate evidence are not reasonable (*Khela*, para 74).

[60] The issue is not so much that the applicant should not be found to be inadmissible. That is a decision for the government agents to make. However, the decision must be reasonable, in that it must be intelligible, transparent and justified, and it must fall within a range of possible outcomes in view of the facts and the law. This decision is not. The facts as found by the decision maker do not establish the danger to the security of Canada on the appropriate standard.

[61] The judicial review application is therefore granted. The parties did not raise a serious question of general importance and none is certified.

JUDGMENT in IMM-5189-17

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted and the matter must be the subject of a new determination by a different officer.

2. There is no question certified.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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