Federal Court Cour fédérale

Date: 20211229

Docket: IMM-4057-20

Citation: 2021 FC 1476

Ottawa, Ontario, December 29, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ABDELRAHMAN MOHAMED ELMOHAMADY ELMADY

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Abdelrahman Mohamed Elmohamady Elmady ("the Applicant") seeks to challenge a decision of the Immigration and Refugee Board ("IRB")'s Immigration Division ("ID"). The ID found the Applicant inadmissible to Canada pursuant to s. 34(1)(f) by way of s.

34(1)(c) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*], based on his membership in the Muslim Brotherhood.

II. Background

[2] The Applicant is a citizen of Egypt. He arrived in Canada by way of the Vancouver Airport on October 13 2017.There is some conflict in the materials regarding the date as the ID decision says 2019, and the Memorandums of Argument before me indicate it was in 2017. Ultimately, this distinction is in no way determinative for the application and is likely a typo and was 2017. Regardless, he was examined by Canada Border Services Agency ("CBSA") officers when he arrived in Canada. In his initial interview, he stated that he was living and working in Saudi Arabia, intending to stay in Canada for 20 days. He possessed a visa to the United States, which was revoked on November 7, 2017.

[3] The CBSA uncovered a police report identifying the Applicant as a leader of the Muslim Brotherhood, and stated the organization was "organizing to execute hostile activities." In interviews with the CBSA, the Applicant confirmed that he was a member of the Muslim Brotherhood. He stated he first joined at the age of 12 to protest injustice in the government, and was a member from 1994 to 2014 after which he joined the Freedom and Justice Party (which his father played a part in founding). His evidence was that as part of the Muslim Brotherhood, he was a volunteer, assisting with the "building up of Islamic Values, organizing outings and trips at the social level, and facilitating studies of the Koran." He said that his young age when he started prevented him from becoming a leader. He told the Officer that he had a wife and two children in Egypt, who he left and did not tell that he was making a claim for refugee protection in Canada.

[4] Based on these conversations, a report under s. 44(1) of the *IRPA* was prepared on November 20, 2017. In that report, the Officer found that the Applicant was inadmissible to Canada for his membership in the Muslim Brotherhood, pursuant to s. 34(1)(f) with reference to s. 34(1)(c) [membership in an organization that there are reasonable grounds to believe engages, has engaged, or will engage in terrorism]. He was referred for an admissibility hearing. This hearing took place over the course of four days, on April 6, July 5, July 6, and December 10, 2018.

[5] On August 12, 2020, the ID found that the Applicant was a member of the Muslim Brotherhood, and that as a result, he was a person described in s. 34(1)(f) of the *IRPA*. As a result, the ID issued a deportation order pursuant to s. 229(1)(a) of the *Immigration and Refugee Protection Rules*, SOR /2002-227 [*IRPR*].

III. Issues

[6] The issues are:

A. Was the ID's decision reasonable?

    1. Did the ID err in their application of the definition of terrorism found at s. 83.01 of the *Criminal Code?*
    2. Did the ID err in their treatment of the evidence?

IV. Standard of Review

[7] The Applicant and Respondent are in agreement that the standard of review is reasonableness for the majority of the aspects of the ID's decision, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] However, the Applicant submits that the ID's "retrospective application of the terrorism offence, as well as his failure to apply the correct legal test" are reviewable on a standard of correctness. The submissions are that the ID's interpretation of the terrorism provision of the *Criminal Code* – in terms of its retrospectivity and international law implications – constitute a general question of law of central importance to the legal system as a whole. In the Applicant's view, this is because the way Canada understands and applies the term "terrorism" has significant implications nationally and internationally, and that resultantly, the administration of justice requires a clear and definitive answer to this question.

[9] As to the Applicant's submission that the Officer's failure to apply the correct legal test necessitating correctness on review, I disagree. The application of the correct legal test is reviewable on a reasonableness standard (see, e.g. *Cervenakova v Canada (Citizenship and Immigration)*, 2021 FC 477 at paras 17-21). As such, for the decision to be reasonable, the decision-maker must apply the correct legal test to the issues before them. Regarding the Applicant's submissions that there is a general question of law of central importance to the legal system as a whole – arguing that the standard should be correctness – this does reflect the current state of administrative law.

[10] In *Vavilov* at paragraphs 58-62, the Supreme Court of Canada confirmed that the category of general question of law of central importance to the legal system as a whole, as enumerated in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], persisted in its existence post-*Vavilov*, and that it is a category necessitating correctness review. However, the jurisprudence before and since have demonstrated that this category is narrow. At paragraph 61 of *Vavilov*, the Supreme Court of Canada stressed that "the mere fact that a dispute is 'of wider public concern' is not sufficient for a question to fall into this category — nor is the fact that the question, when framed in a general or abstract sense, touches on an important issue."

[11] The Supreme Court of Canada in *Vavilov* cited a multitude of cases wherein the Court concluded a question is not a general question of law of central importance to the legal system as a whole. There are far more questions deemed to fall below this threshold than those which have met it. Examples of questions constituting a general question of law of central importance to the legal system as a whole include when an administrative proceeding will be barred by the doctrines of *res judicata* and abuse of process (*Toronto (City) v C.U.P.E, Local 79*, 2003 SCC 63); the scope of the state's duty of religious neutrality (*Mouvement laïque québécois v Saguenay*, 2015 SCC 16); the appropriateness of limits on solicitor-client privilege (*Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53); or the scope of parliamentary privilege (*Chagnon v Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39). As the majority of the Supreme Court of Canada recognized in *Dunsmuir*, the key underlying rationale for this category of questions is the reality that certain general questions of law require uniform and consistent answers because of their impact on the administration of justice as a whole. In these cases, correctness review is necessary to resolve general questions of

law that are of fundamental importance and broad applicability, with significant legal consequences for the justice system as a whole or for other institutions of government. The questions posed by the Applicant here are not of this type, and as such, are not properly categorized as a general question of law of central importance to the legal system as a whole.

[12] Additionally, there are a multitude of cases illustrating that the proper standard of review as to findings that an organization or individual engaged in terrorism is reasonableness (see, e.g. *Saeedi v Canada (MCI)*, 2021 FC 557 at paras 16-17; *Kamal v Canada (IRC)*, 2018 FC 480 at para 13).

[13] I find that the proper standard of review for the entirety of the ID's decision is reasonableness. As set out by the Supreme Court of Canada in *Vavilov*, at paragraph 23, "where a court reviews the merits of an administrative decision … the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness." Reasonableness review begins with the principle of judicial restraint and respect for the distinct role of administrative decision-makers, and the Court does not conduct a *de novo* analysis or attempt to decide the issue itself (*Vavilov* at paras 13, 83). Rather, it starts with the reasons of the administrative decision-maker and assesses whether the decision is reasonable in outcome and process, considered in relation to the factual and legal constraints that bear on the decision (*Vavilov* at paras 81, 83, 87, 99). A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting "an internally coherent and rational chain of analysis" when read as a whole and taking into account the administrative setting, the record

before the decision-maker, and the submissions of the parties (*Vavilov* at paras 81, 85, 91, 94-96, 99, 127-128).

V. Analysis

A. *The Applicable Law*

[14] Attached, as Appendix A, is the applicable law.

B. *Preliminary Issue*

[15] The Applicant filed a supporting affidavit of Tiara Flores, dated September 7, 2021, attaching an excerpt from an Access to Information and Privacy ("ATIP") response. The Respondent objects to the admission of Exhibit A of this affidavit, because it was not before the ID. They correctly cite *Majdalani v Canada (MCI)*, 2015 FC 294 at paragraph 20, for the proposition that evidence not before the decision-maker is not admissible on judicial review unless it falls within a recognized exception. The Respondent argues that none of the recognized exceptions applies to this excerpt to allow it to be considered. The Respondent further objects to the document's admission because the Applicant had the document prior to the conclusion of proceedings before the ID, and never referred to it. The Respondent's position is that the Applicant cannot refer to it now to challenge the ID's decision based on a document not before them.

[16] The Applicant in response to the Respondent's argument said that there is no "Final Recommendation" in the affidavit, rendering it of less value. As well, the affidavit of Ms. Flores

predates the Minister obtaining further information and evidence, which they explicitly state they are going to do.

[17] The response of the Respondent to that submission is that the Applicant has demonstrated a habit of lacking due diligence and seeking to raise issues post-hearing that he had ample opportunity to raise during the hearing. As such, the Respondent submits that all of the evidence the ID relied upon to make its findings are contained in the Certified Tribunal Record ("CTR"), and that Exhibit A of this affidavit ought not to be admitted.

[18] I agree with the Respondent that I will not admit this evidence but not because of the Applicant's "habit of lack of due diligence" as presented by the Respondent. The reason is that this evidence was not before the decision-maker, and it does not fall within any recognized exceptions to the admissibility of new evidence on judicial review as set out by Justice Stratas in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paragraph 20.

C. *Was the ID's decision reasonable?*

[19] An important concession given at the hearing was the Applicant conceded membership (in the Muslim Brotherhood) and the Muslim Brotherhood's status as an organization. As a result, any previous argument on those questions is no longer at issue.

(1) Did the ID err in their application of the definition of terrorism found at s. 83.01 of the *Criminal Code*?

(a) *Definition of terrorism*

[20] In their decision, the ID concluded that the 1948 assassinations of Judge Ahmed al-Khazindar ("the Judge") and Prime Minister Mahmoud Fahmi el-Nokrashi ("the PM") by the Muslim Brotherhood falls within the definition of terrorist activity, as set out in s. 83.01(1) of the *Criminal Code.*

[21] The Applicant submitted that decision was unreasonable because of the ID's application of the definition of terrorism to the instant case in that the ID failed to consider *Suresh v Canada (Minister of Citizenship and Immigration),* 2002 SCC 1 [*Suresh*]. The Applicant challenges the ID's application of the correct legal test. The Applicant said that despite noting that *Suresh* and the statutory definition of terrorist activity enacted by the Parliament of Canada in the *Criminal Code* form the definition of terrorism, at no point does the ID consider the *Suresh* test.

[22] The Applicant's position is that in *A.K. v Canada (Citizenship and Immigration),* 2018 FC 236 [*A.K.*], this Court made it clear that the starting point of any definition of terrorism is *Suresh.*

[23] At paragraph 40 Justice Mosely in AK said The Supreme Court of Canada at paragraph

98 of *Suresh* adopted the definition of terrorism found in the *International Convention for the Suppression of the Financing of Terrorism*, which, at Article 2(1)(b), defines terrorism as:

> Any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

[24] The distinction between this and the *Criminal Code* definition is the requirement from *Suresh* that the violence be directed at a civilian. The Applicant submits that the assassinated individuals, the PM and the Judge, were not civilians. The Applicant is certain that the PM was not a civilian, and say that it is "arguable that" a judge does not constitute a civilian, since the Judge was appointed by the government. The result being, the Applicant says it was an error for the ID to rely on s. 83.01 of the *Criminal Code* without considering it in tandem with *Suresh*. Notably, the Applicant does mention that it may have been open to the member to consider both definitions and prefer that of the *Criminal Code*, but to fail to consider *Suresh* at all was unreasonable.

[25] I do not agree with the Applicant's interpretation of the application of *A.K.* Rather than saying that *Suresh* is a mandatory starting point in defining terrorism, Justice Mosley in *A.K.* wrote at paragraph 38 that "in relying on the Criminal Code definition of 'terrorist activity,' an administrative tribunal decision maker has to be alert to the context in which that definition is meant to be employed." He further wrote that in the specific context of that case, it was "more useful to begin with the decision of the Supreme Court of Canada in *Suresh*" (para 39).

[26] The ID, at paragraph 6 of their decision, relied on *Alam v Canada (MCI*), 2018 FC 922 [*Alam*]. In *Alam,* Justice Fothergill held that there is no obligation on a tribunal to apply the non-exhaustive definition of "terrorism" from *Suresh*.

[27] It is helpful in my deliberation to consider *Alam,* in tandem with Justice Brown's decision in *Ali v Canada (MCI),* 2017 FC 182 at paragraphs 39-43. Justice Brown wrote:

> I do not accept the argument that paragraph 34(1)(c) should be interpreted only with reference to the definition proposed by the Supreme Court in Suresh," and that "by enacting section 83.01 of the Criminal Code, Parliament did exactly what the Supreme Court allowed it to do [in Suresh]: it adopted a more detailed definition of terrorism. I appreciate that section 83.01 of the Criminal Code defines "terrorist activity", which expression is not the same as the word "terrorism", which is used in the IRPA and considered in Suresh. Nevertheless, the contours of each are so over-lapping that any distinction between the two, in my respectful opinion, has no meaningful significance. I take them to be interchangeable (para 42).

[28] Justice Brown then concluded that this definition may be rightfully imported into the *IRPA* for the purposes of a finding under s. 34(1)(f) and (c), and that post-*Suresh*, "in an administrative law case involving the interpretation of s.34 of the IRPA, it is appropriate to consider the Criminal Code definition of terrorism" (para 102)

[29] Given the above jurisprudence, I find that it was not unreasonable, in light of the facts and law before them, for the ID to only apply the definition of terrorist activity from s. 83.01 of the *Criminal Code*.

(b) *Retrospectivity*

[30] The law and submissions often use the phrases retroactive and retrospective interchangeably. I will use retrospective only in this decision, as is most grammatically and linguistically accurate in this case.

[31] The Applicant submits that the application of the definition of terrorism was unreasonable, violating a legal presumption against retrospective application of the law (*Singh v Canada (Citizenship and Immigration),* 2005 FCA 417) because the assassinations occurred in 1948. The Applicant's position is that because the assassinations occurred before the legal concept, or prohibition, of terrorism had been developed (in or around 1992); as a result, applying this term to such an incident occurring before the definition existed applies the law retrospectively and is thus unreasonable.

[32] Further, the Applicant submitted that s. 83.01(1)'s definition of terrorism contains a caveat that terrorism does not include acts committed in accordance with international law. Prior to 1991, international law permitted acts of violence aimed at overthrowing racist, colonial governments such as these assassinations, occurring while Egypt was under colonial British rule.

[33] The Applicant said that the ID's approach was ahistorical, and unfairly holds the organization to account for conduct that occurred before it was prohibited or condemned by international law. The legal framework at the time allowed for political violence, and the Muslim Brotherhood was resisting British rule. As well, the Applicant argued that the Judge assassinated

was not a “civilian” so also does not fall within the definition. The Applicant’s position is s that the ID’s decision was unreasonable in that it was silent as to this historical context.

[34] The ID, at paragraph 7 of their decision, said:

> Terrorist activity means an act or omission, in or outside Canada, that is committed in whole or in part for a political, religious or ideological purpose, objective or cause, and in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and that intentionally causes death or serious bodily harm to a person by the use of violence, endangers a person's life, causes a serious risk to the health or safety of the public or any segment of the public, causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C), and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance, with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

[35] Based on this definition, the ID determined that the Muslim Brotherhood’s previous actions – of killing a Judge as retribution for imposing criminal sanctions on some members of the Muslim Brotherhood, as well as the assassination of the PM in response to a political decision that had an adverse impact on the Muslim Brotherhood – are acts falling within the

definition of terrorist activity, as set out in s. 83.01(1). The ID, at paragraphs 60 and 61 of their decision, characterized these assassinations as intentional inflicts of death by way of violence for an ideological purpose with the intention to intimidate the Egyptian government and its civilians.

[36] I find that the ID's conclusion that the assassinations fit within the definition of s. 83.01(1) was reasonable.

[37] However, there remains the assertion that doing so was applying the law retrospectively. The Applicant argues that there is a presumption against the law applying retrospective, and therefore that by holding the Muslim Brotherhood accountable based on terrorist acts which occurred before the legal concept of terrorism or the prohibition thereof had been developed, the ID erroneously ignored this presumption.

[38] I disagree. The ID did not erroneously engage in a retrospective application, but rather applied the relevant sections of the *IRPA* properly. In *Brosseau v Alberta Securities Commission,* [1989] 1 SCR 301 [*Brosseau*], the Supreme Court of Canada reiterated the so-called "presumption against retrospective effect." That is, "if there is confusion with respect to the meaning of a law, it should not be construed so as to have retrospective effect," but that "the presumption against retrospectivity does not apply if the goal of the statute is not to punish the person, but to protect the public. The proper view is that a statute does not have a retrospective effect if the real aim of the law is prospective and it is designed to protect the public in the future" (as cited in *Al Yamani,* 2002 FCT 1162 at paras 46-47); *Valle Lopez v Canada (Citizenship and Immigration),* 2010 FC 403 at paras89-97 [*Valle Lopez*]).

[39] Justice O'Keefe, in *Valle Lopez*, examined the text of the relevant provision seeking to be applied in a manner the Applicant alleged was retrospective. He concluded both that it is not a retrospective application to adopt today a rule which henceforward excludes persons from Canada on the basis of their conduct in the past. Further he held that the presence of the words "have occurred, are occurring, or may occur" indicated that even if the presumption applied, it was rebutted by clear parliamentary intention to have the provision apply to past events.

[40] I find, in line with the relevant jurisprudence, that this is similarly the case here. In light of the *Brosseau* principle that this presumption does not apply when the goal is to protect the public. I find that the purpose of s. 34 of the *IRPA* – deeming individuals inadmissible for variously engaging in terrorism and or being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism, or the other subsections of s. 34 – is clearly to protect the public, and thus, the presumption does not apply. As well, as stated in *Valle Lopez*, the language "have occurred, are occurring, or may occur" was sufficient to demonstrate Parliament's intention to have the law apply retrospectively, thus rebutting the presumption.

[41] In this case, s. 34(1)(f) of the *IRPA* includes organizations that there are reasonable grounds to believe "engages, has engaged, or will engage in" such acts, and s. 33 – the rules of interpretation – includes events that "have occurred, are occurring or may occur." This is similarly clear, and indicates that retrospective application was Parliament's intention. The ID's conclusion that this portion of the *IRPA* rightfully applies to the Applicant's membership in the group was reasonable, despite the fact that the legal definition of terrorism had not been fully

developed at the time the acts were committed. Consider the implications of the Applicant's argument if applied, for instance, to Nazi atrocities that occurred before the international definition of genocide was developed. This, not to mention the jurisprudence and statute cited above, illuminates the absolute failure of this argument.

[42] The previously discussed issues are determinative in this case. However, for the sake of fulsomeness, I will address the Applicant's other two arguments. The Applicant argues that the closing words of the s. 83.01 definition of terrorism ("does not include any act … in accordance with international law") indicate that the definition should not apply to these acts, as they were in accordance with international law. The Applicant asserts this because they were carried out against the British colonial government in Egypt. The Applicant has not cited any international law that indicates this is acceptable, and again, it would be unthinkable for this to be the case.

[43] The Applicant's argument that the ID's analysis was unreasonably ahistorical, by holding the organization to account for conduct (political violence) that occurred before it was prohibited by international law amount to essentially a repetition of the "retrospective application of the law" argument discussed *supra*, and fails similarly.

(2) Did the ID err in their treatment of the evidence?

[44] The Applicant takes issue with the ID's treatment of the evidence before them. Specifically asserting that the ID relied on biased sources, ignored contrary evidence, wrongly attributed the assassinations to the Muslim Brotherhood, and ignored structural changes within the organization since the 1970s.

(a) *Changes to the Muslim Brotherhood*

[45] The Applicant argues that the ID failed to consider the change in the Muslim Brotherhood, which occurred in the 1970s. Regarding the Muslim Brotherhood's rhetoric, the Applicant states that rhetoric cannot define terrorist activity, and that it should not be a basis for concluding a disavowal of violence is not credible. The Applicant also cites the fact that the ID did not point to any evidence that people of Egypt viewed the rhetoric as incitement to violence. Further submissions by the Applicant are that the decision unreasonably placed emphasis on a quoting of the founder of the Muslim Brotherhood, as well as the use of the term martyrdom.

[46] On the Muslim Brotherhood's connection to Hamas, the Applicant argued that this is premised on a misunderstanding of the evidence. The ID reached this conclusion based in part on a consideration of two factors – the Hamas Charter of 1988, and the Muslim Brotherhood's endorsement or support for Hamas activities. Specifically, the Applicant says that the ID's conclusion that the two are connected based on Hamas referring to itself as "one of the wings of the Muslim Brotherhood" is based on an error of fact, since while the Muslim Brotherhood originated in Egypt, there are sections throughout the world. The Applicant submits that Hamas evolved out of the Jordanian Muslim Brotherhood, and the Applicant submits that the Egyptian and Jordanian are separate entities. The Applicant argues that Egypt's Muslim Brotherhood was not designated as a terrorist organization until after the July 2013 military coup, a political reality that they assert the ID ignored.

[47] The Respondent cites Hamas's 1988 proclamation that they are a wing of the Muslim Brotherhood, the Muslim Brotherhood's support and sympathy with Hamas decisions, and the UK Home Office Policy describing the Muslim Brotherhood's support for and defence of Hamas' attacks against Israel as proof of the ties with Hamas. The Respondent argued that in circumstances where an organization is claimed to have fundamentally changed into a law-abiding organization, a tribunal must assess whether the organization has transformed itself into a new distinct entity that has expressly given up any form of violence, severing the connection to the organization's past involvement with terrorism. The Respondent said that this was the analysis the ID conducted thus not being unreasonable

[48] The ID found that the Muslim Brotherhood did commit acts of terrorism (in the assassination of the Judge and the PM) under s. 83.01(1) of the *Criminal Code,* and that the Muslim Brotherhood at present is not a completely different organization. In reaching this conclusion, the ID assessed the Muslim Brotherhood's beginnings, history of violence, and reviewed documentary evidence. The ID considered the Muslim Brotherhood's modern-day rhetoric, including the "call for an unrelenting jihad," encouraging "martyrdom," a presidential campaign speech referencing the Muslim Brotherhood's violent founder, as well as the Muslim Brotherhood's ties to Hamas.

[49] While it is true that mere rhetoric may fall below the defined standard of terrorism (though not necessarily always), that is not the question being asked. In the instant case, we are dealing with an organization with a demonstrated history of terrorism, and the question then is whether the group is still a terrorist group in light of their disavowals. In such a situation,

examining rhetoric may be sufficient to conclude that the disavowal is not credible, in light of the previous terrorism. The Applicant presented the position that the quoting of their violent founder, al-Banna, does not indicate a return to their violent roots, and draw a comparison to quoting George Washington, stating that this does not mean one accepts or even endorses slavery. This argument holds little water. While it is true that quoting Washington does not mean you endorse slavery, rhetoric is to be taken in its broader context. Al-Banna, in the ID's determination, stood for the Muslim Brotherhood's history of violence. Thus, quoting him invoked this. Taken together with their past violent history, rhetoric, ties to Hamas, as well as the documentary evidence, it was reasonable for the ID to conclude that the organization had not undergone the alleged changes since the 1970s.

[50] I accept the Respondent's arguments regarding the alleged error related to the finding concerning the Hamas connection (see para 47 above). A review of the decision shows the ID considering this argument (at para 54) as well as analysing the short article the Applicant produced called "Hamas Denies Links with Muslin Brotherhood in Egypt and Elsewhere". The ID found that while the evidence is that Hamas "…makes its own decision and operates with its own organization's goals in mind." The ID found that based on the evidence that the two organizations have a "long lineage and remain supportive of one another." As well the ID noted that there is no evidence to support any meaningful distance from Hamas and that Hamas is an organization that engages in terrorism (paras 67-69). There were no specific arguments presented to the ID regarding the distinction between the Jordanian branch and Egyptian branch of the Muslim Brotherhood so that not being addressed by the ID other than the ID referencing the short article (see above) is not a reviewable error. The ID comprehensively considered the

multitude of documentary evidence submitted before them, and their analysis demonstrates a rational chain of analysis that is justified in light of the facts and the law, as required by *Vavilov* at paragraph 85. The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100). That burden has not been met with respect to their challenges to the ID's treatment of evidence. As such, I find that the ID's decision was reasonable.

(b) *Attributing Assassinations*

[51] The Applicant submitted that the ID's attribution of the assassinations to the Muslim Brotherhood, was unreasonable, as these acts were committed by rogue members.

[52] The ID considered this argument in detail (at paras 60-62 of their decision) and ultimately concluded that, in light of the Muslim Brotherhood's goals, rhetoric, and the evidence as to the acts, the acts were committed by members of the Muslim Brotherhood. Citing *Uddin Jilani v Canada (Citizenship and Immigration),* 2008 FC 758, the ID resultantly concluded that the acts of these members can be attributed to the organization as a whole. I find that the Applicant's arguments on this point amount to a mere request for a reweighing and reassessment of the evidence and I see no reason to displace the ID's finding, given the ID's conclusion on this point was reasonable.

(c) *Bias in Evidence*

[53] The Applicant argues that the ID, in reaching their conclusion relied on documentation that was biased. Specifically, the Applicant asserts that the ID erred in its reliance on the Bedford

Row Report, a report from the Institute for Counter Terrorism, a blog called Gems of Islamism, a source named Thomas Quiggin, and a UK Home Office Report.

[54] The Applicant submitted that the Bedford Row Report was biased by virtue of being commissioned by the Egyptian Government following the military coup in 2013, and takes issue with the ID's description of the report as the "most compelling document on the organizational structure" of the Muslim Brotherhood. The Applicant then discussed the relative lack of utility of the Applicant's witnesses as being a reviewable error for the ID to have relied on them

[55] The Respondent notes that the Applicant did not make any submissions before the ID as to the reliability of the Bedford Row Report or the weight attributed to it. The Applicant was aware of the subject matter; authors, purpose, objectives, as well as the methodology of the report so cannot now bring it up as an error. The Respondent submits that this argument is being raised for the first time at judicial review, and that it is settled law that the reasonableness of a decision may not be impugned on such a basis.

[56] I agree with the Respondent on this point. The ID reviewed the Bedford Row Report, noting its length and the expertise of the group in London who prepared it. The ID noted its analysis, sources, comprehensiveness, and neutrality, and ultimately concluded that it was a credible and trustworthy source. This is similarly the case for the report from the Institute for Counter Terrorism, as the ID found it to be a "credible and trustworthy non-profit academic organization," and the simple fact that it is located in Israel is insufficient to find error with the ID's quoting of it.

[57] As correctly noted by the Respondent, the Applicant did not make any submissions before the ID as to the reliability of the Bedford Row Report, nor on the weight attributed to it. Thus, this issue is being raised for the first time on judicial review, and it is settled law that the reasonableness of a decision cannot be impugned on such a basis (*Grillo v Canada (Citizenship and Immigration)*, 2021 FC 801 at para 53).

[58] I do not find that the Applicant's arguments demonstrate the need for judicial intervention on this point as the argument is a mere request for a reweighing of evidence. This is not the role of this Court on judicial review (*Vavilov* at para 125).

(d) *Ignoring Evidence*

[59] The Applicant submits that the ID ignored a report of the International Law Advisory Group ("ILAG"). The Applicant's position is that this report was contrary to the ID's conclusion based on the Bedford Row Report, and thus, rendered their decision unreasonable by way of ignoring contrary evidence.

[60] I disagree with the Applicant. It is settled law that a decision-maker is under no obligation to refer explicitly to all of the evidence before them, and that they are presumed to have reviewed it all unless the contrary is established (*Hashem v Canada (MCI)*, 2020 FC 41 at paras 28-29). This ILAG Report was one of approximately 90 articles submitted by the Applicant, and the Applicant never raised the ILAG Report at any point before the ID in written or reply submissions. The ID wrote in the reasons that the Applicant filed a great deal of documents and scarcely referenced the vast majority of them (at para 49).

[61] It was reasonable for the ID to not refer specifically to this report, considering the broader context of the multitude of documents filed and the – or lack of reliance by the Applicant on the ILAG Report. Regardless, the ILAG Report is evidence that would go to the weight attributed to the Bedford Row Report, rather than genuinely contrary evidence. The Bedford Row Report itself sets out its authors and background, and the ILAG Report merely reiterates in detail these aspects, which the decision maker is presumed to have read in the absence of contrary evidence (of which there is none).

[62] The remainder of the Applicant's issues related to sources are akin to a line-by-line treasure hunt for error, which is not the manner in which reasonableness review is conducted (see *Vavilov* at para 102). Recall that, as set out in paragraph 125 of *Vavilov*, a reviewing court is to "refrain from reweighing and reassessing the evidence considered by the decision maker." Further, the role of this Court on reasonableness review is not to engage in a line-by-line treasure hunt for error (*Vavilov* at para 284), nor is it to opine as to how we would deal with evidence or concluded more broadly. Rather, my role is to review the decision-maker's conclusion to determine whether it falls on a spectrum of potentially reasonable outcomes, based on a rational and coherent chain of analysis that is justified in light of the facts and law before them. I find the sources used by the ID to have been reasonable for them to rely on.

VI. Proposed Certified Questions

[63] At the hearing, the Applicant stated that they had proposed questions for certification. The Applicant acknowledged that the proposed certified questions had not been raised with the Respondent beforehand. The Applicant did provide the questions to the Court on November 10,

2021, after being given leave to do so. The Applicant received a reminder that this should have been ready to be argued at Court with the Respondent being in a position to address it. Another small inconsequential mistake is that the Applicant states in their certified question that this hearing took place on November 8, 2021, when in fact it actually took place on November 4, 2021.

[64] The proposed wording of two questions is as follows:

A. Does section 34(1)(f) of the *Immigration and Refugee Protection Act* allow for a retrospective or retroactive application of international instruments criminalizing terrorism, such as the *International Convention on the Suppression of the Financing of Terrorism*, to facts predating the entering into force of the international instrument in question?

B. Can the interpretation of terrorism in section 34(1)(c) of the *Immigration and Refugee Protection Act* refer solely to the definition of terrorism found with the Criminal Code to the exclusion of the definition enunciated by the Supreme Court in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3?

    i. If so, does the decision maker need to explain their preference for the Criminal Code definition over the definition of terrorism enunciated in the Supreme Court's decision in *Suresh v Canada (Minister of Citizenship and Immigration),* 2002 SCC 1, [2002] 1 SCR 3?

[65] The Applicant submits that the first question has never been squarely addressed by this Court, and that the second question is unsettled and dispositive of the issue in this case.

[66] The Respondent opposes the Applicant's proposed questions for certification. The Respondent argued that the first question is not dispositive of the judicial review application nor relevant to the tribunal's decision, while the second is both a misstatement of the law and not dispositive of the judicial review application.

[67] This Court recently reiterated in *Lewis v Canada (Public Safety and Emergency Preparedness),* 2017 FCA 130 at paragraph 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v Canada (Public Safety and Emergency Preparedness),* 2015 FCA 21 para 10), nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v Canada (Citizenship and Immigration),* 2016 FCA 178 at paras 15, 35).

[68] I will not grant a certified question in this case. I agree with the Respondent that the first question is not dispositive nor does it transcend the interests of the parties and raise a question of general importance. As for the second, it is a clear misstatement of the jurisprudence stemming from *Suresh*, as discussed at length in this decision, and as such is not dispositive in this matter.

JUDGMENT IN IMM-4057-20

THIS COURT'S JUDGMENT is that

1. This application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

APPENDIX A

Criminal Code (R.S.C., 1985, c. C-46)

Terrorism	**Terrorisme**
Interpretation	**Définitions et interprétation**
Definitions	**Définitions**
83.01(1)	**83.01(1)**
terrorist activity means	**activité terroriste**
(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:	a) Soit un acte — action ou omission, commise au Canada ou à l'étranger — qui, au Canada, constitue une des infractions suivantes :
(i) the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970,	(i) les infractions visées au paragraphe 7(2) et mettant en oeuvre la Convention pour la répression de la capture illicite d'aéronefs, signée à La Haye le 16 décembre 1970,
(ii) the offences referred to in subsection 7(2) that implement the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971,	(ii) les infractions visées au paragraphe 7(2) et mettant en oeuvre la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, signée à Montréal le 23 septembre 1971,
(iii) the offences referred to in subsection 7(3) that implement the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973,	(iii) les infractions visées au paragraphe 7(3) et mettant en oeuvre la Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques, adoptée par l'Assemblée générale des Nations Unies le 14 décembre 1973,
(iv) the offences referred to in subsection 7(3.1) that implement the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979,	(iv) les infractions visées au paragraphe 7(3.1) et mettant en oeuvre la Convention internationale contre la prise d'otages, adoptée par l'Assemblée générale des Nations Unies le 17 décembre 1979,
	(v) les infractions visées au paragraphe 7(2.21) et mettant en oeuvre la

(v) the offences referred to in subsection 7(2.21) that implement the Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on March 3, 1980, as amended by the Amendment to the Convention on the Physical Protection of Nuclear Material, done at Vienna on July 8, 2005 and the International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York on September 14, 2005,

(vi) the offences referred to in subsection 7(2) that implement the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988,

(vii) the offences referred to in subsection 7(2.1) that implement the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988,

(viii) the offences referred to in subsection 7(2.1) or (2.2) that implement the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988,

(ix) the offences referred to in subsection 7(3.72) that implement the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997, and

(x) the offences referred to in subsection 7(3.73) that implement the International

Convention sur la protection physique des matières nucléaires, faite à Vienne et New York le 3 mars 1980, et modifiée par l'Amendement à la Convention sur la protection physique des matières nucléaires, fait à Vienne le 8 juillet 2005, ainsi que la Convention internationale pour la répression des actes de terrorisme nucléaire, faite à New York le 14 septembre 2005,

(vi) les infractions visées au paragraphe 7(2) et mettant en oeuvre le Protocole pour la répression des actes illicites de violence dans les aéroports servant à l'aviation civile internationale, complémentaire à la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, signé à Montréal le 24 février 1988,

(vii) les infractions visées au paragraphe 7(2.1) et mettant en oeuvre la Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, conclue à Rome le 10 mars 1988,

(viii) les infractions visées aux paragraphes 7(2.1) ou (2.2) et mettant en oeuvre le Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, conclu à Rome le 10 mars 1988,

(ix) les infractions visées au paragraphe 7(3.72) et mettant en oeuvre la Convention internationale pour la répression des attentats terroristes à l'explosif, adoptée par l'Assemblée générale des Nations Unies le 15 décembre 1997,

(x) les infractions visées au paragraphe 7(3.73) et mettant en oeuvre la Convention internationale pour la répression du financement du terrorisme,

Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999, or

(b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(A) causes death or serious bodily harm to a person by the use of violence,

(B) endangers a person's life,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or

adoptée par l'Assemblée générale des Nations Unies le 9 décembre 1999;

b) soit un acte — action ou omission, commise au Canada ou à l'étranger :

(i) d'une part, commis à la fois :

(A) au nom — exclusivement ou non — d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique,

(B) en vue — exclusivement ou non — d'intimider tout ou partie de la population quant à sa sécurité, entre autres sur le plan économique, ou de contraindre une personne, un gouvernement ou une organisation nationale ou internationale à accomplir un acte ou à s'en abstenir, que la personne, la population, le gouvernement ou l'organisation soit ou non au Canada,

(ii) d'autre part, qui intentionnellement, selon le cas :

(A) cause des blessures graves à une personne ou la mort de celle-ci, par l'usage de la violence,

(B) met en danger la vie d'une personne,

(C) compromet gravement la santé ou la sécurité de tout ou partie de la population,

(D) cause des dommages matériels considérables, que les biens visés soient publics ou privés, dans des circonstances telles qu'il est probable que l'une des situations mentionnées aux divisions (A) à (C) en résultera,

(E) perturbe gravement ou paralyse des services, installations ou systèmes

stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law. (activité terroriste)

essentiels, publics ou privés, sauf dans le cadre de revendications, de protestations ou de manifestations d'un désaccord ou d'un arrêt de travail qui n'ont pas pour but de provoquer l'une des situations mentionnées aux divisions (A) à (C).

Sont visés par la présente définition, relativement à un tel acte, le complot, la tentative, la menace, la complicité après le fait et l'encouragement à la perpétration; il est entendu que sont exclus de la présente définition l'acte — action ou omission — commis au cours d'un conflit armé et conforme, au moment et au lieu de la perpétration, au droit international coutumier ou au droit international conventionnel applicable au conflit ainsi que les activités menées par les forces armées d'un État dans l'exercice de leurs fonctions officielles, dans la mesure où ces activités sont régies par d'autres règles de droit international. (terrorist activity)

International Convention for the Suppression of the Financing of Terrorism

Article 2, 1:

Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act

Article 2, 1:

Commet une infraction au sens de la présente Convention toute personne qui, par quelque moyen ce soit, directement ou indirectement, illicitement et délibérément, fournit ou réunit des fonds dans l'intention de les voir utilisés ou en sachant qu'ils seront utilisés, en tout ou partie, en vue de commettre :

a) Un acte qui constitue une infraction au regard et selon la définition de l'un des traités énumérés en annexe;

b) Tout autre acte destiné à tuer ou blesser grièvement un civil, ou toute autre personne qui ne participe pas directement aux hostilités dans une situation de conflit armé, lorsque, par sa nature ou son contexte, cet acte vise à intimider une population ou à contraindre un gouvernement ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque.

Immigration and Refugee Protection Act (S.C. 2001, c. 27)

Inadmissibility

Rules of interpretation

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

Security

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;

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

(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;

(c) engaging in terrorism;

(d) being a danger to the security of Canada;

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

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

Interdictions de territoire

Interprétation

33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

Sécurité

34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;

c) se livrer au terrorisme;

d) constituer un danger pour la sécurité du Canada;

e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;

f) être membre d'une organisation 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), b.1) ou c).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4057-20
STYLE OF CAUSE:	ABDELRAHMAN MOHAMED ELMOHAMADY ELMADY v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	DECEMBER 29, 2021

APPEARANCES:

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