Federal Court  Cour fédérale

Date: 20220322

Docket: IMM-919-21

Citation: 2022 FC 385

Ottawa, Ontario, March 22, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MOSAAB AL AYOUBI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Mosaab Al Ayoubi, is seeking judicial review of a decision made by a migration officer [Officer] dated January 5, 2021, rejecting his application for permanent residence in Canada as a member of the Convention refugees abroad class or as a member of the country of asylum class. The Officer found the Applicant inadmissible to Canada pursuant to paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant is a citizen of Syria. He currently resides in Beirut, Lebanon.

[3] The Applicant completed his compulsory military service between February 2007 and January 2009 with the Political Security Directorate [PSD]. He was stationed for one (1) month as a security guard for the military intelligence branch in Raqqa, before he was transferred to the house of a general, who was in charge of the Syrian Military Intelligence branch in that city.

[4] In 2010, after the end of his military service, the Applicant and his family moved to Lebanon. They all claimed refugee protection for Canada through the sponsorship refugee program. On May 5, 2016, they were interviewed at the Canadian Embassy in Beirut and, in the following months, four (4) members of the Applicant's family were accepted as refugees in Canada.

[5] On June 30, 2017, the Applicant received a procedural fairness letter [PFL] informing him of concerns that he was a member of an inadmissible class of persons described in paragraph 34(1)(*f*) of the IRPA. Specifically, the reviewing officer was concerned that the Applicant had been a member of the Syrian Military Intelligence, an organization for which there are reasonable grounds to believe has engaged in terrorism. The Applicant responded to these concerns on July 4, 2017, explaining that he was only a guard, not an active member, and that he was transferred to the general's house to serve him and his family, staying for two (2) and a half years until the completion of his military service. The Applicant also indicated that serving in the military was not a choice. On August 1, 2017, the reviewing officer rejected the application as he was satisfied there were reasonable grounds to believe the Applicant was a member of an

inadmissible class of persons described in paragraph 34(1)(*f*) of the IRPA. The Applicant filed an application for leave and judicial review on August 28, 2017.

[6] Following an agreement by the parties to have the matter redetermined by a different officer, the Applicant was interviewed again on November 13, 2017, and February 26, 2019.

[7] On November 12, 2019, the reviewing officer sent the Applicant another PFL so that he could address concerns that: (1) he was a member of the PSD from 2007 to 2009; (2) the PSD is an organization for which there are reasonable grounds to believe has engaged in acts of espionage that are against Canada or that are contrary to Canada's interests; and (3) he provided contradictory and inconsistent information during his interview on February 26, 2019, in particular in relation to his military service, his knowledge and his responsibilities in the organization where he served. In the absence of a response from the Applicant, the application was rejected on January 14, 2020.

[8] The Applicant's representative demonstrated, however, that a response was submitted within the deadline. As a result, the Officer reviewed the case a second time on February 24, 2020. The Officer still had concerns as to the PSD being an organization described in paragraphs 34(1)(*a*) and (*f*) of the IRPA, and as to the fact that the Applicant had been a member of that organization. After some additional delays, a new PFL was sent to the Applicant on October 15, 2020, detailing the Officer's analysis and concerns to the Applicant.

[9] In his response to the PFL, dated November 13, 2020, the Applicant submitted that it was unreasonable to conclude that he was a member of the organization as he did not partake, assist in or contribute to any work or activities undertaken by the organization. Rather, he was drafted into the military and assigned to that specific organization. Likewise, nothing in his assigned tasks and involvement demonstrated any commitment to the organization's goals and objectives. The Applicant also challenged the Officer's analysis on the issue of the organization engaging in acts of espionage that are against Canada or that are contrary to Canada's interests. In his view, the documentary evidence upon which the Officer relied was vague and based on unreliable sources of information. Finally, the Applicant requested that he be considered for ministerial relief if he was found to be a member of an inadmissible class of persons.

[10] On January 5, 2021, the Officer rejected the application for permanent residency in Canada. The Officer concluded that the Applicant was a member of the PSD, an organization for which there are reasonable grounds to believe has engaged, engages or will engage in acts of espionage that are against Canada or that are contrary to Canada's interests.

[11] In the Global Case Management System, which form part of the reasons, the Officer addressed the Applicant's observations regarding his lack of commitment to the organization's goals and objectives. The Officer noted that they contradicted information provided by the Applicant in an earlier interview and did not alleviate the concerns that he was a member of the PSD, having served with the organization between 2007 and 2009, and being knowledgeable of its purpose and activities. The Officer was equally unconvinced that the Applicant was forced to act against his will, noting that he was asked twice during the second interview if he had tried to

escape or request a transfer, to which he replied in the negative. The Officer also noted that the Applicant had said that he refused to carry a weapon or bring food in the interrogation room, but this refusal never resulted in punishment.

[12] Furthermore, the Officer also responded to the Applicant's argument regarding whether the PSD was an organization engaging in acts of espionage that are against Canada or that are contrary to Canada's interests. The Officer noted that the information relied on was obtained from several open, reliable and credible sources, including Amnesty International and Human Rights Watch, and found that the Applicant's explanations did not alleviate the concern that there are reasonable grounds to believe that the PSD, being a part of the Syria's intelligence services [Mukhabarat], was an organization described in paragraph 34(1)(*a*) of the IRPA.

[13] Finally, the Officer observed that the Applicant's request for ministerial relief could not be considered within the scope of the application for permanent residence, as it required a separate application.

[14] The Applicant challenges the decision on the following grounds: (1) the Officer failed to provide adequate reasons on the issue of his membership in the PSD; (2) the Officer erred in its assessment of the PSD's engagement in acts of espionage; and (3) the Officer should not have questioned his credibility. While the Applicant also argues, as a separate ground, that the decision is unreasonable because it is based on insufficient grounds and is not supported by objective and reliable evidence, the Applicant has not articulated his argument in sufficient detail for the Court to consider it.

II. Analysis

A. *Standard of Review and Legislative Framework*

[15] Both parties agree that the appropriate standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Weldemariam v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 631 at paras 30-31[*Weldemariam*]; *Gaga v Canada (Citizenship and Immigration)*, 2020 FC 607 at para 11 [*Gaga*]; *Crenna v Canada (Citizenship and Immigration)*, 2020 FC 491 at paras 63-65; *AB v Canada (Citizenship and Immigration)*, 2020 FC 461 at para 27).

[16] When determining whether a decision is reasonable, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[17] Paragraphs 34(1)(*a*) and (*f*) of the IRPA describe as inadmissible to Canada a foreign national or permanent resident who has been a member of an organization with respect to which there are reasonable grounds to believe engages, has engaged or will engage in acts of espionage. These provisions must be read in conjunction with section 33 of the IRPA, which confirms that the facts are assessed on the basis of "reasonable grounds to believe" and that there are no

temporal constraints with respect to the interpretation and application of paragraphs 34(1)(*a*) and (*f*) of the IRPA.

[18] Unlike the criminal threshold of "beyond a reasonable doubt", the "reasonable grounds to believe" threshold is a low one. It requires more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities. Reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paras 114, 116-117; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at para 89).

B. *Assessment of Membership*

[19] The Applicant claims that the Officer provided insufficient reasons regarding his membership in the PSD. He argues that the factors of membership, such as the nature and duration of his activity and his level of commitment to the organization and its objectives, were not properly assessed and discussed. To support his argument, he relies on *Perez Villegas v Canada (Citizenship and Immigration)*, 2011 FC 105 at para 44 [*Perez Villegas*].

[20] The Applicant's argument is without merit.

[21] The IRPA does not define the term "member". However, it has been consistently held that "membership" must be interpreted broadly. The Applicant recognizes this in his reply. An individual is not required to be an actual card-carrying or a formal member. It is also not

necessary for the person concerned to participate in the acts of the organization (*Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paras 26-32; *Garces Caceres v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 4 at paras 38-39 [*Garces Caceres*]; *Ismeal v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 198 at para 20).

[22] In *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 [*Kanagendren*], the Federal Court of Appeal examined whether the test for assessing membership under paragraph 34(1)(*f*) of the IRPA had changed following the decision in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40. The appellant had argued that membership should not be extended to those who are not involved in the organization's activities, who are loosely linked to the organization or who are compelled to join the organization. This Court had found that it was irrelevant whether or not an applicant was in any way involved with the activities of the organization, as paragraph 34(1)(*f*) of the IRPA was not a determination as to complicity (*Kanagendran v Canada (Citizenship and Immigration)*, 2014 FC 384 at para 14). The Federal Court of Appeal upheld the decision and concluded that paragraph 34(1)(*f*) of the IRPA does not require a complicity analysis in the context of membership, nor does it require a "member" to be a "true" member who contributed significantly to the wrongful actions of the group (*Kanagendren* at para 22; *Garces Caceres* at para 39).

[23] While the inadmissibility finding in *Kanagendren* flowed from membership in an organization involved in terrorism pursuant to paragraphs 34(1)(*f*) and (*c*) of the IRPA, the Applicant has not persuaded me that the principles established in *Kanagendren* should not

equally apply to membership in an organization engaging in espionage activities pursuant to paragraphs 34(1)(*f*) and (*a*) of the IRPA (*Gaga* at paras 7-19).

[24] Most of the decisions upon which the Applicant relies, including *Perez Villegas*, were rendered many years before the Federal Court of Appeal's decision in *Kanagendren*. This Court has since held that a person's admission of membership in an organization is sufficient to meet the membership requirement in paragraph 34(1)(*f*) of the IRPA (*Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404 at para 11; *Gaga* at para 17-18; *MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796 at para 7; *Khan v Canada (Citizenship and Immigration)*, 2017 FC 397 at para 31).

[25] In the present case, the Applicant admitted during his interviews that save for his training period, the majority of his two-year mandatory military service was with the PSD. He therefore acknowledged his membership with the PSD. His military service booklet also confirmed that he served with the PSD from 2007 to 2009. Thus, it was not necessary for the Officer to address the nature, the duration and the level of the Applicant's commitment to the organization (*Rahman v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 807 at para 26; *Intisar v Canada (Citizenship and Immigration)*, 2018 FC 1128 at para 23).

[26] Moreover, the Applicant's reliance on *Yihdego v Canada* (*Public Safety and Emergency Preparedness)*, 2020 FC 833 [*Yihdego*] is misguided. In that instance, the determinative issue was the Immigration Division's analysis of Canada's interests (*Yihdego* at paras 23, 30). The Court did not quash the membership conclusion.

[27] That said, the Officer nonetheless considered and responded to the arguments raised by the Applicant in his response to the PFL. While the Applicant tried to minimize his tasks and duties by stating that he was drafted and assigned limited guard duty outside one of the organization's buildings and later transferred to the general's house to assist with personal and family-related tasks, the Officer concluded that the evidence instead established that the Applicant was serving with the PSD, that he was aware of the PSD's purpose as an intelligence branch and that he had knowledge of its activities. The Officer found that any work or duties the Applicant was assigned to do would be considered work undertaken for the PSD. Having reviewed the record, I am satisfied that the Officer's findings are reasonable and supported by the evidence.

[28] The Applicant has not convinced me that the Officer failed to provide adequate reasons for his conclusion that he was a member of the PSD, or that the Officer's assessment of the issue is unreasonable.

C. *Assessment of the PSD's Engagement in Acts of Espionage*

[29] After finding that the PSD met the definition of an organization and was part of the Mukhabarat, and after summarizing the information contained in various reports, the Officer stated the following in the PFL issued to the Applicant and dated October 15, 2020:

> Given numerous reports by well known agencies such as [Human Rights Watch] and Amnesty International, as well as known news outlets such as Al Jazeera and PBS citing Syrian Intelligence Services (Mukhabaraat) [*sic*] as being an entity that conducted monitoring and espionage activities on Canadian soil contrary to Canada's national security and public safety as well as acts of espionage against Canada's allies such as Germany and the United

> States, there are reasonable grounds to believe that the Political Security Directorate, one of the four main intelligence agencies in Syria and part of the Mukhabaraat[*sic*], is an organization that engages, has engaged or will engage in acts of espionage that [are] [*sic*] against Canada or that [are] [*sic*] contrary to Canada's interests.

[30] The Applicant submits that the Officer's conclusion is unreasonable because it relies on documentary evidence that is vague and based on unreliable or unverifiable sources of information. Specifically, he challenges the Officer's reliance on these reports because they are based on hearsay evidence reported by individuals who preferred to remain anonymous.

[31] I am not persuaded by the Applicant's argument.

[32] At the hearing, the Applicant referred to *Karakachian v Canada (Citizenship and Immigration)*, 2009 CF 948 [*Karakachian*] to support his position. This Court had determined that the officer used questionable sources to conclude that the organization in question was a terrorist organization (*Karakachian* at paras 43-46). Here, the Officer relied on reports from international and non-governmental organizations, such as Amnesty International and Human Rights Watch. It is generally accepted that such reports are considered credible, reliable and independent sources of information (*Koffi v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 970 at paras 54-58; *Zeki Mahjoub v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1503 at paras 72-75; *Jalil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 246 at para 38).

[33] The Applicant also contends that it was unreasonable for the Officer to rely on information from a news outlet's report entitled, "Are Syrian spies operating on U.S. Soil?" Relying on *Weldemariam*, he argues that spying on individuals residing in Canada's allied countries, and not on the countries themselves, does not entail actions that are contrary to Canada's best interests in a way that engages paragraph 34(1)(*a*) of the IRPA.

[34] In *Weldemariam*, which is presently appealed to the Federal Court of Appeal, the determinative issue was what it means for an act of espionage to be "contrary to Canada's interests" (*Weldemariam* at para 42). The Immigration Division had concluded that the Information Network Security Agency, the organization in question, had conducted acts of espionage contrary to Canada's interests for two (2) reasons: (1) the acts were directed towards nationals of Canada's allied countries; and (2) the targeted individuals were members of a news media outlet that was active in many countries – as freedom of the press is a cornerstone of the *Canadian Charter*, the organization acted contrary to Canada's interests. The Court recognized that espionage activities directed against Canada's allies may be contrary to Canada's interests. However, it noted that the organization was not targeting Canada's allies; it was instead targeting private individuals who were not in Canada. The Court found that the Immigration Division should have provided a reasonable explanation of the nexus between the actions of the organization and Canada's national security interests (*Weldemariam* at para 74).

[35] Unlike in *Weldemariam*, the Officer here explained the nexus between the actions of the PSD and Canada's interests.

[36] It is important to recall that the applicable standard of proof is “reasonable grounds to believe”. It is a low one, and the evidence must establish something more than mere suspicion but less than proof on the balance of probabilities. The objective basis for the belief must be based on compelling and credible information.

[37] Given the evidence before the Officer, which included the Applicant’s statements during his interviews and reliable and credible sources of information which confirmed the monitoring and intimidation of individuals in Canada, as well as in other allied countries, the Officer could reasonably find that there were reasonable grounds to believe the PSD engages, has engaged or will engage in acts of espionage that are against Canada or that are contrary to its interests. In my view, the Applicant is essentially inviting the Court to reweigh the evidence to come to a different conclusion. That is not my role on judicial review (*Vavilov* at para 125). The Applicant has failed to persuade me that the Officer’s conclusion on this issue is unreasonable.

D. *The Applicant’s Credibility*

[38] The Applicant argues that it was unreasonable for the Officer to question his credibility on the length of his military service and on his awareness of the alleged events in the interrogation room.

[39] I am not persuaded that the Officer questioned the Applicant’s credibility on the length of his military service. In responding to the PFL dated October 15, 2020, the Applicant argued that the Officer had erroneously indicated that he had served for “two years and nine months” and that, on the contrary, he had only completed one year and nine months of compulsory service

from 2007 to 2009. The Officer addressed the Applicant's argument by noting that, in a previous interview, the Applicant had stated "2 years and 9 months I wish to be honest" when asked about the duration of his military service. The Applicant now claims before this Court that the evidence shows that the length of his military service was 23 months.

[40] Given the inconsistencies in the Applicant's statements regarding the length of his military service, it was reasonably open to the Officer to rely on what the Applicant stated during his interview rather than on his counsel's response to the PFL.

[41] The Applicant also alleges that the Officer questioned his credibility because of the inconsistencies in his evidence regarding what he heard and saw in the interrogation room.

[42] In responding to the PFL, the Applicant submitted an affidavit in which he stated that he never heard or saw what took place in the building to which he was assigned. The Officer noted that this statement was in direct contradiction with information he had provided during one of his interviews. After reviewing the record, I am satisfied that the Officer could reasonably find that there were inconsistencies in the Applicant's evidence.

[43] To conclude, the Applicant has failed to demonstrate a reviewable error in the Officer's decision. When read holistically and contextually, I am satisfied that the Officer's decision meets the reasonableness standard set out in *Vavilov*.

[44] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-919-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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