Date: 20080403

Docket: IMM-1356-07

Citation: 2008 FC 405

Ottawa, Ontario, April 3, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MOZAFAR CHOGOLZADEH

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Applicant, Mr. Mozafar Chogolzadeh, had a long history of involvement with the Mujahedin-e-Khalq (MEK). The MEK is an organization listed as a terrorist entity by the Government of Canada for the purpose of Part II.1 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[2] In *Miller v. Canada (Solicitor General)*, 2006 FC 912, [2006] F.C.J. No. 1164 (QL), Chief Justice Allan Lutfy addressed this Court's inability to weigh factors that the Minister considered when deciding as he did:

> [83] Although the applicant may disagree with the weight assigned in the memorandum to the factors she considered to be the more important, or with the extent to which certain points were developed, she has fallen short of demonstrating that the memorandum did not "address" the "major points in issue" (*VIA Rail Canada Inc. v. National Transportation Agency et al.* (2000), 193 D.L.R. (4th) 357, [2000] F.C.J. No. 1685, (F.C.A.) at paragraph 22).
>
> [84] As noted above at paragraph 41, the Supreme Court stated in *Suresh* at paragraph 37:
>
> > [...] *Baker* does not authorize courts reviewing decisions on the discretionary end of the spectrum to engage in a new weighing process, but draws on an established line of cases concerning the failure of ministerial delegates to consider and weigh implied limitations and/or patently relevant factors [...]
>
> In my view, the applicant has not demonstrated that the Minister failed to "consider and weigh" the "patently relevant factors"...

[3] Again, this is a balancing exercise, the Minister is called upon to assess and weigh the evidence presented by Mr. Chogolzadeh. It was open to the Minister to conclude that any evidence favourable to an exemption did not outweigh the impact of Mr. Chogolzadeh's long-standing past membership in a terrorist organization. Mr. Chogolzadeh's break from the MEK and his family's establishment in Canada were before the Minister as was specified in the Reasons. The findings of fact in regard to Mr. Chogolzadeh's "membership" and activities in the MEK are reasonable and based on the record.

[4] Mr. Chogolzadeh continually made reference to his alleged opposition to the MEK. Significantly though, his opposition was not to the MEK's terrorist tactics, but rather to the direction it took in supporting Saddam Hussein's campaign against Iraqi Kurds. Mr. Chogolzadeh's

opposition only began after a decade of involvement in the MEK and awareness of its terrorist activities. These are significant aggravating factors.

[5] As stated by the Supreme Court of Canada in *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385: "The simple term "recommendations" should be given its ordinary meaning. "Recommendations" ordinarily means the offering of advice and should not be taken to mean a binding decision." (Emphasis added.)

[6] Furthermore, as stated by this Court, in *Khalil v. Canada*, 2007 FC 923, [2007] F.C.J. No. 1221 (QL), at paragraph 342: "…although public servants are charged with making a recommendation to the Minister, it is for the Minister alone to decide whether relief will be granted". (Emphasis added.)

[7] It is clear that Mr. Chogolzadeh was refused due to his long membership in a terrorist organization, his material support to the organization, and his knowledge of its activities. His disassociation from the MEK only took place when he no longer agreed with the MEK's direction (not its tactics).

[8] Mr. Chogolzadeh devoted over a decade of his life to the MEK and, ultimately, nearly paid with his life for his association when the organization turned against him. The fact that the Minister considered Mr. Chogolzadeh's long-standing membership with the MEK, as determinative of his decision, is reasonable.

II. Judicial Procedure

[9] This is an application, pursuant to section 72 of the IRPA, to judicially review the decision of the Minister of Public Safety and Emergency Preparedness, dated February 20, 2007, wherein, it was decided to deny the Applicant's application for a "Ministerial relief", pursuant to subsection 34(2) of the IRPA.

III. Background

[10] The Applicant, Mr. Mozafar Chogolzadeh, came to Canada, on January 26, 1993, together with his wife, Mrs. Mina Baranji. Their claim to the United Nations High Commission for Refugees (UNHCR) was accepted and the Canadian government granted them a Convention Refugee Minister's Permit, valid for one year, which enabled them to join their children in Canada.

[11] Mr. Chogolzadeh and his wife have five children, one of whom, Diyana, was born in London, Ontario, on August 12, 2002, and is a Canadian citizen.

[12] The four other children, now adults, came to Canada on March 13, 1991 as unaccompanied minors. Mr. Chogolzadeh and his wife joined them two years later. Only their oldest daughter, Ms. Mastoureh Chogolzadeh, who resides in Vancouver with her husband and two minor children, has been accepted as a permanent resident in Canada. The three other children are attached to their parent's case and are not eligible to apply for permanent residence status in their own right.

[13] Mr. Chogolzadeh is an Iranian national of Kurdish ethnic origin. He was born August 23, 1951, in Piranshah, Iran. He has worked as a dentist assistant and then became an experienced dentist from 1966 until 1981 in an office, in Piranshah.

[14] Mr. Chogolzadeh began his political activities in March/April 1979, the year of the Iranian revolution. This was a time of political upheaval, when many political organizations were formed. Kurdistan became a center for political organizations which were disappointed with the outcome of the revolution.

[15] Mr. Chogolzadeh first began his activities by reading and distributing political literature for the MEK. He continued his involvement through the 1980s, earning his livelihood from the MEK, by distributing literature and gathering medicine, arms, food and petrol and delivering these items to the MEK. The MEK provided all the necessities of life for Mr. Chogolzadeh and his family. The MEK even arranged for Mr. Chogolzadeh's four minor children to come to Canada, in 1991. During the Gulf War, the MEK sent about 1200 children of its members and supporters outside of Iraq.

[16] The MEK was formed in the 1960s, in opposition to the pro-Western Shah, but went on also to oppose the successor regime of the Islamic Republic of Iran, becoming its main insurgent threat. During the 1980s, the MEK was supported by Iraq's Saddam Hussein – then at war with Iran – providing the MEK with bases, weapons and protection.

[17] Incidents linked to the MEK include: mortar attacks, assassinations, explosions and coordinated attacks on Iranian embassies in thirteen countries, including the Canadian mission in 1992; killings of U.S. military personnel and civilian defence contractors in Iran; and support for the November 1979, takeover of the U.S. Embassy, in Iran.

[18] By 1989, Mr. Chogolzadeh alleges that he started to have some disagreements with the MEK. He disagreed with the directions the MEK was taking and the manner in which it was run. He spoke about the lack of democracy in the MEK and the fact that the MEK was beginning to fight against Kurdish organizations in Iraq. When he spoke out against the MEK policies, he was branded as a traitor and threatened.

[19] Mr. Chogolzadeh ceased support for the MEK, in 1991, when it announced it would fight together with the Iraqi government of Saddam Hussein against the Iraqi Kurds. Mr. Chogolzadeh refused to participate with the MEK in March of 1991; he was detained and, on May 23, 1991, was taken to a MEK prison camp in northern Iraq.

[20] Mr. Chogolzadeh escaped from the MEK detention, on October 30, 19991, when he was being transferred by MEK guards to be handed over to the Iraqi authorities. He was reunited with his wife and managed to enter Turkey, in 1991.

[21] In Turkey, Mr. Chogolzadeh and his wife claimed protection with the UNHCR office, in Ankara. They completed UNHCR resettlement registration forms, on December 8, 1991. Their claims were accepted by the UNHCR, on August 12, 1992, in Ankara, Turkey.

[22] Mr. Chogolzadeh and his wife resettled in Canada, on January 26, 1993, under Convention Refugee Minister's Permits, valid for one year. They submitted an application for permanent residence, on April 13, 1993. The application was rejected in 1995, but they continued to benefit from renewals of their Minister's permits.

[23] Subsequent to an interview with Mr. Chogolzadeh, on September 13, 2000, an Immigration Officer considered he was inadmissible to Canada due to his involvement with the MEK. A report alleging such inadmissibility was prepared and an inquiry was ordered. The hearing, which began June 7, 2001, was adjourned on September 13, 2001 and never resumed.

[24] Mr. Chogolzadeh applied for Ministerial relief, in 2001. After external consultations were completed, a recommendation was prepared. Subsequent to Mr. Chogolzadeh's comments, a final recommendation to refuse relief was made. The recommendation was received by the Minister of Public Safety and Emergency Preparedness, on December 6, 2006, and the Minister denied Mr. Chogolzadeh's relief, on February 20, 2007.

IV. Decision under Review

[25] The Minister determined that Mr. Chogolzadeh had furthered the goals of the MEK through his procurement work in the 1980s; therefore, even though Mr. Chogolzadeh had not personally committed any atrocities, he was integral to maintaining the functioning of the organization, which is listed as a terrorist organization by Canada.

[26] The Minister found that Mr. Chogolzadeh was aware of the MEK's activities (bombings, killings, assassinations) through having read accounts of MEK successes in newspapers at the camps where he worked. The Minister found that Mr. Chogolzadeh had a level of trust within the MEK, since the MEK had arranged the travel of his children to Canada, in 1991. The Minister concluded that Mr. Chogolzadeh's activities, on behalf of the MEK, indicated a strong allegiance to the organization which was committed to the use of violence and, such considerations outweighed any national interest which would enable the Minister to approve the application. (Applicant's Record, Briefing Note for the Minister, pp. 10-11.)

[27] Mr. Chogolzadeh contends that the Minister delayed the processing of his family's Permanent Residence applications with no intention of finalizing them.

[28] Mr. Chogolzadeh is of the view that no justifiable reason has been given for continuing to maintain that he poses harm to the national interest of Canada. Mr. Chogolzadeh and his family have been in Canada for over fifteen years. According to Mr. Chogolzadeh, the only conclusion that

can be drawn from the facts, given the lengthy passage of time, is that the Respondent and his officials are acting in bad faith.

V. Relevant Legislation

Ministerial Relief - Inadmissibility Provision

[29] The discretion to grant a subsection 34(2) exemption, from a finding of inadmissibility, is one that is vested exclusively with the Minister. No delegation of decision-making is permissible, unlike most other ministerial decisions. (IRPA, ss. 6(3).)

[30] The relevant portions of section 34 of the IRPA, are:

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34.** (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
…	…
(*c*) engaging in terrorism;	*c*) se livrer au terrorisme;
…	…
(*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*) or (*c*).	*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*) ou *c*).
Exception	Exception
(2) The matters referred to in subsection (1) do not constitute inadmissibility in	(2) Ces faits n'emportent pas interdiction de territoire pour le résident

respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

(IRPA, ss. 34(1); formerly clause 19(1)(*f*)(iii)(B) of the *Immigration Act*, R.S.C. 1985, c. I-2.)

VI. Issue

[31] Was the Minister's determination to deny relief patently unreasonable or based on erroneous findings of fact or unreasonable inferences?

VII. Standard of Review

[32] The decision under subsection 34(2) calls for a "quintessential exercise of executive prerogative" to determine who may or may not be admitted to Canada. (*Grillas v. Canada (Minister of Manpower and Immigration)*, [1972] S.C.R. 577.)

[33] Furthermore, as stated recently by Justice Richard Mosley, in *Sounitsky v. The Minister of Citizenship and Immigration*, 2008 FC 345, which was discussed with counsel of both parties in a telephone conference subsequent to the date of the hearing of February 20, 2008, further to the release of the Supreme Court of Canada decision, on March 7, 2008, in *Dunsmuir v. New Brunswick*, [2008] SCC 9:

> [15] …Prior to *Dunsmuir*, the prevailing view in this Court was that the decision … was to be reviewed on the standard of patent unreasonableness for questions of fact, reasonableness *simpliciter* for mixed fact and law, and correctness for questions of law. The decision as a whole was to be reviewed on a reasonableness standard:

> *Demirovic v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1284, [2005] F.C.J. No. 1560.
>
> [16] In *Dunsmuir*, the Supreme Court held that the two reasonableness standards created a system which was unclear and overly difficult to apply. Thus they should be merged into a single test, producing a distinction between legal questions, which continue to be assessed on a correctness standard, and all other findings by administrative bodies, which will stand unless they can be shown to be unreasonable.
>
> [17] In applying the reasonable standard, the question which judges must now ask themselves is whether the decision was reasonable, giving "due consideration to the determinations of decision makers": *Dunsmuir* at paragraph 49. The Supreme Court expressed its recognition that legislative supremacy drives the need for deference to be shown by the judiciary to administrative decisions made under properly delegated authority.
>
> [18] The Supreme Court has also determined that it is no longer necessary to apply the pragmatic and functional analysis in every case where there is clear precedent as to the standard to be applied. I need not, therefore, re-evaluate the levels of deference to be shown to the decision … other than to note that questions of fact are no longer reviewable on a patent unreasonableness standard. Instead, all questions decided … other than those of pure law are to be upheld unless unreasonable.

VIII. Analysis

[34] In seeking ministerial relief under subsection 34(2), the burden of proof rests on the Applicant to show that his admission to Canada would not be detrimental to the national interest. (*Kashmiri v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 997 (QL).)

[35] When exercising it's discretion, the Minister must not only consider subsections 34(1) and 34(2), he is obliged to contemplate paragraph 3(1)(*i*) of the IRPA:

Objectives — immigration	**Objet en matière d'immigration**
3. (1) The objectives of this	**3.** (1) En matière

Act with respect to immigration are	d'immigration, la présente loi a pour objet :
(*i*) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and	*i*) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;

[36] This Court, in *Miller*, above, stated: "The broad language used in subsection 34(2) speaks to Parliament's intention that the Minister be free to take into account a wide range of factors in exercising [his] discretion".

[37] The national interest will also be shaped by the historical context at any given time and is not a static concept. Combating terrorism on the national and international front is a concern at the forefront of Canada's current national interest.

[38] The Minister's decision not to admit Mr. Chogolzadeh to Canada, as a permanent resident, is reasonable and according to law. The Minister's reasons for that decision sets out an account of appropriate considerations. No issue requiring this Court's intervention is raised by the Minister's refusal.

[39] Mr. Chogolzadeh is asking this Court to reweigh the evidence and to come to a conclusion that would be more favourable to him. All of the major points in issue had been properly addressed,

in the Briefing Note, including Mr. Chogolzadeh's break from the MEK and his subsequent establishment in Canada. (Applicant's Record, Briefing Note, p. 10; *Miller*, above, para. 83; *VIA Rail Canada Inc. v. Canada (National Transportation Agency)* (2000), 193 D.L.R. (4th) 357 (F.C.A.), para. 22.)

[40] In *Miller*, above, Chief Justice Lutfy addressed this Court's inability to weigh factors that the Minister considered when deciding as he did:

> [83] Although the applicant may disagree with the weight assigned in the memorandum to the factors she considered to be the more important, or with the extent to which certain points were developed, she has fallen short of demonstrating that the memorandum did not "address" the "major points in issue" (*VIA Rail Canada Inc. v. National Transportation Agency et al.* (2000), 193 D.L.R. (4th) 357, [2000] F.C.J. No. 1685, (F.C.A.) at paragraph 22).
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> [84] As noted above at paragraph 41, the Supreme Court stated in *Suresh* at paragraph 37:
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> > [...] *Baker* does not authorize courts reviewing decisions on the discretionary end of the spectrum to engage in a new weighing process, but draws on an established line of cases concerning the failure of ministerial delegates to consider and weigh implied limitations and/or patently relevant factors [...]
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> In my view, the applicant has not demonstrated that the Minister failed to "consider and weigh" the "patently relevant factors" …

[41] Again, this is a balancing exercise, the Minister is called upon to assess and weigh the evidence presented by Mr. Chogolzadeh. It was open to the Minister to conclude that evidence favourable to an exemption did not outweigh the impact of Mr. Chogolzadeh's long-standing past membership in a terrorist organization. Mr. Chogolzadeh's break from the MEK and his family's establishment in Canada were before the Minister as was specified in the Reasons. The findings of

fact in regard to Mr. Chogolzadeh's "membership" and activities in the MEK are reasonable and based on the record.

[42] Mr. Chogolzadeh continually made reference to his alleged opposition to the MEK. Significantly though, his opposition was not to the MEK's terrorist tactics, but rather to the direction it took in supporting Saddam Hussein's campaign against Iraqi Kurds. Mr. Chogolzadeh's opposition only began after a decade of involvement in the MEK and awareness of its terrorist activities. These are significant aggravating factors.

[43] The enumerated considerations, listed and alleged by Mr. Chogolzadeh, to have been ignored by the Minister, were before the Minister. Mr. Chogolzadeh's position is untenable and it does not give rise to any issue requiring this Court's intervention. Mr. Chogolzadeh took no issue with the facts as set out in the Briefing Note when it was circulated for his comment.

[44] The Briefing Note clearly indicates that the Minister reviewed the material which Mr. Chogolzadeh had presented; it recognized that it was only after over a decade of support or membership in the MEK, that Mr. Chogolzadeh disassociated himself from it. It is also understood, thereby, that Mr. Chogolzadeh and his family have become established in Canada with no contact with the MEK since arriving in Canada. The Reasons also point out that the MEK is a listed terrorist organization and that Mr. Chogolzadeh had knowledge of the MEK's tactics while he was providing material support to the organization. The fact that Mr. Chogolzadeh gave strong allegiance to a

terrorist organization, which used violence to advance its goals, outweighs any other national interest which could warrant a positive decision. (Applicant's Record, Briefing Note, p. 11.)

[45] The Minister's rationale directs itself adequately to Mr. Chogolzadeh's application. Mr. Chogolzadeh insists that he is of no harm to the national interest and has never personally committed acts of violence; and, that he would benefit from acceptance of his application. There is, however, no requirement that relief be granted in these circumstances.

No Prior Positive Recommendation

[46] Mr. Chogolzadeh is of the opinion that the Minister was compelled to consider the prior positive recommendation, made in this case, by the Citizenship and Immigration Canada (CIC) Officer, who had extensive knowledge of the family and had, personally, interviewed them. He notes that, in his detailed recommendation, the Officer concluded: "I submit and recommended that relief be granted in this case". (Applicant's Record, Reasons of CIC Regional War Crimes Unit, pp. 389-391.)

[47] Mr. Chogolzadeh specifies that the Briefing Note ignores this prior recommendation. It does not give any reasons for departing from the said recommendation and asserts Mr. Chogolzadeh ought to be granted relief.

[48] Mr. Chogolzadeh states that the Minister is not entitled to ignore the assessment done by an Officer with expertise to make such a recommendation: this error is all the more egregious given

that the author of the second recommendation, in 2005, had no particular experience or contact with Mr. Chogolzadeh. Furthermore, according to Mr. Chogolzadeh, ignoring the Officer's recommendation has the effect of rendering the regulatory process, illusory, in that, there is no purpose served in requiring such an assessment.

[49] Contrary to Mr. Chogolzadeh's contention, the Respondent explains that there was no prior positive recommendation to the Minister. A local official of CIC merely recommended that Ministerial relief be recommended to the Minister. Officials in Ottawa, responsible for making recommendations to the Minister, did not concur and recommended that Ministerial relief not be granted; thus, there has never been a positive recommendation in this case. The fact that a local official of a government department recommends that a ministerial highly discretionary determination be exercised, in a particular manner, does not give rise to any issue when the discretionary determination is not exercised in that way.

[50] The Minister was not bound by the recommendation and was able to decide on the basis of the material, submitted by Mr. Chogolzadeh, which included mention of the fact that an employee of CIC had recommended that a positive recommendation be made. A negative decision does not point to evidence having been ignored.

[51] As stated by the Supreme Court of Canada in *Thomson*, above: "The simple term "recommendations" should be given its ordinary meaning. "Recommendations" ordinarily means the offering of advice and should not be taken to mean a binding decision." (Emphasis added.)

[52] Moreover, Justice Peter deCarteret Cory noted: "… recommendation constitutes a report put forward as something worthy of acceptance. It serves to ensure the accuracy of the information on which the Deputy Minister makes the decision, and it gives the Deputy Minister a second opinion to consider. It is no more than that." (*Thomson*, above.) (Emphasis added.)

[53] Furthermore, as stated by this Court, in *Khalil*, above: "…although public servants are charged with making a recommendation to the Minister, it is for the Minister alone to decide whether relief will be granted". (Emphasis added.)

[54] The relief, in subsection 34(2), is not illusory, but it is clearly intended to be exceptional.

[55] It is clear that Mr. Chogolzadeh was refused due to his long membership in a terrorist organization, his material support to that organization, and his knowledge of its activities. His disassociation from that organization occurred when he no longer agreed with the MEK's direction (not its tactics). Discretion is not fettered when a factor is ultimately considered as the most significant amongst many, and when it tips the scales against an Applicant.

[56] The MEK was the prime focus of Mr. Chogolzadeh's adult life: he devoted more than a decade of his life to the MEK and, ultimately, nearly paid with his life for his association when the organization had turned against him. The fact that the Minister considered the long-standing membership with the MEK, as determinative of his decision, is reasonable.

VIX. Conclusion

[57] Furthering the goals of an organization known to have been involved in acts, as outlined in section 34 of the IRPA, is integral to the maintaining of the organization's functioning. (Applicant's Record, Briefing Note, p. 11.)

[58] The Briefing Note confirms that the Minister had apprehended the facts and had taken account of the relevant considerations, therein. The Minister was entirely within his discretionary determination to find that Mr. Chogolzadeh's membership in the MEK largely defined his life; thus, to determine that the Applicant did not meet his burden; and, therefore, his decision was not to admit Mr. Chogolzadeh as a permanent resident.

[59] Based on the foregoing, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1356-07
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APPEARANCES:

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