Federal Court  Cour fédérale

Date: 20090922

Docket: IMM-2088-08

Citation: 2009 FC 948

Vancouver, British Columbia, September 22, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

VAHAKN VASKEN KARAKACHIAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the *IRPA* or the Act), of a decision by immigration officer Andrée Blouin, dated February 29, 2008, denying the applicant's application for permanent residence.

[2] The fundamental issue here is whether the officer could reasonably conclude that the applicant is inadmissible on the ground that he is a member of the Armenian Revolutionary

Federation and thereby contravenes paragraph 34(1)(*f*) of the Act. Having studied the records filed by the two parties as well as their written and oral submissions, I have come to the conclusion that this application for judicial review must be allowed.

FACTS

[3] The applicant is a citizen of Lebanon by birth. He also obtained Australian citizenship in 1994 and United States citizenship in 2005. He has been a temporary resident of Canada since February 2000, and he held a work permit that expired on January 12, 2008. He was managing editor of a community newspaper that was named best ethnic publication in Canada by the Department of Heritage in September 2002.

[4] In March 2002, the applicant and his wife initiated procedures to obtain permanent residence in Canada. In June of that same year, they received their Quebec selection certificate. Their application for permanent residence in Canada was received by the Consulate General of Canada in Buffalo on or about September 3, 2002.

[5] The applicant was first interviewed at the Consulate General on or about October 8, 2003. Despite repeated requests by the applicant's representative for a decision on his application, it was not until May 25, 2007 that the Consulate General finally sent the applicant a letter of refusal based on paragraph 34(1)(*f*) of the Act.

[6] On November 22, 2007, this Court granted the applicant leave to apply for judicial review of that initial decision. Consequently, the applicant was asked to appear at the Consulate General of Canada in Buffalo for a second interview, which was held on January 9, 2008.

[7] On February 29, 2008, immigration officer Andrée Blouin sent the applicant a letter in which she informed him that his application for permanent residence (and that of his wife) was denied.

IMPUGNED DECISION

[8] The immigration officer's letter is relatively terse and essentially informs Mr. Karakachian that his application for permanent residence is denied on the ground that there are reasonable grounds to believe that he is a member of an organization referred to in paragraph 34(1)(*f*), that is, an organization that "… engages, has engaged or will engage in acts" of terrorism. The explanations supporting that conclusion are limited to the following single paragraph:

> Specifically, you are a member of the inadmissible class described in subsection 34(1)f). I have reached this conclusion because during your interview on January 9, 2008, your decision to not answer, question or refute our concerns about the violent history of the Armenian Revolutionary Federation (ARF), an organization for which you have confirmed being a supporter for many years and a member for the past 2 years, lead me to conclude that you were not unaware of the past use of violence and terrorism by the ARF to reach its political aims.

[9] In the notes she entered in the CAIPS system on the same day she sent the letter of refusal to the applicant (a month and a half after the interview), the immigration officer expands somewhat on

her reasons for denying the applicant's application for permanent residence. She first explains the reason for the interview, which is that the Court referred the applicant's case to another immigration officer on the ground that he had not been given the opportunity to respond to the allegations that he had supported and even been a member of the Armenian Revolutionary Federation (ARF). She adds:

> Explained that based on information on our file the ARF has been involved in the past in violent actions against government and civilians in order to reach their political goals. I had documents printed from the internet on the desk, and applicant did not ask to see the documentation nor tried to refute my preamble. Coming from open sources, I would have shown them to him if he had asked for them. He did not.

[10] Asked to respond to the officer's concerns, the applicant replied by explaining the social involvement of the ARF and by pointing out to the officer that the ARF was now part of the government in Armenia. He added that he had been a member of the ARF for only the past two years, although he had been a sympathizer before then.

[11] Clearly not satisfied with that reply, the officer repeated her concerns regarding the ARF. Here is what she writes in her notes on the subject:

> I repeated again that we had concerns about the violent activities of the ARF. Applicant was very careful in his answer, saying that he has never read that the party was involved in terrorism. He was very careful, and the formula "having never read" did not come out fluidly.
> Asked again about his response to our concerns of the ARF having used violent actions to reach their goals, applicant started with the historic background of the ARF: created in 1890, working towards a better life for Armenians and Armenia, having the genocide

> recognized; lobbying, etc. Applicant mentioned that there was a terrorist group named Assala, but he mentioned nothing regarding the Justice commandos against Armenian genocide, which have been linked with the ARF.
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> Applicant confirmed that he was a sympathizer and then member of the ARF and he was evasive in responding to the concerns put to him about the violent activities of the ARF. I directly asked the applicant to respond to our concerns about involvement of the ARF in terrorist activities and he deliberately did not address our concerns.

[12] The immigration officer then notes that she again mentioned having information on file, but that the applicant did not ask to see or attempt to rebut that information.

[13] She ends her notes as follows:

> I am not satisfied that the applicant did not know about the past involvement of the ARF in promoting and advocating terrorism to reach its aims. Based on the information on file and put to the applicant, there are reasonable grounds to believe that the ARF is an organization that (engages), has engaged or will engage in acts referred to in A34(1)(a), (b) or (c). This renders him inadmissible under A34(1)f).
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> I am also not satisfied of the *bona fides* of this applicant as he chose to not answer truthfully the questions I asked him. This renders him inadmissible under A16.

ISSUES

[14] This application for judicial review raises three issues:

a. Did the immigration officer breach the principles of procedural fairness by not disclosing her documentary sources to the applicant so that he could respond to them?

b. Did the immigration officer err in concluding that the applicant is a member of a terrorist organization?

c. Did the immigration officer err in concluding that the applicant contravened section 16 of the Act by failing to answer truthfully the questions put to him?

ANALYSIS

- Preliminary Issue

[15] On December 23, 2008, the respondent filed a motion under section 87 of the *IRPA* to obtain the non-disclosure of confidential security intelligence information that was blocked out in the panel's certified record. This motion was supported by a secret affidavit explaining the reasons for which the blocked-out information cannot be disclosed, to which was appended the confidential information that the respondent seeks to protect.

[16] In response to that motion, the applicant requested the appointment of a special advocate to protect his interests in his absence during the hearing of the motion.

[17] In accordance with the practice that has been established in similar matters, an *ex parte* and *in camera* hearing was first held on March 11, 2009, at which the Minister called the author of the secret affidavit filed in support of the motion to testify. I was then able to ask that person questions regarding the information that the respondent seeks to keep confidential and the grounds underlying that motion.

[18] Subsequently, on March 20, 2009, I heard the submissions of the two parties by conference call. On that occasion, counsel for the applicant submitted the grounds on which she believed the Minister's motion should be dismissed and also argued alternatively for the need to appoint a special advocate. The Minister's motion and the applicant's request to appoint a special advocate were then taken under consideration.

[19] On April 6, 2009, another conference call involving counsel for both parties was held, during which I communicated my decision to grant the motion filed by the Minister under the authority of section 87 of the *IRPA* and to deny the applicant's request to appoint a special advocate. I then briefly explained the reasons for my decision, making it clear that I would provide more extensive reasons in the context of the final decision regarding the application for judicial review itself. Here, therefore, are those reasons.

[20] Section 87 is in Division 9 (sections 76-87.1) of the *IRPA* and provides a means of safeguarding the confidentiality of national security information in immigration matters. This provision incorporates, with any necessary modifications, the provisions of section 83 concerning the procedure to be followed with respect to security certificates.

[21] It is settled law that the good administration of justice generally requires judicial debates to be public. However, Canadian courts have repeatedly recognized the constitutionality of *in camera* or *ex parte* hearings where national security considerations so require. In this regard, the Supreme Court wrote:

> More particularly, the Court has repeatedly recognized that national security considerations can limit the extent of disclosure of information to the affected individual. In *Chiarelli*, this Court found that the Security Intelligence Review Committee could, in investigating certificates under the former *Immigration Act, 1976*, S.C. 1976-77, c. 52 (later R.S.C. 1985, c. I-2), refuse to disclose details of investigation techniques and police sources. The context for elucidating the principles of fundamental justice in that case included the state's "interest in effectively conducting national security and criminal intelligence investigations and in protecting police sources" (p. 744). In *Suresh*, this Court held that a refugee facing the possibility of deportation to torture was entitled to disclosure of all the information on which the Minister was basing his or her decision, "[s]ubject to privilege or similar valid reasons for reduced disclosure, such as safeguarding confidential public security documents" (para. 122). And, in *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3, 2002 SCC 75, the Court upheld the section of the *Privacy Act*, R.S.C. 1985, c. P-21, that mandates *in camera* and *ex parte* proceedings where the government claims an exemption from disclosure on grounds of national security or maintenance of foreign confidences. The Court made clear that these societal concerns formed part of the relevant context for determining the scope of the applicable principles of fundamental justice (paras. 38-44).
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> *Charkaoui* v. *Canada (Citizenship and Immigration)*, 2007 SCC 9, at paragraph 58 (Charkaoui No. 1). See also *Almrei* v. *Canada (Minister of Citizenship and Immigration)*, 2004 FC 420, at paragraph 58; *Henrie* v. *Security Intelligence Review Committee (S.I.R.C.)*, [1989] 2 F.C. 229, at page 238; affd at [1992] F.C.J. No. 100 (F.C.A.)

[22] That said, courts must constantly seek to maintain a balance between legitimate national security considerations and the equally legitimate interests of a person pitted against the state in a judicial proceeding. In *Henrie*, above, Justice Addy provided useful reference points for

determining whether certain information would be injurious to national security or endanger the safety of certain persons:

> In criminal matters, the proper functioning of the investigative efficiency of the administration of justice only requires that, wherever the situation demands it, the identity of certain human sources of information remain concealed. By contrast, in security matters, there is a requirement to not only protect the identity of human sources of information but to recognize that the following types of information might require to be protected with due regard of course to the administration of justice and more particularly to the openness of its proceedings: information pertaining to the identity of targets of the surveillance whether they be individuals or groups, the technical means and sources of surveillance, the methods of operation of the service, the identity of certain members of the service itself, the telecommunications and cypher systems and, at times, the very fact that a surveillance is being or is not being carried out. This means for instance that evidence, which of itself might not be of any particular use in actually identifying the threat, might nevertheless require to be protected if the mere divulging of the fact that CSIS is in possession of it would alert the targeted organization to the fact that it is in fact subject to electronic surveillance or to a wiretap or to a leak from some human source within the organization.
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> It is of some importance to realize than an "informed reader", that is, a person who is both knowledgeable regarding security matters and is a member of or associated with a group which constitutes a threat or a potential threat to the security of Canada, will be quite familiar with the minute details of its organization and of the ramifications of its operations regarding which our security service might well be relatively uninformed. As a result, such an informed reader may at times, by fitting a piece of apparently innocuous information into the general picture which he has before him, be in a position to arrive at some damaging deductions regarding the investigation of a particular threat or of many other threats to national security. He might, for instance, be in a position to determine one or more of the following: (1) the duration, scope intensity and degree of success or of lack of success of an investigation; (2) the investigative techniques of the service; (3) the typographic and teleprinter systems employed by CSIS; (4) internal security procedures; (5) the nature and content of other classified documents; (6) the identities of service personnel or of other persons involved in an investigation.

> *Henrie* v. *Canada (Security Intelligence Review Committee)*, above, at pages 242-243.

[23] Given those principles, and having had the opportunity to examine the witness who signed the affidavit in support of the motion filed by the Minister, I came to the conclusion that the disclosure of the confidential information that was blocked out of the panel's certified record would be injurious to national security and endanger the safety of a person. This information must accordingly remain secret and will not be disclosed to the public, the applicant or his counsel.

[24] There remains the question of whether a special advocate should be appointed to protect the interests of the applicant. Contrary to the situation with respect to a security certificate, where the appointment of a special advocate is always required under paragraph 83(1)(*b*), this decision is left to the discretion of the judge who hears the application for judicial review where that application is made in the context of other proceedings provided by law. Under that provision, the judge may appoint a special advocate if the judge is of the opinion that "considerations of fairness and natural justice" so require.

[25] In the context of the case at bar, the appointment of a special advocate does not seem necessary to me for the following reasons. I note first of all that the applicant cannot benefit from any of the rights under section 7 of the Charter since he applied for a visa outside the country in order to obtain permanent resident status in Canada. Such an application does not affect his life, liberty or security since Mr. Karakachian is not in detention and does not risk being removed to a

country where he could suffer mistreatment, but involves economic interests at most: *Malkine* v. *Canada (Citizenship and Immigration)*, 2009 FC 496, at paragraph 24.

[26] As my colleagues have noted in similar situations, the requirements of procedural fairness must be adapted to the particular circumstances of each case. Not being a Canadian citizen, Mr. Karakachian has no right to enter Canada: *Canada (Minister of Employment and Immigration)* v. *Chiarelli*, [1992] 1 S.C.R. 711, at paragraph 24. In fact, the Federal Court of Appeal has already held that the duty of fairness owed to visa applicants is minimal: *Khan* v. *Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345; *Chiau* v. *Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297

[27] Furthermore, the portions of the certified record that were blocked out were not substantial and do not prevent the applicant from availing himself of all means against the negative decision he is challenging. His counsel admits, in fact, that the information to which he is being refused access probably came from him; what he is alleging, therefore, is not ignorance of that information but rather its possible interpretation. That does not strike me as a valid ground for appointing a special advocate.

[28] Having read the entire record, and in particular the blocked-out evidence that is the subject of the motion filed by the Minister under section 87 of the Act, I have therefore come to the conclusion that Mr. Karakachian had access to the gist of the information on which the immigration officer relied to deny him a permanent resident visa. The information to which he does not have

access would add little to his understanding of the reasons for the decision and in no way prevents him from advancing all possible arguments against the decision. In these circumstances, the appointment of a special advocate is not required to ensure procedural fairness before this Court.

- Standard of Review

[29] The question of whether the ARF is a terrorist organization is one of mixed fact and law, in that it is necessary first to define what a terrorist organization is and then to determine whether the organization in question can be characterized as such. This Court has found that the question of whether an organization falls within paragraph 34(1)(*f*) of the Act must be reviewed on the reasonableness standard: see, for example, *Kanendra* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FC 923; *Omer* v. *Canada (Minister of Citizenship and Immigration)*, 2007 FC 478; *Yamani* v. *Canada (Minister of Public Safety and Emergency Preparedness*), 2006 FC 1457*; Rajadurai* v. *Canada (Minister of Citizenship and Immigration)*, 2009 FC 119; *Jilani* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FC 758. The same holds for the related question of whether the applicant was a member of that organization: *Poshteh* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85. Finally, the same standard must also be applied in reviewing the officer's decision made under subsection 16(1) of the Act, given the major factual basis of such a decision.

[30] The Court must therefore ask itself whether the decision made by the officer has the qualities of reasonableness, that is, whether the decision-making process was justified, transparent and intelligible, and whether the decision falls within a range of possible, acceptable outcomes

which are defensible in respect of the facts and law; *Dunsmuir* v. *New Brunswick*, 2008 SCC 9, at paragraph 47.

[31] In this regard, it is important not to confuse the standard of review with the standard of proof. Under paragraph 34(1)(*f*) of the Act, the standard of proof that applies is set out in section 33. These two provisions read as follows:

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.	**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.
34. (1) A permanent resident or a foreign national is inadmissible on security grounds for: (*a*) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada; (*b*) engaging in or instigating the subversion by force of any government; (*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	**34.** (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants : *a*) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada; *b*) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force; *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

organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (*a*), (*b*) or (*c*).	motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas *a*), *b*) ou *c*).

[32] The standard of proof that corresponds to the existence of "reasonable grounds to believe" requires more than mere suspicion but less than the civil standard of balance of probabilities. Reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information. Here is what I wrote in *Moiseev v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 88, [2008] F.C.J. No. 113, at paragraph 16:

> The standard of review should not be confused with the standard of proof required to establish inadmissibility under section 34 of the *IRPA*. In making its finding that the applicant was inadmissible on security grounds pursuant to that section, the visa officer had to pay attention to section 33 of the *IRPA*, according to which facts that constitute inadmissibility "include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur". The "reasonable grounds" standard requires "a *bona fide* belief in a serious possibility based on credible evidence" (…). The Supreme Court of Canada has found that this standard requires more than suspicion, but less than the civil standard of balance of probabilities: see *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40.

[33] Therefore, the role of this Court is not to determine whether the ARF is or was a terrorist organization, nor even whether there were reasonable grounds to believe that the applicant falls within paragraph 34(1)(*f*), or, on a balance of probabilities, also falls within subsection 16(1) of the Act. The only question that the Court must decide is whether the officer could reasonably come to the conclusion she reached, based on the evidence before her: *Thanaratnam* v. *Canada (Minister of*

Citizenship and Immigration), 2005 FCA 122, at paragraphs 32-33; *Mendoza* v. *Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 934, at paragraph 25.

[34] Lastly, it goes without saying that questions of procedural fairness do not require a standard of review analysis. If the Court finds that the duty of fairness has been breached, it has no choice but to allow the application for judicial review: *A.G. of Canada* v. *Sketchley*, 2005 FCA 404.

- Procedural Fairness

[35] The applicant submits that the impugned decision is rendered invalid by a breach of procedural fairness because the officer did not disclose her documentary sources to him, so that he was unable to examine them and then discuss them with her. He alleges more specifically that at no time did the officer show him the documents, cite them or allow him to consult them.

[36] For her part, the officer reports in the notes she wrote after the applicant's interview that the printed documents she had obtained on the Internet were on her desk and that the applicant never asked to see them. Consequently, the respondent argues that the applicant waived his right to obtain a copy of the documentation on which the officer relied in making her decision and accepted the situation, and therefore cannot complain about it now.

[37] In the circumstances here, I do not think one can infer from the applicant's conduct a tacit waiver of his right to be informed of the content of the documents on which the officer relied in making her decision. The applicant was not represented during the interview and he cannot be

faulted for not asking to see the documents that were on the officer's desk in the absence of any offer on her part. It seems to me that the applicant could legitimately assume that the documents on the officer's desk were not intended for him.

[38] A person who appears before a government authority is generally not on an equal footing and will generally not assume that he is entitled to see documents that happen to be on the desk of the person interviewing him. Since the officer did not expressly invite him to consult the documents on which she was relying, the applicant could reasonably believe that he was not permitted to see them. I realize that the duty of fairness is relatively relaxed in the context of an application for permanent residence. Nevertheless, the applicant's ability to respond to the officer's concerns regarding the true nature of the ARF was seriously hindered by the ignorance in which he was kept as to the documents consulted. Consequently, I am of the opinion that the applicant's right to procedural fairness was infringed.

- Did the immigration officer err in concluding that the applicant is a member of a terrorist organization?

[39] A close reading of the reasons given by the officer for concluding that the ARF is a terrorist organization and that the applicant was a member of that organization reveals several flaws. First, nowhere in her decision does she specify what she means by the word "terrorism". Yet this is a concept which is at the very heart of paragraph 34(1)(*f*) and of which several definitions can be found in international instruments and Canadian caselaw: see, among others, *Suresh* v. *Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3. Although the term as such is not

defined in the *Criminal Code*, R.S.C. 1985, c. C-46, the expressions “terrorist activity” and “terrorist group” are defined in subsection 83.01(1). This Court has stated on more than one occasion that an immigration officer must indicate in clear terms what constitutes terrorism and how the concept applies in the specific case of the applicant who is denied a visa: *Jalil* v. *Canada (Minister of Citizenship and Immigration)*, [2006] 4 F.C.R. 471; *Naeem* v. *Canada (Minister of Citizenship and Immigration)*, 2007 FC 123; *Mekonen* v. *Canada (Minister of Citizenship and Immigration)*, 2007 FC 1133; *Beraki* v. *Canada (Minister of Citizenship and Immigration)*, 2007 FC 1360.

[40] I note in passing that the ARF is not on the list of terrorist organizations established by the government under the authority of the *Anti-terrorism Act* (S.C. 2001, c. 41). The respondent is right to argue that this requirement does not appear anywhere in the text of subsection 34(1) of the Act. The fact that an organization does not appear on that list can nevertheless be considered one indicia among others that it is not a terrorist organization, at least in the eyes of the Canadian government.

[41] The Minister also submitted that the officer had indeed provided a definition of terrorism to the extent that one of the documents she cites in her notes contains such a definition. I do not consider that sufficient, and for several reasons. First, nothing in the officer’s notes would suggest that she has adopted all of the statements found in that document, which is several pages long; it cannot be presumed from the fact that she refers to the document without any further comment that she endorses everything it contains, even though it cites, among other things, a United Nations resolution adopted in 1994 that gives a definition of what constitutes terrorism. Moreover, the

officer could not delegate to a third party, in this instance a foreign government, the responsibility of determining what must be considered a terrorist organization for the purposes of enforcing a Canadian statute. And there, indeed, lies the problem: the document she cites comes from the Ministry of Foreign Affairs of Azerbaijan and is entitled “Armenian Aggression Against Azerbaijan”. It would have been far preferable for the officer to refer to the definition of terrorism given by the Supreme Court in *Suresh*, for example, to interpret a Canadian statute. I will return to that document a little farther on.

[42] In short, I do not believe that the officer discharged her duty to define a terrorist organization for the purposes of paragraph 34(1)(*f*). Before finding that the ARF is an inadmissible organization of which the applicant was a member, she had to set out her thinking in clear terms and could not in effect delegate this responsibility to another agency, without even giving her reasons for adopting that definition.

[43] I also believe that it was unreasonable for the officer to find that the ARF is a terrorist organization, and this for several reasons. First, the documentary evidence on which she relied to draw that conclusion is dubious and lacking in rigour to say the least. Indeed, the officer relied on only two documents consulted on the Internet, the first originating with the Ministry of Foreign Affairs of the Republic of Azerbaijan, to which I have already referred above, and the second being a very short (half-page) biography of Samuel Weems, a disbarred American lawyer better known for his relentless campaign to deny the Armenian genocide. It is important to note that this biography was taken from the Wikipedia online encyclopedia.

[44] It is hard to believe that the officer found these mere two documentary sources sufficient to make a decision as important as declaring someone inadmissible to Canada because of his membership in a terrorist organization. The objectivity of the document originating with the government of Azerbaijan is seriously questionable, given the conflict which has existed for many years between that country and Armenia and which stems notably from the two countries' territorial claims on Nagorno-Karabakh. In that context, it is not difficult to imagine that a government would be more likely to characterize as "terrorist" an organization based in the country with which tensions remain high despite an official cease-fire.

[45] As for Wikipedia, this Court has on several occasions stressed its limitations in terms of reliability: see, among others, *Fi* v. *Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125; *Sinan* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FC 714; *Khanna* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FC 335. Wikipedia is an online encyclopedia to which individuals contribute voluntarily without editorial supervision or control. There is a link on the site's home page to the following disclaimer:

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[46] It was therefore risky to say the least to rely on those two sources to conclude that the ARF is a terrorist organization. Moreover, a careful reading of those documents did not allow the officer to reasonably draw the conclusion that the ARF is a terrorist organization. Even though the movement may have had subversive aims when it was founded in 1890, its objectives may have since changed. In fact, it appears that the ARF is now a recognized political party, a member of the Socialist International, and has even been part of the Armenian government in recent years. Finally, the document from the government of Azerbaijan does not clearly establish ties between the ARF and various Armenian splinter groups that committed terrorist acts on its territory until 1994. In any case, the all-out attack on the Armenian government and its purported support of international terrorism suggests that the document is more a propaganda exercise than a rigorous analysis of the ARF and the prevailing situation in Armenia.

[47] The Minister argued that it was largely immaterial whether the ARF was still a terrorist organization and that for the purposes of paragraph 34(1)(*f*) of the Act it was sufficient for an organization to have engaged in terrorist acts in the past for it to fall under that provision. In that regard, I agree with my colleague Justice Snider when she wrote in *Al Yamani* v. *Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1457, that timing is not a factor that should be taken into consideration because paragraph 34(1)(*f*) clearly refers to membership in an organization that there are reasonable grounds to believe has engaged in acts of terrorism in the past.

[48] That said, I believe that this must be qualified to a certain extent. It is easy to imagine that the passage of time might be immaterial where an organization has been inactive for some time but has not formally renounced violence. On the other hand, the situation strikes me as entirely different where a violent organization has transformed itself into a legitimate political party and has expressly given up any form of violence. It is difficult to believe that Parliament's intent was to render inadmissible any person belonging to a legitimate political party from the mere fact that the party may have been considered a terrorist organization before that person joined it.

[49] It is true that subsection 34(2) of the Act softens the inadmissibility provisions contained in the different paragraphs of subsection 34(1) by providing that a permanent resident or a foreign national may make an application with a view to satisfying the Minister that "their presence in Canada would not be detrimental to the national interest." However, I am not satisfied that subsection 34(2) was enacted to deal with the type of situation in which Mr. Karakachian finds himself. Rather, it seems to me that this case essentially raises the prior question of whether Mr. Karakachian can be considered a member of a terrorist group.

[50] It is therefore my opinion, for all the reasons mentioned in the preceding paragraphs, that the officer erred in finding that the applicant was a member of a terrorist organization. She could not reasonably conclude, based on the documentary evidence before her, that the ARF is or was a terrorist organization. As already mentioned, it is not for this Court to determine whether the ARF falls within paragraph 34(1)(*f*). That determination must be made by another immigration officer, taking into account the principles that issue from these reasons.

- Section 16 of the *IRPA*

[51] It would technically not be necessary for me to deal with the submissions of the two parties with respect to section 16 of the Act, given my findings concerning paragraph 34(1)(*f*). It is true that an unfavourable finding under either of those provisions is sufficient in principle to dismiss the application for judicial review. Nevertheless, I believe that the errors committed in applying paragraph 34(1)(*f*) are sufficiently serious to warrant referring the matter to another immigration officer. In any case, the reasoning adopted by the officer pursuant to section 16 strikes me as just as problematic as her approach under paragraph 34(1)(*f*).

[52] Subsection 16(1) of the Act provides that an applicant must act transparently and in good faith in his dealings with the Department's representatives. It reads as follows:

16. (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**16.** (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[53] A reading of the officer's notes discloses that the applicant was patently not in agreement with her perception of the ARF. Asked to respond to the officer's concerns about what she considered to be terrorist activities by the ARF, the applicant replied by pointing out the ARF's social involvement, the party's participation in the Armenian government and the fact that it was running a candidate in the next election. When the officer continued by asking him what he thought

of the violent acts committed by the ARF to achieve its aims, the applicant merely reminded her of the historical origins of the movement and its aims.

[54] An applicant's statement can be characterized as truthful or not if it concerns factual data the accuracy of which can be verified or questioned. Yet none of the information provided by the applicant was questioned. Rather, what the officer faults the applicant for is not agreeing with her opinion concerning the ARF. But the fact that he does not share her point of view in no way means that the applicant is concealing anything from her or attempting to evade her questions. A person cannot be accused of lying merely because they do not give the answers one wants to hear, or because they disagree with the premises underlying the question.

[55] Given all the preceding reasons, I am therefore of the opinion that the immigration officer's decision was seriously flawed and cannot in any way be considered a conclusion that a reasonable person would reach on the basis of the information that was available. Accordingly, this second application for judicial review made by the applicant must be allowed.

[56] The parties submitted no question for certification, and I will certify none. Counsel for the applicant argued that the certification of a question would unreasonably delay a decision in a matter that has already dragged on for too long. It is now over seven years since Mr. Karakachian filed his application for permanent residence. I am sensitive to that argument and I am also of the opinion that the applicant is entitled to a prompt consideration of his application in accordance with the Act.

ORDER

THE COURT ORDERS that the application for judicial review be allowed and that the applicant's matter be referred to a different immigration officer to be assessed without delay in accordance with the Act and taking into account these reasons.

"Yves de Montigny"
Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2088-08
STYLE OF CAUSE:	VAHAKN VASKEN KARAKACHIAN v. MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 25, 2009
REASONS FOR ORDER AND ORDER BY:	de Montigny J.
DATED:	September 22, 2009

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