Federal Court Cour fédérale

Date: 20130820

Docket: IMM-4193-12

Citation: 2013 FC 883

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, August 20, 2013

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

ZOUHAIR EL MAGHRAOUI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>REASONS FOR JUDGMENT AND JUDGMENT</u>

[1] The applicant is seeking judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), of a decision by a Citizenship and Immigration Canada (CIC) officer on April 17, 2012, refusing the applicant's application for permanent residence on the basis that there are reasonable grounds to believe that he is inadmissible for misrepresentation and on security grounds as a member of a terrorist organization under

paragraph 34(1)(*f*) and subsection 40(1) of the *IRPA*. The officer also found that it was not appropriate to grant the applicant an exemption for humanitarian and compassionate considerations under section 25 of the *IRPA* given the seriousness of the inadmissibilities.

Facts

[2] The applicant, a Tunisian citizen, arrived in Canada in 1995. His application for refugee protection was rejected in 1997; the application for leave and judicial review of that decision was dismissed on January 7, 1998. In February 1998, he married Ms. Amina El Maachi, who is now a Canadian citizen. The couple have three minor children born in Canada, and Ms. El Maachi also has two children from a previous marriage.

[3] In April 1998, the applicant applied for permanent residence and an exemption based on humanitarian and compassionate considerations. That application was sponsored by his wife. On September 20, 1999, a CIC officer concluded that the marriage was bona fide and approved the application at the first stage, subject to the examination of inadmissibilities that might apply in this case. However, Quebec's Ministère de l'Immigration et des Communautés culturelles rejected Ms. El Maachi's application for undertaking submitted on September 29, 2000, with the result that the applicant's application for permanent residence was no longer sponsored.

[4] The applicant met with officers from the Canadian Security Intelligence Service (CSIS) on August 22, 2001, and January 16, 2002, concerning his application for permanent residence. On or about December 29, 2003, CSIS sent a first report about the applicant to the Canada Border Services Agency (CBSA). A new report was subsequently sent on March 3, 2011.

[5] On June 19, 2009, the applicant sent a demand letter to CIC, requiring it to grant him permanent residence forthwith. On March 18, 2010, CIC asked Mr. Maghraoui for an update on his case. In his response of January 21, 2011, the applicant requested the disclosure of [TRANSLATION] "all information (from external or internal sources) related to potential inadmissibility concerns".

[6] On November 22, 2011, CIC called the applicant in for an interview. He was advised that [TRANSLATION] "the information available indicates that there is a possibility that you are described in paragraphs 34 and/or 40 of the *IRPA*". The interview was held on December 6, and the officer's decision is dated April 17, 2012.

Impugned decision

[7] The officer concluded that the applicant was inadmissible under paragraphs 34(1)(*f*) (security) and 40(1)(*a*) (misrepresentation) of the *IRPA*. She acknowledged at the beginning of her analysis that the applicant's statement regarding the witness to his son's birth had been improperly recorded in CSIS' notes but nonetheless found that the entire document was not necessarily invalid because of that.

[8] First, with respect to inadmissibility for misrepresentation, the officer identified a number of misrepresentations by the applicant that could have induced an error in the administration of the *IRPA*. She initially noted the applicant's false narrative that was submitted to obtain refugee status as well as the inconsistencies, omissions and minimization of the ties he had had with a number of individuals connected to the Al-Qaida network.

[9] The officer found that the applicant had submitted a narrative that was not credible in support of his refugee claim that was rejected in 1997. The applicant was alleging at that time that he was associated with a religious group named [TRANSLATION] "Sufism Group" to [TRANSLATION] "stop the practice of homosexuality". The Tunisian authorities associated him at that time with the Islamic group El-Nahda. It was not until 14 years later that the applicant corrected his statements and conceded that he had never been a member of the [TRANSLATION] "Sufism Group" and that he had never been arrested and detained by the Tunisian authorities. The officer found that [TRANSLATION] "the fact that the claimant lied undermines his credibility and also suggests to me that he may be hiding important facts about his history in Tunisia"(Decision, para 20).

[10] The officer also noted that the applicant gave conflicting evidence about his ties to a certain Hicham Gherras and one Ahmed Laabidi. The applicant had stated that he did not know Laabidi. He corrected himself after the CSIS officer confronted him with the fact that Laabidi had been a witness to his marriage. As for Gherras, the officer noted that the applicant had been unable to identify him in a photo in 2001 but that he was able to do so in 2002. The evidence shows that in November 2000, Mr. Gherras' spouse was arrested in Germany and had in her possession the passport of the applicant's wife. After an exchange with the officer, the applicant blamed his wife's son who had perhaps sold the passport. The officer found that this was a [TRANSLATION] "surprising coincidence" and that the applicant's ties with Mr. Gherras were more significant than what the applicant had indicated.

[11] The officer's decision is based, however, on the fact that the applicant did not disclose the extent of his ties with two individuals connected to the Al-Qaida network, Raouf Hannachi and

Mohamedou Ould Slahi. At his first interview with CSIS in August 2001, the applicant indicated that he sometimes saw Raouf Hannachi at the mosque, the soccer stadium and the Tunisian café. At the second interview in January 2002, the applicant identified Raouf Hannachi in a photograph, stating that he had never been invited to his home. However, when questioned by the officer at the interview and confronted with CSIS' notes, the applicant said that he had never seen Raouf Hannachi. The officer concluded that the applicant was seeking to minimize the closer ties he had with Raouf Hannachi and thus made a misrepresentation within the meaning of paragraph 40(1)(*a*) of the *IRPA*.

[12] With respect to Slahi, the applicant identified him in a photo at his interview with CSIS in 2001 and said that he was a contact at the mosque. In 2002, he was unable to identify him in a photo and denied knowing him at the interview with the officer although Slahi had said that he knew the applicant. The officer found that the conflicting testimony about the ties that the applicant had (or had had) with Messrs. Hannachi and Slahi created doubt about the frankness and candour of his narrative and that he was minimizing those ties out of fear that they would adversely affect his application for permanent residence.

[13] With respect to paragraph 34(1)(*f*) of the *IRPA*, the officer noted that anyone who provides logistical support or participates in any way in the activities of a terrorist organization may be considered a member of the organization. She then stated that it was clear from both the open and classified evidence that the applicant had close ties with known members of the Al-Qaida network, namely, Hannachi and Slahi. She added that these two individuals were connected to

Ahmed Ressam, who is currently imprisoned in the United States for conspiring to bomb the Los Angeles airport at the turn of the millennium.

[14] Moreover, the officer had doubts about the source of a balance of more than $30,000 in the joint account of the applicant and his wife, considering their low declared income and the fact that they were caring for three minor children. The applicant stated that part of the money, i.e. $10,000, had been entrusted to him by his wife's daughter; she also had two children and worked only occasionally in non-specialized jobs. Accordingly, the officer did not find the applicant's explanations satisfactory.

[15] Considering all these factors, the officer made the following comments regarding national security:

> [TRANSLATION]
>
> [58] I considered the applicant's statements as well as all the available information, both open and classified. I noted and also considered the following factors:
>
> - the applicant's close ties with individuals who are members of the Al-Qaida network or connected to it;
> - the applicant's attitude at the interview, tending to minimize or deny these ties;
> - the applicant's inconsistencies and omissions regarding the individuals he associated with;
> - the applicant's lack of credibility.
>
> [59] In the context of the security assessment, an essential process to obtain permanent residence, the applicant chose to hide important information about his relationships with persons connected to the Al-Qaida network. This makes me think that the applicant knew he should not associate with these individuals.
>
> [60] Moreover, the applicant stated that he had never taken part in any activity associated with Islamist extremism or an Islamist organization. However, the applicant's credibility, tainted by his

> misrepresentations, combined with the classified information, causes me to reasonably doubt the sincerity of the applicant's statements in this regard.
>
> [61] Thus, considering the foregoing, I assigned significant weight to the classified information and to the fact that the applicant misrepresented his ties with individuals connected to the Al-Qaida network (see classified notes).
>
> [62] Finally, I also considered the broad and non-restrictive interpretation given by Canadian courts to the notion of 'member' of an organization.
>
> [63] In my opinion, all the preceding factors combined give me reasonable grounds to believe that the applicant was a member of the Al-Qaida network. Consequently, the applicant is described in section 34(1)(*f*) of the *IRPA* and is inadmissible to Canada.
>
> [64] Moreover, I am of the view that, given the questions put to him at the interview, the applicant was reasonably informed about CIC's concerns and hence had the opportunity to respond.

[16] With respect to the application for exemption on humanitarian and compassionate grounds, the officer initially noted that the applicant had not demonstrated the existence of a personalized fear in Tunisia. She said she was sensitive to the applicant's situation, particularly the fact that he had been in Canada since 1995, that his wife's health was fragile and that he had three children in Canada. The officer also considered the fact that the applicant supported his family financially and morally and that it was not in the best interests of the children that the applicant be returned to Tunisia. She nonetheless concluded that the seriousness of the inadmissibilities prevailed over these difficulties:

> [TRANSLATION]
>
> [74] I reached the conclusion earlier that the applicant is inadmissible to Canada under L34(1)(*f*), because there are reasonable grounds to believe that he was a member of the Al-Qaida network. It is a global organization with cells scattered over the entire world and with

> members and collaborators ready to engage in violent terrorist actions in the name of an extremist Islamic ideology. Furthermore, Al-Qaida has been implicated in numerous terrorist attacks, including the one in the United States in September 2001. After a thorough review of the humanitarian and compassionate grounds invoked, I found that if the applicant had to leave Canada, he and all the members of his family in Canada would experience significant difficulties. However, I am of the opinion that the seriousness of the inadmissibility overrides these difficulties in this case.
>
> [75] In addition, by misrepresenting his ties to persons of interest connected to the Al-Qaida network, the applicant tried to circumvent the obligation to provide all information relevant to his background check, which is part of the requirements that all applicants for permanent residence must comply with. In my opinion, the applicant thereby attempted to interfere with the security checks. Accordingly, the inadmissibility under L40(1)(*a*) that the applicant faces is linked to national security considerations. In my opinion, the difficulties noted earlier are not as serious as the inadmissibility, and lifting it is not warranted in the circumstances of this case.

Issues

[17] The applicant did not really challenge the reasonableness of the officer's decision on the merits. Both in her written representations and at the hearing, his counsel invoked a number of breaches of procedural fairness that taint the officer's findings. She particularly argued that the procedure followed in this case violated the rights protected by section 7 of the *Canadian Charter of Rights and Freedoms* in a number of respects. I will therefore rule in the paragraphs on the following arguments put forward by counsel for the applicant:

> (a) Did the officer breach her duty to disclose, procedural fairness and the applicant's rights protected under section 7 of the *Charter* by not providing him with the information and documents regarding her concerns about the applicant's admissibility under sections 34 and 40 of the *IRPA*?
>
> (b) Should the officer have disregarded the CSIS reports because they are unreliable?
>
> (c) Should the officer have excluded the CSIS reports inasmuch as the interview notes had been destroyed?

Analysis

[18] It is now settled law that the applicable standard of review where the question is whether the principles of natural justice and procedural fairness were respected is correctness: *Sketchley v Canada (Attorney General)*, 2005 FCA 404, [2006] 2 FCR 392; *Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100, [2003] 1 SCR 539. Consequently, this Court will not show any deference if it finds that the officer did not meet her obligations with respect to the applicant.

a. Did the officer breach her obligation to disclose, procedural fairness and the applicant's rights protected under section 7 of the *Charter* by not providing him with the information and documents regarding her concerns about the applicant's admissibility under sections 34 and 40 of the *IRPA*?

[19] The applicant alleges that the officer breached procedural fairness and the rights guaranteed to him under section 7 of the *Charter* by not disclosing, prior to the interview, all the evidence that was before her. He adds that the information that he was confronted with at the interview, as well as the redacted copies of the report issued by CSIS on December 29, 2003, and CSIS' interview notes obtained as a result of an access request, were not sufficient to enable him to respond to the officer's concerns. According to the applicant, the disclosure of these reports was necessary to [TRANSLATION] "equalize the chances". Finally, he submits that even the public documents, to which the officer assigned considerable weight, should have been provided to him.

[20] I cannot accept this argument for the reasons that I set out in *Jahazi v Canada (Citizenship and Immigration)*, 2010 FC 242 at para 32, [2011] 3 FCR 85 and *Stables v Canada (Minister of*

Citizenship and Immigration), 2011 FC 1319 at para 40-42, 400 FTR 135. In order for the right under section 7 of the *Charter* to be dealt with in accordance with the principles of natural justice, a person must first establish that he or she has been deprived or could be deprived of life, liberty or security of the person. In *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 SCR 350, the Supreme Court of Canada stated that section 7 of the *Charter* applied because the persons named in a security certificate were detained and could be returned to a country where there was a risk of torture:

> [17] *Medovarski* thus does not stand for the proposition that proceedings related to deportation in the immigration context are immune from s. 7 scrutiny. While the deportation of a non-citizen in the immigration context may not *in itself* engage s. 7 of the *Charter*, some features associated with deportation, such as detention in the course of the certificate process or the prospect of deportation to torture, may do so.

[21] In this case, the applicant is not detained, and the *IRPA* does not require his detention. He is not facing a removal from Canada and will be able, if necessary, to file an application for a pre-removal risk assessment under section 115 of the *IRPA*. In addition, there is no evidence of a personalized risk to his life or security of his person if he were returned to Tunisia. At the risk of repeating myself, I believe it would be useful to reiterate the following passage from my reasons in *Stables:*

> [40] It has been held, time and again, that a finding of inadmissibility does not, in and of itself, engage an individual's section 7 interests (see, for example, *Poshteh v Canada (MCI)*, 2005 FCA 85 at para 63, [2005] 3 FCR 487 [*Poshteh*]; *Barrera v Canada (MEI)*, [1993] 2 FC 3 at pp 15-16, 99 DLR (4th) 264. Even if it is true that the Applicant, not being a refugee, could be deported while he awaits the processing of his ministerial relief application, it would still not be sufficient to trigger the application of section 7 rights (*Medovarski v Canada (MCI)*, 2005 SCC 51 at para 46, [2005] 2 SCR 539; *Canada (MEI) v Chiarelli*, [1992] 1 SCR 711, at paras 12, 13; *Hoang v Canada (MEI)* 24 ACWS (3d) 1140 (FCA), 120 NR 193 (FCA)).

> [41] Such a finding is consistent with the basic constitutional foundation of Canadian immigration law, to wit, that only Canadian citizens have the absolute right to enter and remain in Canada. Non-citizens do not have an unqualified right to enter or remain in Canada, and their ability to do so is strictly dependant on their satisfaction of the admissibility criteria decided by Parliament.
>
> [42] It is true that in *Suresh*, above, the Supreme Court determined that the removal of a Convention refugee from Canada to a country where a person would face a risk of torture engages the rights protected under s. 7 of the Charter and cannot proceed unless it is consistent with the principles of fundamental justice. It was the risk of torture on removal, though, and not the fact of removal itself, that engage the applicant's section 7 interests in that case. . . .

[22] That being said, the principles of procedural fairness require that an applicant be provided with the information on which a decision is based so that the applicant can present his or her version of the facts and correct any errors or misunderstandings. This duty of fairness can be met without always having to furnish all the documents and reports the decision-maker relied on. This will be the case, in particular, where a document is protected by privilege based on national security or on the solicitor-client relationship. Ultimately, the concern will always be to ensure that the applicant has the opportunity to fully participate in the decision-making process by being informed of information that is not favourable to the applicant and having the opportunity to present his or her point of view: see, in particular, *Dasent v Canada (Minister of Citizenship and Immigration)* (TD), [1995] 1 FC 720 at para 23; *Mekonen v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1133, at para 12 and ff.; *Nadarasa v Canada (MCI)*, 2009 FC 1112 at para 25, [2009] FCJ No 1350 (QL). The greater the impact of the impugned decision, the stricter this requirement will be: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 31-33. In this case, the decision to reject the applicant's application for permanent residence because there were reasonable grounds to believe that he was inadmissible for misrepresentation and for being a

member of a terrorist organization could have significant repercussions if he were deported to his country of origin.

[23] After reading the entire record as well as the information that was excluded on the ground of national security, I have concluded that the officer did not breach her duty to respect the principles of procedural fairness. The officer called the applicant in for an interview and indicated that she had concerns about the inadmissibilities for misrepresentation (*IRPA*, s 40) and security (*IRPA*, s 34). The call-in letter stated the purpose of the interview as follows:

> [TRANSLATION]
> The purpose of the interview is for us to share our concerns with you and to give you the opportunity to respond. Among other things, we will discuss your activities and your contacts in Canada, past and present. We will examine your immigration history in general and, in particular, the inconsistent statements you made in your application for permanent residence.

[24] The applicant cannot therefore argue that he was taken by surprise. In any event, the two interviews with CSIS could not have left any doubt in his mind as to the concerns the Canadian authorities had about him because of his ties with specific individuals who were possibly part of the Islamist movement. Furthermore, through an access to information request, the applicant had obtained a copy of the interview notes with CSIS dated August 30, 2001, and January 31, 2002. The applicant received the notes on November 26, 2008, three years before his hearing. Although the notes arrived redacted, he was still able to recall the topics covered at those interviews and had to have known what was said because he was obviously present at those interviews. Moreover, it was because of these notes that he understood the relevance of introducing into evidence the birth

registration of his son, Mouaadh, in order to establish that it had been signed by a nurse and not by Hicham Gherras as was suggested in the interview notes of December 2003 recorded by CSIS.

[25] Moreover, it is clear from the interview notes that the officer confronted the applicant on the essential points of the inconsistent statements and omissions that she was accusing him of. She went back to the answers he had given at the two interviews with CSIS agents and referred to the key information in those reports. She allowed him to make all the corrections and clarifications he wished and to present his version of the facts, particularly regarding his ties with Raouf Hannachi, Mohamedou Ould Slahi, Ahmed Laabidi and Hichem Guerras. By way of example, I will quote the following paragraphs from the interview notes:

> [TRANSLATION]
>
> 82. At your interview with CSIS on AUG222001, you were asked if you knew the Tunisian Ahmed Laabidi and you said that you did not know that name. Why didn't you say right away that you knew him?
>
> 83. At CSIS in August 2001, why didn't you say that Djelloul Bouhali had been your witness?
>
> …
>
> 96. During the interview on August 22, 2001, with CSIS, when you were shown a photo of Hicham, you stated that you had seen him at the mosque but could not identify him. As you described to me, Chayma was born on July 16, 2001, you had this interview about five weeks after he was born, it was very close. How do you explain that you could not recognize where you saw him?
>
> 97. Then, at the interview on January 16, 2002, you said you had seen Hicham at the hospital in September 1998 because his wife shared a room with your wife for her delivery. Why are you telling me today that it was when Chayma was born but at the time you said it was when Mouaadh was born?
>
> …

> 101. According to the information I have, you told CSIS that yes, in fact, Hicham signed for Mouaadh's birth?
>
> 102. According to the information I have, you were shown his photo?
>
> …
>
> 105. The information in the file also indicates that H. Gherras' wife was arrested in Germany in November 2000 with the ppt of your wife. Explanation?
>
> …
>
> 110. With regard to this person [Mohamedou Ould Slahi], during the interview with CSIS on August 22, 2001, you were shown his photo, you recognized him, you said he was a contact at the Assuna mosque by the name of 'Abdullah'?
>
> 111. If I gave you his name? … It's the name you gave to CSIS, I'll give you his real name.
>
> 112. Still on the subject of Mr. Ould Slahi, if I told you that I have information that Mr. Ould Slahi was also seen by CSIS, and he said that he knew you quite well, what would you say?
>
> …
>
> 121. You say that you never met Raouf Hannachi in person?
>
> 122. And yet, at CSIS, you said that you had seen him? … Do you remember that you were questioned about Raouf?
>
> 123. However, at CSIS you were questioned about him several times, and you stated that you saw him in public places but that you had never seen him in any private home?

[26] These numerous questions attest to the fact that the applicant's attention was specifically drawn to the inconsistencies that were noted based on the different responses he gave to the same questions and that he had ample opportunity to explain. The applicant, moreover, did not try to demonstrate how his participation in the process would have been different had he received the

CSIS reports (in their entirety or redacted) in advance and did not give any example of what he might have said if he had read those reports prior to the interview. On the contrary, he provided the officer with the same explanations (particularly regarding his wife's passport) that he had provided earlier regarding the discrepancies between his different answers.

[27] Taking all the foregoing into account, I have reached the conclusion that the process followed by the officer was fair and did not deprive the applicant of the opportunity to shed light on his activities and his relationships with the four individuals suspected of being involved in the Al-Qaida network's Islamist movement. The officer was not required to give the CSIS reports to the applicant. The Supreme Court of Canada has recognized on a number of occasions that national security considerations may limit the scope of the disclosure of information to an individual: *Ruby v Canada (Solicitor General)*, 2002 SCC 75, [2002] 4 SCR 3; *Suresh*, above; *Charkaoui*, above. Moreover, there is no similar mechanism to the one provided in sections 86 and 87 before the IRB and the Federal Court enabling the Minister to bring a motion for non-disclosure in an administrative proceeding. It is not at all certain that an officer of the Minister can, without statutory authorization, redact on his or her own initiative and without any framework, information whose disclosure could, in the officer's opinion, be injurious to national security or the safety of any person. For the purposes of complying with procedural fairness, what is important is that the information contained in the documents on which the decision-maker bases his or her decision be communicated to the applicant, as opposed to the documents themselves. In this case, this duty was discharged.

[28] However, what about documents from public information sources? The basic rule in this regard was set out by the Federal Court of Appeal in *Mancia v Canada (Minister of Citizenship and Immigration)* (CA), [1998] 3 FC 461, and it is that there is no requirement to disclose published documentary sources of information before the decision is made:

> [11] …
> In circumstances where the applicant is aware of a general process of relying on published documentary sources of information on country conditions, as the applicant here must be deemed to have been, and where he supplied some information of that sort with his application, I cannot conclude that the information referred to by the PCDO was beyond the ambit of publicly available information that a reasonable applicant, advised by counsel, as the applicant was, would anticipate that the PCDO would consider in reaching his decision.
>
> It was information available to the public, as in *Nadarajah* and *Quintanilla*. In my opinion, there was no obligation on the PCDO to indicate the specific documents he was considering in advance of his decision. There was no breach of a duty of fairness in referring to documents available from public sources without identifying the specific documents before the PCDO's decision was made.
>
> See also: *Holder v Canada (Minister of Employment and Immigration)*, 2012 FC 337 at para 28, [2012] FCJ No 353; *Stephenson v Canada (Minister of Citizenship and Immigration)*, 2011 FC 932 at para 35 ff., [2011] FCJ No 932

[29] In her decision, the officer actually referred to a number of reports, books, newspaper articles and magazines dealing with Ahmed Ressam, Mohamedou Ould Slahi and the Al-Qaida network. These documents are all public, were not prepared in relation to the applicant's case and do not involve the applicant specifically. On the contrary, they concern persons about whom the applicant was questioned at the interviews with CSIS and only confirm the ties between these persons and the Islamist movement. The applicant, furthermore, did not attempt to show in what

way these documents, which served as a backdrop, had taken him by surprise or how disclosing them could have enabled him to prepare himself better.

[30] The onus was on the applicant to explain the ties he had with the four persons suspected of belonging to the Al-Qaida network, which he was unable to do. His inconsistencies, omissions and attempts to minimize his knowledge about these persons have nothing to do with the public documents the officer quoted, and she had no duty to disclose them to the applicant before making her decision.

(b) Should the officer have disregarded the CSIS reports because they are unreliable?

[31] The applicant submitted a request to the officer to exclude CSIS' notes and reports and again argued before this Court that the officer should not have considered these notes and reports given their unreliability. Specifically, the applicant alleges the length of time between when the interviews took place (August 2001 and January 2002), when the report was issued (December 29, 2003) and when it was sent to the CBSA, the existence of an error in CSIS' notes regarding a statement erroneously attributed to the applicant, a report by the Security Intelligence Review Committee (SIRC) for the year 1999-2000 establishing that there were errors in CSIS' interview notes on three occasions, and the unconstitutionality of CSIS' policy to destroy evidence. I will return to this last point when I address the last issue.

[32] It is appropriate at the outset to mention that the officer considered these representations in her decision and explicitly agreed that CSIS' notes contained an error in that they indicated that Hicham Guerras signed for reporting the birth of the applicant's son while instead it was the

applicant who signed the birth registration of Mr. Gherras' son. However, this error was not significant in the context of the officer's decision on the applicant's ties to Mr. Guerras.

[33] The officer also considered the excerpt from the SRIC's report that the applicant relied on. Apart from the three complaints from the public that the applicant referred to in his representations, the officer noted that the Committee examined sixteen security intelligence investigations at immigration conducted by CSIS and concluded that all the briefing notes in that sample were accurate and substantiated by the information collected. On that basis, she could reasonably find that CSIS' notes are generally reliable and thus dismiss the applicant's request, especially since a significant portion of the information in the CSIS report had been compiled in a broader context than the verification of the applicant's history.

[34] The applicant attempted to argue that there could be other errors in the interview notes and CSIS reports. But this is pure speculation. Other than the error about his son's birth certificate, it is clear from the officer's interview notes that the applicant never questioned the statements made to CSIS but simply minimized or nuanced them. He had ample opportunity to establish that they were inaccurate as he did for the birth registration, and he cannot now object to their use because he disagrees with the conclusions the officer drew from them.

(c) Should the officer have excluded the CSIS reports insofar as the interview notes had been destroyed?

[35] As mentioned above, the applicant is relying on the decisions of the Supreme Court of Canada in *Charkaoui v Canada (Citizenship and Immigration)*, 2008 SCC 38, [2008] 2 SCR 326 (*Charkaoui #2*), and of the Federal Court of Appeal in *Harkat v Canada (Citizenship and*

Immigration), 2012 FCA 122, [2012] 3 FCR 635, that CSIS' internal policy on the destruction of operational notes breaches the principles of procedural fairness and is a serious breach of the duty to retain information under section 12 of the *Canadian Security Intelligence Service Act*, RSC 1985, c C-23. For the following reasons, I do not believe that this argument can be accepted in the context of this case.

[36] In *Charkaoui #2*, the Supreme Court of Canada found that, in the context of security certificates, CSIS' policy of destroying interview notes was contrary to section 12 of the *Canadian Security Intelligence Service Act* and violated the rights protected under section 7 of the *Charter*. According to the Court, procedural fairness requires that the designated judge have access to the officers' notes and that he or she may provide them to the individual involved, being careful to exclude any information that might pose a threat to national security. The Supreme Court of Canada merely stated that the destruction of the notes was not consistent with section 7 of the *Charter* and that it was left to the designated judge to determine whether the destruction of the notes had had a prejudicial impact.

[37] The issue of destroying CSIS' notes in the context of security certificates was examined again in the *Harkat* decision. On that occasion, the Federal Court of Appeal affirmed that the policy of destroying original notes that was in force at the time the facts in issue occurred (policy OPS-217) violated section 7 of the *Charter*. The Federal Court of Appeal noted that in that case the destruction of the original notes was prejudicial to the appellant and that disclosing the summaries to the special advocate did not constitute an adequate remedy because neither the special advocate nor the designated judge could verify their accuracy. The appropriate remedy, in the circumstances, was to exclude the summaries from the admissible evidence.

[38] In this case, the applicant cannot invoke a violation of section 7 of the *Charter* and ask that CSIS reports be excluded under subsection 24(1) of the *IRPA* for the simple reason that this provision does not apply in this case. As previously mentioned, the context in this case is not a security certificate situation where a person may be detained and returned to a country where a risk of torture is alleged.

[39] Moreover, the Federal Court of Appeal in *Harkat* was careful to carve out an exception to the principle of excluding summaries where the original notes and recordings have been destroyed. Where the summary deals with conversations to which the applicant was privy, there is no need to intervene because the applicant will be able to correct any errors it may contain. Here is what Justice Létourneau wrote in this regard:

> [143] I would except from the exclusion those conversations to which the appellant was privy. He is in a position to determine the accuracy and reliability of the summaries. While still objectionable, the destruction of the originals is not as prejudicial to the appellant as it is when the originals destroyed are originals of conversations about him and to which he was not privy. He can, by his testimony and other specific evidence, raise any error, inconsistency or inaccuracy contained in these summaries which affect their accuracy and reliability: see *Charkaoui* #2, at paragraph 67. I would simply issue as an appropriate and sufficient remedy with respect to these conversations a declaration that his right to disclosure under section 7 of the *Charter* has been violated: see *Canada (Prime Minister) v. Khadr*, [2010] 1 S.C.R. 44

[40] The applicant did not cite any decision where CSIS' destruction of original interview notes was examined in the context of an application for permanent residence. The only decision referred to was *Golestaneh v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 509, [2007] FCJ No 691, where Justice Blais found that a CBSA officer erred in law when he

prepared an inadmissibility report on the basis of a CSIS report without consulting the documents in support of the report. It does not appear to me that this decision is of any use to the applicant because it appears from the impugned decision that the officer had access and consulted all the available documents.

Conclusion

[41] For all the foregoing reasons, I am of the opinion that this application for judicial review must be dismissed. At the hearing, counsel for the applicant stated a certified question regarding CSIS' duty to retain interview notes, which she subsequently withdrew because in her view the Supreme Court of Canada had already answered it in *Charkaoui #2*. Although I disagree with the applicant's interpretation of *Charkaoui #2*, I do not believe it is necessary to certify this question insofar as it seems to me to have been determined by the Federal Court of Appeal in *Harkat*.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question of general importance is certified.

"Yves de Montigny"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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