Federal Court Cour fédérale

Date: 20151208

Dockets: IMM-6971-13
IMM-1940-15

Citation: 2015 FC 1353

Ottawa, Ontario, December 8, 2015

PRESENT: The Honourable Madam Justice Mactavish

Docket: IMM-6971-13

BETWEEN:

TAHIRA HAMEED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-1940-15

AND BETWEEN:

TAHIRA HAMEED

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] Before me are two applications for judicial review brought by Tahira Hameed. The first relates to the decision of an immigration officer that found Ms. Hameed to be inadmissible to Canada for being a member of the Haqiqi branch of the Muttahida Quami Movement (MQM-H), an organization for which there are reasonable grounds to believe has engaged in terrorism. The second application relates to the decision of the Minister of Public Safety and Emergency Preparedness refusing to grant Ministerial relief from the inadmissibility finding to Ms. Hameed.

[2] Ms. Hameed submits that the Minister's decision refusing to grant her Ministerial relief was unreasonable to the extent that the decision was based on alleged inconsistencies in her evidence, as the inconsistencies were either minor or non-existent. Ms. Hameed further argues that the Minister gave undue weight to Ms. Hameed's past membership in the MQM-H, and that he failed to have sufficient regard to the brief, low-level and non-violent nature of her involvement with the organization. Ms. Hameed also asserts that the Minister failed to give sufficient consideration to the compelling personal factors favoring the granting of relief, including the best interests of her five Canadian-born children.

[3] Ms. Hameed has not made any substantive submissions with respect to the reasonableness of the inadmissibility finding. She accepts that if the Minister's decision denying her Ministerial relief is upheld, the application challenging the inadmissibility finding should properly be dismissed. She submits, however, that if the decision of the Minister refusing Ministerial relief is set aside, it should follow that the inadmissibility decision should also be quashed.

[4] For the reasons that follow, I have concluded that the Minister's decision refusing to grant Ministerial relief to Ms. Hameed was reasonable. Consequently, both applications for judicial review will be dismissed.

I. **Background**

[5] Ms. Hameed, who is a nurse by training, is a citizen of Pakistan and a member of the Urdu-speaking Mohajir ethnic minority. She comes from a politically active family who was involved in the Mohajir Quami Movement. In 1993, Ms. Hameed joined the women's wing of the MQM-H at the urging of her father, and she helped the MQM-H establish a family planning clinic in Karachi, where she volunteered several days a week. Ms. Hameed also raised funds for the clinic through the MQM-H.

[6] In August of 1995, Ms. Hameed was kidnapped by members of the MQM-A, a rival of the MQM-H, outside of the health clinic where she volunteered. She was then forced to treat a gun-shot victim. While she was treating the victim, the police raided the building in which she was being held and arrested her. Ms. Hameed was released the next day on the promise that she would identify her kidnappers.

[7] Ms. Hameed says that she then began receiving threats from the MQM-A, prompting her father to send her to Islamabad in order to keep her safe. However, in November of 1996, Ms. Hameed was the subject of another kidnapping attempt, this one being unsuccessful. Ms. Hameed then fled to Lahore, although she subsequently returned to Karachi.

[8] In March of 1997, Ms. Hameed and her brother were the subject of an attack by members of the MQM-A, which caused serious injuries to them both. Two months later, Ms. Hameed's

fiancé was kidnapped, tortured and killed for being an MQM-H member. On June 10, 1997, Ms. Hameed was wounded in an attack by unknown gunman while at a meeting of the MQM-H's women's wing. A month later, her brothers were kidnapped and they have never been seen again.

[9] In August of 1997, Ms. Hameed and her father were arrested and tortured by the police, who questioned them about the death of several police officers allegedly killed by members of the MQM-H. Ms. Hameed and her father were later released upon the payment of a bribe. Ms. Hameed's father advised her that she should leave Pakistan, which she did on August 28, 1997, arriving in Canada two days later.

[10] Once in Canada, Ms. Hameed remained in contact with the MQM-H through their office in Chicago, although there is a dispute as to the nature and extent of her involvement with the North American branch of the organization.

[11] Ms. Hameed was recognized as a Convention refugee in 1999, and she applied for permanent residence that same year. In 2002, Ms. Hameed was reported to be inadmissible to Canada pursuant to section 19(1)(f)(iii)(B) of the *Immigration Act*, R.S.C. 1985, c. I-2, as a result of her involvement in the MQM-H.

[12] Ms. Hameed applied for Ministerial relief from the inadmissibility determination on April 25, 2002. Her application was first refused on June 19, 2013. However, this decision was later set aside on consent to allow the Minister to reconsider his decision in light of the Supreme Court's decision in *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559.

[13] On October 16, 2013, Ms. Hameed's application for permanent residence was denied, and on March 31, 2015, the Minister once again refused Ms. Hameed's application for Ministerial relief.

II. The Inadmissibility Finding

[14] Although she takes issue with findings made with respect to the nature and extent of her involvement with the organization, Ms. Hameed admits that she was a member of the MQM-H while she lived in Pakistan. She has also not disputed that there are reasonable grounds to believe that the MQM-H has engaged in terrorism, although she says that she was not aware of this at the relevant time. There is thus no substantive reason to set aside the decision finding that Ms. Hameed was inadmissible to Canada under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[15] This leaves the question of whether the Ministerial relief decision was reasonable.

III. The Minister's Decision Denying Relief to Ms. Hameed

[16] As is the practice in cases such as this, the Canada Border Service Agency prepared a briefing note summarizing Ms. Hameed's application for Ministerial relief for consideration by the Minister.

[17] The briefing note provides an overview of the Ministerial relief process and identifies the legal test to be applied by the Minister in deciding whether relief should be granted to Ms. Hameed.

[18] The document contains background information regarding both the MQM-H, and its predecessor, the MQM. After reviewing Ms. Hameed's immigration history, the briefing note

provides a detailed discussion of her involvement with the MQM-H, including her version of certain events and her position on various issues. The briefing note then provides an assessment of Ms. Hameed's application, discussing the evidence weighing against her, and explaining why Ms. Hameed's arguments on various points should not be accepted. The analysis ends with a recommendation by the President of the Canada Border Services Agency that Ministerial relief not be granted to Ms. Hameed.

[19] The document concludes with a statement by the Minister that he was "not satisfied that the presence of Ms. Tahira Hameed in Canada would not be detrimental to the national interest". Consequently, Ministerial relief was denied.

IV. Ms. Hameed's Submissions

[20] Ms. Hameed submits that the Minister's decision was based upon two principle considerations: her past membership in the MQM-H, and the alleged inconsistencies in her evidence.

[21] To the extent that the Minister's decision was based upon her past membership in the MQM-H, Ms. Hameed says that the decision is unreasonable, as the Minister failed to fully appreciate the limited, low-level, humanitarian role that she played within the organization. The Minister further erred, Ms. Hameed says, by finding inconsistencies in her evidence where none existed, or by basing the decision on inconsistencies in her evidence that were minor or inconsequential.

[22] Finally, Ms. Hameed submits that the Minister erred by failing to give sufficient consideration to the humanitarian considerations that were raised in her application for

Ministerial relief. These considerations included the best interests of Ms. Hameed's five Canadian-born children, and the impact that denying relief to Ms. Hameed would have on her husband's immigration status.

[23] Each of these arguments will be addressed in turn. Before doing so, however, it is important to understand the principles applicable to judicial reviews of Ministerial decisions under subsection 34(2) of *IRPA*.

V. **Legal Principles Governing Applications for Ministerial Relief**

[24] It is the applicant for Ministerial relief who bears the onus of satisfying the Minister that his or her presence in Canada would not be detrimental to the national interest: *Al Yamani v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 381 at para. 69, 311 F.T.R. 193.

[25] Where the Minister adopts the recommendation contained in a CBSA briefing note, the briefing note will be taken to be the Minister's reasons: *Al Yamani*, above at para. 52; *Haj Khalil v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2014 FCA 213 at para. 29, 464 N.R. 98.

[26] The test to be applied by the Minister in deciding whether Ministerial relief should be granted in a given case was discussed by the Supreme Court of Canada in *Agraira*, above. There, the Court held that "a broad range of factors may be relevant to the determination of what is in the 'national interest', for the purposes of s. 34(2)": at para. 87. In general, the Minister should be guided by the following factors:

> 1. Will the applicant's presence in Canada be offensive to the Canadian public?

2. Have all ties with the regime/organization been completely severed?

3. Is there any indication that the applicant might be benefiting from assets obtained while a member of the organization?

4. Is there any indication that the applicant may be benefiting from previous membership in the regime/organization?

5. Has the person adopted the democratic values of Canadian society?

Agraira, above at para. 87.

[27] Applications for Ministerial relief under subsection 34(2) of *IRPA* are not intended to be an alternate form of humanitarian and compassionate review. Personal factors relating to the individual applicant may, however, be relevant in the context of an application for Ministerial relief, where, for example, they could shed light on the applicant's personal characteristics in determining whether he or she can be viewed as a threat to the security of Canada: *Agraira*, above at para. 84.

[28] Given the discretionary nature of subsection 34(2) decisions, the standard of review to be applied in reviewing the substance of a decision of the Minister refusing to grant Ministerial relief is that of reasonableness: *Agraira*, above at paras. 49-50. An interpretation of the national interest that relates primarily to national security and public safety, but which does not exclude the other considerations is reasonable: *Agraira*, above, at para. 88.

[29] With this understanding of the relevant principles governing a case such as this, I will turn next to consider Ms. Hameed's arguments as to why the Minister's decision was unreasonable.

VI. Ms. Hameed's Past Membership in the MQM-H

[30] It is a reviewable error for the Minister to refuse an application for Ministerial relief simply because the applicant was a member of an organization for which there are reasonable grounds to believe has engaged in terrorism: *Soe v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 461 at paras. 32-35, [2007] F.C.J. No. 620; *Kanaan v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 241 at paras. 6-8, 71 Imm. L.R. (3d) 63. Section 34(2) of *IRPA* is only engaged once an individual has been found to be inadmissible to Canada for being a member of such an organization, and as Justice Phelan noted in *Soe*, above, at para. 34, treating past membership as determinative of an application for Ministerial relief would render the exercise of discretion meaningless.

[31] This is not, however, such a case. The Minister did not treat Ms. Hameed's past membership in the MQM-H as being determinative of her application for Ministerial relief. Instead, the Minister had regard to the nature and extent of her involvement with the MQM-H, the role that she played within the organization, and the commitment to the organization that was demonstrated by her continued involvement with the organization, despite facing intense persecution as a result of that involvement.

[32] At the same time, the reasons specifically note Ms. Hameed's position that:

- She was an ordinary member of the MQM-H and held no positions of authority within the organization;
- Her participation in the MQM-H primarily consisted of healthcare delivery at a clinic established by the organization;

- Any monies that she may have raised for the MQM-H were intended for use in the family planning clinic; and
- She was unaware of the MQM-H's acts of violence, and she would not have joined the organization had she known that it had engaged in violence.

[33] The Minister balanced these competing considerations, and, at the end of the day, what Ms. Hameed takes issue with is the weight that was ascribed to the factors relating to her past membership in the MQM-H that militated against the granting of relief relative to the weight that was ascribed to factors that might have favored the granting of Ministerial relief.

[34] In reviewing the reasonableness of the Minister's exercise of discretion under subsection 34(2) of *IRPA*, the Court is not, however, entitled to re-weigh the evidence that was before the Minister. Where, as here, the Minister has considered and weighed all of the factors relevant to an application for Ministerial relief, the decision should be found to be reasonable: *Agraira*, above at para. 91.

VII. The Inconsistencies in Ms. Hameed's Evidence

[35] Ms. Hameed also takes issue with the Minister's reliance on alleged inconsistencies in the submissions that she has made over the years. According to Ms. Hameed, the essential nature of her story has been remarkably consistent, and the Minister "was really over-reaching" in finding material inconsistencies in her evidence where none existed.

[36] Inconsistencies were noted in Ms. Hameed's evidence on a number of points, including the circumstances under which she joined the MQM-H, the nature of the MQM-H meetings that

she attended in Pakistan, her role in recruiting members into the MQM-H, and the nature and extent of her involvement with the MQM-H after her arrival in Canada.

[37] The briefing note specifically identifies the various submissions that have been made by Ms. Hameed over the years on these points, flagging where there were inconsistencies in her evidence.

[38] For example, the note observes that in her application for refugee protection and in other submissions that she has made to Canadian immigration authorities over the years, Ms. Hameed maintained that her decision to join the MQM-H had been a voluntary one, although she says that she joined the organization with the encouragement of her father.

[39] In contrast, in her most recent submissions in support of her application for Ministerial relief, Ms. Hameed maintained that her decision to join the MQM-H was not in fact voluntary, but that she was pressured into joining the organization by her father and brother, even though she had no interest in politics. Ms. Hameed stated that it was not open to her to resist the wishes of her male family members, as she lived in a male-dominated society. She further explained that she had not previously mentioned the duress that she was under, as it would have been disloyal for her to speak of her father in this manner. This does not, of course, explain why it was now appropriate for her to do so.

[40] Similarly, Ms. Hameed's initial submissions to the Minister stated that while she was in Pakistan, she was involved in encouraging other women to join the MQM-H's women's wing. She now states, however, that she was not involved in recruiting women for the MQM-H's

political activities, but only for the organization's humanitarian endeavours, such as the health clinic.

[41] Insofar as the nature and extent of her involvement with the MQM-H in North America is concerned, Ms. Hameed provided conflicting evidence with respect to the duration and frequency of her contact with the MQM-H's Chicago office. She had variously stated that she ceased being active in the MQM-H soon after her arrival in Canada, that she ceased being in contact with the organization in 1999, and that she was still a member at the time of her CSIS and CIC interviews in 2000 and 2001.

[42] Ms. Hameed now says that she was initially in contact with the MQM-H office in Chicago in order to obtain proof of membership in the organization for her refugee hearing. She also now states that she contacted the Chicago office on a few subsequent occasions in order to attempt to obtain information regarding her family members still in Pakistan.

[43] In each of these cases, the briefing note reviewed the information that Ms. Hameed had provided over time, highlighting instances where her evidence has conflicted. It was ultimately up to the Minister to decide how significant these inconsistencies were, and, once again, it is not the role of this Court, sitting in review of the Minister's decision, to re-weigh the evidence that was before the Minister.

VIII. The Minister's Consideration of Ms. Hameed's H&C Factors

[44] Ms. Hameed's final argument relates to the way that the Minister dealt with the humanitarian and compassionate considerations that were raised by her application for Ministerial relief.

[45] Ms. Hameed noted in her submissions to the Minister that she is a Convention refugee, that she has five Canadian-born children, and that her spouse is also in Canada. She submitted that it would be contrary to her children's best interests to have her removed from Canada, and that her husband's status in Canada would also be put in jeopardy if she was denied Ministerial relief, as he is a failed refugee claimant who was included in her application for permanent residence.

[46] In support of her submissions regarding the interests of her children, Ms. Hameed submits that it is in her children's best interests to remain with both of their parents in Canada. She also provided the Minister with psychological reports outlining the impact that the family's uncertain immigration status has had on her children's mental health.

[47] Once again, Ms. Hameed's submissions regarding her personal circumstances and those of her husband, and her submissions regarding the best interests of her children were all outlined, in detail, in the briefing note. It cannot thus be said that the Minister did not have regard to Ms. Hameed's submissions regarding the humanitarian and compassionate consideration raised by her application.

[48] Indeed, the briefing note explicitly states that Ms. Hameed's submissions regarding her personal circumstances had been considered, recognizing, however, that according to the Supreme Court of Canada's decision in *Agraira*, the predominant considerations in an application for Ministerial relief are Canada's national security and public safety.

[49] Ms. Hameed acknowledges that the Supreme Court held in *Agraira* that applications for Ministerial relief under subsection 34(2) of *IRPA* are not intended to be an alternate form of

humanitarian and compassionate review. Indeed, the Supreme Court expressly stated that H&C factors are more properly considered in the context of an application for permanent residence on humanitarian and compassionate grounds: *Agraira*, above at para. 84.

[50] Ms. Hameed submits, however, that the decision in *Agraira* was premised on the notion that H&C relief was in fact available to someone in her situation. Given that this is no longer the case, she says that the ruling in *Agraira* should be revisited.

[51] The decision in *Agraira* was rendered by the Supreme Court on June 20, 2013. The *Faster Removal of Foreign Criminals Act*, S.C. 2013, c. 16 (*FRFCA*), received royal assent the previous day. Paragraph 9 of the *FRFCA* amended subsection 25(1) of *IRPA*, rendering persons found inadmissible to Canada under sections 34, 35 and 37 of *IRPA* ineligible for humanitarian and compassionate relief under to subsection 25(1) of the Act.

[52] Although the *FRFCA* was introduced in Parliament on June 20, 2012, the Supreme Court did not consider the effect of the pending legislative change in *Agraira*, and it may be that the question raised by Ms. Hameed will have to be addressed at some point down the road. There are, however, several reasons why this is not the appropriate case in which to do it.

[53] The Supreme Court's decision in *Agraira* was binding on the Minister when he considered Ms. Hameed's application for Ministerial relief, just as it is binding on me. Although she filed her last set of submissions with the Minister after the enactment of the *FRFCA*, Ms. Hameed did not make the argument to the Minister that she is now advancing in her submissions. As a result, the Minister cannot be faulted for failing to consider submissions that

were not made to him. We also do not have the benefit of a decision by the Minister on this issue to inform the analysis of Ms. Hameed's new argument.

[54] Ms. Hameed also did not raise this argument in her application for leave, nor did she raise it in the memorandum of fact and law filed in relation to her application for judicial review. Indeed, it appears that Ms. Hameed raised this argument for the very first time at the hearing of her application for judicial review. This was unfair to the respondent, who may have responded differently to the application, had he been aware that the ongoing relevance of *Agraira* was under challenge. I am therefore not prepared to decide the case on this basis.

[55] The Minister expressly considered all of the factors raised by Ms. Hameed in her submissions, including her various H&C factors, before concluding that he was not satisfied that the presence of Ms. Hameed in Canada would not be detrimental to the national interest, and no reviewable error has been identified in his treatment of Ms. Hameed's H&C factors.

IX. <u>Conclusion</u>

[56] Ms. Hameed has not identified any relevant factors that were not considered by the Minister in deciding her application for Ministerial relief, nor has she identified any irrelevant factors that were taken into consideration by the Minister in concluding that it was not in the national interest to provide her with such relief. All of Ms. Hameed's submissions are essentially an invitation to have the Court reweigh the evidence that was before the Minister.

[57] As noted earlier, that is not the role of this Court, sitting in review of the Minister's decision. While I might well have weighed the competing factors differently, where, as here, the

Minister has considered and weighed all of the relevant factors, the decision should be found to be reasonable. Consequently, Ms. Hameed's application for judicial review is dismissed.

X. The Proposed Certified Question

[58] Ms. Hameed proposes the following question for certification:

> As a result of the removal of the possibility of seeking humanitarian and compassionate consideration pursuant to section 25 of *IRPA* for persons inadmissible under section 34, 35 or 37, should the Court reconsider the direction of the Supreme Court of Canada in *Agraira* which excludes consideration of humanitarian and compassionate factors in an application for Ministerial relief?

[59] As noted earlier, I am not prepared to decide this question in considering Ms. Hameed's application for judicial review. Consequently, the answer to the question would not be dispositive of this application, and I therefore decline to certify it.

JUDGMENT

THIS COURT'S JUDGMENT is that these applications for judicial review are dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-6971-13 AND IMM-1940-15
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STYLE OF CAUSE:	TAHIRA HAMEED v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-1940-15
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PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

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