

Federal Court



Cour fédérale

Date: 20160222

Docket: IMM-2827-15

Citation: 2016 FC 232

Toronto, Ontario, February 22, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

AKRAM MUSLIH ANTEER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of the Immigration Division (“ID”) of the Immigration and Refugee Board of Canada, dated May 28, 2015, which found the Applicant to be inadmissible to Canada pursuant to s 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

Background

[2] The Applicant is a national of the Palestinian Authority (“PA”) and a permanent resident of Sweden.

[3] He arrived in Canada on April 18, 2013 and claimed refugee status. When interviewed by Canada Border Services Agency (“CBSA”) officers at the port of entry he denied being a citizen or resident of any other country, declared that he had resided in Israel and Jordan from 2002 to 2012, that his country of last permanent residence was Jordan, and, acknowledged that he was a member of Fatah. The Applicant was detained by CBSA.

[4] On May 29, 2013 and January 22, 2014 the Applicant was interviewed by a CBSA inland enforcement officer (“Enforcement Officer”). During the course of those interviews, the Applicant provided the Enforcement Officer with his membership card for the Palestine National Liberation Movement, also known as Fatah, with an expiry date of August 17, 2012. He initially stated that he had joined Fatah when he was 10 years old and later stated that he joined “when Oslo took place” which the Enforcement Officer thought likely meant the signing of the Oslo Accords by Israel and the Palestinian Liberation Organization (“PLO”) in 1993. The Applicant stated that he had achieved cadre level of membership. He also described his role within Fatah, which included identifying and intercepting opponents of Fatah and working with high ranking Fatah officials, and stated that he reported to the head of Fatah in the Jenin area, Ata Abu Rumeila (“Rumeila”). The Enforcement Officer also noted, based on reports in the record, that Rumeila was the reputed head of the al-Aqsa Martyrs Brigade (“AAMB”) in Jenin. The

Applicant also stated that he was at Yasser Arafat's ("Arafat") compound when it was under siege by the Israelis in 2002, was wounded at that time, and was subsequently held by Israeli security forces at an Israeli detention centre until released in 2005. He was subsequently arrested and detained by the Israeli security forces in 2005 and released in 2006, he was arrested again in 2008 and, in 2009, the Applicant was expelled from Israel and removed to Jordan.

[5] Following these interviews, the Enforcement Officer, pursuant to s 44(1) of the IRPA, issued a report concerning the Applicant's inadmissibility. The Enforcement Officer was of the opinion that the Applicant was inadmissible to Canada on security grounds based on his membership in Fatah and that there were reasonable grounds to believe that Fatah is an organisation that engages, has engaged or will engage in terrorism according to s 34(1)(f). A Minister's Delegate referred the Applicant to the ID for an inadmissibility hearing, pursuant to s 44(2) of the IRPA.

[6] Although the ID noted the Applicant's failure to notify Canadian immigration authorities about his having been to Sweden and obtaining permanent residence there, in its admissibility decision the ID was solely concerned with the Applicant's admissibility on the basis of s 34(1)(f) of the IRPA. The ID found that the Applicant was a member of Fatah and that there were reasonable grounds to believe that it is a terrorist organization that had engaged in terrorist acts pursuant to s 34(1)(f) of the IRPA. Therefore, the Applicant was inadmissible and, pursuant to s 45(d) of the IRPA, the ID issued a removal order against him, which was executed on June 8, 2015 returning the Applicant to Sweden.

Decision Under Review

[7] The ID noted that the Applicant did not dispute that he was a member of the Fatah organization. However, he did dispute the characterization of Fatah as a terrorist organization and denied that he engaged in or promoted acts of terrorism on behalf of Fatah.

[8] Despite the Applicant's membership concession, the ID reviewed the jurisprudence and concluded that there was sufficient evidence to find that he was a member of Fatah. That finding is not challenged by the Applicant on judicial review and is therefore not addressed in these reasons.

[9] The ID then found, based on the evidence and the submissions, that there were reasonable grounds to believe that Fatah is an organization that engaged, has engaged or will engage in acts of terrorism pursuant to s 34(1)(f) of the IRPA.

[10] In its decision, the ID referred to *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 [*Mugesera*] to define reasonable grounds to believe as being situations where, "there is an objective basis for the belief, which is based on compelling and credible information". Noting that the IRPA does not define "organization", the ID referenced *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 [*Sittampalam*] in support of the proposition that the term is to be given an unrestricted and broad interpretation and that factors such as identity, leadership, hierarchy, structure or territory are helpful, but not

essential, in making such a determination. A flexible approach is to be taken in assessing the attributes of a group.

[11] The ID noted that the documentary evidence provided an extensive history of the Fatah organization, which it briefly summarized. The ID found Fatah is a highly structured organization that has its own constitution. The PA is, essentially, Fatah. It has a 20 member Executive Committee, including the President. Below this is a 120 member Revolutionary Council. Fatah is divided into geographical sectors and subdivided into cells. It operates its own security apparatus, military and intelligence units. The ID concluded, therefore, that it meets the requirements of *Sittampalam* as an organization.

[12] The ID also noted that the IRPA does not define “terrorism”. It referenced the Supreme Court of Canada’s decision in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*] which accepted the definition found in the *International Convention for the Suppression of the Financing of Terrorism*, being:

...any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

[13] The ID acknowledged that the neither the PLO nor Fatah are on the list of entities or persons tied to terrorist activity which list is established by the Governor in Council pursuant to the *Criminal Code of Canada*, RSC, 1985, c C-46 [*Criminal Code*], ss 83.01 to 83.33 and the

Regulations Establishing a List of Entities, SOR/2002-284 (“list of entities”). However, it noted that the AAMB and Hamas are listed entities.

[14] In determining whether Fatah was a terrorist organization, the ID reviewed principles established by jurisprudence, including that the terrorist organization must be identified with specificity; acts that the organization engaged in must be specified; how the acts meet the definition of terrorism must be explained; it must be established that the organization sanctions terrorist acts; and, where the organization has multiple factions but reports to a single leader, the action and intentions of a certain faction can be impugned to the organization as a whole.

[15] The ID then reviewed documentary evidence of Fatah’s history of violent, terrorist activities prior to its renunciation of terrorism in 1988 and referred to the formation of Fatah-affiliated AAMB in 2000. The ID found that the evidence established that Fatah was a terrorist organization. Although it also operated civil functions as the governing body in the PA, it “remains a monolithic organization with one supreme leader and a top-down chain of command”. Further, although Fatah has assumed a recognized political role in the PA and has publically distanced itself from its terrorist past, there is no temporal component to the analysis required by s 34(1)(f) (*Yamani v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 1457 [*Yamani*]).

[16] The ID found, in any event, that it had been established that it is likely that Fatah did not entirely disassociate itself from acts of terrorism against the Israeli state even after renouncing

armed struggle and that the most notorious faction within Fatah, the AAMB, did not exist separately from Fatah as a whole.

[17] The ID referred to a finding in a New York trial court in February 2015 that the PA and PLO were liable for knowingly supporting terrorist attacks in 2002 and 2004. It also noted that Fatah's charter continues to speak to the liberation of Palestine by means of armed struggle, if necessary.

[18] The ID found that the Applicant had a committed relationship with Fatah, joining at the age of 16 and achieving the level of cadre. He assisted in their security operations and in the recruitment of new members. He was present in Arafat's compound during the 2002 siege by the Israeli Defence Forces ("IDF"). He resided in Jenin where the AAMB was very active and reported directly to the reputed head of the AAMB, Rumeila. Given his active involvement and commitment to Fatah, it was inconceivable that the Applicant would be unaware of the activities of Fatah and of the AAMB and the connection between the two.

[19] The ID noted that the Applicant claimed that he disassociated himself from Fatah in 2010. However, that his sympathy hunger strike in 2013 in support of convicted terrorist Samer al-Issawi was a likely indicator that his support of Fatah and its goals had not changed even after he ceased active membership. In any event, inadmissibility under s 34(1)(f) of the IRPA does not require that the Applicant be a current member, that he have been a member when Fatah engaged in acts of terrorism, or, that Fatah be included on the list of entities. There was also no

requirement that the Applicant have promoted, participated in or have been complicit in terrorist acts in order for there to be a finding of inadmissibility pursuant to s 34(1)(f).

[20] And, regardless of the finding in *Yamani* that there is no temporal requirement to the s 34(1)(f) analysis, the ID found that the Applicant was a member of Fatah at a time when it engaged in acts of terrorism through its military wing, the AAMB, and that the AAMB was not a separate entity from Fatah.

[21] The ID was satisfied that there were reasonable grounds to believe that the Applicant was a member of Fatah and that Fatah is an organization that engages has engaged, or will engage in acts terrorist acts. The ID found, therefore, that the Applicant was inadmissible on security grounds.

Relevant Legislation

IRPA:

Rules of interpretation

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.

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

...

Interprétation

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) Empoignent interdiction de territoire pour raison de sécurité les faits suivants :

...

(c) engaging in terrorism;

c) se livrer au terrorisme;

...

...

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

Exception - application to Minister

Exception - demande au ministre

42.1 (1) The Minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.

42.1 (1) Le ministre peut, sur demande d'un étranger, déclarer que les faits visés à l'article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de l'étranger si celui-ci le convainc que cela ne serait pas contraire à l'intérêt national.

Issues

[22] The Applicant identifies six issues, however, in my view, these can be distilled to a single issue being: was the ID's finding that the Applicant was inadmissible under s 34(1)(f) of the IRPA reasonable?

Standard of Review

[23] The parties submit, and I agree, that the standard of review applicable to the question of whether there are reasonable grounds to believe that an organization has engaged, is engaging or will engage in acts of terrorism, as referenced in s 34(1)(f), is reasonableness (*Pizarro Gutierrez*

v Canada (Citizenship and Immigration), 2013 FC 623 at para 21; *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 876 at para 82; *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85 at para 20 [*Nassereddine*]; *Canada (Citizenship and Immigration) v USA*, 2014 FC 416 at para 13). As such, this Court shall only intervene if the decision falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

Positions of the Parties

Applicant’s Position

[24] The Applicant acknowledges that he was a member of Fatah which, for a period of time in the past, promoted violent struggle to achieve its goals. However, he submits that through Arafat’s guidance, Fatah converted to a secular nationalist political party, although it has been plagued by internal division and factionalism.

[25] The Applicant submits that the ID erred in finding that Fatah has a unified common structure. Its factions and wings are functionally distinct and the alleged actions of its military wing, AAMB, should not be imputed to Fatah. Further, because Fatah is not listed on many countries’ lists of proscribed terrorist organizations, including Canada’s, but the AAMB is listed, this demonstrates that Fatah is viewed differently than the AAMB. It is therefore an error to find that the Applicant’s membership in Fatah constituted membership in the AAMB. The importance of an inadmissibility finding to the Applicant requires a “restrictive and cautious approach” (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86

[*Kanagendren*]) that considers the similarity of exclusion under Article 1(f)(a) of the Refugee Convention.

[26] Further, in 1999, after the signing of the Oslo Accord which established the PA, Arafat was invited to Ottawa by then Prime Minister Chrétien, despite his prior involvement in violent struggle as the leader of Fatah. Because Arafat was not deemed to be a security threat, this was implicit recognition by the government of Canada that there is a temporal component to a s 34(1)(f) style analysis. Similarly, former Prime Minister Harper maintained diplomatic relations with and financially supported the PA as led by President Abbas, who succeeded Arafat. Thus, a reasonable inference can be drawn that Canada has recognized that Fatah has abandoned its past terrorist ways and has become active in the democratic process and that this explains why Fatah is not a listed terrorist organization.

[27] The Applicant also submits that the ID's decision is irreconcilable with Canadian policy on the designation of terrorist organizations. Subsection 34(1)(f) must reflect and conform to Canadian government policy, including legislative directives and policy statements made by the Minister of Public Safety and Emergency Preparedness. Because the list of entities published by Public Safety Canada did not include Fatah, the ID's decision cannot be reconciled, and is inconsistent with government policy and is therefore unreasonable.

[28] The Applicant submits that the ID failed to consider that the timing of the Applicant's membership might be a relevant consideration. In that regard, *Chwah v Canada (Citizenship and Immigration)*, 2009 FC 1036 [*Chwah*] and *Karakachian v Canada (Citizenship and*

Immigration), 2009 FC 948 [*Karakachian*] apply directly to the Applicant's case because Fatah expressly renounced terrorism before the Applicant joined as a member. However, these decisions were not given sufficient consideration by the ID which instead favoured the prior decision of this Court in *Yamani*, which held that there is no temporal component in the s 34(1)(f) analysis. The ID also failed to properly consider the qualifications to *Yamani* as set out in *Chwah* and *Karakachian*. Because in those cases the organizations at issue had renounced terrorism prior to the claimants becoming a member, this served to transform the organization, thereby severing the link that might otherwise have been drawn between a claimant's current or former membership and the past activities of the organization as it is no longer one to which s 34(1)(f) applies.

[29] Further, the Applicant submits that s 34(1)(f) focuses on membership in a terrorist organization, it does not require actual participation or complicity in terrorist acts on the part of the Applicant. The Applicant associated with and was loyal to Fatah's "pro-peace, non-violent political wing" and knowledge of alleged terrorist acts should not be imputed to him. There was also no evidence that he remains a member of Fatah or that he was ever a member of AAMB. Further, there is no credible link between the Applicant and any alleged terrorist acts and this should have a mitigating effect on his inadmissibility under s 34(1)(f) of the IRPA. The Applicant submits that, on balance, the evidence before the ID was insufficient to satisfy the low threshold of "reasonable grounds to believe" that he is member of an organization which falls within s 34(1)(f).

[30] The Applicant also submits that the ID erred by relying on a newspaper article about a New York court decision which found the PA and PLO liable for supporting terrorist attacks between 2002 and 2004. Because the actual court decision was never filed with the ID, it was unable to verify its veracity and, therefore, erred by relying on it (*Almrei (Re)*, 2009 FC 1263).

[31] Finally, the Applicant submits that the ID failed to address and apply the definition of terrorism set out in the Supreme Court of Canada's decision *Suresh*.

Respondent's Position

[32] The Respondent submits that the standard of "reasonable grounds to believe" is applicable under s 34(1)(f) of the IRPA and that it is lower than the civil standard of "balance of probabilities" (*Kanagendren*; leave to the SCC dismissed: 2015 CanLII 75966 (SCC); *Mugesera* at para 114; *Ugbazghi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 694 at para 47 [*Ugbazghi*]). This is a low evidentiary threshold that applies to a very broad range of conduct that gives rise to inadmissibility. However, this is balanced by s 42.1(1) of the IRPA pursuant to which the Minister is also given discretion to grant relief against an inadmissibility finding (*Ugbazghi* at paras 47-48).

[33] The Respondent submits that the Applicant has conceded to being a member of Fatah from 1993 to 2010. Further, that based on the evidence, the ID found him to be a committed member and those findings have not been seriously challenged.

[34] The fact that the Applicant is no longer a member of Fatah is not relevant as both the IRPA and jurisprudence confirm that there is no temporal requirement (*Tjiueza v Canada*, 2009 FC 1260 at para 36 [*Tjiueza*]; *Yamani* at para 37; *Mirmahaleh v Canada (Citizenship and Immigration)*, 2015 FC 1085 at para 21 [*Mirmahaleh*])). The Federal Court of Appeal has held that “it is not a requirement for inadmissibility under s. 34(1)(f) of the IRPA that the dates of an individual’s membership in an organization correspond with the dates on which that organization committed acts of terrorism or subversion by force” (*Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2010 FCA 274 [*Gebreab*]; also see *Haqi v Canada (Citizenship and Immigration)*, 2014 FC 1167 at paras 33-37; *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at para 101; leave to appeal dismissed: April 23, 2015, no 36241). The Applicant’s submission that he joined Fatah only after it renounced violence is not relevant to the s 34(1)(f) analysis but could possibly be a consideration in a request for ministerial relief under s 42.1 of the IRPA (*Saleh v Canada (Citizenship and Immigration)*, 2010 FC 303 [*Saleh*]).

[35] The Respondent submits that the ID’s finding that Fatah is a terrorist organization for purposes of s 34 of the IRPA is reasonable as it found that Fatah continued to sanction and support violent struggle through its military branch, the AAMB, which did not exist separately from Fatah as a whole. While the Applicant asserted that Fatah does not have a unified common structure, it did not support this by specific references to the documentary evidence. Further, the ID’s findings concerning the nature of Fatah are amply supported by the seven volume Certified Tribunal Record (“CTR”) which included evidence from a wide variety of sources.

[36] The Respondent submits that the Applicant has failed to provide jurisprudence in support of his arguments concerning government policy and that unlisted entities cannot be terrorist organizations for the purposes of s 34 (1)(f) of the IRPA. *Jalil v Canada (Citizenship and Immigration)*, 2007 FC 568 [*Jalil*] sets out a two-step analysis for s 34(1)(f) of the IRPA. First, a determination must be made as to whether there are reasonable grounds to believe the organization in question committed the acts of violence attributed to it. Second, there must be a determination of whether those acts constitute terrorist acts. The ID properly assessed both steps in determining that Fatah committed the acts attributed to it and that those acts amounted to terrorism. Its finding is also consistent with prior decisions of this Court which have upheld findings that Fatah is a terrorist organization (*Khalil v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 1332 at para 19-23 [*Khalil*]; *Saleh*). Further, there is no requirement under the IRPA that a terrorist organization be a listed entity, or that there be evidence that a person is on a watch list, to make them inadmissible to Canada (*Mirmahaleh*).

[37] The Respondent submits that the Applicant has not cited any objective documentary evidence to demonstrate that the ID's decision is unreasonable nor to show that the ID ignored evidence favourable to the Applicant's case. Further, that the Applicant's submissions concerning Arafat's visit in 1999 are based on speculation and have no relevance to s 34(1)(f) or the applicable case law. The New York Times article referenced by the ID was just one piece of evidence, in a voluminous record, which connected Fatah to terrorist attacks during the period 2002-2004 and, in any event, the Applicant has not established that the article is in error.

Analysis

[38] In *Jalil*, referring to *Mugesera*, this Court held that the assessment of whether there are reasonable grounds to believe that an organization has engaged in acts of terrorism is a two-step analysis. First, a determination must be made as to whether there are reasonable grounds to believe the organization in question committed the acts of violence attributed to it. This is a finding of fact. The second step involves determining whether those acts constitute terrorist acts.

[39] In this case, the ID noted that the history and activities of the Fatah organization was found in the documentary evidence, specifically, Exhibits 2 through 7, 12, 13 and 19. The ID found that Fatah formed an armed wing in 1964 and commenced a campaign of terrorist activities against Israeli targets in 1965. Referencing Exhibit 2, an article by Jane's Terrorism and Insurgency Centre ("Jane's Report") the ID stated that this included the killing of civilians by the blowing up of school buses, the kidnapping and killing of Israeli athletes at the 1972 Olympics as well as by hijacking airplanes and buses. Politicians were also targeted and killed. Again referencing Exhibit 2, the Jane's Report, the ID stated that in 2000 the Fatah-related AAMB organization was formed and began a campaign of suicide bombings targeting Israeli police, military and civilians. The ID was satisfied that the evidence established that Fatah was a terrorist organization.

[40] By way of background, I would note that the documentary evidence indicates that al-Tahrir al-Wataniyya-Filastiniyya, the Palestinian National Liberation Movement, or, Fatah, was founded in 1959 by Arafat as a nationalist political and guerilla group which sought the

liberation of Palestinian territory from Israeli control and the establishment of an independent, sovereign Palestinian state. Under the leadership of Arafat, Fatah became the dominant force in the PLO. The PLO had been formed as a vehicle to co-ordinate efforts against the Israeli state with the express goal of liberating Palestine through armed struggle. Arafat became chairman of the executive committee of the PLO in 1969. Fatah formed an armed wing, al-Asifa, in 1964 and launched guerrilla operations in Israeli territory during the 1970's and 1980's with armed operations continuing through different groups, including Force 17 and Tanzim, until Arafat renounced terrorism at a special session of the United Nations in 1988.

[41] In 1993 the Oslo Accords were signed between the PLO and Israel which led to the creation of the Palestinian National Authority, or PA. However, following the beginning of the Second Intifada in September 2000, a new Fatah-affiliated militant organization was formed, the AAMB. In 2001 the AAMB claimed responsibility for a suicide attack on an Israeli bus killing three people and injuring nine others; in January 2002 a female AAMB member conducted a suicide bombing in Jerusalem killing one person and injuring 100 others; in February the AAMB killed a police officer and conducted another suicide attack, injuring 3 people; in March 2002 AAMB conducted 5 suicide bombings targeting Israeli civilians, killing many and injuring more. Similar attacks continued throughout 2002 to 2007. In June 2007 President Abbas, Arafat's successor, banned all armed militia, including the AAMB.

[42] The record before the ID also contained a significant amount of documentary evidence, from a variety of sources, which supported its finding that there were reasonable grounds to believe that Fatah had engaged in terrorism. That is, because there was an objective basis for its

belief based on compelling and credible information, reasonable grounds to believe were established (*Mugesera* at paras 114-16; *Khalil* at para 12). Further, the ID referenced the definition of terrorism in *Suresh*, and the acts that it identified fell within that definition, as most were intended to harm civilians as a means to achieving Fatah's goals (*Naeem v Canada (Citizenship and Immigration)*, 2010 FC 1069 at paras 57-59).

[43] The Applicant submits that because the Canadian government has not listed Fatah on its terrorist list, this indicates that the government considers Fatah as distinct from the AAMB, which it has listed. In that regard, I would note first that the Applicant has put forward no evidence establishing that Parliament intended to link "organizations" as described in s 34(1)(f) of the IRPA, to the list of entities, made pursuant to the *Criminal Code*, nor that being on the list of entities is a prerequisite to a finding of inadmissibility under s 34(1)(f). In that regard, in *Karakachian*, Justice de Montigny stated:

[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.

[44] Subsequently, in *NK v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1377 at para 80 [NK], Justice Russell found that the listing was beside the point as the Immigration Appeal Division had previously ruled that the MQM, the organization at issue in that case, is a terrorist organization which determination had not be set aside on judicial review

“In addition, this Court has confirmed that listing is not required for the purposes of determining admissibility under s 34(1)(f). See *Karakachian*, above, at para 40”.

[45] The Applicant submits that the finding in *Karakachian* was *obiter* and that, therefore, Justice Russell wrongly concluded that the jurisprudence was clear that there is no requirement that an organization be listed for the purposes of determining admissibility. In my view, what can be taken from *Karakachian* is precisely what Justice de Montigny stated, that listing is not a requirement under s 34(1)(f), but the fact that Parliament has not listed Fatah is one indicia that Parliament does not consider that entity to be a terrorist organization (also see *Mirmahelah* at para 21).

[46] I would also note, however, that s 83.01(1) of the *Criminal Code* defines a terrorist group as:

- a) an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or
- b) a listed entity

[47] A listed entity means an entity on a list established by the Governor in Council. Accordingly, the mere fact that an entity is not listed pursuant to the *Criminal Code* and the list of entities does not necessarily mean that it is not a terrorist group or that Parliament does not consider it as such. As stated in *Figueroa v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 836 at para 13 “Placing an entity to the list [*sic*] allows the Crown to assert that an entity is a “terrorist group” when prosecuting a terrorism offence. But the list is not exhaustive. Terrorist groups are not necessarily ‘listed entities’”.

[48] Further, this Court has also previously upheld a determination by the ID, based on the evidence before it, that there were reasonable grounds to believe that Fatah is a terrorist organization (*Khalil* at paras 53-54; *Saleh* at paras 9, 19-20). And, the low standard of proof applicable to s 34(1)(f), “reasonable grounds to believe”, suggests that Parliament did intend to give the ID significant discretion to make factual determinations regarding an organization’s activities (*Mirmahaleh* at para 16; and see *Yamani* at paras 13-14; *Tjiueza* at paras 38-39, referring to s 34(2), now s 42.1 of the IRPA).

[49] As to the Applicant’s submission that, because in 1999 a previous government invited Arafat to Ottawa and because a successor government allegedly maintained diplomatic relations with and financially supported the PA, this leads to an inference that Canada recognizes that Fatah has abandoned its terrorist past and that this is why Fatah is not listed as a terrorist organization, the Applicant provides no evidence to support this other than its own speculative link. Nor do I accept the Applicant’s submission that Arafat’s visit was implicit recognition by the Canadian government that there is “no temporal component” to the s 34(1)(f) analysis, by which the Applicant appears to mean that past acts of terrorism by Fatah are not a consideration when interpreting and applying s 34(1)(f), which would, in fact, mean that there *is* a temporal component. And, even if I did agree, this is not helpful to the Applicant for the reasons set out below.

[50] With respect to the temporal component of the analysis, the Applicant also submits that the ID failed to give sufficient consideration to *Chwah* and *Karakachian* and to the qualifications those cases placed on the *Yamani* decision, upon which the ID did rely.

[51] In *Yamani* Justice Snider was quite clear in stating that there is no temporal component to a s 34(1)(f) analysis:

[11] Quite simply, and contrary to the arguments made by Mr. Al Yamani, there is no temporal component to the analysis in s. 34(1)(f). If there are reasonable grounds to believe that an organization engages today in acts of terrorism, engaged in acts of terrorism in the past or will engage in acts of terrorism in the future, the organization meets the test set out in s. 34(1)(f). There is no need for the Board to examine whether the organization has stopped its terrorist acts or whether there was a period of time when it did not carry out any terrorist acts.

[12] Membership by the individual in the organization is similarly without temporal restrictions. The question is whether the person is or has been a member of that organization. There need not be a matching of the person's active membership to when the organization carried out its terrorist acts.

[13] The result may seem harsh. An organization may change its goals and methodologies and an individual may choose to leave the organization, either permanently or for a period of time. The provision seems to leave no option for changed circumstances by either the organization or the individual. Fortunately, Parliament, in including s. 34(2) in *IRPA*, provided means by which an exception to a finding of inadmissibility under s. 34(1) can be made. Under that provision, a permanent resident or a foreign national may apply to satisfy the Minister that "their presence in Canada would not be detrimental to the national interest". Parliament has provided all persons, who would otherwise be inadmissible under s. 34(1), with an opportunity to satisfy the Minister that their presence in Canada is not detrimental to the national interest. Under this procedure, factors such as the timing of membership or the present characterization of the organization may be taken into account.

[52] Subsequently, in *Chwah*, the claimant admitted to being a member of the Lebanese forces which had, in the past, used weapons to pursue their goals and engaged in terrorism to achieve their objectives. Justice Boivin found that the officer's decision was terse and made no reference to any evidence showing that the organization had taken part or participated in terrorist acts since

the militia had been disbanded in 1990 or since the applicant became a member in 1992. From 1990 forward it had transformed itself into a political party before being banned in 1994. The officer had erred by failing to assess the organization's role prior to 1990 and after 1990. The claimant had joined the organization in 1992, after its transformation, and there was no evidence that the organization had perpetrated terrorist acts from the time he joined or thereafter.

[53] In *Karakachian*, Justice de Montigny agreed with Justice Snider when she wrote in *Yamani* that timing is not a factor that should be taken into consideration because s 34(1)(f) clearly refers to membership in organizations that there are reasonable grounds to believe have engaged in acts of terrorism in the past. But he went on to say:

[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.

[54] In *Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1213, Justice Snider found that:

[23] Under this analysis, "there is no temporal component" in the determination of the organization, or in the determination of the individuals membership (*Al Yamani*, above, at paras. 11 - 12). The Board does not have to examine whether the organization has stopped terrorists acts, and does not have to see if there is a "matching up to persons active membership to when the organization carried out its terrorists acts" (*Al Yamani*, above at para. 12). Furthermore, for the purposes of s. 34(1)(f), the determination of whether the organization in question engages, has

engaged, or will engage in acts of terrorism is independent of the claimant's membership.

[55] She certified the following question:

Is a foreign national inadmissible to Canada, pursuant to s. 34(1)(f) of IRPA, where there is clear and convincing evidence that the organization disavowed and ceased its engagement in acts of subversion or terrorism as contemplated by s. 34(1)(b) and (c) prior to the foreign nationals membership in the organization?

[56] The Federal Court of Appeal dismissed the appeal and provided the following response:

It is not a requirement for inadmissibility under s. 34(1)(f) of the IRPA that the dates of an individual's membership correspond with the dates on which the organization committed acts of terrorism or subversion by force.

[57] In my view, the Federal Court of Appeal effectively resolved this question.

[58] In any event, in both *Chwah* and *Karakachian* the claimant had joined the organization after its transformation. In this situation, the Applicant joined Fatah in 1993 which, it is true, was after the renunciation of violence in 1988 and was the same year the Oslo Accord was signed. However, the documentary evidence is clear that Fatah engaged in acts of violence and terrorism both before the denunciation of terrorism in 1989 and, through the AAMB, during the Second Intifada from 2000 to at least 2007. In March 2002 the Applicant was in Arafat's compound when it was essentially besieged by the IDF in response to the AAMB actions in the Second Intifada. He remained a member of Fatah until at least 2012. Thus, even if there is a requirement for a temporal connection between the Applicant's membership and Fatah's acts of terror, and, given the Federal Court of Appeal's decision in *Gebreab* I do not agree that there is

such a requirement, it exists in this case based on the ID's finding that the AAMB is a wing of Fatah.

[59] In that regard, the ID found that the AAMB did not exist separately from Fatah as a whole and that the Applicant was a member of Fatah at a time when it engaged in acts of terrorism through its military wing, the AAMB. While it is true that the documentary evidence regarding the connections between Fatah and the AAMB is mixed, in my view, when considered as a whole, the documentary evidence provides an objective basis which supports the ID's finding.

[60] The CTR is voluminous, comprising seven volumes of materials. The ID referred to Exhibits 2, 4, 5 and 12 in describing the history and organization of Fatah and Exhibits 2-7, 12, 13 and 19 in describing its activities. While it pinpoints only one piece of evidence (Exhibit 4, p 75) in support of its statement that the most notorious faction within Fatah, the AAMB, did not exist separately from Fatah, this finding is otherwise supported within the documentary evidence.

For example:

- Jonathan Schanzer, *Hamas vs. Fatah: the Struggle for Palestine*, (New York: Palgrave MacMillan, 2008) states that shortly after the outbreak of violence in 2000, Fatah created the AAMB. While Fatah also carried out violence against Israeli through other militias, which included Force 17, the Presidential Guard, and other small factions, the AAMB "were the only Fatah splinter to rival Hamas with spectacular and bloody terrorist attacks.... By 2002, the al-Aqsa Martyrs Brigade's had claimed responsibility for dozens of attacks in which Israeli civilians were killed":

By 2003, al-Aqsa Martyrs Brigade's members openly admitted their membership in Arafat's Fatah faction. Malik Jallad, a Brigades commander in Tulkarem acknowledged, "We belong to Fatah." One Brigades foot soldier told *USA Today*, "Our commander is Yasir Arafat himself." Even Arafat's spokesman Mohammed Odwan confirmed that the Martyrs Brigades were "loyal to President Arafat". Papers subsequently seized by the

Israeli military from PA offices also demonstrated financial links. In one documented example, Arafat paid \$20,000 to the group. From other captured files, it became clear that Fatah financed everything from explosives to guns to gas money (p 76)

- Various sources confirm that local chapters of the AAMB were funded by central political leadership of Fatah (Jane's Intelligence Review, "The rise and fall of the Al-Aqsa Martyrs Brigades", May 14, 2002; Matthew Levitt and Seth Wikas, "Defensive Shield Counterterrorism Accomplishments", The Washington Institute for Near East Policy, April 17, 2002; Israel Ministry of Foreign Affairs, "Documents seized during Operation Defensive Shield linking Arafat to Terrorism", April 15, 2002; Israel Ministry of Foreign Affairs, "Palestinian Authority Security Services supplied guidance-weapons-funds to Al-Aqsa Martyrs Brigades in order to perpetrate terrorist attack", May 1, 2002; Israel News Agency, "Yasser Arafat's 'Moukata' Compound in Ramallah: A Center for Controlling and Supporting Terrorism", Matthew Kalman, "Terrorist says orders come from Arafat", USA Today, March 14, 2002);
- *"Palestinian Suicide Terrorism in the Second Intifada: Motivations and Organizational Aspects"* states:

The third Palestinian organization to have employed suicide terrorism during the Second Intifada is Fatah, the dominant faction of the Palestine Liberation Organization (PLO), which in turn is headed by Yasser Arafat. ...Fatah has been responsible for almost a third of all suicide attacks since the beginning of the Second Intifada... More important...Fatah has become the most active organization in terms of the numbers of attacks on Israelis. In 2002, it has perpetrated more suicide attacks than all of the other groups combined...As a result of attacks by Fatah and affiliated organizations such as Tanzim and Al-Aqsa Martyrs, 42 Israeli were killed and 629 wounded between September 2000 and June 2002...

The article goes on to state that the links between AAMB and the PA leadership seem to be close and that, according to an FBI source, the infrastructure, funds, leadership and operatives that comprise the AAMB and facilitate the groups activate hail from Fatah, its leaders are salaried members of the PA and its security forces and by Fatah's own admission it is AAMB's parent and controlling organisation;

- Aaron D Pina, "CRS Report for Congress: Palestinian Factions" June 8, 2005, Congressional Research Service, The Library of Congress, notes that a PLO website claims that Fatah supports engagement in a political settlement with Israel but that Fatah also includes several wings that do not exclude force of arm to accomplish the political goals of the party, these include the Force 17, Tanzim and AAMB. The article states that the AAMB does not have a well defined leadership structure and, of the described factions, it may have the most autonomy from the PLO. But "On December 18, 2003

Fatah asked the leaders of the al-Aqsa Martyr's Brigades to join Fatah Council, recognizing it officially as part of Fatah organization”;

- Matthew Levitt, “Designating the al-Aqsa Martyrs Brigades”, The Washington Institute for Near East Policy, March 25, 2002 noted that in the US State Department had announced the AAMB’s pending designation as a foreign terrorist organization even before Congress and completed the formal process leading to that listing. The article refers to AAMB’s intimate relationship with Fatah, the dominant faction within the PLO, the PA and the various Palestinian security forces and states that the infrastructure, funds, leadership and operatives that comprise the AAMB and facilitate its activities all hail from Fatah and that by its own admission Fatah is AAMB’s parent and controlling organization;
- Israel Ministry of Foreign Affairs, “Jenin’s Terrorist Infrastructure”, April 2, 2002 describes Fatah movements, and especially its military wing the AAMB as very active in the Jenin sector having carried out numerous shooting and bombing attacks especially against villages in the area as well as attacks against a large number of Israeli civilian targets;
- Matthew Kalman, “Terrorist says orders come from Arafat”, USA Today, March 14, 2002 reported the leader of AAMB as stating that it was an integral part of Fatah and that “The truth is, we are Fatah itself, but we don’t operate under the name of Fatah. We are the armed wing of the organization, we receive our instructions from Fatah. Our commander is Yasser Arafat himself”;
- Matthew Kalman, “Arafat alleged to raise Libyan money: Sources say he uses funds to finance Al Aqsa Brigades”, Chronicle Foreign Service, SFGate, June 23, 2002 states that AAMB continues to embarrass Abbas, even though both he and they belong to Fatah movement and describes the killing of a 7 year old girl;
- BBC News, “Palestinian Authority funds go to militants”, November 7, 2002 quotes a Fatah leader in Jenin as saying that “Fatah has two section: a military wing led by the military and a political wing led by politicians. But there is no difference between Fatah and the al Aqsa Martyrs’ Brigades”;
- BBC News, “Profile: Fatah Palestinian Movement”, August 4, 2009 states that the Second Intifada saw a number of armed groups associated with Fatah and Tanzim emerge, most notable the AAMB and that “The brigades are neither officially recognized nor openly backed by Fatah, though members often belong to the political faction”;
- Khaled Aby Toameh, “Fatah Committed to Aksa Martyres” June 20, 2004 eufunding.org - states that the PA has no plans to dismantle the Aksa Martyrs Brigades, the armed wing of Fatah quoting the Prime Minister Ahmed Qurei who also acknowledged that the group is part of Fatah and that its gunmen are entailed to play a role in the future “We have clearly declared that the Aksa Martyrs Brigades are part of Fatah”... “we are committed to them and Fatah bears full responsibility for the group”;

- Michael Rubin, "In Bad Company: Yasser Arafat and Saddam Hussein", The Washington Institute for Near East Policy, May 2, 2002 describes the AAMB and Tanzim as military units formally attached to Arafat's Fatah movement.

[61] The Respondent points out that the Applicant refers to no documentary evidence in support of its position that the AAMB is separate and distinct from Fatah. In response and when appearing before me, counsel for the Respondent referred to the Jane's Report in support of its position and submitted that the Jane's Report was not mentioned in the ID's decision and that it was contradictory evidence that had been improperly ignored. As noted above, the Jane's Report is found in Exhibit 2 of the materials and was referenced by the ID in connection with the identification of acts terrorism by Fatah.

[62] The Jane's Report also notes that the beginning of the Second Intifada in late 2000 saw a resurgence of violence by "Fatah-affiliated militant factions", the most notable being the AAMB, which conducted numerous suicide attacks on Israeli civilian targets. Further, that the AAMB was formed in response to armed wings of militant Islamist groups but that it "does not formally constitute the armed wing of Fatah - as alleged by Israel - but is instead politically affiliated". And, following the arrest of several of the AAMB senior leaders in 2002, that the organization became highly decentralized and organized along local lines with no discernable single leader. However, the Jane's Report also refers to the AAMB as a "Fatah-affiliated faction" stating:

... the beginning of the Second Intifada in September 2000 saw a considerable change in the tactics utilized by Fatah and its affiliated armed factions. A particularly noticeable change was the use of suicide attacks by members of the newly formed Al-Aqsa Martyrs Brigades.... The Al-Aqsa Martyrs Brigade and other Fatah-affiliated armed factions have also been involved in attacking Palestinian targets, including opponents of Yasser Arafat's rule, journalists...

[63] The Jane's Report also states that subsequent to 2007, and following an amnesty agreement between the AAMB and Israel, the AAMB ceased to exist in the West Bank. Since then it has transformed into an "amorphous decentralized movement composed of loosely linked cells primarily located in the Gaza Strip and on a smaller scale, in the West Bank".

[64] I would also note that "Erased in a Moment: Suicide Bombing Attacks Against Israeli Civilians", an article prepared by Human Rights Watch ("HRW") from 2002, concludes that failure by Arafat and the PA to take steps that could have deterred suicide bombings aimed at civilians implies a high degree of responsibility for what occurred. It noted that individual members of AAMB have even been among the beneficiaries of payments approved personally by Arafat at a time when he knew or should have known that such individuals were alleged to have been involved in planning or carrying out attacks on civilians. HRW also describe the links between Fatah and the AAMB as "complex, yet ill-defined". It states that leaders and militants in the AAMB have regularly identified themselves as Fatah, the AAMB letterhead carries the Fatah emblem, as do their websites, which also link to Fatah communiqués and documents. While Fatah leaders have frequently asserted that the organization never took a decision to set up the AAMB or to recognize their claim to be the "military wing" of the organization, nor had Fatah's individual leaders or the Fatah ruling council contested the claim or publically disassociated Fatah from AAMB. At the local level, many Fatah leaders maintained an ambiguous relationship with the AAMB. While not disavowing them, they claimed that there was no supervisor-subordinate role between Fatah and the AAMB and that they never exercised effective control over the AAMB, although at least one ranking AAMB cadre had asserted a direct link between the militias and Fatah leadership.

[65] In my view, what can be taken from the evidence on the record is that after 2007 the AAMB may have “transformed into a more autonomous movement consisting of a number of differently named armed factions who individually associate themselves, in written and verbal statements to Fatah” which is not known to have retained any “significant formal structure linked to Fatah”. However, the documentary evidence, including the Jane’s Report, is clear that from 2000 to 2007, the AAMB was an armed faction that was clearly, if not formally, linked to or affiliated with Fatah. Further, the fact that the AAMB’s terrorist activities diminished in 2007 when President Abbas renounced the use of violence and ordered the dissolution of the AAMB at the conclusion of the Second Intifada also suggests some level of control over the AAMB by Fatah.

[66] Accordingly, there was sufficient evidence to ground the ID’s conclusion that Fatah was a terrorist organization, and, that the AAMB did not exist separately from Fatah and were one organization, at least for some period of time. Therefore, the ID’s findings fall within the range of possible, acceptable outcomes and were reasonable.

[67] It is true that the ID’s analysis of the evidence and the relationship between Fatah and the AAMB could have been more detailed. However, the ID is not required to refer to every document in the CTR (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland Nurses*]; *Mirmahaleh* at para 25; *Somasundaram v Canada (Citizenship and Immigration)*, 2014 FC 1166 at paras 33; *Florea v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 598 (FCA)) and did reference Exhibit 2, which contains the Jane’s Report, in the context of the history and activities

of Fatah. In fact, the Jane's Report sets out a timeline which documents major events related to Fatah from 1959 to 2011, including many suicide bombings and other attacks by Fatah and its related entities, including AAMB, from September 2000 to June 22, 2007, and from 2008 to 2010. Nor did the ID ignore evidence that was contrary to its conclusion because, at best, the Jane's Report and HRW article serve to confirm that, by design, there was no formal affiliation between Fatah and AAMB, but that there was a clear connection. In my view, the ID's reasons are supported by the record. And, as stated in *Newfoundland Nurses*, "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met". Therefore, the decision falls within the range of defensible outcomes (*Dunsmuir* at para 47).

[68] As to the ID's reference to a New York Times newspaper article reporting that a United States District Court decision had found the PLO and PA liable for supporting terrorism between 2002 and 2004, although the Applicant submits that the ID erred by relying on the article rather than the judgment itself, in my view, little turns on this point. The ID did mention the article, stating that the United States District Court's finding supported the Minister's contention that Fatah likely continued to support acts of terrorism in spite of publically renouncing such activists. However, there is no suggestion of undue reliance on the article by the ID, and in any event, viewed in the context of the seven volumes of documentary evidence, some of which is noted above, it was merely one more piece of evidence supporting the ID's conclusion that Fatah was an organization that has engaged in terrorism. Referring to the news article was not a

reviewable error, nor has the Applicant suggested that the article incorrectly reported the outcome of that decision.

[69] The Applicant also suggested that the ID should consider the “very similar applicability of the Exclusion clause - Article (F)(a) of the U.N. Convention [sic]”. In *Nassereddine* I found that the considerations under Article 1F(a) of the Convention Relating to the Status of Refugees 28 July 1951, 189 UNTS 137 (the Refugee Convention) cannot be imported into s 34(1)(f), including the requirement of complicity or a substantial contribution to the activity in question. The same conclusion was subsequently also reached by the Federal Court of Appeal in *Kanagendren* (leave to appeal to SCC refused, 36508, 19 November 2015).

[70] For all of these reasons, I find that the ID’s decision was reasonable and, therefore, that the application for judicial review must be dismissed.

Certified Question

[71] The Applicant submits the following question for certification pursuant to s 74(d) of the IRPA:

Is a foreign national **inadmissible** to Canada in the basis of his former membership in an organization , **under section 34(1)(f)** of the **IRPA**, as determined by the **Immigration Division** of I.R.B., **regardless of:**

- a) Whether the **Ministry of Public Safety and Emergency Preparedness** has not included **such organization on its List of Terrorist Entities? and**
- b) Whether the Government of Canada has bilateral diplomatic relations with **and** financial supports such organization?

(Emphasis and underlining in Applicant's submission).

[72] The Respondent opposes the Applicant's request to certify a question and submits that the question does not meet the test as set out in *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 [*Varela*].

[73] The test for certification is whether there is a serious question of general importance and of broad significance which would be dispositive of the appeal and which transcends the interests of the parties to the litigation (*Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9; *Varela* at paras 28-30; *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11).

[74] As noted above, the listing of an entity is not exhaustive because, even if it is not listed, it may still fall within the *Criminal Code* definition of a terrorist group pursuant to s 83.01(1). Further, the IRPA does not link s 34(1)(f) organizations that engage, have engaged or will engage in terrorism to the *Criminal Code* definition of a terrorist group as a listed entity. And, decisions of this Court have concluded that listing is just one indicia of whether an organization does, has, or will engage in terrorist activities (*Karakachian* at para 40; *NK* at paras 80, 102; *Mirmahaleh* at para 21). Ultimately, the reasonableness of an inadmissibility finding is largely dependent on the documentary evidence contained in the record. Therefore, in my view, the question posed by the Applicant is not dispositive.

[75] Further, decisions to engage a governmental organization in diplomatic relations, to provide it funding or to invite its leader to Canada differ greatly from the type of administrative

decision-making required of the ID under the IRPA. Comparing the two types of decisions and attempting to impugn one based on the result in the other is unhelpful and does not lend itself to a certified question. Simply put, the government of Canada's past diplomatic relations with Arafat and the PLO are not relevant to the interpretation of s 34(1)(f) of the IRPA in these circumstances.

[76] For these reasons, I decline to certify the question proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There is no order as to costs.
3. The question proposed by the Applicant is not certified.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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