Federal Court  Cour fédérale

Date: 20170425

Docket: IMM-3407-16

Citation: 2017 FC 397

Ottawa, Ontario, April 25, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ABDUL RAUF KHAN

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of the Immigration Division ("ID") of the Immigration and Refugee Board of Canada dated July 20, 2016 in which the ID found that the Applicant is inadmissible under s 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

[2] For the reasons that follow, this application for judicial review is dismissed.

Background

[3] The Applicant is a citizen of Pakistan. He came to Canada in February 2000 and claimed refugee protection on the basis that he had supported the Mohajir Quami Movement ("MQM") in Pakistan and feared persecution by the Haqiqi group. The Applicant was granted refugee protection in February 2001. He applied for permanent residence status in May 2001, which application remains outstanding, as does an application for ministerial relief made in 2011.

[4] On June 13, 2014 a report was made, pursuant to s 44(1) of the IRPA, which found the Applicant to be inadmissible on security grounds for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism as prescribed by s 34(1)(f) of the IRPA. Specifically, for being a member of the MQM and the MQM-Altaf ("MQM-A"). The Applicant was referred to the ID for an admissibility hearing. On July 20, 2016, the ID determined that the Applicant was inadmissible, which decision is under review in this application for judicial review. The ID contemporaneously issued a deportation order.

Decision Under Review

[5] As its starting point, the ID addressed the temporal component of s 34(1)(f), comparing and contrasting this Court's decisions in *El Werfalli v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 612 ("*El Werfalli*"); *Al Yamani v Canada (Citizenship and Immigration)*, 2006 FC 1457; and *Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1213 ("*Gebreab*"). The ID quoted the Court's conclusions in *El*

Werfalli which included that where an individual's membership is contemporaneous with the terrorist activities, an inference may be drawn that the person knew or ought to have known of the organization's terrorist activities (at para 68).

[6] The ID identified the issue before it as being whether the Applicant was a member of the MQM and the MQM-A and whether these organizations were engaged in terrorism.

[7] The ID noted the history of the MQM. This included that it was founded in 1984, that in 1992 the MQM Haqiqi ("MQM-H"), a breakaway MQM faction led by Afaq Ahmed and Aamir Khan, was launched, and, that the MQM, led by Altaf Hussain, then became known as the MQM-A (the MQM and MQM-A organizations will hereinafter collectively be referred to as the MQM in these reasons as any distinction between the two entities is not relevant to this matter). The ID also reviewed the documentary evidence and found that multiple documents from reliable sources credited the MQM with bombings, kidnappings, torture and violent demonstrations and found that the activities of the MQM fit the definition of terrorism as defined by the Supreme Court of Canada in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1. Further, that the MQM was engaging in these terrorist activities during the time that the Applicant joined and remained a member of that party.

[8] As to the Applicant's membership, the ID noted that the Applicant's Personal Information Form stated he had supported the MQM since 1990 and that his family were long-time supporters. He wrote that he "worked very hard and enthusiastically for the MQM" and that it was his involvement that caused the Haqiqi faction to target him in 1998. Further, his

permanent residence application stated that he was a social worker with the MQM between June 1990 and June 1998. Finally, at his Canada Border Services Agency interview, he explained that he worked as a volunteer for the party and as a social worker he had worked at political rallies controlling the crowds and saying slogans, he used a loudspeaker and encouraged the crowd to listen to the president, he also distributed pamphlets at colleges and on the streets. The ID noted the Applicant's evidence that the MQM helped him get a job at Mandarin International Leather, but that the company was not connected to the MQM. Further, that the Applicant's evidence was that he did not have a special rank in the party but was one of thousands of workers; he did not pay dues or make financial contributions to the party; and, he attended meetings once or twice a month at the party's office where he would be given flyers for distribution or given instructions about upcoming rallies.

[9] The ID noted the Applicant's claim that his knowledge of the party was that it was advocating for the rights of migrants from India and that he joined because his family's land was confiscated by the government when his father passed away. He and his mother hoped that if the MQM got into power, they might be able to get their land back. The ID noted that the Applicant alleged that he had no knowledge of any violence being conducted by the party or on behalf of the party, other than one strike when Altaf Hussain was arrested, which he knew from watching television. The ID also noted the Applicant's testimony that when he was a member of the MQM, he and his colleagues understood it to be a peace-loving group that was trying to protect the rights of migrants from India. He stated that he was told the MQM was a good group, whereas the Haqiqi group was doing bad things, such as robberies and kidnappings, for which it tried to blame the MQM. The ID also noted the Applicant's submission that the facts concerning

his association with the MQM indicated that he had only a peripheral and marginal association and should not be found to be a member as contemplated by s 34(1)(f) of the IRPA.

[10] Next the ID considered jurisprudence pertaining to membership under s 34(1)(f) of the IRPA and concluded, based on the criteria identified by the jurisprudence to determine if a person is a member of such an organization, that the Applicant's involvement with the MQM was not minimal or marginal and did rise to the level where he could reasonably be found to be a member of the organization. His membership lasted for eight years which is a significant amount of time, he demonstrated a high degree of commitment to the organization based on the fact that he attended meetings once or twice a month for many years, he volunteered to work for the MQM at rallies controlling the crowds and he also distributed pamphlets over a period of many years. He was committed to the MQM's objective of increased rights in Pakistan for migrants from India and personally benefitted from his membership when the MQM assisted him with getting a job.

[11] The ID found that the Applicant's association with the MQM was comparable to the facts in *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2004 FC 310, aff'd in *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 ("*Poshteh*"); *Ugbazghi v Canada (Citizenship and Immigration)*, 2008 FC 694 ("*Ugbazghi*"); and *Motehaver v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 141; and with other MQM cases (*Memon v Canada (Citizenship and Immigration)*, 2008 FC 610 ("*Memon*"); *Qureshi v Canada (Citizenship and Immigration)*, 2009 FC 7 ("*Qureshi*"); *Omer v Canada (Minister of Citizenship*

and Immigration), 2007 FC 478 ("*Omer*"); *Mohammad v Canada (Minister of Citizenship and Immigration)*, 2010 FC 51 ("*Mohammad*")).

[12] The ID noted that a finding of complicity is not necessary for a finding that a person is a member of an organization under s 34(1)(f) and that none of the cases provided to it indicated that direct knowledge of violent acts by a member of an organization is required before a finding of inadmissibility under s 34(1)(f) of the IRPA can be made. Further, that based on the evidence, the Applicant was essentially aware that accusations of kidnapping and robberies were being made against the MQM because of discussions with colleagues and statements by Altaf Hussain that it was Haqiqi who were committing these acts but blaming the MQM. The ID found that the Applicant chose to believe what others were telling him. This was not unreasonable, considering that he did not observe these incidents first hand, but constituted the kind of passive knowledge of violent activities of the MQM which was referred to by this Court in *Qureshi*.

[13] The ID concluded that only one fact distinguished the Applicant's circumstances from other MQM cases it referred to, being that he did not raise funds or make donations to the party, but that the length of time he was involved with the party and the frequency of his involvement constituted significant support of and commitment to the party and that there were reasonable grounds to believe that his involvement constituted membership under s 34(1)(f).

Issues and Standard of Review

[14] In my view, although the Applicant identifies a number of issues, all of which pertain to his level of knowledge of the MQM's terrorist activities, this application really raises only one

issue, being whether the ID reasonably concluded that the Applicant was a member of the MQM for the purposes of s 34(1)(f) of the IRPA.

[15] Whether a person is a member of an organization pursuant to s 34(1)(f) of the IRPA is a question of mixed fact and law to which the reasonableness standard applies (*Mirmahaleh v Canada (Citizenship and Immigration)*, 2015 FC 1085 at para 15 ("*Mirmahaleh*"); *Kanapathy v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 459 at para 29 ("*Kanapathy*"); *Gacho v Canada (Citizenship and Immigration)*, 2016 FC 794 at para 9 ("*Gacho*")). This Court has explicitly held that whether a person is a member of the MQM pursuant to s 34(1)(f) of the IRPA must be analyzed based on the reasonableness standard of review (*Begum v Canada (Citizenship and Immigration)*, 2016 FC 729 at para 11 ("*Begum*")).

[16] When reviewing a decision on the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

Submissions of the Parties

Applicant's Position

[17] The crux of the Applicant's submission is that the ID erred by failing to consider the Applicant's lack of knowledge of the terrorist activities of the MQM as a determinative criteria

when assessing his membership in that organization for the purposes of s 34(1)(f) of the IRPA. Relatedly, that the ID's finding that the Applicant had passive knowledge of the MQM's terrorist activities was unreasonable given the evidence.

[18] The Applicant submits that membership cannot be determined simply on the basis of the level of association or involvement, an essential criterion is knowledge. In *Krishnamoorthy v Canada (Citizenship and Immigration)*, 2011 FC 1342 ("*Krishnamoorthy*"), Justice Mosley quoted Justice O'Reilly in *Sinnaiah v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1576 ("*Sinnaiah*") for the proposition that to establish membership in an organization, there must "at least be evidence of an "institutional link" with, or "knowing participation" in, the group's activities" (*Krishnamoorthy* at para 24). The Applicant submits that in this matter there was no evidentiary foundation to support that the Applicant knew that the MQM were terrorists. Nor does a consideration of the factors to be applied in determining whether an applicant's participation in activities associated with a terrorist organization constitute membership in that organization support, on the facts of this matter, a conclusion of membership of the Applicant in the MQM (*PS v Canada (Citizenship and Immigration)*, 2014 FC 168).

[19] The Applicant also disagrees with the ID's interpretation of *Qureshi* and *Mohammad* and says that neither can be used to establish that the Applicant's knowledge of the MQM's terrorist activities in the present case was sufficient to render him inadmissible. The Applicant takes particular issue with the ID's finding that the Applicant had at least the same sort of passive knowledge of the violent activities of the MQM as are referenced in *Qureshi*. In that regard, the Applicant submits that in *Qureshi* the applicant had little knowledge of the organization but here

the Applicant had no knowledge and to equate these two levels is an error. Further, there the claim of no knowledge was found to be not credible but if knowledge was irrelevant then the credibility of the claim concerning knowledge did not need to be addressed. Additionally, the Applicant asserts that knowledge of an allegation is not knowledge, even passive knowledge, of facts.

Respondent's Submissions

[20] The Respondent submits that while membership is not defined, it has been held that it is to be given an unrestricted and broad interpretation given its context in immigration legislation (*Poshteh* at paras 26-32). Here the finding by the ID that the Applicant was a member of the MQM was consistent with the broad interpretation of membership that is required by the jurisprudence. The ID specifically considered the factors set out in the jurisprudence (*TK v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 327 ("*TK*") and applied the facts of this case to these factors in reaching its conclusion (also see *Mirmahaleh* at paras 29-30).

[21] The Respondent submits that the Applicant's argument that the ID's decision was not reasonable because he lacked knowledge of the violent acts of the MQM, and therefore is not a member for the purposes of s 34(1)(f), is misplaced as it is well settled that knowledge is not required in a s 34(1)(f) finding. The test for membership under 34(1)(f) "does not require any complicity or knowing participation in an act of terrorism" (*Mirmahaleh* at para 30). Further, complicity is not an issue under s 34(1)(f) (*Omer* at para 11*; Uddin Jilani v Canada (Citizenship and Immigration)*, 2008 FC 758 at para 20). As stated by the Federal Court of Appeal in *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 ("*Kanagendren*"), while

s 34(1)(c) contemplates actual participation in acts of terrorism, s 34(1)(f) is only concerned with membership in a terrorist organization.

[22] The ID's finding that the Applicant had passive knowledge of the MQM's terrorist activities was reasonable in light of the jurisprudence (*Poshteh*; *Ismeal v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 198 at paras 21-23 ("*Ismeal*"); *Kanendra v Canada (Minister of Citizenship and Immigration)*, 2005 FC 923 at paras 21-23 ("*Kanendra*")) and the evidence. The Applicant admitted his membership from 1990 to 1998 during which the MQM was engaging in terrorist activities. Given that his membership was contemporaneous with those activities an inference may be drawn that he knew or ought to have known of them (*El Werfalli* at para 68). The ID also considered several cases and none of them required direct knowledge of the MQM's activities (*Memon*; *Qureshi*; *Omer*; *Mohammad*). The ID found that the Applicant was aware that accusations of kidnappings and robberies were being made against the MQM because of discussions he had with colleagues and statements made by Altaf Hussein. The Respondent submits that the facts also establish that the Applicant was involved with the MQM for a long time during the height of its violent activities, his involvement was not minimal and he lived in Karachi where much of the violence occurred.

[23] In any event, whether the Applicant had passive knowledge or not was not a necessary finding in the context of making a s 34(1)(f) finding and, even if the ID erred in considering it, this does not amount to a reviewable error. The Respondent notes that in *Omer*, the Court held that it was an error for the Board to have considered the issue of complicity, instead of simply membership, but that this was not a reviewable error as it had no effect on the decision (at para

15). Nor does a finding of passive knowledge detract from the ID's finding that the Applicant was a member of the MQM where no knowledge is required.

Analysis

[24] The relevant provisions of the IRPA are as follows:

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;	a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
(c) engaging in terrorism;	c) se livrer au terrorisme;
(d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada;

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(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).
…	…
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.

[25] In my view, the ID correctly identified that it was required to determine if the MQM was an organization engaged in terrorism and, if so, whether the Applicant was a member of that organization.

[26] When appearing before me the Applicant took the position that he was not conceding that the MQM was a terrorist organization during the relevant time period, nor was he contesting this. In my view, to the extent that there is any issue on this point, the ID's finding that the MQM was engaging in terrorist activities during the time that the Applicant was a member of that organization was reasonable based on the documentary evidence summarized, in part, by the ID in its reasons and as found in the record. I would also note that this Court has previously upheld

decisions where it has been found that the MQM was an organization engaging in acts of terrorism under s 34(1)(f) (*Begum*; *Jalil v Canada (Citizenship and Immigration)*, 2007 FC 568; *Memon*; *Qureshi*; *Omer*; *Mohammad*).

[27] Thus, the determinative issue on this application is whether the Applicant is a member of the MQM. In that regard, the Applicant's primary argument is that, regardless of his admitted membership, he was not a member of the MQM for the purposes of s 34(1)(f) because he had no direct actual knowledge of its terrorist activities. In the Applicant's view, direct actual knowledge of an organization's terrorist activities is a necessary condition or a pre-requisite for a finding of membership. However, the Applicant has not pointed to any case law in support of that view nor does the jurisprudence concerning the statutory interpretation of s 34(1)(f) and the criteria that should inform an assessment of membership provide support for the Applicant's position.

[28] As a starting point, "member" is not defined in the IRPA, however, jurisprudence has consistently held that it should be interpreted broadly given that the context at play concerns national security and public safety. The Federal Court of Appeal in *Poshteh* stated that:

> [27] There is no definition of the term "member" in the Act. The courts have not established a precise and exhaustive definition of the term. In interpreting the term "member" in the former *Immigration Act*, R.S.C. 1985, c. I-2, the Trial Division (as it then was) has said that the term is to be given an unrestricted and broad interpretation. The rationale for such an approach is set out in *Canada (Minister of Citizenship & Immigration) v. Singh* (1998), 151 F.T.R. 101 (Fed. T.D.) at paragraph 52:
>
> > [52] The provisions deal with subversion and terrorism. The context in immigration legislation is public safety and national security, the most serious concerns of government. It is trite to say that

> terrorist organizations do not issue membership cards. There is no formal test for membership and members are not therefore easily identifiable. The Minister of Citizenship and Immigration may, if not detrimental to the national interest, exclude an individual from the operation of s. 19(1)(*f*)(iii)(B). I think it is obvious that Parliament intended the term "member" to be given an unrestricted and broad interpretation.
>
> […]
>
> [29] Based on the rationale in *Singh* and, in particular, on the availability of an exemption from the operation of paragraph 34(1)(*f*) in appropriate cases, I am satisfied that the term "member" under the Act should continue to be interpreted broadly.

(Also see *Kanapathy* at paras 33-34; *Krishnamoorthy* at para 21; *Qureshi* at paras 21-23; *Kanendra* at paras 21-23).

[29] I would also note that the wording of s 34(1)(f), unlike s 35(1)(a), does not import a required element of knowledge. Nor, on its face, does s 34(1)(f) require direct actual knowledge as a pre-requisite for either membership or for the triggering of the provision in whole. Rather, s 34(1)(f) triggers inadmissibility only on the basis that a person is a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts of terrorism.

[30] The Federal Court of Appeal has held that being a member simply means "belonging" to an organization (*Chiau v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 297 (FCA) ("*Chiau*") at paras 55-62; *Ismeal* at para 20). And, consistent with the requisite broad interpretation of the term member, actual or formal membership in an organization is not

required and informal participation or support for an organization may suffice (*Kanapathy* at paras 33-34; *Kanendra* at paras 21-23).

[31] Although not addressed by the Respondent, I also point out that there is jurisprudence which has found that if membership is admitted then it is membership for all purposes, including s 34(1)(f) (*Saleh v Canada (Citizenship and Immigration)*, 2010 FC 303 at para 19; *Gebreab* at para 32; *Haqi v Canada (Citizenship and Immigration)*, 2014 FC 1167 at para 38 ("*Haqi*"); *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85 at para 59). Here the Applicant admitted to membership in the MQM and the record establishes that he participated in and supported that organization. As described in the ID's decision, the Applicant's evidence was that he was a member between 1990 and 1998, working hard and enthusiastically for that organization. Thus, as will be discussed below, on these facts alone, absent consideration of actual or passive knowledge, the ID reasonably concluded that the Applicant was a member pursuant to s 34(1)(f).

[32] In support of its argument that actual knowledge is a pre-requisite for membership under s 34(1)(f), the Applicant relies on Justice O'Reilly's statement in *Sinnaiah*, referencing *Chiau* and *Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 349 (overturned by the Federal Court of Appeal on a different issue, see *Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 122), that to establish membership in an organization there must "at least be evidence of an "institutional link" with, or "knowing participation" in, the group's activities" which was later quoted by Justice Mosley in *Krishnamoorthy* (at para 24).

[33] In my view, this does not support the Applicant's contention. In *Sinnaiah*, decided in 2004, the concern was that membership was being imputed in a circumstance where the applicant denied any association with or membership in the Liberation Tigers of Tamil Eelam ("LTTE"). Justice O' Reilly found that there had not been a "scintilla" of evidence before the officer who made the inadmissibility finding that could have satisfied the threshold of reasonable grounds to believe that the applicant was actually a member of the LTTE (at para 17). In *Krishnamoorthy*, also decided in 2004, Justice Mosley held that not every act of support for a group for which there are reasonable grounds to believe is involved in terrorist activities will constitute membership for the purposes of s 34(1)(f). He found that in that case the officer had erred by failing to consider the relevant criteria for determining such membership as set out in the jurisprudence which included the involvement of the applicant, the length of that involvement, the degree of commitment to the organization and its objectives (*Tharmavarathan v Canada (Citizenship and Immigration)*, 2010 FC 985 at para 28). Justice Mosley concluded that the evidence in the record did not support the officer's finding that there were reasonable grounds to believe that the applicant was a member of the LTTE. Neither of those cases are factually similar to the matter now before me.

[34] Further, neither *Sinnaiah* or *Krishnamoorthy* elaborated on the necessity for an institutional link or knowing participation and what was meant by those terms or connected them to a requirement that an applicant have actual knowledge of the organization's terrorist activities. And in my view, in this matter, any necessity for an institutional link is established by the Applicant's admitted membership in the MQM and voluntary engagement in various activities

which have been established by the case law as meeting the requirements for membership under s 34(1)(f).

[35] Moreover, subsequent case law also clearly establishes that complicity or knowing participation in an act of terrorism is not a requirement for membership under s 34(1)(f) (*Kanapathy* at para 35). Justice Mactavish in *Kanapathy* held that the requirements for establishing inadmissibility on security grounds are less stringent than the requirements for exclusion on grounds of violating international human rights. The latter requires complicity or knowing participation in the commission of a specific international crime, while the former does not require any complicity or knowing participation in an act of terrorism (*Kanapathy* at para 35; *Mirmahaleh* at para 30).

[36] The Federal Court of Appeal confirmed in *Kanagendren* that complicity is not relevant when considering membership. It noted that in *Ezokola* the Supreme Court of Canada found that complicity arises by contribution and that Article 1F(a) of the United Nations Convention Relating to the Status of Refugees, 1951, CTS 1969/6; 189 UNTS 150 requires serious reasons for considering that an individual has voluntarily made a significant and knowing contribution to a group's crime or criminal purpose. In comparing s 34(1) and s 35(1), the Federal Court of Appeal stated that:

> [22] In contrast, nothing in paragraph 34(1)(*f*) requires or contemplates a complicity analysis in the context of membership. Nor does the text of this provision require a "member" to be a "true" member who contributed significantly to the wrongful actions of the group. These concepts cannot be read into the language used by Parliament.

[37] In the context of its textual analysis of s 34(1)(f), the Federal Court of Appeal also noted that because of the very broad range of conduct that gives rise to inadmissibility under s 34(1)(f), and unlike s 35(1)(a), the Minister is given discretion to grant relief against inadmissibility. Further, that the purposes underlying s 34(1) and s 35(1)(a) are very different. Subsection 34(1)(f) is animated by security concerns which purpose is served by a wide definition of membership (at para 27).

[38] It is also significant that those who are found inadmissible under s 34(1)(f) have an avenue of recourse through ministerial relief under s 42.1 of the IRPA (formerly s 34(2) of the IRPA). In *Ugbazghi*, Justice Dawson noted that it is because of the broad range of conduct that gives rise to inadmissibility under s 34(1) that the Minister is given discretion to grant relief from inadmissibility (at para 47, referring to s 34(2) of the IRPA). More recently, in *Haqi*, Justice Gagne held that the term "member" ought to be interpreted broadly taking into account the availability of ministerial relief and the government's concern for public safety and national security (at para 48).

[39] In several prior decisions of this Court concerning ministerial relief in the context of membership in MQM (all pursuant to s 34(2) of the IRPA), applicants have raised objections to the Minister's plausibility findings or inferences in respect of actual knowledge of MQM's use of violence (*Siddique v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 192 at paras 58-64; 2016 FC *Naeem v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1285 at para 49; *Afridi v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1299 at para 33). Thus, it would appear that actual knowledge of the MQM's terrorist activities in the

circumstances of the Applicant's case may be a more relevant consideration for the purposes of granting ministerial relief.

[40] The Applicant also asserts that the ID erred by finding that the Applicant had passive knowledge of the MQM's activities on the basis that he was aware of the accusations being made against the MQM. In its reasons the ID stated that this Court confirmed in *Qureshi* that s 34(1)(f) does not require more than a passive knowledge about the MQM's activities. Further, that in *Mohammad* it was implicit that the applicant did not believe and had no knowledge that the MQM engaged in terrorist acts, however, that this Court upheld the ID's decision that third party reports about violence committed by the MQM outweighed the public statements made by the party that it did not condone violence. Here the ID found that the Applicant was aware of the accusations of kidnappings and robberies but chose to believe what he was told by other party members being that it was the MQM-H that was committing these acts and casting the blame on the MQM. The ID found this not to be unreasonable, especially if the Applicant never personally observed any of those activities, but that he had at least the same sort of passive knowledge of the violent activities as in *Qureshi*.

[41] In *Qureshi* the applicant claimed to have no knowledge of violent or terrorist activities. The ID in that case found this not to be credible given that he had been an active member in the MQM for seven years, he was well educated and the record demonstrated that it was well established and well publicized that the MQM committed violence, murder and torture. I would note, however, that in *Qureshi* the ID in its admissibility determination addressed both s 34(1)(f) and s 35(1)(a). When addressing the question of whether the Refugee Protection Division

("RPD") correctly applied the test for complicity in s 35(1)(a), this Court found that the RPD failed to link the applicant's position in the MQM to the commission of prosecutorial crimes by MQM members and to identify any basis upon which to advance the applicant's knowledge of the MQM atrocities beyond a passive level to a more aware degree of knowledge that connoted approval and sharing of a common purpose in those crimes (at paras 41 and 42). Accordingly, this Court found the decision to be unreasonable with respect to the s 35(1)(a) complicity finding. However, it dismissed the application as the decision was reasonable in finding that the applicant was inadmissible as a result of being a member of a terrorist organization pursuant to s 34(1)(f). The Court did not address passive knowledge in the context of s 34(1)(f).

[42] Thus, the ID in this matter erred to the extent that it stated that this Court, in *Qureshi*, confirmed that s 34(1)(f) does not require more than passive knowledge of a terrorist organization's activities. That said, I am not persuaded that the error is fatal or that the ID erred in its conclusion based on the record which, as in *Qureshi*, confirmed widespread reporting of violent acts attributed to the MQM, that the Applicant had the same kind of passive knowledge (also see *Mirmahaleh* at paras 27-31). In any event, nothing turns on this.

[43] That is because the ID in this matter recognized and applied the criteria that has previously been established by the jurisprudence for determining membership under s 34(1)(f), which does not include actual direct knowledge of an organization's terrorist activities, and, reasonably concluded that the Applicant was a member of the MQM.

[44] These criteria were recently summarized by Justice LeBlanc in *Gacho*:

> [23] In this regard, this Court has consistently found that the term "member" does not require actual or formal membership coupled with active participation. Instead, being a "member" simply means "belonging" to a group (*Chiau*, at para 57; see also *Denton-James v. Canada (Minister of Citizenship & Immigration)*, 2004 FC 1548 (F.C.), at para 13; *Ismeal v. Canada (Minister of Public Safety & Emergency Preparedness)*, 2010 FC 198 (F.C.), at paras 19-20).
>
> [24] Generally, the factors relevant for deciding whether or not an applicant is a member of an organization for the purposes of section 34 of the Act are an applicant's intentions, degree of involvement and degree of commitment (*Krishnamoorthy*, at para 23). In *Sinnaiah v. Canada (Minister of Citizenship & Immigration)*, 2004 FC 1576 (F.C.), Justice O'Reilly stated that to "establish "membership" in an organization, there must at least be evidence of an "institutional link" with, or "knowing participation" in, the group's activities" (at para 6).
>
> [25] A foreign national's "membership" in an organization that subverted a government is assessed on the "reasonable grounds to believe" standard of proof pursuant to section 33 of the Act. This standard "requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities" *(Mugesera c. Canada (Ministre de la Citoyenneté & de l'Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100 (S.C.C.), at para 114).
>
> [26] Moreover, given that section 33 of the Act states that the facts giving rise to inadmissibility include facts that "have occurred, are occurring or may occur," this Court has interpreted this to mean that "membership" is without temporal constraints. This means that an officer need only ask "whether the person is or has been a member of that organization" *(Al Yamani v. Canada (Minister of Citizenship & Immigration)*, 2006 FC 1457 (F.C.), at para 12, (2006), 304 F.T.R. 222 (Eng.) (F.C.) [*Yamani*]). Officers need not match a person's active membership to when the organization carried out the subversive acts (*Yamani*, at para 12).

[45] In *TK*, which was applied by the ID in the present case, Justice Russell enunciated the following criteria:

> [105] On this issue, I agree with the Applicant that the jurisprudence has set out criteria that should be considered when

> determining whether a person is a member of an organization. The criteria include: the person's involvement in the organization, the length of time associated with the organization, and the person's degree of commitment to the organization and its objectives. See *Krishnamoorthy*, above, at paragraph 23 and *Villegas*, above, at paragraph 44.

[46] In this case, the ID in its decision recognized that a number of factors must be considered, that in each case some will point away from membership and some will support it (*Poshteh*; *Ismeal* at para 22; *Toronto Coalition to Stop the War v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 957), and, that not every act of support for a group that there are reasonable grounds to believe is involved in terrorist activities will constitute membership (*Krishnamoorthy*). It then applied the criteria to the Applicant's evidence and compared his involvement with findings of membership in other cases, including that his involvement was for a significant period of time, eight years; that he had a high degree of commitment to the MQM based on his attendance at meetings once or twice a month, his volunteering at rallies and distribution of pamphlets over those years; he was committed to the MQM's objective of increasing the rights in Pakistan of migrants from India; and that he personally benefited from his membership when the party helped him get a job.

[47] The standard of proof applicable in determining whether an applicant is a member of an organization that there are reasonable grounds to believe has engaged in terrorism pursuant to s 34(1)(f) is low (*Kanapathy* at para 32). In general, the evidence must establish something more than mere suspicion but less than proof on the balance of probabilities. Reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at

para 114; *B074* at para 30; *Memon* at para 13). In my view, the standard of proof was met. Based on the evidence and the jurisprudence there was a sufficient basis for the ID to have reasonably concluded on the facts and the law that the Applicant was a member of the MQM for the purposes of s 34(1)(f) of the IRPA, with or without actual direct knowledge of the MQM's terrorists activities.

[48] Accordingly, the ID's decision falls within the range of possible, acceptable outcomes which are defensible on the facts and the law. The decision is grounded on the relevant jurisprudence and is justified, transparent and intelligible. I see no basis upon which this Court should intervene.

Certified Question

[49] The Applicant submitted the following question for certification:

> Does the requirement that a person knowingly participate in a terrorist organization in order to be considered a member of that organization under the *Immigration and Refugee Protection Act* 34(1)(f) require knowledge of the terrorist methods of the organization?

[50] The Respondent opposes the certification of the question on the basis that knowledge is not a requirement and this is well settled law.

[51] Pursuant to s 74(d) of the IRPA, an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question. The test to be applied when considering whether a question is

suitable for certification is set out in *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168:

> [9] It is trite law that to be certified, a question must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance. As a corollary, the question must also have been raised and dealt with by the court below and it must arise from the case, not from the Judge's reasons (*Canada (Minister of Citizenship and Immigration) v. Liyanagamage*, 176 N.R. 4, 51 A.C.W.S. (3d) 910 (F.C.A.) at paragraph 4; *Zazai v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89, [2004] F.C.J. No. 368 (C.A.) at paragraphs 11-12; *Varela v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145, [2010] 1 F.C.R. 129 at paragraphs 28, 29 and 32).

(Also see *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at paras 28-30; *Canada (Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11).

[52] The Federal Court of Appeal in *Liyanagamage v Canada (Secretary of State)*, [1994] FCJ No 1637 (FCA) at paras 4-6 also stated that the certification process is not to be used as a tool to obtain from that Court declaratory judgments on fine questions which need not be decided in order to dispose of the case nor is it to be equated with the references process established by the *Federal Courts Act*, RSC, 1985, c F-7.

[53] In my view, the question as framed is not suitable for certification as neither s 34(1) nor s 34(1)(f) contain a requirement that a person knowingly participated in a terrorist organization to be considered a member of that organization. Nor is the issue of actual knowledge of the organization's terrorist activities dispositive as the existing criteria established by the jurisprudence were reasonably considered and applied by the ID.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There shall be 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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