Federal Court  Cour fédérale

Date: 20170727

Docket: IMM-5080-16

Citation: 2017 FC 731

Ottawa, Ontario, July 27, 2017

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

S.M.N.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary Matters

[1] On March 6, 2017, Prothonotary Roger Lafrenière (as he then was) ordered that certain documents in Court File No. IMM-5080-16 be sealed on the ground that there would be a serious risk to the Applicant and his family if their identities were made public. He ordered that the Applicant be identified in these proceedings by his initials "SMN", and that his name be replaced by his initials in the style of cause.

[2] On May 9, 2017, Justice Simon Noël granted the Respondent's motion pursuant to s 87 of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [IRPA] for non-disclosure of information redacted from the Certified Tribunal Record submitted on behalf of the officer whose decision is the subject of this application for judicial review. Justice Noël noted the Respondent's assurance that he would not rely on the redacted information in his response to the application.

[3] Neither party asks this Court to reverse or vary these orders. SMN does not allege that Justice Noël's order of May 9, 2017 gives rise to an issue of procedural fairness.

II. Overview

[4] SMN seeks judicial review of a determination by an officer with Immigration, Refugees and Citizenship Canada [IRCC] that he is inadmissible to Canada pursuant to ss 34(1)(d) and 40(1)(a) of the IRPA. The IRCC officer rejected SMN's application for permanent residence on these grounds.

[5] Given the nature of SMN's studies and employment in Iran, his association with organizations that have documented ties to Iran's nuclear program, the potential use of SMN's expertise in the development of weaponry, and SMN's deliberate omission of material facts from his application for permanent residence, I conclude that the IRCC officer's decision was reasonable. The application for judicial review is therefore dismissed.

III. Background

[6] SMN is a citizen of Iran. In 2008, he undertook doctoral studies in mechanical engineering at the Iran University of Science and Technology [IUST]. From March 2009 to July 2009, he worked part-time for the Iranian Atomic Agency, also known as the Atomic Energy Organization of Iran [AEOI].

[7] SMN began his mandatory military service in July 2009. In February 2010, he accepted a position as a mechanical engineer with the AEOI, and was assigned to the Iranian Centrifuge Technology Company [ICTC], sometimes referred to by its Iranian acronym "TESA".

[8] In September 2011, SMN travelled to Canada on a student visa to continue his doctoral studies at the University of Saskatchewan. In September 2014, he applied for permanent residence as a member of the Federal Skilled Worker program. Additional information was requested by IRCC and provided by SMN. However, SMN did not disclose his field of study in Iran or his past employment with the AEOI and the ICTC.

[9] SMN was interviewed by Canadian officials in September 2015. During the interview, he disclosed his previous field of study and work experience in Iran. On May 14, 2016, SMN admitted to an officer with the Canadian Border Services Agency that he had deliberately omitted certain information from his application for permanent residence because he feared that it would have a negative impact on the outcome.

[10] On August 26, 2016, an IRCC officer informed SMN of the possibility that he may be inadmissible to Canada pursuant to ss 34(1)(d) and 40(1)(a) of the IRPA. SMN provided submissions in response on September 21, 2016.

IV. Decision under Review

[11] On October 20, 2016, the IRCC officer denied SMN's application for permanent residence pursuant to ss 34(1)(d) and 40(1)(a) of the IRPA. The IRCC officer found that there were reasonable grounds to believe that SMN is a danger to the security of Canada, and that his failure to disclose his field of study in Iran and his work for the AEOI constituted a material misrepresentation.

V. Issues

[12] This application for judicial review raises the following issues:

A. Did the IRCC officer reasonably find SMN to be inadmissible to Canada pursuant to s 34(1)(d) of the IRPA?

B. Did the IRCC officer reasonably find SMN to be inadmissible to Canada pursuant to s 40(1)(a) of the IRPA?

VI. Analysis

[13] Decisions regarding inadmissibility pursuant to ss 34(1) and 40(1)(a) of the IRPA involve questions of mixed fact and law, and are subject to review by this Court against the standard of

reasonableness (*Alijani v Canada (Minister of Citizenship and Immigration)*, 2016 FC 327 at para 16 [*Alijani*]; *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 12 [*Oloumi*]). The Court will intervene only 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).

A. *Did the IRCC officer reasonably find SMN to be inadmissible to Canada pursuant to s 34(1)(d) of the IRPA?*

[14] Paragraph 34(1)(d) of the IRPA provides that a person is inadmissible to Canada if he or she is a danger to the security of Canada. There is no dispute that contributing to Iran's development of weapons of mass destruction [WMD] constitutes a danger to the security of Canada (see *SN v Canada (Citizenship and Immigration)*, 2016 FC 821 at para 44 [SN]; *Hadian v Canada (Citizenship and Immigration)*, 2016 FC 1182 at para 18).

[15] In *Alijani*, Justice Jocelyn Gagné provided the following explanation of the test for finding a person inadmissible to Canada pursuant to s 34(1)(d) of the IRPA:

> [17] In *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 90 [*Suresh*], the Supreme Court of Canada found that in order to conclude that a person represents a danger to the security of Canada pursuant to paragraph 34(1)(d) of IRPA, the officer has to have an "objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible." As the issue here is not one of refoulement as it was in *Suresh* (see for example *Suresh* at para 89), that holding needs to be read with [*Jahazi v Canada (Citizenship and Immigration)*, 2010 FC 242] above at para 64, in which this Court held that the "reasonable grounds to believe" standard "requires a *bona fide* belief in a serious possibility based on credible evidence", a standard which seems slightly higher than that set out in *Suresh*.

> [18] Therefore, in my view, the officer had to address the following issues:
>
> > - Could the Applicant's expertise find application in nuclear technology or in the production of missiles and other weapons? In other words, does the theory of dual use apply here?
> >
> > - If so, is there a serious possibility based on credible evidence that the Applicant could use his expertise in nuclear technology or in the production of missiles and other weapons?

[16] SMN concedes that his expertise could find application in nuclear technology or the production of missiles and other weapons. However, he maintains that there is no serious possibility, based on credible evidence, that he has used, or could use, his expertise to further Iran's nuclear technology or the development of WMD.

[17] SMN says that his work at the University of Calgary and the University of Saskatchewan could not reasonably be construed as contributing to Iran's WMD program. He relies on letters of support from three Canadian professors and a Canadian psychologist. These letters explain the nature of his academic pursuits in Canada, and attest to his good character.

[18] Regarding his past employment in Iran, SMN says the following:

> 1. [SMN] never completed PhD studies at IUST, for the reason that the subject matter was not one he wanted to pursue;
>
> 2. He lost his job at AEO/TESA because he was considered not to be loyal;
>
> 3. As stated in [his] affidavit, his role as a mechanical tester was through IUST. He never conducted this work through ICT/TESA;

> 4. While some of his previous work testing specimens [at IUST] could in theory be applied to military spheres, it could also be applied to other fields such as medical technology or agriculture;
>
> 5. He had no duties whatsoever during his time with the AEO […]; and
>
> 6. His research and academic interests have nothing to do with nuclear technology.

[19] Counsel for SMN describes his work in Iran as that of a "floundering academic" who was employed only briefly at the AEOI and who made no meaningful contribution to the development of Iran's nuclear technology or WMD. SMN sought to publish an article only to avoid military service. He was eventually dismissed from his employment with the IUST due to his lack of commitment.

[20] According to SMN, "[g]iven that the IUST and TESA both did not hold [him] in high regard, it would seem ludicrous to believe that he worked on sensitive WMD related programs for either IUST or TESA." He criticizes the IRCC officer's decision to give little weight to the letters of support from Canadian professors on the ground that they may not have known about his past education and work experience:

> Given the type of research the Applicant has conducted in Canada and the accolades he has received it does not seem logical that knowledge of what happened with IUST and TESA in Iran would change these references' opinion of the Applicant and his unrelated work in Canada. Secondly, the fact that they did not know does not change the evidence that the Applicant's work in Canada was related to the biomedical and medical engineering fields in Canada and had nothing to do with nuclear energy or weapons.

[21] SMN says that the IRCC officer found him "guilty by association", and his situation is therefore comparable to that of the applicant in *Azizian v Canada (Citizenship and Immigration)*, 2017 FC 379 [*Azizian*].

[22] The Respondent says that *Azizian* may be distinguished from the present case. In *Azizian*, there was no evidence that the applicant knew his employer was involved with Iran's nuclear program. Here, SMN has admitted that he tested materials for the AEOI, and knew that his work was "dual use" and could be applied to the development of WMD.

[23] The Respondent also says that *Alijani* does not assist SMN. In *Alijani*, the applicant was found to be inadmissible based solely on his field of study and the institution where he worked. Here, SMN conducted tests for the AEOI while pursuing doctoral studies under the supervision of a nuclear physicist at an institution with documented ties to Iran's WMD program.

[24] The Respondent says that the short duration of SMN's employment with the AEOI (approximately seven months) is irrelevant. During that time, SMN attended workshops on the manufacture, assembly and design of centrifuges. He had access to drawings and participated in discussions about optimizing equipment to make it lighter. He was aware that the centrifuges were used for uranium enrichment.

[25] The Respondent notes the absence of evidence from SMN's supervising professors in Iran regarding the nature of his studies. Indeed, SMN chose to omit these facts from his

application for permanent residence, later admitting that this was because he feared they might jeopardize his chances of success.

[26] Where an official notifies an applicant of concerns regarding his or her inadmissibility to Canada, the onus to assuage those concerns lies squarely on the applicant (IRPA, s 11(1); *Esteban v Canada (Citizenship and Immigration)*, 2005 SCC 51 at para 46; *SN* at para 51). While SMN eventually disclosed his field of study and his past employment with the AEOI, in my view the IRCC officer reasonably drew an adverse inference from his deliberate misrepresentation. The Respondent notes that to this day there are unanswered questions regarding SMN's studies at IUST, including the title of his thesis.

[27] Furthermore, SMN admitted that his work for the AEOI could potentially be applied to the production of weaponry. He did not dispute the documented ties of the organizations where he studied and worked to Iran's WMD program. While his contribution may have been modest, the threshold for inadmissibility on security grounds is relatively low: a *bona fide* belief in a serious possibility that an individual is a danger to the security of Canada.

[28] This case underscores the importance of complete candour when applying for permanent residence in Canada. If SMN had made full disclosure regarding his past studies and employment in Iran, then the outcome of his application may have been different. His reticence raised legitimate doubts regarding his past and whether he had been forthright in his dealings with Canadian officials. Combined with the nature of his studies and employment in Iran, the admitted "dual use" of his expertise, and his association with organizations that have

documented ties to Iran's WMD program, the IRCC officer's conclusion that SMN is inadmissible pursuant to s 34(1)(d) of the IRPA was reasonable.

B. *Did the officer reasonably conclude that SMN was inadmissible pursuant to s 40(1)(a) of the IRPA?*

[29] Paragraph 40(1)(a) of the IRPA provides as follows:

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

[30] Section 40 of the IRPA is intended to deter misrepresentation and maintain the integrity of Canada's immigration processes. It requires applicants to disclose all material facts to immigration officials in their applications (*Oloumi* at paras 23 and 37; *Khorasgani v Canada (Citizenship and Immigration)*, 2012 FC 1177 at paras 14 and 19 [*Khorasgani*]). Misrepresentation occurs where two elements are present: (i) there is a misrepresentation by an applicant; and (ii) that misrepresentation is material, such that it induces or could induce an error in the administration of the IRPA (*Khorasgani* at paras 11 and 14).

[31] Counsel for SMN does not seriously contest the IRCC officer's finding that SMN is inadmissible to Canada pursuant to s 40(1)(a) of the IRPA. While not conceding the point, he

acknowledges that the Respondent's case is "almost airtight". SMN admitted that he omitted information from his application for permanent residence precisely because it might have had an adverse impact on the outcome. It is incongruous for him to now suggest that this information was immaterial.

[32] As Justice Danièle Tremblay-Lamer held in *Oloumi* at paragraph 25, a misrepresentation need not be decisive or determinative to be material. It will be material if it is important enough to affect the process. The information that SMN chose to withhold was clearly relevant to the determination of his application for permanent residence, and it ought to have been disclosed.

[33] I am therefore satisfied that the IRCC officer reasonably found SMN to be inadmissible pursuant to s 40(1)(a) of the IRPA.

VII. Conclusion

[34] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal, and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for appeal.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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