Federal Court  Cour fédérale

Date: 20190517

Docket: IMM-2196-18

Citation: 2019 FC 565

Ottawa, Ontario, May 17, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SYED MUZAFFAR ABBAS RIZVI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Mr. Rizvi, is a citizen of Pakistan. As a student in Pakistan, Mr. Rizvi joined the All Pakistan Mohajir Student Organization, a student political organization affiliated with the Mohajir Quami Movement [MQM]. The MQM is a political party in Pakistan with a mandate to promote the rights of the minority Mohajir population. Members of the MQM have engaged in violent acts, and the party has been accused of terrorism by Pakistan.

[2] In 1990, Mr. Rizvi joined the MQM, where some of his family members also held high-level positions. As a result of their involvement in the MQM, the family home was raided, and Mr. Rizvi was beaten, tortured, threatened, and shot at. He came to Canada in 1997 and sought protection.

[3] Mr. Rizvi was recognized as a Convention refugee in September 1998, and in November of that same year he applied for permanent residence. He continued to be involved in the MQM after his arrival in Canada.

[4] While processing Mr. Rizvi's application for permanent residence, an immigration officer concluded that there were reasonable grounds to believe that the MQM is an organization that engages, has engaged, or will engage in acts of terrorism and that Mr. Rizvi was therefore inadmissible under what is now paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Following this inadmissibility finding, Mr. Rizvi sought Ministerial relief from the Minister of Public Safety and Emergency Preparedness [Minister]. That relief was refused. In July 2009, the Immigration Division found Mr. Rizvi to be inadmissible pursuant to paragraph 34(1)(f) of the IRPA.

[5] The Minister consented to reconsider Mr. Rizvi's request for Ministerial relief pursuant to the former subsection 34(2) of the IRPA. In April 2018, the Minister again denied the request. It is that decision that is now before the Court on judicial review. Mr. Rizvi submits that the Minister (1) unreasonably concluded that his presence in Canada would be a threat to national security or public safety, and (2) failed to consider necessary factors including Canada's national

interest in preserving family unity and in promoting the maximum social, cultural, and economic benefits of immigration. The respondent submits the decision was reasonable as it was consistent with the Supreme Court's decision in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [*Agraira*].

[6] For the reasons that follow, the application is dismissed.

II. The Record

[7] The respondent brought a motion pursuant to section 87 of the IRPA seeking an order for non-disclosure of limited portions of the Certified Tribunal Record [CTR]. The motion was addressed in accordance with section 83, as modified by section 87.

[8] A supplementary classified affidavit was filed by the respondent, and an *in camera ex parte* hearing was conducted. As a result of that hearing, the respondent agreed to lift a partial redaction and advised that the redacted information was not being relied upon in responding to the application for judicial review. The motion was granted by order dated October 29, 2018. That order is available on the public file.

III. The Former Section 34 of the IRPA and Ministerial Relief

[9] Mr. Rizvi sought Ministerial relief under the former section 34 of the IRPA. Subsection 34(1) identifies the circumstances in which a foreign national is inadmissible to Canada on security grounds. Subsection 34(2) provides that where inadmissibility arises under subsection

(1) and a foreign national satisfies the Minister that their continued presence in Canada would not be detrimental to the national interest, then the subsection (1) circumstances will not constitute inadmissibility:

Security	**Sécurité**
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 or an act of subversion against a democratic government, institution or process as they are understood in Canada;	**a)** être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au 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;
(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) 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) ou c).
Exception	**Exception**
(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign	**(2)** Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le

national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

[10] Subsection 34(2) was considered by the Supreme Court of Canada in *Agraira*, where a Libyan national had been found to be inadmissible on the basis of his membership in an organization that Citizenship and Immigration Canada had found to be a terrorist organization. An application for Ministerial relief pursuant to subsection 34(2) had been denied, the Minister concluding that it was not in the national interest to admit individuals with sustained contact with known terrorist or terrorist-connected organizations.

[11] Writing for the Court, Justice LeBel found that the meaning of "national interest" in the context of subsection 34(2) was key as it defines the standard the Minister must apply in assessing an applicant's continued presence in Canada in the exercise of ministerial discretion (*Agraira* at para 55). As the Minister had not expressly defined the term "national interest," Justice LeBel, relying on the Court's decision in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, found that the Minister's decision may imply a particular interpretation and proceeded to consider "what appears to have been the ministerial interpretation of 'national interest'," based on the Minister's reasons and Citizenship and Immigration Canada's *Inland Processing Operational Manual: Refusal of National Security Cases/Processing of National Interest Requests* (30 April 2012), online: <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/ip/ip10-eng.pdf> [Guidelines] *(Agraira* at paras 56–58; relevant extracts from the Guidelines are included at Appendix 1 of the Supreme Court's judgment).

[12] The Supreme Court identified the type of information that was before the Minister: the extent of the applicant's membership, the activities undertaken on behalf of the organization, non-involvement in violence with or on behalf of the organization, reasons for joining the organization, actual knowledge of the organization's involvement in violence, ongoing involvement with the organization, and establishment in Canada (*Agraira* at para 59). The Court noted that many of these considerations were responsive to the factors set out in the Guidelines (*Agraira* at para 59). The Court then held that the factors as set out in the Guidelines did not constitute a fixed and rigid code but rather set out relevant and reasonable factors to guide the exercise of the Minister's discretion and assist in framing a fair administrative process (*Agraira* at para 60). The Court noted that the Minister placed particular emphasis on matters related to national security and public safety, finding that if the Minister expressly defined the term "national interest," the definition would have related predominately to national security and public safety. However, the Court also found the definition would not have excluded other important considerations outlined in the Guidelines (*Agraira* at para 62).

[13] Justice LeBel concluded that this definition was reasonable; the interpretation was consistent with Dreidger's modern approach to statutory interpretation (*Agraira* at para 64). In doing so, he found that humanitarian and compassionate [H&C] considerations are more properly considered in the context of a section 25 application and that subsection 34(2) is not to be transformed into an alternative form of humanitarian review. However, personal factors may nonetheless be relevant in assessing whether an individual is a threat to national security or public safety and may be reasonably considered, depending upon the particulars of the application before the Minister (*Agraira* at paras 84–88).

[14] The factors as set out in the Guidelines were summarized by Justice Anne Mactavish in *Hameed v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1353 at paragraph 26 [*Hameed*]:

> 1. Will the applicant's presence in Canada be offensive to the Canadian public?
>
> 2. Have all ties with the regime/organization been completely severed?
>
> 3. Is there any indication that the applicant might be benefiting from assets obtained while a member of the organization?
>
> 4. Is there any indication that the applicant may be benefiting from previous membership in the regime/organization?
>
> 5. Has the person adopted the democratic values of Canadian society?

IV. Decision under Review

[15] In refusing Mr. Rizvi's request for Ministerial relief, the Minister relied upon a report prepared by the Canada Border Services Agency [CBSA], which reviewed and assessed Mr. Rizvi's submissions. The CBSA report reflects the reasons for the Minister's decision.

[16] The CBSA report sets out the MQM's organizational background, noting that in 1992, the organization split into two factions, MQM-H and MQM-A. The report reviews Mr. Rizvi's immigration history and then outlines the positions he held within the MQM, violence he had experienced as an MQM member in Pakistan, his involvement with the MQM in Canada, his explanation for inconsistent statements in respect of his organizational involvement with the MQM, and his knowledge as it related to MQM's involvement in violence. The report notes that Mr. Rizvi chose to follow the MQM-A faction in 1992. The report also summarizes Mr. Rizvi's

submissions that were made in response to CBSA's disclosure of its draft report and recommendation to the Minister.

[17] The CBSA report notes that Mr. Rizvi had ceased his involvement in the MQM in Canada in either 2003 or 2008. The CBSA addresses his role in the MQM, noting that he had maintained a version of events for over 14 years in which he held a senior leadership position with the party in Pakistan and only refuted that version in circumstances where the original narrative was no longer in his best interest. The CBSA considered his explanation for the inconsistencies, noted other parts of his narrative that were consistent with his high-level role in the MQM, and found the "false statements have affected the reliability of his submission."

[18] The CBSA report notes that the MQM has been recognized as a group that engaged in acts of terrorism and that this was particularly the case in the early 1990s. The report concludes that Mr. Rizvi had not demonstrated that he was not aware of MQM's involvement in terrorism and violence, citing, among other factors, his long-term and active involvement in the MQM and the active and prominent involvement of his family in the MQM. The report further notes that Mr. Rizvi's membership and activities assisted the organization whether he was directly involved in the violent acts or not.

[19] The CBSA also concludes that Mr. Rizvi had demonstrated a high level of commitment to the MQM. In support of this conclusion, the CBSA notes that despite his brother's death due to his MQM affiliation and the fact that Mr. Rizvi had been subjected to violence, arrest, and torture, he did not disassociate from the MQM on leaving Pakistan. Instead, he became actively

involved with the organization in Calgary. His eventual disassociation was the result of his changed family situation in Canada and not disapproval of the MQM.

[20] The hardships and risks that Mr. Rizvi's family would face upon his removal from Canada are addressed in the CBSA report. It is noted that removal would not be automatic as a result of Mr. Rizvi's refugee status and further noted that he would have the benefit of accessing a Pre-Removal Risk Assessment should his removal become enforceable in the future.

[21] The report also addresses delay in the processing of the application for relief and Mr. Rizvi's personal circumstances, including his lack of a criminal record in Canada, his contribution to Canadian society, and his establishment in Canada. The report rejects delay as a ground for relief and finds that his establishment and role as a caregiver to his children do not overcome the national security and public safety concerns that would arise from his continued presence in Canada.

V. Issue

[22] The application raises a single issue: was the Minister's refusal to grant relief unreasonable?

VI. Standard of Review

[23] There is no dispute as between the parties that the Minister's exercise of discretion and interpretation of the IRPA are to be reviewed against a standard of reasonableness (*Agraira* at paras 49 and 50).

VII. Analysis

A. *Was the Minister's refusal to grant relief unreasonable?*

[24] In advancing the position that the Minister's decision was unreasonable, Mr. Rizvi makes two arguments. First, the Minister's conclusion that his presence in Canada would be a threat to national security or public safety was unreasonable. Second, the Minister failed to consider necessary factors, including Canada's national interest in preserving family unity and in promoting the maximum social, cultural, and economic benefits of immigration.

(1) Did the Minister unreasonably conclude that Mr. Rizvi's presence in Canada would be a threat to national security or public safety?

[25] Mr. Rizvi submits his non-violent nature and non-violent involvement in the MQM do not provide a basis upon which to find him to be a threat to public safety or national security. He argues that his past actions as a member of the MQM cannot form the basis for a *current* conclusion that he poses a threat to national security or public safety. He points to his long residence in Canada without incident or engagement in any activities that indicate a danger to national security or public safety as determinative on this issue. He further submits that in the

context of applications for rehabilitation, the passage of time has been held to be a strong indicator of rehabilitation and that, as in matters relating to rehabilitation, applications for Ministerial relief under subsection 34(2) require a current assessment of whether the person poses a danger to the public. He argues that the failure to consider the passage of time as a strong indicator that he does not pose a danger is a reviewable error.

[26] Mr. Rizvi also argues that although *Agraira* allows for consideration of past activities, it does not preclude the consideration of current or future risk. He submits the Minister erred by inferring solely from his past involvement with the MQM, and without considering the non-violent nature of that involvement or his long period of good behaviour in Canada, that his presence in Canada would be contrary to the national interest. He points to his long period of disassociation from the MQM to argue there was no basis upon which the Minister could conclude his continued presence in Canada would be detrimental to the national interest. He submits that he demonstrated he was not a threat to public safety or national security and that it was unreasonable for the Minister to find otherwise.

[27] Mr. Rizvi further argues that other than his past inconsistent statements relating to his degree of involvement in the MQM, there is no positive evidence on the record that he was anything other than a regular member of the MQM. While the Minister was entitled to give little weight to his testimony relating to his degree of involvement, there was documentary evidence supporting his account, evidence that was not found to be unreliable or not genuine. He further submits that it was unreasonable to find he *must* have known the MQM was involved in acts of

terrorism. The applicant consistently told CBSA he did not believe the MQM engaged in violence and that was the reason he supported them.

[28] I am unpersuaded by Mr. Rizvi's submissions.

[29] I would first note that Mr. Rizvi had the burden of satisfying the Minister that his continued presence in Canada would not be detrimental to the national interest (*Hameed* at para 24).

[30] Past conduct is a relevant factor when assessing whether there is a basis for a *current* conclusion that an individual poses a threat to national security or public safety. In *Agraira*, Mr. Agraira's past actions in Libya were prominent in the assessment. The jurisprudence also consistently reflects the view that past activities are of import and relevance when assessing a request under subsection 34(2) (*Afridi v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1299 at para 35 [*Afridi*]; *Siddique v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 192 at para 79). Past conduct would, of course, also be relevant when considering whether an applicant's presence in Canada would be offensive to the Canadian public, which is one of the relevant factors identified in *Agraira* (at paras 17, 87).

[31] The Minister appropriately considered past conduct, but in doing so, he did not focus solely on Mr. Rizvi's past activities. For example, the report acknowledges that Mr. Rizvi disassociated from the MQM but notes that his reasons for doing so were not related to disapproval of the MQM's violent activities but simply due to a lack of time after becoming

married. The report also considered Mr. Rizvi's degree of current remorse or regret for his past involvement with the MQM.

[32] The reasons for disassociation and the finding that there was an absence of remorse also undermine Mr. Rizvi's arguments that his almost unblemished conduct in Canada is a strong indication of rehabilitation and is determinative of the question of whether his presence in Canada would be detrimental to the national interest. In weighing and considering all of the circumstances, the Minister reasonably concluded that mere disassociation, even for an extended period of time, does not reflect a degree of rehabilitation that would overcome national security and public safety concerns.

[33] Mr. Rizvi's submission to the effect that the Minister unreasonably discounted evidence that supported his assertion that he was nothing more than a regular member of the MQM is also unpersuasive. The report addresses the inconsistent evidence on this point, considers Mr. Rizvi's explanation, and provides a reasoned analysis for concluding that the facts simply did not support Mr. Rizvi's revised description of his role. The report also concludes that even if Mr. Rizvi did not hold the specific position in the organization that he initially reported he held, he was nonetheless a well-informed member of the MQM with a high-profile position. In support of this conclusion, the report points to undisputed facts: his involvement with high-level MQM members in Pakistan, his family's engagement at a high level in the MQM, and the leadership role he assumed with MQM Calgary upon arrival in Canada.

[34] Mr. Rizvi is not assisted by his submissions to the effect that he was not personally involved in violence and that his membership in the MQM reflected an interest in non-violent electoral politics: "however laudable the goals of an organization may be, the use of terrorism to achieve these goals is never justified" (*Afridi* at para 34, citing *Suresh v Canada (Minister of Citizenship and Immigration)*, [2000] 2 FC 592 at para 36 (CA)). The Minister did not err in focusing on the violent activities of the MQM, even though Mr. Rizvi did not personally engage in those activities.

(2) Did the Minister fail to consider other relevant factors?

[35] Mr. Rizvi argues the Minister erred by failing to address the interests of his children, for whom he is a key caregiver, and by being "short" on giving consideration to his significant establishment and financial independence in Canada.

[36] In *Agraira*, the Supreme Court found that the term "national interest" would include the preservation of values that underlie the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, and the democratic character of the Canadian federation (*Agraira* at para 65). Mr. Rizvi submits that in light of the national interest in preserving family unity and pursuing the maximum social, cultural, and economic benefits of immigration, it was unreasonable for the Minister not to fully address these considerations. I disagree.

[37] The CBSA report notes and addresses the negative impacts that relocation to Pakistan would have on Mr. Rizvi's family, including his daughters. The report also reviews and

addresses the impact of his lack of immigration status on his family and speaks to his submissions on establishment in Canada.

[38] The Minister was not considering H&C factors in the context of an H&C request pursuant to section 25 of the IRPA. Instead, H&C factors were being considered in the context of an application under subsection 34(2) for Ministerial relief. The Minister was entitled to consider and assess those factors in the context of this particular application to the extent that they were relevant to an assessment of whether Mr. Rizvi is a threat to the national interest (*Agraira* at paras 84–88). This is precisely what was done, and it was reasonably open to the Minister to conclude, as the CBSA report does, that these factors were not sufficient to overcome the predominant national security and public safety concerns.

VIII. Conclusion

[39] The application is dismissed. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-2196-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and

2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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