

Federal Court



Cour fédérale

Date: 20200327

Docket: IMM-3964-19

Citation: 2020 FC 436

Ottawa, Ontario, March 27, 2020

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

BEHROZ VARGHAEI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Varghaei challenges a decision of an Officer that he is an inadmissible person described in paragraph 34(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, “for being a member of an organization, that there are reasonable grounds to believe engages, has engaged, or will engage in acts” such as subversion by force of any government and terrorism.

[2] For the reasons set out herein, I find that his challenge succeeds.

Background

[3] Mr. Varghaei, his wife, and their children are all nationals of Iran, and were listed as dependents on his permanent residency application to Canada. They were recognized by the United Nations High Commission for Refugees as Convention Refugees in 2015. In June 2016, the Applicant applied for resettlement in Canada, as a privately sponsored Convention Refugee Abroad class member. In approximately June 2017, a group of five sponsored the family as Convention Refugees. The application was sent to the Canadian visa office in Ankara, Turkey, to be processed.

[4] Mr. Varghaei was interviewed by a visa officer [Officer] in Turkey on November 10, 2017. The Officer determined he was a Convention Refugee and that his application would be accepted pending the outcome of inadmissibility background checks, including medical and security checks. On his application for a permanent resident visa and in the interview, Mr. Varghaei admitted to having been a member of Peykar (the Organization of Struggle for the Emancipation of the Working Class, aka the Marxist Mojahedin) from January 1978 to January 1981. He also admitted to membership in Hekmatism (the Worker-communist Party of Iran) from January 2005 to September 2015.

[5] A procedural fairness letter was sent to Mr. Varghaei on April 15, 2019, relating to these memberships. It reads, in the relevant portion, as follows:

... I have concerns that you are a member of the inadmissible class of persons described in paragraph 34(1)(f) of the *Immigration and Refugee Protection Act (IRPA)* for membership in organizations that have engaged in acts such as subversion by force of any government and terrorism. During your interview, you admitted to

being a member of Peykar (Organization of Struggle for the Emancipation of the Working Class) a splinter faction of Mujahedine-e Khalq (MEK), an organization designated as a terrorist entity. You also admitted that you supported the overthrow of the Iranian government, and supported this ideology up until 2015. By being a member, you supported the goals of this group.

[6] In the response to the procedural fairness letter dated April 30, 2019, the Applicant says that because of his young age (15-18 years of age) at the time of his membership in Peykar, he was “more of a sympathizer than actual member” of the organization. He adds that his “involvement as a Peykar supporter was all peaceful.”

[7] By letter dated May 23, 2019, the Officer notified the Applicant that his response to the fairness letter had not allayed his concerns and the application for permanent residency was refused on the grounds of inadmissibility.

[8] On December 27, 2018, the Officer received a security assessment from the National Security Screening Division of Canada Border Services Agency entitled “NSSD Inadmissibility Assessment – 34(1)(f)” [the Security Assessment] regarding the inadmissibility of the Applicant under subsection 34(1) of the Act. The Applicant only became aware of this after this Court granted leave. The Respondent filed an amendment to the Certified Tribunal Record on November 27, 2019, which included the Security Assessment.

[9] The nine page Security Assessment “recommends that there are reasonable grounds to believe that the applicant is inadmissible to Canada pursuant to paragraph 34(1)(f)” but notes that the decision on inadmissibility rests solely with the Officer. The principal basis for the

recommendation is the observation that the “Peykar Organization is a faction of the Mujahedin-e Khalq (MEK), aka the Mujahedin of Iran (PMOI), aka the Mujahedeen-e-Khalq Organization (MKO); the Peykar and the MEK have both engaged in terrorism and the subversion by force of a government.”

Issues

[10] Prior to the disclosure of the Security Assessment, the Applicant submitted that the decision was not reasonable because the Officer unreasonably found that he was a “member” of Peykar, and because he conflated Peykar with MEK, and Peykar with Hekmati. Following receipt of the Security Assessment, he included as a ground of review an alleged failure of procedural fairness and natural justice by virtue of the Officer failing to disclose the Security Assessment in the fairness letter.

Analysis

[11] On the issue of procedural fairness, the Respondent argues that the Officer is not required to disclose every document considered in the determination, and that all of the Officer’s concerns set out in the Security Assessment are stated in the procedural fairness letter provided to the Applicant. The Respondent’s line of reasoning is that Mr. Varghaei admitted membership in Peykar, and Peykar is a faction of the MEK, an organization designated as a terrorist entity. On the issue of the Applicant’s membership and involvement with Peykar, the Respondent maintains that the Officer’s decision was reasonable based on the evidence before them on the record. The

Respondent notes that the Applicant, in his response to the procedural fairness letter, did not contradict or deny his involvement in Peykar, nor Peykar's association with MEK.

[12] The Applicant points out that in the "Case Review" notes, the Officer's focus is on the activities of MEK, a terrorist group. The only reference to Peykar, other than it being a splinter group from MEK, is the following: "The Paykar [sic] Organization was confined to conducting guerilla attacks in the north of the country." This is problematic. First, as counsel noted, the Officer engaged in no discussion whether this conduct constitutes "subversion by force" as required in paragraph 34(1)(b) of the Act. More critically, the reference to its guerilla activities appears to be in the 1982 period, after Mr. Varghaei had left the organization.

[13] The Security Assessment and the Officer's decision describe the activities of MEK that would lead one to have reasonable grounds that a member of that organization might be inadmissible to Canada. However, Mr. Varghaei was never a member of MEK. He was a member of Peykar. The documentary evidence, including the Security Assessment, describes it as a group that splintered from MEK in 1975 – three years before Mr. Varghaei joined Peykar. As such, the reliance on the activities of MEK by the Officer and the author of the Security Assessment appears misplaced.

[14] Had the Applicant had access to the Security Assessment he would have known the reason for the Officer's concerns described in the fairness letter and thus would have had an opportunity to respond fully to them. The fairness letter does not, in my view, set out the real concerns revealed in the Security Assessment. The failure to provide him with it is a breach of

procedural fairness, and in my view, led the Officer to make an unreasonable decision based on the activities of MEK, not Peykar.

[15] Accordingly, this application is allowed.

[16] Neither party proposed a question for certification.

JUDGMENT IN IMM-3964-19

THIS COURT'S JUDGMENT is that the application is allowed; the decision of the Officer dated May 23, 2019, denying the application for a permanent resident visa on grounds of inadmissibility is set aside; the application is to be determined by a different officer after the Applicant has had an opportunity to respond in writing to the content of the Security Assessment; and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3964-19

STYLE OF CAUSE: BEHROZ VARGHAEI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 10, 2020

JUDGMENT AND REASONS: ZINN J.

DATED: MARCH 27, 2020

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