

Federal Court



Cour fédérale

Date: 20210201

Docket: IMM-4556-19

Citation: 2021 FC 89

Ottawa, Ontario, February 01, 2021

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

AHMAD HAYTHAM ALYAFI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2015, Mr Ahmad Haytham Alyafi and his wife, Ms Hala Diab, citizens of Syria, applied for permanent residence in Canada. They were sponsored by their son, a Canadian citizen. The couple originally came to Canada in 2013 on temporary resident permits (TRP). An immigration officer denied the requests for permanent residence on the basis that Mr Alyafi was inadmissible to Canada pursuant to paragraph 34(1)(d) of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [IRPA] (see Annex for provisions cited). Paragraph 34(1)(d) states that persons are inadmissible on security grounds if there are reasonable grounds to believe they present a danger to the security of Canada.

[2] The officer found that Mr Alyafi, a highly educated and experienced chemical engineer, was inadmissible due to his long employment at a senior level with the Scientific Studies and Research Centre (SSRC) in Syria. The SSRC has been involved in the production of chemical weapons.

[3] Mr Alyafi challenges the officer's decision on two grounds. First, he argues that the question of his admissibility to Canada was dealt with when he was granted a TRP; the issue, he says, has already been decided in his favour. Second, he contends that the officer's decision was unreasonable because it overlooked important facts, including evidence that his employment at SSRC was under duress, he did not occupy senior positions, he played no strategic role in the SSRC, and he does not present any significant danger to Canada.

[4] He asks me to quash the officer's decision and order another officer to reconsider his application for permanent residence.

[5] I can find no basis for overturning the officer's decision. The granting of a TRP does not preclude a later finding of inadmissibility. In addition, the officer's conclusion that the evidence showed reasonable grounds to believe that Mr Alyafi presented a danger to Canada's security was not unreasonable in the circumstances.

[6] I must, therefore, deny this application for judicial review.

II. Issues

[7] There are two issues:

A. *Issue 1: Was the issue of inadmissibility already decided?*

B. *Issue 2: Was the officer's conclusion unreasonable?*

III. Issue One – Was the issue of admissibility already decided?

[8] Mr Alyafi submits that he had been interviewed by border security and intelligence officers in the context of his application for a TRP. He says he disclosed his association with the SSRC and the officers assured him that his employment history presented no obstacle to obtaining permanent residence. In his view, the issue of admissibility has already been decided in his favour and the officer dealing with his permanent residence application should have been bound by that finding.

[9] I disagree. To establish that the officer considering his permanent residence was estopped from making a decision on inadmissibility, Mr Alyafi has to prove that the same issue was already decided, the decision on that point was final, and the parties to the earlier decision were the same (*Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 25).

[10] Mr Alyafi cannot satisfy these requirements. In particular, he cannot establish that the issue of admissibility had been previously decided. There is no evidence that a decision on admissibility formed any part of the decision to grant him a TRP. Perhaps the officers interviewing him offered positive assurances about his chances of obtaining permanent residence. But they were not charged with making a decision on that issue. In fact, inadmissibility to Canada would not necessarily have presented an obstacle to his obtaining a TRP, so there was no reason to have rendered a definitive ruling on the point (s 24(1)).

[11] Therefore, the officer dealing with the issue of permanent residence was not estopped from rendering a decision on inadmissibility.

IV. Issue Two – Was the officer’s conclusion unreasonable?

[12] Mr Alyafi maintains that the officer overlooked significant evidence in his favour. He argues that the officer’s conclusion – that there were reasonable grounds to believe he presented a danger to the security of Canada – was unreasonable.

[13] I disagree. The officer considered the relevant evidence and arrived at a reasonable conclusion.

[14] A finding of inadmissibility must be based on reasonable grounds to believe that the person presents a security risk, supported by objective, compelling, and credible evidence (*Mugesera v Canada (MCI)*, 2005 SCC 40 at para 114). A person poses a danger to Canada if there is a reasonable suspicion that he or she presents a substantial threat to the security of

Canada (*Suresh v Canada (MCI)*, 2002 SCC 1 at para 90). There must be evidence that the person has actually done, or may be expected to do, something that could be considered a threat to Canadians (*Hosseini v Canada (IRC)*, 2018 FC 171 at para 39).

[15] Considering these legal requirements, the officer's decision was not unreasonable. The parties agree that the standard of review to apply here is reasonableness (*Canada (MCI) v Vavilov*, 2019 SCC 65 at para 16 [*Vavilov*]). The question, then, in respect of the officer's conclusion, is whether the analysis provides sufficient justification, intelligibility, and transparency (*Vavilov*, above, para 100). The burden falls on Mr Alyafi to establish that the officer's conclusion was unreasonable.

[16] The officer cited the following evidence in support of the finding that there were reasonable grounds to believe that Mr Alyafi posed a security risk:

- Mr Alyafi worked at the SSRC from 1974 to 1994 where he occupied senior positions – including Senior Researcher, Deputy Project Director and Technical Director, and Director of Technical Support Directorate – suggesting that he had important influence within the organization.
- The SSRC was known to be involved in the manufacture of chemical weapons. Mr Alyafi became aware of that involvement early in his employment at the SSRC.
- Mr Alyafi played a key role in the start-up of a plant whose purpose was to manufacture chemical weapons; he was aware of that purpose.
- After leaving the SSRC, Mr Alyafi became Vice-Minister of Industry, a senior government position.

[17] Based on this evidence, the officer concluded that there were reasonable grounds to believe that Mr Alyafi had made a “significant and knowing” contribution to Syria's chemical

weapons program and, therefore, represented a danger to the security of Canada. He was inadmissible.

[18] Mr Alyafi submits that the officer failed to adequately assess the following evidence:

- Mr Alyafi had no involvement in the development of chemical weapons. His role was technical, relating solely to electrical requirements and installation.
- He was obliged to work at SSRC after it had funded his PhD studies. He was not a willing employee for the first 7½ years of his employment there.
- He attempted to resign 15 times. He succeeded in 1994 at the point when he was near retirement.
- He produced a technical report on the viability of the plant he was involved in developing. His report cast doubt on the feasibility of the second stage of that development and he was reprimanded for it.
- He played no strategic role in the organization. Even though his project-specific job titles may have suggested otherwise, in reality he was no more than a researcher or senior researcher.
- He has not been an employee of SSRC for over 25 years.

[19] Mr Alyafi submits that the officer failed to take adequate notice of this evidence, especially the fact that his employment was under duress. He maintains that the evidence fails to show that he poses any significant risk to Canada's security.

[20] Again, I disagree with Mr Alyafi's submissions.

[21] The officer considered Mr Alyafi's claim not to have been directly involved in producing chemical weapons. However, the officer noted that Mr Alyafi knowingly contributed to the manufacture of those weapons.

[22] The officer also noted that there was no evidence to support Mr Alyafi's assertion that he had attempted to resign numerous times. Indeed, Mr Alyafi's employment record shows only his final resignation in 1994. Based on this evidence, the officer found that Mr Alyafi's lengthy employment history did not support his contention that he worked at the SSRC against his will. Rather, his involvement in Syria's chemical weapons program appeared to have been voluntary.

[23] The officer also took note of Mr Alyafi's report in which he had pointed out a flaw in the development of a chemical weapons facility. The officer observed that Mr Alyafi did not object to the project itself but merely highlighted a design flaw. Again, the officer did not regard Mr Alyafi's involvement in the project as involuntary. In fact, his role was indispensable to the success of the project. The officer noted that Mr Alyafi was welcomed back to the team after a short disciplinary assignment.

[24] The officer responded to Mr Alyafi's submission that his job titles did not correspond with his minor role in the organization. The officer noted that those titles described senior roles, suggesting that Mr Alyafi had significant influence in the SSRC. Indeed, at one point, he supervised 90 employees.

[25] As for the fact that Mr Alyafi left his position at the SSRC more than 25 years ago, it is not necessary for purposes of an inadmissibility finding that the danger posed by the person be current (*Re Harkat*, 2012 FCA 122 at para 152).

[26] In my view, the officer considered and evaluated all of the relevant evidence in arriving at his conclusion on inadmissibility. I see nothing unreasonable about that conclusion. The analysis was justified, intelligible, and transparent.

V. Conclusion and Disposition

[27] The officer considering Mr Alyafi's permanent residence application was not bound to find him admissible to Canada simply because he had previously been granted a TRP. Further, the officer's finding of inadmissibility was not unreasonable on the evidence.

[28] I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-4556-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

ANNEX

<i>Immigration and Refugee Protection Act (S.C. 2001, c. 27)</i>	<i>Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)</i>
Temporary resident permit	Permis de séjour temporaire
24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.
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 :
...	...
(d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada;

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: AHMAD HAYTHAM ALYAFI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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JUDGMENT AND REASONS O'REILLY J.

DATED: FEBRUARY 01, 2021

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