Federal Court  Cour fédérale

Date: 20221102

Docket: IMM-6462-20

Citation: 2022 FC 1495

Ottawa, Ontario, November 2, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

TARA FATLUM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The Applicant's wife sponsored the Applicant for a permanent resident visa at the Canadian Mission in Vienna in November 2017. His application was denied because he was a member of the Kosovo Liberation Army [KLA] during the Kosovo war, which organization the Minister's Migration Officer [Officer] found reasonable grounds to believe was engaged in the subversion by force of a government and in terrorism, as set out in paragraphs 34(1)(b), (c) and

(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Officer therefore declared the Applicant inadmissible. The decision was dated October 23, 2020 [Decision].

[2] The Applicant is seeking judicial review because the reasons the Officer gave were inadequate and therefore unreasonable. The inadequacy of the reasons, according to the Applicant, flows from the Officer's failure to engage with the evidence the Applicant submitted in response to two procedural fairness letters. This lack of engagement allegedly prevented the officer from answering key questions put forward by the Applicant, and prevented the Officer from providing reasons why this evidence was not given much weight.

[3] With respect, I conclude the reasons of the Officer are adequate, transparent, intelligible and justified and are therefore reasonable. The Officer considered the evidence submitted by the Applicant and indeed relied on it. The Officer properly noted but did not engage with irrelevant opinion evidence based on incorrect appreciations of well-settled constraining law.

II. Facts

[4] The Applicant was born and raised in Kosovo, and is an ethnic Albanian. During the Kosovo war, he fled his home city due to the violent repression Albanians suffered from Serbian security forces. When he arrived at the Albanian border, he encountered members of the KLA. They asked him to join the KLA. He agreed to help with non-combat tasks such as digging "halls", cooking and carrying things. On April 11, 1999, he was injured and remained in a hospital in Albania until NATO forces forced the Serbian army to leave Kosovo at which point he returned home.

[5] The Applicant first met his future wife in Kosovo in 2004. She moved to Canada with her family in February 2014 and is now a Canadian. Over the years, she went back to Kosovo a number of times to visit the Applicant. They eventually had two children together; both are Canadian citizens.

III. Decision under review

[6] The Decision found the Applicant inadmissible for a permanent resident visa because the Officer had reasonable grounds to believe he was a person described in paragraph 34(1)(f) *IRPA*. The Officer's notes in the Global Case Management System were attached to the letter and form part of the Decision. The bulk of the Officer's reasons is found in the notes, particularly notes related to the two procedural fairness letters sent by the Officer and the Applicant's two replies.

[7] On July 26, 2019, the Officer sent the first procedural fairness letter because the Officer was satisfied there existed reasonable and probable grounds to believe the KLA was an organization that had engaged in the subversion by force of a government, and that had engaged in terrorism, contrary to paragraphs 34(1)(b), (c) and (f) of *IRPA*.

[8] The Applicant admitted and there is no dispute he was a member of the KLA from May 25, 1998 to April 11, 1999.

[9] In the procedural fairness letter, the Officer cited 4 sources to support these conclusions: (1) an Encyclopedia Britannica article on the KLA; (2) an article from the website "Global Security" on the KLA; (3) an article from the website "Adem Jashari and UCK" on "The

Military Oath"; and (4) NATO Resolution 1160 dated March 31, 1998. The Officer noted that, regardless of whether the Applicant himself engaged in violent or terrorist acts, he was still inadmissible based on his previous membership in the KLA.

[10] The Applicant responded to this first procedural fairness letter on October 22, 2019. He submitted an opinion from an American lawyer, Henry Perrit, a professor of law at the Illinois Institute of Technology's Chicago-Kent College of Law and author of two books on the Kosovo crisis and the KLA.

[11] Counsel advised Dr. Perrit has no training in Canadian law, nor had he been qualified as an expert in a Canadian proceeding. I have no doubt he has considerable expertise in the facts of the Kosovo crisis, and perhaps also in international law, but his opinions are divorced from constraining Canadian law in terms of the matter at hand, namely the application of paragraph 34(1)(f) of *IRPA*. While his opinion is described as "Expert Opinion" I was not asked to, nor am I able to overlook that his opinions are based on legal notions contrary to already litigated and established *IRPA* jurisprudence. I will assess Dr. Perrit's material in that context.

[12] The Applicant also submitted three articles: (1) Vedran Obucina, *A War of Myths: Creation of the Founding Myth of Kosovo Albanians*, (2) Gabor Sulyok, *Terrorism or National Liberation: Remarks on the Activities of the Kosovo Liberation Army During the Kosovo Crisis*, and (3) Klejda Mulaj, *Resisting an Oppressive Regime: The Case of Kosovo Liberation Army*.

[13] The Applicant submits that the Officer was required to look at the legality and legitimacy of the KLA's actions in order to determine whether they were subversive or constituted terrorism. These, according to the Applicant, require illicit intent, unlawful actions, or "improper means". The opinion and articles the Applicant relied on describe the history of Kosovo and Serbia. He submits they show that KLA's subversion by force and terrorism were justified and therefore do not permit findings under paragraphs 34(1)(b), (c) or (f).

[14] The Applicant also underscored that the KLA received the backing of NATO and that he himself did not engage in or intend to engage in any of the violent activities of the KLA in terms of subversion or terrorism.

[15] In this connection, I should note that NATO (of which Canada is a member) by Resolution dated March 31, 1998, in fact condemned KLA's acts of terrorism: NATO condemned "all acts of terrorism by the Kosovo Liberation Army". The Resolution also condemned the use of excessive force by the Serbian Police Forces against civilians in Kosovo.

[16] In addition, the Applicant submitted it is in the best interest of his children that his family be reunited. The Officer made no conclusion in this respect.

[17] On July 3, 2020, the Officer sent a second procedural fairness letter reiterating concerns the Applicant was inadmissible under paragraph 34(1)(f) of *IRPA*.

[18] The Applicant responded on July 17, 2020. Counsel challenged the credibility and reliability of the Officer's sources (except the NATO Resolution). He reiterated his material submitted previously supported the conclusion that the KLA could not be considered to be a subversive or terrorist group for the purposes of paragraph 34(1) of *IRPA*.

[19] In the Decision finding the Applicant inadmissible, the Officer reviewed both replies to the procedural fairness letters. The Officer, having weighed and assessed the evidence including the documents provided by the Applicant, concluded there were reasonable grounds to believe the Applicant had been a member of an organization that engaged in the subversion by force of a government and in terrorism, contrary to paragraphs 34(1)(b), (c) and (f) of *IRPA*, and declared him inadmissible.

[20] In the course of the Officer's reasons, the Officer expressly noted the Applicant's criticism of the reliability of the sources noted in both procedural fairness letters (except for the NATO Resolution). The Decision relied on the documents submitted by the Applicant.

[21] In this connection, the Officer summarized the main conclusions of the opinion and articles submitted by the Applicant.

[22] The Officer noted Dr. Perritt's "improper means" theory (Dr. Perritt's document was submitted by the Applicant), his conclusion that the KLA was justified in its armed struggle against an oppressor, and his opinion the KLA's actions did not compare to those of other terrorist groups.

[23] The Officer noted the Applicant's further article, *A War of Myths: Creation of the Founding Myth of Kosovo Albanians* provides historical context for the creation of the KLA.

[24] Finally, the Officer drew particular attention to the Applicant's article *Terrorism or National Liberation: Remarks on the activities of the Kosovo Liberation Army during the Kosovo Crisis*: there its author concluded among other things that the KLA committed "blatant acts of terror."

[25] The Officer therefore concluded that there were reasonable grounds to believe that the KLA organization had engaged in acts of subversion or terrorism as defined by subsection 34(1) and consequently declared the Applicant inadmissible.

IV. Issues

[26] The parties agree, as do I, the issue is whether the Decision is reasonable.

V. Standard of Review

[27] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in

> relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[28] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".

> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.
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> [Emphasis added]

[29] The Supreme Court of Canada in *Vavilov* at para 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies," and provides guidance that the reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
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> [Emphasis added]

[30] Furthermore, *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[31] The Federal Court of Appeal recently emphasized in *Doyle v Canada (Attorney General)*, 2021 FCA 237 that the role of this Court is not to reweigh and reassess evidence before the decision maker:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
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> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

VI. Relevant statutory provisions

[32] Section 34 of the *IRPA* states:

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 :
…	…
(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;
…	…
(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).

VII. Analysis

A. *Legal test for para 34(1)(b) and (c) of IRPA*

[33] Before reviewing the submissions of the Applicant, it is important to establish the proper legal test for subversion by force under paragraph 34(1)(b) *IRPA*. For these purposes I consider the arguments with respect to terrorism under paragraph 34(1)(c) to be essentially the same given

my understanding of the Applicant's position, who relied on the same submissions from Dr. Perrrit and the articles filed in respect of both.

[34] The Applicant submits that subversive/terrorism behaviour must have illicit intent, unlawful actions, or "improper means" or purposes. Based on his evidence he submits the KLA's subversive/terrorism actions were legitimate and could not support findings under paragraphs 34(1)(b) or (c) of *IRPA*.

[35] As the Respondent put it, this argument essentially differentiates between good and bad subversion, and likewise between good and bad terrorism. It is, as I understand it, the end to be achieved by the subversion by force and or terrorism that determines the legal characterization of subversion by force or terrorism for the purposes of paragraph 34(1)(b), (c) and(f) of *IRPA*.

[36] With respect, that is not the law in Canada. Established constraining law is clear that the legality or legitimacy of activities by the KLA, or any other group engaging in actions described by paragraphs 34(1)(b) or (c) of *IRPA*, are generally irrelevant. It is this law that I will apply.

[37] In this connection the Respondent relies on the Federal Court of Appeal's judgment, per Justice Gauthier in *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 [*Najafi*] at paras 64 to 70. As may be seen from the following, this judgment concludes the "legality or legitimacy" of subversive (and I would add terrorism) acts are not relevant under section 34(1) of *IRPA*:

> 64] Turning to Mr. Najafi's second argument, I cannot agree that the legislator must expressly state in the provision at issue that

its international obligations should be overcome. If it were so, the Supreme Court of Canada could not have reached the conclusion that it did in *Németh* that section 115 of the *IRPA* does not address removal by extradition when it was acknowledged that the ordinary meaning of the words used in the section, "removed from Canada", could include extradition as a form of removal. Thus, the matter is not one of principle. Rather, it is simply a question of properly applying the contextual approach, taking into consideration the words of paragraph 34(1)(*b*) (in French and English) and reading them in their entire context harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament. In assessing the reasonableness of the Division's interpretation, I will now proceed in this way.

[65] As noted by the Division, the word "subversion" is not defined in the Act, and there is no universally adopted definition of the term. The *Black's Law Dictionary's* definition to which the Division refers at paragraph 27 (particularly, the words "the act or process of overthrowing … the government") is very much in line with the ordinary meaning of the French text («actes visant au renversement d'un gouvernement »). Although in certain contexts, the word "subversion" may well be understood to refer to illicit acts or acts done for an improper purpose, the words used in the French text do not convey any such connotation. I am satisfied that the shared meaning of the two texts does not ordinarily include any reference to the legality or legitimacy of such acts.

[66] I note that the word "subversion" is used only in the English version of paragraph 34(1)(*b*), while it is used in both the English and French versions of paragraph 34(1)(*a*). This may or may not signal a different meaning, but it is not my purpose to properly construe paragraph 34(1)(*a*) in this appeal. I will only note that in *Qu v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17132 (FC), [2000] 4 F.C. 71, rev'd in 2001 FCA 399, the application judge was dealing with a predecessor of paragraph 34(1)(*a*), and this Court never had to deal with the meaning of "subversion" on appeal.

[67] In the provision at issue here, the word "subversion" must be read in the context of the expression "subversion by force of any government" (in French: "actes visant au renversement d'un gouvernement par la force"), whereas in paragraph 34(1)(*a*), it is used in reference to "an act of subversion against a democratic government".

[68] While Mr. Najafi has attempted to frame the debate around the interpretation in terms of the words "subversion by force" in

> paragraph 34(1)(*b*), and the legitimacy of the use of the force in certain contexts mentioned above under international law, it is apparent from the expert evidence he relies on that a key question is the legitimacy of the government against which such use of force is directed.
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> [69] The notion of an oppressed people's right of self-determination to use force on which he relies, is directly linked to the "illegitimacy" of the government being opposed because of colonial domination or alien occupation and racism.
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> [70] This is why the judge put as much emphasis as she did on the immediate context of paragraph 34(1)(*b*). The interpretative question raised by these facts is whether the word "government" is limited to "democratically elected government" or some other formula designating a government whose legitimacy is not in issue, or whether it applies to any government, even it is oppressive and racist. When one considers the words of paragraph 34(1)(*b*), ("any government"), they are clear and unambiguous. The words "subversion by force of **any government**" [Emphasis in original, ed.] do not on their face, imply a qualification of any kind with respect to the government in question.
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> [Emphasis added]

[38] Especially notably, the Supreme Court of Canada refused Mr. Najafi leave to appeal the Federal Court of Appeal's judgment in *Najafi*: see *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262, leave to appeal to SCC refused, 36241 (April 23, 2015). It therefore stands as binding on this Court in this application.

[39] I further note the Federal Court of Appeal considered the legislative evolution of paragraph 34(1)(b) of *IRPA* in *Najafi* at paras 72 and following to 83, where Justice Gauthier concluded:

> [83] At this stage of my analysis, I find that the language of paragraph 34(1)(*b*) is clear.
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> [Emphasis added]

[40] International law, on which the Applicant now relies, was also considered in *Najafi* at paras 84 to 89 at which point the Justice Gauthier concluded:

> [89] Even if I adopt this approach, I cannot conclude from the overall legal context that paragraph 34(1)(*b*) should be construed as encompassing only the use of force that is not legitimate or lawful pursuant to international law.
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> [Emphasis added]

B. *Alternative relief from the Minister may also be available to the Applicant*

[41] Materially as will be seen later in this case, the Federal Court of Appeal held that persons found inadmissible under para 34(1)(f) may nonetheless apply for relief from the Minister under subsections 34(2) and 42.1(2) of *IRPA*:

> [80] Obviously, when I state that Parliament intended for the provision to be applied broadly, I am referring to the inadmissibility stage, for, as noted by the Supreme Court of Canada in *Suresh*, albeit in a different context, the legislator always intended that the Minister have the ability to exempt any foreign national caught by this broad language, after considering the objectives set out in subsection 34(2). This is done by way of an application. (As discussed above, subsection 34(2) is now subsection 42.1(1). Per subsection 42.1(2), it can now also be granted on the Minister's own initiative).
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> [81] This mechanism can be used to protect innocent members of an organization but also members of organizations whose admission to Canada would not be detrimental or contrary to national interest because of the organization's activities in Canada and the legitimacy of the use of force to subvert a government abroad.
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> [82] It is obvious that in the latter case in particular, the resolution of international law issues may be complex. This supports the argument that the Minister is better equipped to deal with such issues in the context of an application for ministerial exemption. An example of such reasoning is provided by the *Geneva Conventions Act*, R.S.C., 1985, c. G-3, section 9, which allows the Minister of Foreign Affairs to issue a certificate stating

> that a state of war or of international or non-international armed conflict existed between states or within a state.
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> […]
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> [90] Like the Division, I find that legality or legitimacy may well be an issue that the Minister can consider under subsection 34(2) of the *IRPA*, but it is not one that is relevant to the application of paragraph 34(1)(*b*). Thus, the Division's interpretation is clearly reasonable. I would answer the certified question, as formulated by the judge or reformulated at paragraph 46, in the negative.
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> [Emphasis added]

C. *Additional submissions*

[42] The Applicant submits the Officer had a duty to provide robust reasons because of the substantial impacts of the Decision, per *Vavilov* at paras 133-135. The Applicant advances three arguments to support his claim that the reasons rendered by the Officer did not meet this standard. First, the Officer failed to properly consider the opinion of Dr. Perritt and the scholarly articles submitted by the Applicant and therefore did not grapple with the key issues and arguments he submitted. Second, the Officer failed to explain the weight they gave to the evidence submitted by the Applicant. Third, the Officer failed to consider the Applicant's specific circumstances.

[43] In support of his first argument, the Applicant alleges the Officer selectively treated the evidence. Notably, the Applicant submits the Officer only provided a very brief summary of Dr. Perritt's opinion and did not mention his qualifications. The brief summary omitted important aspects such as the history of the KLA and the support it received from NATO. Similarly, the Officer only provided a very cursory summary of the scholarly articles submitted.

[44] In so doing, according to the Applicant, the Officer failed to respond to the key issues and central arguments he raised because the Officer failed to consider the full extent of the expert opinion and the scholarly articles. This rendered the reasons unreasonable, *Vavilov* at paras 102-103.

[45] The Applicant had also raised concerns over the reliability of the sources the Officer cited. These criticisms were noted by the officer, but never answered. In so doing, the Applicant submits the Officer again failed to engage with a key question put forward by the Applicant.

[46] The Respondent replies that the question of whether the KLA resorted to "improper means" – the central international law submission of the Applicant here and below - was not germane to the test for subversion articulated by the Federal Court of Appeal in *Najafi*. I agree that the submissions of the Applicant were contrary to well-established Canadian law.

[47] As noted above, the key question the Applicant put to the Officer was whether the KLA engaged in activities described in paragraphs 34(1)(b) or (c) that were legitimate or lawful pursuant to international law. With respect, it is "clear" according to *Najafi* at para 83 that whether KLA's actions were "legal or legitimate" at para 65 or "legitimate or lawful pursuant to international law" at para 89 were irrelevant. With respect therefore, I can see no point in the Officer engaging with irrelevant material because the submissions on international law were entirely academic given *Najafi*.

[48] With respect, *Vavilov* does not require administrative decision-makers to entertain and discourse upon every argument placed before them, at para 128. Such a requirement would undermine the values of efficiency and access to justice that underpin administrative decision-making, *Vavilov* at para 128. With respect, this is especially true when the arguments advanced has no legal basis as here.

[49] In addition, administrative decision-makers are not required to cite all relevant jurisprudence: *Vavilov* at para 91. I cannot accept that the absence of analysis of irrelevant legal submissions is sufficient to render the Officer's reasons inadequate, especially since the Officer was applying the legal test the Federal Court has continued to apply since *Najafi* in 2014: *Canada (Minister of Public Safety and Emergency Preparedness) v Edom*, 2021 FC 1220 [Justice Pallotta] at para 24; *Zahw v Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 FC 934 [Justice Walker] at paras 55-57; *Niyungeko v Canada (Minister of Citizenship and Immigration)*, 2019 FC 820 [Justice Diner] at para 33.

[50] The Applicant correctly points out the Officer did not respond to the criticisms levelled against the sources identified by Respondent in both procedural fairness letters, Two points may be made in response. First, it is abundantly clear that it is for the decision-maker not this Court to weigh and assess the evidence before it: per *Doyle*, above. As I see it, this is what the Officer did. Moreover, and in any event, the Officer relied on the Applicant's evidence. In any event I am not persuaded the Officer offended the principle that evidence obtained from organizations which adhere to the standard of objectivity and accuracy may be accepted: *Kablawi v Canada (Citizenship and Immigration)*, 2010 FC 888 at paras 46-47.

[51] As noted, the Officer relied on the very documents submitted by the Applicant to support the Officer's conclusion that KLA had engaged in acts of subversion by force and terrorism as described by section 34(1). Consequently, whether or not and to what extent the Officer's other sources identified in the two procedural fairness letters were relied upon, the Officer's conclusion still stands. In this connection the Officer's reasons state:

> He [the Applicant] refers to the articles that were sent in response to our previous Procedural Fairness letter, which he states are objective and credible, and which in his opinion confirm that the KLA was not a subversive group or a terrorist group as per section 34(1) of the *IRPA*. The opinion by Henry H. Perritt, Jr., [submitted by the Applicant, ed.] concludes that the KLA was not motivated by "improper means", but was rather resisting oppression and human rights violations by the Serbian government, using force that was proportional to the oppression. It states that the KLA was not a terrorist organization when its activities are compared with those of other organizations generally regarded as terrorist.
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> The document "A War of Myths: Creation of the Founding Myth of Kosovo Albanians" [submitted by the Applicant], ed.], speaks to the history of the region and population the preceded and led to the creation of the KLA, and states that "Kosovo Albanians waited hastily for some sort of Dayton Agreement in Serbia, after Milosevic signed the treaty. When Serbian military and police operations turned from Bosnia to Kosovo, young Kosovars, disappointed with the international community and Rugova's silent opposition, turned violent. This was the creation of the Kosovo Liberation Army that started guerilla warfare for freedom." The document "Terrorism or National Liberation: Remarks on the Activities of the Kosovo Liberation Army during the Kosovo Crisis" [submitted by the Applicant, ed.], points to the difficulty in defining "terrorism" as different parties' perspectives will inevitably differ. The document also states that: "It has been proven that the KLA was responsible for a number of atrocities hardly reconcilable with its ultimate goal, notably the independence of Kosovo. Numerous reports from various sources confirmed that the armed Albanian units had perpetrated acts rightly classified as acts of terrorism. Among these acts one may find the following: Abduction on a daily basis of members of Serbian armed forces and Serb and Roma civilians, as well as Albanians charged with collaboration; taking of hostages; torture, ill-treatment and murder of several kidnapped persons, some of them civilians, including women and children; arbitrary arrests and

> detentions, as well as summary executions by Albanian "paramilitary tribunals:; harassment; discriminatory treatment, and so on." It later states that "Apart from these blatant acts of terror, the KLA indeed tried to operate as a national liberation movement". The author also states: "Therefore I suppose that the KLA was more than just a terrorist organisation, although at the very beginning the label of terrorism was properly used to describe its essence. Subsequently, however, as the crisis evolved into a relatively large-scale internal armed conflict, it gradually started develop (*sic*) into what it originally said it had been; an armed force of the Kosovar Albanian community". Further, he states that "The Serbian-Albanian conflict was clearly an instance of armed conflicts of a non-international character in the sense of Article 1 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of No-International Armed Conflicts. Thus, the attacks directed by members of the KLA against Serbian armed forces were not acts of terrorism, but "acts of war". As for the atrocities and excesses discussed above, these actions are nevertheless rightly viewed as acts of terrorism also prohibited by Article 4(2) (d) of Additional Protocol II. Terrorist acts committed by the KLA are consequently grave breaches of international humanitarian law, and fall under the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia (ICTY), but do not affect the legal qualification of hostilities as an internal armed conflict." The author concludes that "in the beginning the organisation was correctly seen as a terrorist organisation, but as the crisis intensified, it developed into an "organised armed group" in the sense of Additional Protocol II."
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> Based on the evidence available, including the documents provided by the applicant in response to our procedural fairness letter, I have reasonable grounds to believe that the KLA is an organization that engages, has engaged or will engage in acts of espionage, subversion, or terrorism as defined under section 34(1). Even though the role and perception of the KLA may have changed over the years, there is sufficient credible evidence available to suggest that the KLA did engage in acts described in section 34(1)(b) and (c). The applicant is described at A34(1)(f) and is inadmissible to Canada. Application refused.
>
> [Emphasis added]

[52] On the above, the Applicant's own submissions reasonably support the Officer's findings.

[53] Finally, the Applicant submits that the Officer did not consider his specific circumstances. It is true the Officer did not do this. However, as the Federal Court of Appeal stated in *Najafi*, a person found inadmissible under paragraph 34(1)(f) may nonetheless apply for relief from the Minister under subsections 34(2) and 42.1(2) of *IRPA*. As *Najafi* also holds, the Minister is better equipped to deal with cases such as that of the Applicant by way of an exemption:

> [82] It is obvious that in the latter case in particular, the resolution of international law issues may be complex. This supports the argument that the Minister is better equipped to deal with such issues in the context of an application for ministerial exemption.
>
> [Emphasis added]

[54] At the hearing, the Court asked about the possibility of a Ministerial exemption. Counsel for the Minister explained that while no relief is available for the Applicant under the exceptional humanitarian and compassionate exemptions in section 25 of *IRPA*, the Minister may grant relief under section 42.1 of *IRPA*. It appears no such relief has yet been requested by the Applicant.

VIII. Conclusion

[55] The Decision adds up, is adequately reasoned, grapples with the issues before it, conforms with relevant constraining law and the record, and is justified, transparent and intelligible. I find the Decision reasonable. Therefore this application for judicial review will be dismissed.

IX. Certified Question

[56] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-6462-20

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5180-21
STYLE OF CAUSE:	TARA FATLUM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 27, 2022
JUDGMENT AND REASONS:	BROWN J.
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APPEARANCES:

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