

Federal Court



Cour fédérale

Date: 20231124

Docket: IMM-10454-22

Citation: 2023 FC 1561

Ottawa, Ontario, November 24, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

MOHAMMED BASHIR SHALA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] On this Application, Mohammed Bashir Shala seeks judicial review of an Immigration Division [ID] Decision finding that he is inadmissible pursuant to paragraphs 34(1)(b), (c) and (f) of the *Immigration and Refugee Protection Act*, 2001 SC, c 27 [IRPA] for being a member of an organization that has engaged in terrorism.

[2] The ID concluded that there were reasonable grounds to believe that Mr. Shala's employment with the Palestinian Authority [PA] was equivalent to membership in the

Palestinian Liberation Organization [PLO], which the ID found to be an organization engaged in terrorism.

[3] For the reasons that follow, this judicial review Application is granted as the ID did not reasonably consider the contradictory evidence on the relationship between the PA and the PLO.

I. Background

[4] Mr. Shala is a 62-year-old Palestinian national from Gaza. From 1997 until 2007, he was employed by the PA in Gaza as a secretary to the General in charge of the logistics branch of PA. The logistics branch managed food, fuel, clothing and supplies for the PA police and military.

[5] The Oslo Accords are a set of peace agreements signed in 1993 and 1995. They were signed after the First Intifada, a Palestinian uprising against Israeli occupation in the West Bank and Gaza from 1987-1991. The Oslo Accords established the PA to govern parts of Gaza and the West Bank.

[6] In 2007, Hamas, a terrorist organization, took control of Gaza.

[7] In April 2008, Mr. Shala retired from the PA and holds a PA pensioner identity card. He states that he is not presently a member of the PA nor is he affiliated with any other organization.

[8] He made a refugee claim in 2019 claiming fear of persecution from Hamas for refusing to join them.

[9] The Canadian Border Services Agency [CBSA], on behalf of the Minister of Public Safety and Emergency Preparedness, issued a report under subsection 44(1) of IRPA alleging Mr. Shala was inadmissible to Canada pursuant to paragraph 34(1)(f) of IRPA.

[10] On March 21 and 22, 2022, the ID held an admissibility hearing.

II. Decision under review

[11] In the Decision dated August 26, 2022, the ID found Mr. Shala inadmissible to Canada pursuant to paragraphs 34(1)(b), (c) and therefore (f) of IRPA. As a result, the ID issued a Deportation Order against Mr. Shala pursuant to subsection 45(d) of IRPA and paragraph 229(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Having been found inadmissible, Mr. Shala's claim for refugee protection was terminated.

[12] The ID concluded that Mr. Shala was a member of an organization that there are reasonable grounds to believe has engaged in or instigated subversion by force of a government and engaged in terrorism. The ID determined there were reasonable grounds to believe: (1) that PA is an internal organ of the PLO; (2) that the PLO is an organization engaged in or instigated the subversion of a government; (3) that the PLO is an organization engaged in terrorism; and (4) that Mr. Shala is a member of PLO.

A. *PA is an internal organ of the PLO*

[13] The ID determined that the PLO is an “organization” as it has a clear hierarchy, leadership by Mahmoud Abbas, an identity established through a formal constitution of the Palestinian National Covenant, and control of territory.

[14] The ID notes that Yasser Arafat was the head of Fatah and the PLO and also the leader of PA. When Mr. Arafat died, Mr. Abbas took over as the single leader of Fatah, PLO, and PA. Mr. Shala testified that he received orders from Mr. Abbas to stay home and not attend work when Hamas took over Gaza, and he acknowledged that the PLO and PA are “intrinsically linked.” Therefore, the ID found that the PA is an internal organ of PLO and not a distinct entity.

B. *PLO is an organization that engaged in or instigated the subversion by force of a government*

[15] The ID found evidence that PLO armed forces used guerilla warfare concepts to destabilize the Jordanian government. The ID found that in the mid 1960s the PLO Chairman was plotting to aggravate the level of conflict between the PLO and the Jordanian government and had challenged the Jordanian government’s legitimacy, which created a threat of violence meant to cause instability in the Jordanian government. The ID found these acts met the threshold of reasonable grounds to believe the PLO engaged in or instigated the subversion by force of the Jordanian government. Additionally, the ID found that one of PLO’s goals is the destruction of Israel and eradicate Zionist economic, political, military, and cultural existence. The ID found evidence that the PLO launched attacks on Israel and Israeli soldiers starting in the late 1960s and in 1975.

C. *PLO is an organization engaged in terrorism*

[16] The ID reviewed the Palestine National Covenant which cites “armed struggle” as necessary to liberation and eliminating Zionism and imperialist aggression. The ID also recounted a PLO faction attack on an Israeli school bus killing eight children and four adults, wounding 20 others, and the hostage and murder of eleven Israelis by Black September, a terror sect of Fatah, which the ID found to be linked to the PLO since Mr. Arafat was the leader of both groups. The ID found these occurrences established reasonable grounds to believe that PLO, including its internal organs, engaged in terrorism.

[17] The ID considered Mr. Shala’s position that his employment did not overlap during times when the PLO engaged in or instigated subversion by force of the government. The ID however noted that there is no temporal element to determining whether an organization has stopped its terrorist acts.

[18] The ID analyzed whether the PLO became a different organization at the time of Mr. Shala’s employment in May 1997. The ID noted that PLO signed peace treaties, the Oslo Accords, with Israel in 1993 and 1995, out of which the PA was established. The ID also noted that the Palestinian National Charter was amended in 1996. However, the ID found that PLO continued to engage in violence and pointed to the fact that in 2000, Mr. Arafat declared the Oslo Accords were dead and the Second Intifada, a bloody conflict, took place from 2000 to 2005.

[19] The ID cited a United States Congress report that the PLO did not assume responsibility for all PLO elements and personnel to assure compliance with the renunciation of terrorism,

prevent violators, and discipline violators. Further, the report said the PLO and PA leaders did little to prevent, and in some cases, encouraged, acts of violence. The ID found that in 1997, the PLO remained the same organization that engaged in subversion by force of a government and engaged in terrorism previously.

D. *Reasonable grounds to believe Mr. Shala is a member of PLO*

[20] The ID noted “member” is to be given broad and unrestricted interpretation and that it can be formal, by association, or informal participation. The ID considered the various criteria to determine membership including the knowledge of the organization and the level of involvement with the organization. The ID acknowledged that to establish membership, there must be evidence of an institutional link with the group’s activities, but explained that paragraph 34(1)(f) requires only that a person is a member of an organization, not an active participant who knowingly supports subversion.

[21] The ID found that Mr. Shala had been a member of the PA since 1997 and as the PA is an internal organ of the PLO, Mr. Shala was a member of PLO. The ID found that Mr. Shala held a military position with the PA reaching the rank of Captain and that while his role was not directly in combat, he provided significant support to the military operations. Further, when the leader of the PLO and PA ordered him not to collaborate with Hamas in 2007, Mr. Shala complied.

[22] The ID also noted that Mr. Shala's identification card has the name of PLO at the top which the ID determined was alone sufficient to establish membership, but that along with the other evidence, also established reasonable grounds that Mr. Shala was a member of PLO.

III. Issue and standard of review

[23] The only issue is the reasonableness of the ID's finding that Mr. Shala, as an employee of the PA, was a member of the PLO, a terrorist organization, and therefore inadmissible to Canada.

[24] In considering this issue, the parties agree that the applicable standard of review of the ID decision is reasonableness as explained in *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 69 [*Vavilov*]. A reasonable decision 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. The hallmarks of reasonableness are transparency, intelligibility, and justification (*Vavilov* at paras 85 and 99).

[25] Justification is assessed in light of the relevant legal and factual constraints on the decision. The burden of justification varies with the circumstances, including the wording of the relevant statutory provisions, the applicable precedents, the evidence, the submissions of the parties, and the impact of the decision on the affected persons (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 66).

IV. Analysis

[26] Mr. Shala argues that the ID finding that the PA is an internal organ of PLO is not reasonably supported by the evidence. He submits that the ID failed to properly consider the contradictory evidence on the role of the PA government within the PLO.

[27] In applying the “reasonable grounds to believe” standard for inadmissibility under the IRPA, the ID must have an objective basis for the belief that is based on compelling and credible information (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114; *Ghazala Asif Khan v Canada (MCI)*, 2017 FC 269 at para 24).

[28] The Federal Court of Appeal in *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 30 [*Kanagendren*] explained that:

...great caution must be exercised when finding membership in one organization to be a proxy in another. Particularly in the context of nationalist or liberation movements, the mere sharing of goals and coordination of political activities may well not justify this type of analysis.

[29] In *Bigirimana v Canada (Citizenship and Immigration)*, 2021 FC 1156 at paragraph 29, Mr. Justice Diner found there must be evidence that is “sufficiently thorough and convincing to link the two organizations.”

[30] In this case, the ID relies upon the fact that the PA and the PLO share the same leader as a basis to conclude that it is the same organization. However, country condition evidence and

the National Documentation Package [NDP] considered by the ID are contradictory to this finding.

[31] The October 2022 Human Rights Watch [HRW] Report titled *Erased In A Moment: Suicide Bombing Attacks Against Israeli Civilians* states at page 45 that the PA “exists independently from” the PLO. At page 44, the HRW Report says:

Although it is not a sovereign state, the Palestinian Authority has explicit security and legal obligations set out in the Oslo Accords... These responsibilities were elaborated further in Annex I of the interim agreement, which specifies that the PA will bring to justice those accused of perpetrating attacks against Israeli civilians. According to article II (3) (c) of the annex, the PA will "apprehend, investigate and prosecute perpetrators and all other persons directly or indirectly involved in acts of terrorism, violence and incitement.

Similarly, PA leaders, including President Arafat, have repeatedly pledged in meetings with international human rights organizations and in radio broadcasts, as well as in the Oslo Accords, that the PA intends to abide by internationally recognized human rights norms." [Footnotes omitted.]

[32] Additionally, in the December 2018 NDP for the Occupied Palestinian Territories 1.9 is a United States Congressional Research Service report titled *The Palestinians: Background and US Relations*, which states that the PA is a “constitutional creature” of PLO agreements with Israel. The NDP states that PLO is the international representative of the Palestinian people while the PA is the “organ of governance for limited Palestinian self-rule in the West Bank and Gaza Strip.” The NDP says that “[b]ecause Mahmoud Abbas is both PLO chairman and PA president, U.S. officials and other international actors sometime conflate his roles.” The NDP also explains that the PA is organized like a state, with its own executive, legislative, judicial branch and security forces.

[33] To support its conclusion that as the PA and the PLO share the same leader, they are the same organization, the ID relied upon *Uddin Jilani v Canada (Citizenship and Immigration)*, 2008 FC 758 [*Jilani*]. However, in *Jalani*, the applicant specifically admitted to being a member of the Muttahida Quami Movement organization in Pakistan. In this case, Mr. Shala does not admit to being a member of the PLO and further argues that the PA is not a faction of the PLO, but a different organization created by the Oslo Accords between PLO and Israel.

[34] In considering the status of the PA, the ID did not undertake any analysis of the legal or operational distinction between PLO and PA. Specifically, the ID did not contend with the following information that was offered:

- that the PA has municipal authority in the Occupied Palestinian Territories and while the PLO takes broader decisions regarding Palestinians worldwide it “holds no legal authority over internal local governance” (Jerusalem, Palestinian Academic Society for the Study of International Affairs, *PLO vs PA*, (September 2014)); and
- the PA was a constitutional creation of the Oslo Accords designated to govern the West Bank and Gaza (December 2018 NDP for the Occupied Palestinian Territories 1.9, United States Congressional Research Service, *The Palestinians: Background and US Relations*).

[35] In its analysis, the ID does not compare the structure, organization, or roles of the PA and PLO, but rather, concludes that since the organizations share the same leader, the PA must be a part of the PLO. This conclusion does not reconcile the conflicting evidence that was before the ID.

[36] This Court has been clear that it is unreasonable for a decision maker to fail to address conflicting evidence on a critical point (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17).

[37] The Respondent relies upon *Anteer v Canada (Citizenship and Immigration)*, 2016 FC 232 [*Anteer*] to argue that the ID's finding is reasonable since there is an "interwoven relationship" between the Fatah, PLO, and PA. However in *Anteer*, the applicant was a member of Fatah directly, which itself was found to be a terrorist organization. *Anteer* is distinct from this case where the ID relies upon its conclusion that the PA is an internal organ of PLO, and because of that connection, the PA must be a terrorist organization.

[38] Mr. Shala's case is also different from *Harara v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 307 [*Harara*] where the applicant admitted to membership in both the Palestinian Liberation Army [PLA] and PLO during an interview with the CBSA and failed to establish any distinction between the PLA and PLO. In this case, however, Mr. Shala was employed by the PA, he denies membership in the PLO, and has provided evidence of the distinction between the PA and PLO.

[39] Considered overall, the ID did not demonstrate the level of caution prescribed in *Kanagendren* when conflating membership in one group with another, especially in the context of nationalist or liberationist movements like that of Palestinian liberation. The two pieces of evidence relied upon by the ID to conclude that the PA and PLO are the same organization, for the purposes of paragraph 34(1)(f), is the fact that they had the same leader and that Mr. Shala holds a pensioner's identity card. In my view, in light of the contradictory evidence, the ID's

conclusion does not demonstrate the “great caution” that must be exercised when finding membership in one organization to be a proxy for another.

[40] The Decision of the ID is therefore not responsive to the evidence, and is therefore unreasonable.

V. Conclusion

[41] This judicial review Application is granted and the matter is returned to the Immigration and Refugee Board of Canada for redetermination by a different panel.

[42] There is no question for certification.

JUDGMENT IN IMM-10454-22

THIS COURT'S JUDGMENT is that:

1. This Application is allowed and the Decision is set aside.
2. This matter shall be returned for redetermination by a different panel of the Immigration and Refugee Board of Canada.
3. There is no serious question of general importance for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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