Federal Court  Cour fédérale

Date: 20240222

Docket: IMM-8592-22

Citation: 2024 FC 297

Ottawa, Ontario, February 22, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

LABEB SALEH SAEED AL-MAFLEHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Labeb Saleh Saeed Al-Maflehi (the "Applicant") seeks judicial review of the decision of a Migration Officer (the "Officer") who refused his application for permanent residence. The application was refused on the grounds that the Applicant is inadmissible to Canada pursuant to paragraphs 34(1)(b), (c) and (f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a citizen of Yemen. He applied for permanent residence in Canada on February 15, 2015. He was interviewed by visa officers in Ethiopia on August 10, 2016 and February 1, 2019.

[3] In the interviews, the Applicant disclosed that he was a member of the Southern Movement / Al-Hirak Al-Janoubi (the "Southern Movement").

[4] On December 3, 2021, the Applicant received a Procedural Fairness Letter from the Officer, advising that he may be inadmissible to Canada pursuant to paragraphs 34(1)(b), (c) and (f) of the Act.

[5] The Applicant responded to that letter on January 18, 2022. In his letter, he asserted that the Southern Movement is not an "organization" within the meaning of paragraph 34(1)(f) of the Act.

[6] The Applicant argues that the decision is unreasonable. He submits that the Southern Movement is not an "organization" but an umbrella description covering many organizations and activists in southern Yemen. He pleads that the Officer improperly relied on information taken from a single website that claims to speak on behalf of the Southern Movement.

[7] The Applicant also argues that the Officer's finding that the Southern Movement engaged in subversion by force is contrary to the evidence submitted and accordingly, is unreasonable.

[8] Finally, relying on the decision in *Foisal v. Canada (Citizenship and Immigration)*, 2021 FC 404, the Applicant submits that a finding of "terrorism" requires a specific intention to cause death or serious injury. He argues that the decision is unreasonable because the Officer failed to determine the specific "intent" of the Southern Movement.

[9] The Minister of Citizenship and Immigration (the "Respondent") submits that the Officer reasonably concluded that the Southern Movement is an organization for the purposes of paragraph 34(1)(f) of the Act, relying on the decision in *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, [2007] 3 F.C.R. 198 (F.C.A.) where the Court found that the word "organization" is to be broadly interpreted.

[10] As well, the Respondent submits that the Officer reasonably relied on the country condition evidence and reasonably concluded that the Southern Movement engaged in terrorism.

[11] The decision is reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[12] In considering reasonableness, the Court is to ask if the decision under review "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"; see *Vavilov*, *supra* at paragraph 99.

[13] The Applicant cited country condition evidence that there were many competing bodies holding themselves out as leadership of the Southern Movement. In his reasons, the Officer refers to a website as the "Southern Movement's own website" without explaining how he reached the conclusion that the website was representative of the entire Southern Movement.

[14] In my opinion, in light of the evidence that many people and groups hold themselves out as leaders of the Southern Movement, it was incumbent on the Officer to explain how he determined that the individuals identified on the website were the "real" leadership group.

[15] The failure of the Officer to adequately explain his conclusion above makes the decision unreasonable, in my opinion it is not necessary to address the remaining arguments.

[16] In the result, the application for judicial review will be allowed, the decision will be set aside and the matter will be remitted to a different officer for redetermination. There is no question for certification.

JUDGMENT IN IMM-8592-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination. There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8592-22
STYLE OF CAUSE:	LABEB SALEH SAEED AL-MAFLEHI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEO CONFERENCE
DATE OF HEARING:	SEPTEMBER 14, 2023
REASONS AND JUDGMENT:	HENEGHAN J.
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APPEARANCES:

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