Federal Court Cour fédérale

Date: April 2, 2024

Docket: IMM-10929-22

Citation: 2024 FC 502

Ottawa, Ontario, April 2, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

MOHAMED ABDULSSALAM FITURI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] The applicant, Mohamed Abdulssalam Fituri, came to Canada from Libya in 2013. Mr. Fituri was granted protection as a Convention refugee in July 2017 and then applied for permanent residence as a protected person. On November 2, 2022, a senior immigration officer refused the application for permanent residence. The officer determined that Mr. Fituri is inadmissible to Canada on security grounds, under paragraph 34(1)(b) of the *Immigration and*

Refugee Protection Act, SC 2001, c 27 [*IRPA*], for engaging in or instigating the subversion by force of any government.

[2] The officer's decision letter states:

> This refers to your 20 September 2017 Protected Person application for permanent residence. I received your file in August 2022 as there were concerns about a potential inadmissibility under section A34(1)(b). Specifically, there were concerns related to your support to the insurgents during the overthrow of the Gaddafi regime.
>
> After carefully reviewing the evidence on file, I find that there are reasonable grounds to believe you are a person described in section 34 of the Immigration and Refugee Protection Act (IRPA). I have come to the conclusion that for the purposes of this application, you are inadmissible to Canada under section 34(l)(b) of IRPA.
>
> Your last letter from your counsel seems to have implied some humanitarian and compassionate considerations. As you have been found described under section A34(l)(b), you are also precluded from requesting an exemption under section A25(l) of the IRPA. As a result of my findings, your application for permanent residence is refused. However, as a Convention refugee you can continue to remain in Canada and enjoy the protection Canada offers.

[3] In addition to the letter, the officer provided reasons for the decision. The officer's reasons noted that the *IRPA* does not define engaging in or instigating subversion by force, but the courts have given the term an unrestricted and broad interpretation. In this regard, the reasons referred to several paragraphs from *Maqsudi v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1184 [*Maqsudi*] that discuss the interpretation of paragraph 34(1)(b) in light of the Federal Court of Appeal's (FCA) decision in *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 [*Najafi*].

[4] The officer's reasons referred to Mr. Fituri's evidence and submissions, which included statements he had made in his Basis of Claim (BOC) form filed in support of the refugee proceeding, as well as the evidence and submissions he filed in response to the officer's procedural fairness letters (PFL). Having examined the evidence, the officer found that Mr. Fituri had collected supplies, stored them at his home, and passed on both supplies and information to insurgents. The officer found that Mr. Fituri knew he was supporting insurgents and he was providing the kind of assistance that would have been crucial to the insurgents in their uprising against the Gaddafi regime. Relying on *Shandi (Re)*, [1991] FCJ No 1319, 51 FTR 252 (FCTD) [*Shandi*], the officer stated that support or facilitation for the objective of subversion can be considered subversion. Consequently, the officer found that even if Mr. Fituri was not a member of an insurgent group and did not engage in violence, the intentional and direct non-violent support he provided to insurgents rendered him inadmissible under paragraph 34(1)(b) of the *IRPA*.

[5] Mr. Fituri submits the officer's decision is unreasonable and asks this Court to set it aside. Mr. Fituri argues he made it clear that he did not join the insurgency or support the use of violence to overthrow the Gaddafi government. He states the officer erred by applying an overly broad interpretation of paragraph 34(1)(b)—one that would capture anyone who provided any support to insurgents—and erred in finding him inadmissible without the requisite intent to commit or support violence. He states the officer also discounted credible evidence, drew adverse inferences that contradicted the evidence, and failed to engage with key arguments.

[6] In addition, Mr. Fituri alleges the officer breached procedural fairness. Mr. Fituri's memorandum of argument raises two points of procedural unfairness: (i) statements in the officer's PFL demonstrate a reasonable apprehension of bias because the officer prejudged him; and (ii) the officer made credibility findings without an oral hearing. At the hearing before this Court, Mr. Fituri stated he would not pursue the second point. He accepts that the officer was not required to grant an oral hearing.

[7] The applicable standards of review are not contentious. The merits of the officer's decision are reviewed on the reasonableness standard of review. This is a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 13, 99 [*Vavilov*]. Allegations of procedural unfairness are reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

A. *Was the officer's decision unreasonable?*

[8] Mr. Fituri submits the officer relied on an overly broad interpretation of paragraph 34(1)(b) that would capture anyone who provided any support to insurgents, even if they did not know they were supporting insurgents, did not know the insurgents would engage in violence, or did not support the use of violence. Mr. Fituri argues that intention to subvert by force, rather than by some other means, is critical to the applicability of paragraph 34(1)(b); force must be the intended means to effect an overthrow of government: *Oremade v Canada (Minister of Citizenship and Immigration) (FC)*, 2005 FC 1077 at paras 25, 29 [*Oremade*]. He argues that

inadmissibility under paragraph 34(1)(b) requires evidence of an intention to support the use of force and his evidence made it clear that he did not join the insurgency or support the use of violence to overthrow the Gaddafi regime. Mr. Fituri submits that aiding insurgents is not sufficient, unless it is done with intent to aid their violent activities. Consequently, the officer erred by finding him inadmissible without the requisite intent to commit or support violence.

[9] Mr. Fituri states the officer also erred by relying on *Shandi*. According to Mr. Fituri, the circumstances in *Shandi* are distinguishable from his case because Mr. Shandi admitted to being a member of a terrorist organization that was attempting to overthrow a democratic government, so it was clear Mr. Shandi was committed to the goals and objectives of the organization and had the requisite intent. Since there was no finding of membership in his case, Mr. Fituri states the officer had to consider and determine whether he had the requisite intent to overthrow the Gaddafi regime by the use of force. Furthermore, Mr. Fituri states the principles in *Shandi* must be read in light of subsequent jurisprudence. According to Mr. Fituri, the proposition in *Shandi* that a subversive act is any act that aids the process of overthrowing a government has been criticized in later jurisprudence for being overbroad and is no longer good law: *Al Yamani v Canada (Minister of Citizenship and Immigration) (TD)*, [2000] 3 FC 433 at para 49 [*Al Yamani*]; *Geng v Canada (Citizenship and Immigration)*, 2023 FC 773 at para 66 [*Geng*].

[10] Mr. Fituri submits his case involved a question of the interpretation of paragraph 34(1)(b), the Supreme Court of Canada's decision in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] is directly relevant, and the officer's approach to statutory interpretation offends the principles in *Mason*. Mr. Fituri argues that the officer made the same

errors as the decision maker in *Mason* by failing to grapple with key arguments on the consequences of a broad statutory interpretation and by failing to interpret section 34 in a manner consistent with Canada's international obligations. He submits the officer failed to engage with his submissions on *Shandi* and whether an intention to support the use of violence is required under paragraph 34(1)(b) of the *IRPA*, failed to consider the consequences of an inadmissibility finding including the risk of *refoulement*, and failed to consider that most of Libya's population would be inadmissible under a broad interpretation of paragraph 34(1)(b) that renders motivation irrelevant and requires only an intention to support the overthrow of an oppressive regime.

[11] I am not persuaded that the officer erred in interpreting paragraph 34(1)(b) of the *IRPA* and the meaning of "engaging in or instigating the subversion by force of any government". The officer followed the authority of *Najafi*. In *Najafi*, the FCA stated that Parliament intended "subversion by force of any government" to have a broad application in line with the French text "actes visant au renversement d'un gouvernement": *Najafi* at paras 64-66; *Maqsudi* at paras 44-45. Paragraph 34(1)(b) applies no matter what type of government is involved: *Najafi* at para 70; *Oremade* at para 24. While Parliament intended for the provision to be applied broadly at the inadmissibility stage, it also provided a ministerial exemption to protect those whose admission to Canada would not be contrary to the national interest: *Najafi* at paras 80-81; *Maqsudi* at para 49.

[12] In response to Mr. Fituri's argument that the wording of paragraph 34(1)(b) required his direct involvement in the use of force to overthrow the Gaddafi regime, the officer relied on

Shandi for the principle that subversion is not limited to the person who commits the *actus reus*, and includes participation by one who assists or facilitates the objective.

[13] Contrary to Mr. Fituri's assertion, the officer did engage with his submissions on the relevance of *Shandi* and the question of whether an intention to support the use of violence is required under paragraph 34(1)(b). Mr. Fituri had argued that *Shandi* was not good law in light of subsequent jurisprudence, pointing specifically to paragraphs 107 to 110 of *Toronto Coalition to Stop the War v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 957. The officer found that the case was distinguishable, including on the key point of intention because there was no evidence the individual knew that his support was furthering a terrorist agenda. The officer found that Mr. Fituri knew he was supporting the insurgents "as he indicated in his own words in his BOC and in his current affidavit". On this application for judicial review, Mr. Fituri maintains that *Shandi* is not good law in view of *Al Yamani* and *Geng*. I note that these specific arguments were not raised before the officer, but in any event, *Al Yamani* and *Geng* do not contradict *Shandi* on the principle in question.

[14] The officer also addressed motivation, noting Mr. Fituri's statements that he acted as a humanitarian and helped the insurgents and their supporters because they needed help and not because he believed his help would contribute to overthrowing the government. The officer found the evidence in the record showed "varying kinds of support for the rebel forces" and made a finding that Mr. Fituri knew he was helping not only his community members, but the insurgents as well. Even if Mr. Fituri did not engage in any violence himself, the officer

considered the support he provided to the insurgents was sufficient to find him inadmissible under paragraph 34(l)(b).

[15] Mr. Fituri relies on *Oremade* for the role of intention as it relates to the use of force in assessing admissibility. However, *Oremade* confirms that motivation is not determinative; intention to subvert by force is not based solely on a person's subjective intention: *Oremade* at para 26. In assessing evidence of intent, it may be presumed that a person knew or ought to have known and to have intended the natural consequences of their actions: *Oremade* at para 30. Also, "by force" is not simply the equivalent of "by violence", and includes coercion or compulsion by violent means, coercion or compulsion by threats to use violent means, and reasonably perceived potential for the use of coercion by violent means: *Oremade* at para 27.

[16] I disagree with Mr. Fituri that the officer's reasoning ran contrary to the principles expressed in *Mason*.

[17] First, *Mason* did not address the proper interpretation of paragraph 34(1)(b) of the *IRPA*. *Mason* considered the statutory interpretation of a different provision, paragraph 34(1)(e), and the issue was whether the administrative decision maker reasonably concluded that inadmissibility on security grounds for "engaging in acts of violence that would or might endanger the lives or safety of persons in Canada" applies to acts of violence without a nexus to national security or the security of Canada. These principles are not directly applicable to the meaning of subversion by force or the role of intention or motivation.

[18] Second, applying the *Vavilov* framework and a "reasons first approach", the Supreme Court of Canada found that the decision maker in *Mason* failed to address arguments Mr. Mason had raised regarding significant legal constraints on the interpretation of paragraph 34(1)(e), and the Court found the decision was not justified in light of the legal constraints. The officer in Mr. Fituri's case did not commit the same errors. Contrary to Mr. Fituri's assertion, the officer did address his submissions on statutory interpretation. The officer did not agree with Mr. Fituri's submissions and interpreted paragraph 34(1)(b) in a manner that was consistent with authorities such as *Najafi*. Mr. Fituri asserted that a finding of inadmissibility would have profound consequences for him and his family, but he did not tie the consequences to the interpretation of paragraph 34(1)(b). The officer reasonably found that the consequences to Mr. Fituri and his family were humanitarian and compassionate considerations outside the scope of an admissibility review. I would also note that the FCA in *Najafi* specifically considered the consequences of a broad interpretation of paragraph 34(1)(b) and whether a broad interpretation was inconsistent with Canada's international obligations. In following *Najafi*, the officer's decision was justified in relation to the relevant legal constraints.

[19] The officer's decision was also justified in relation to the relevant factual constraints. I do not agree with Mr. Fituri that the officer discounted credible evidence, drew adverse inferences that contradicted the evidence, misrepresented his arguments, or failed to engage with key arguments about the relevant facts.

[20] The reasons reproduce several paragraphs from Mr. Fituri's BOC and his statutory declaration. Paragraphs 8 and 9 of the BOC stated in part (as written):

> 8. The uprising in Libya began on or about February 17, 2011. Together with my brothers, we supported the insurgents. When Fashloum and Tripoli came under attack by the Gaddafi forces, some of the residents, including my brothers, retreated to the mountains where they regrouped. Others such as myself remained in Fashlum and acted as a type of underground, collecting supplies and passing on information to the insurgents. My other duties included helping transport woman and children to safer areas…
>
> 9. During the struggle against Gaddafi, our house was used for storing supplies for the anti-Gaddafi fighters and in part as a field hospital. When Tripoli fell to the insurgents, control was taken by the “17 February Revolutionists”. Once that happened my work changed. Together with others we began to labour in an effort to safeguard Fashlum. Our job was to secure properties that had been abandoned by Gaddafi and his followers and their families. The situation at the time was not at all clear. We were often attacked and properties were often looted by pro Gaddafi groups and others…

[21] The officer engaged with Mr. Fituri’s submissions regarding the BOC—including that Mr. Fituri did not understand English and relied on an interpreter, that paragraphs 8 and 9 of the BOC “briefly and vaguely” described certain activities he undertook during the uprising, and that, when considered in view of the evidence submitted in response to the PFL, nothing stated in the BOC could be construed as “engaging in or instigating the subversion by force of any government”.

[22] The officer noted that Mr. Fituri’s submissions seemed to imply there were inaccuracies in the BOC or its translation, without identifying them. The officer also noted that the RPD had accepted Mr. Fituri’s credibility. The officer stated it would have been incumbent on counsel to raise any inaccuracies at the RPD hearing as they could have affected the integrity of the refugee determination. The officer considered and addressed the statutory declaration Mr. Fituri filed in response to the PFL, finding it to be “an attempt to disengage himself from his involvement with

the insurgents". However, the officer did not see any inherent inconsistencies between Mr. Fituri's BOC and declaration, and accepted the statements in the declaration as true—including that Mr. Fituri did not engage in violence himself and that he had worked to help those within his community. In the officer's view, the statements in the statutory declaration lacked details and did not preclude Mr. Fituri's direct, non-violent support of anti-government rebels. Rather, the officer saw the activities described in the BOC as activities that were encompassed within activities of helping those in his community, as described in the declaration.

[23] Mr. Fituri states the officer failed to engage with the content of supporting affidavits from his wife and neighbours. He states the officer made a disguised authenticity finding and it was wrong to ascribe little weight to this evidence. Mr. Fituri also submits the officer unreasonably inferred that he knew he was supporting the insurgents and likely had an additional reason to support them because his brothers had joined. He submits the officer drew unreasonable inferences about his level of commitment and whether he was following directives at the behest of insurgents, which had no valid basis in the evidence.

[24] I disagree. The officer performed a weighing exercise and explained why he afforded the supporting affidavits little weight in determining the question at issue. The officer also considered the objective country evidence and conducted a reasonable weighing exercise when evaluating that evidence. The officer did not make unreasonable inferences—the record supported the officer's findings. As noted above, the officer considered the BOC, the evidence Mr. Fituri filed in response to the PFL, and the objective country evidence. The officer noted that Mr. Fituri's BOC stated that when the uprising began in February 2011, Mr. Fituri and his

brothers supported the insurgents. It also stated that Mr. Fituri used his house to store supplies for the anti-Gaddafi fighters and in part as a field hospital. When Mr. Fituri's brothers retreated to the mountains, Mr. Fituri and others remained in Fashlum and acted as a type of underground, collecting supplies and passing information on to the insurgents. The officer considered this information about collecting supplies and passing information to the insurgents to be consistent with news articles that described how the rebels worked strategically to gather arms and supplies and make plans for a successful revolt, and identified Fashlum as one area with much fighting and where such planning by the rebels occurred.

[25] In view of the evidence, the officer did not accept Mr. Fituri's position that his activities did not meet the statutory requirements for subversion. The officer noted that Mr. Fituri "presents himself as a humanitarian who is neutral, only seeking to help those in his community", but did not accept this portrayal. The officer considered intent and made a finding, based on a consideration of the evidence presented, that Mr. Fituri knew he was providing crucial assistance to the insurgents.

[26] It was the officer's role to assess and evaluate the evidence before them. This Court must refrain from reweighing or reassessing the evidence on judicial review: *Vavilov* at para 125. In my view, Mr. Fituri has not established a reviewable error in the officer's weighing of the evidence that would warrant this Court's intervention.

[27] For these reasons, I do not accept Mr. Fituri's argument that the officer erred by finding him inadmissible without the requisite intent to commit or support violence, or by ignoring

evidence of intention or motive. The officer engaged with Mr. Fituri's submissions and engaged with the evidence to conclude that, even if Mr. Fituri did not engage in any violence, he knew he was supporting insurgents in ways that were sufficient to find, on reasonable grounds, that he is inadmissible according to paragraph 34(1)(b) of the *IRPA*. The officer's reasons respect the principle of "responsive justification" and reflect the stakes: *Vavilov* at para 133; *Mason* at para 76.

B. *Did the officer prejudge the case?*

[28] Mr. Fituri submits the officer prejudged his case and displayed a reasonable apprehension of bias by informing Mr. Fituri that he may be inadmissible to Canada under paragraph 34(1)(b) "due to your self-admitted involvement with the insurgency against the Gaddafi regime". Mr. Fituri submits that this statement carries a different connotation than the statement in his BOC that he "supported" the insurgency. Mr. Fituri states he supported the insurgency in the sense that he wished to have the Gaddafi regime removed but without supporting the means used. Mr. Fituri states the decision should be set aside because the officer's statement indicates that the officer would not consider the matter objectively: *Kalkat v Canada (Citizenship and Immigration)*, 2012 FC 646 at para 42.

[29] I agree with the respondent that the officer's statement does not demonstrate a reasonable apprehension of bias. The officer was informing Mr. Fituri of their concerns, which were based on Mr. Fituri's own statements. The officer addressed Mr. Fituri's allegations of bias in the reasons and explained that the term "admitted" was not meant as a prejudgment; rather, the PFL was referring to statements Mr. Fituri had made in his BOC, which were assumed to be true.

The officer stated that the PFL provided an opportunity for Mr. Fituri to explain his statements or to explain why they were not true.

[30] I agree with the respondent that the officer was simply providing Mr. Fituri with sufficient information regarding admissibility concerns, derived from statements in the BOC, to allow Mr. Fituri to respond. The PFL set out the text of paragraph 34(1)(b) and stated, "According to your Basis of Claim form submitted as part of your refugee claim, you had indicated your involvement in supporting the insurgents against the Gadaffi [*sic*] regime." Use of the term "self-admitted involvement", read in the context of the PFL, was simply a way of referring to the involvement Mr. Fituri had described in his BOC. A reasonable person, viewing the matter realistically and practically, would not believe that the officer had prejudged Mr. Fituri's case or that the officer would not consider the matter objectively.

[31] In conclusion, Mr. Fituri has not established that the officer's decision was unreasonable or that the officer displayed bias. Accordingly, I must dismiss this application.

[32] Neither party proposed a question of general importance for certification. In my view, there is no question to certify.

JUDGMENT in IMM-10929-22

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. There is no question for certification.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10929-22
STYLE OF CAUSE:	MOHAMED ABDULSSALAM FITURI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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