Date: 20071005

Docket: DES-5-01

Citation: 2007 FC 1025

Ottawa, Ontario, October 5, 2007

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

HASSAN ALMREI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

Introduction and background

[1] Hassan Almrei is a 33-year-old foreign national and a citizen of Syria who has been detained since October 19, 2001 pursuant subsection 82(2) of the *Immigration and Refugee Protection Act* (the Act) having been named in a security certificate issued by the Minister of Citizenship and Immigration and the Solicitor General of Canada. He now applies for judicial release from detention under conditions, except for the stay-at-home of the principal supervising surety, similar to those governing the release of three recent detainees under security certificates, namely Messrs Harkat, Jaballah and Mahjoub. Since April 24, 2006, he has been detained at the

Kingston Immigration Holding Centre (KIHC). He is the only detainee there now. The other detainees Messrs. Harkat, Mahjoub, and Jaballah were released from detention by judges of this Court.

[2] The Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness (the Ministers) oppose his release from detention. The Ministers say he represents a substantial risk to national security and coupled with his risk of flight and he should not be released. He is a substantial risk to national security because he espouses the philosophy of Osama Bin Laden which promotes violent acts of terrorism against civilian populations in Western countries, including Canada. In addition, the Ministers submit the surety package proposed by Mr. Almrei to ensure compliance with release conditions is not comparable to those put in place in other similar cases. In particular, they submit none of the four sureties proposed are acceptable and the main feature of that surety package, his being home alone for substantial periods of time, has never been endorsed by any designated judge of this Court.

[3] Mr. Almrei counters testifying he rejects the philosophy of Osama Bin Laden as being contrary to the teaching of Islam. He recognizes he participated in jihad in Afghanistan and Tajikistan but argues this jihad was legitimate because it aimed at liberating Muslim countries from the Soviet occupiers or the surrogate government the Soviets put into place in 1992 after they left Afghanistan in 1989. Mr. Almrei readily agrees that Al-Qaeda is a terrorist organization bent on attacking and killing innocent civilians. His point is that he is no part at all of Al-Qaeda, its affiliates or its Network He argues the security package he is willing to abide

by is effective principally because of the GPS features in the bracelet he would be required to wear and is the best package he can put forward having no relatives in Canada

Background

[4] This is his third application for judicial release from detention. The first two applications for release were dismissed by designated judges of this Court. These previous applications were made pursuant to subsection 84 (2) of the *Immigration and Refugee Protection Act* (the Act). This section is no longer in force having been struck down by the Supreme Court of Canada's decision in *Adil Charkaoui/Hassan Almrei and Mohammed Harkat* v. *The Minister of Citizenship and Immigration &The Minister of Public Safety and Emergency Preparedness*, cited as 2007 SCC 9 issued on February 23, 2007. Mr. Almrei now makes his third release application pursuant to section 83 of the *Act* re-written by the Supreme Court of Canada to apply to foreign nationals as well as to permanent residents.

[5] Since the age of seven, Mr. Almrei grew up in Saudi Arabia after his family fled Syria; his father has been a member of the Muslim Brotherhood in Syria and feared reprisal from the Syrian government. Mr. Almrei arrived in Canada on the 2nd of January, 1999 and was recognized as a Convention Refugee in June of 2000. He cannot be removed from Canada to Syria or any other country where he might face persecution or torture unless, pursuant to section 115 (2) of the *Act*, the Minister is of the opinion he should not be allowed to remain in Canada on the basis he is a danger to national security. He is not married and has no relatives in Canada. His family largely remains in Saudi Arabia.

[6] The security certificate issued in respect of Mr. Almrei was reviewed by my colleague Justice Tremblay-Lamer who, on November 23, 2001, concluded it was reasonable (her reasons are reported at 2001 FCT 1288). Mr. Almrei chose not to testify before her. She held at paragraph 31 of her reasons:

> "The confidential information, which I am unable to disclose, strongly supports the view that Mr. Almrei is a member of an international network of extremist individuals who support the Islamic extremist ideals espoused by Osama Bin Laden and that Mr. Almrei is involved in a forgery ring with international connections that produce false documents." [Emphasis mine]

[7] A security certificate found reasonable by a designated judge of the Federal Court carries with it two consequences. First, the certificate is conclusive proof the person named therein is inadmissible to Canada and, second, the certificate is a removal order that may not be appealed and that is in force without the necessity of holding or continuing an examination or an admissibility hearing.

[8] His first release application was dismissed by my colleague Justice Blanchard on March 19, 2004, whose reasons are found at 2004 FC 420. Justice Blanchard determined Mr. Almrei failed to satisfy him on either branch of subsection 84(2) of the *Act* because he would be removed from Canada within a reasonable time and his release would pose a danger to national security, which danger could not be contained by the release conditions then being proposed. His decision was upheld by the Federal Court of Appeal (the FCA) 2005 FCA 54, but the FCA's decision was set aside by the Supreme Court of Canada on constitutional grounds on appeals by Adil Charkaoui, Hassan Almrei and Mohamed Harkat, cited above.

[9] Mr. Almrei's second attempt at judicial release came before my colleague Justice Layden-Stevenson. On December 5, 2005, prior to the Supreme Court of Canada's release of its judgment in *Charkaoui/Almrei/Harkat*, above, she denied his release from detention, (2005 FC 1645). She was of the view Mr. Almrei had met the first branch of the subsection 84(2) test, concluding he had established that his removal was "not imminent; it was not a done deal and will not occur within a reasonable time". However, she decided Mr. Almrei had not satisfied her on the second branch holding he constituted a danger to national security which danger could not be contained by the imposition of strict conditions of release. I note she made her determination largely based on the public record but was supported in her conclusions by her review of the confidential material filed on behalf of the Ministers.

[10] As stated, this application for release from detention is made pursuant to amended section 83 of the *Act* which now reads:

> (1) No later than 48-hours after the beginning of detention of a permanent resident or a foreign national, a judge shall commence a review of the reasons for the continued detention. Section 78 applies with respect to the review, with any modifications that the circumstances require.
>
> (2) The permanent resident or foreign national must be brought back before a judge at least once in the six-month period following each proceeding review and any other times that the judge may authorize
>
> (3) A judge shall order the detention to be continued if satisfied that the permanent resident or foreign national continues to be a danger to national security or the safety of any person, or is unlikely to appear at a proceeding or for removal.
> [Emphasis mine]

[11] Expanding a foreign national's detention review rights was not the only change brought by the Supreme Court of Canada in the above-noted decision. Two other significant encroachments were made to the certificate scheme (the scheme) in the *Act*.

[12] First, in the area of detention review and in the context of its discussion whether extended periods of detention under the scheme violated *Charter* sections 7 and 12 guarantees, the Chief Justice of Canada, on behalf of a unanimous Court, at paragraph 110 of her reasons answered the question in the negative, provided there was in place "a process that provides regular opportunities for review of detention", taking into account the following non-exclusive factors:

- Reasons for detention;
- Length of detention;
- Reasons for the delay in deportation;
- Anticipated future length of detention, and;
- Availability of alternatives to detention.

These guidelines are applicable to Mr. Almrei's application for judicial release from detention being considered by this Court.

[13] When the Supreme Court of Canada released its judgment on February 23, 2007, only Mr. Almrei and Mr. Mahmoud Es-Sayyid Jaballah remained in detention pursuant to the security certificate scheme. The other affected persons had previously been released on conditions under the then sections 83 or 84(2) of the *Act*. Those persons are Mr. Charkaoui, Mr. Harkat and Mr.

Mahjoub. Mr. Mahjoub was released by Justice Mosley on February 15, 2007 (reasons cited as 2007 FC 171). After the Supreme Court of Canada rendered its decision, Justice Layden-Stevenson, applying the Supreme Court of Canada's guidelines, released pursuant to amended section 83 of the *Act*, Mr. Jaballah from detention under very strict and onerous conditions of release (see *Mahmoud Jaballah* v. *The Minister of Public Safety* & *Emergency Preparedness, et al*., 2007 F.C. 379, issued on April 12, 2007).

[14] The second area of substantial impact on the scheme concerns the provisions of the security certificate scheme which mandates a designated judge of this Court, either with respect to a determination whether a security certificate was reasonable or on a review of detention pursuant to the *Act*, to consider confidential evidence submitted by the Ministers in-camera and *ex parte*, i.e. without disclosure to the named person or his counsel. The Supreme Court of Canada found these provisions to be a violation of section 7 of the *Charter* because they did not provide adequate measures to compensate for the non-disclosure and the constitutional problems it caused. As a result, the Supreme Court of Canada found the *Act's* "procedure for the judicial confirmation of certificates and review of the detention violates section 7 of the *Charter* and has not been shown to be justified under section 1 of the *Charter*." The Chief Justice of Canada "declared the procedure to be inconsistent with the *Charter*, and hence, of no force or effect". However, in order to give Parliament time to amend the law, it suspended this declaration for one year from the date of its judgment.

[15] Paragraph 140 of *Charkaoui/Almrei/Harkat*, deals with the suspension of the declaration:

> "However, in order to give Parliament time to amend the law, I would suspend this declaration for one year from the date of this judgment. If the government chooses to go forward with the proceedings to have the reasonableness of Mr. Charkaoui's certificate determined during the one-year suspension period, the existing process under the IRPA will apply. After one year, the certificates of Mr. Harkat and Mr. Almrei (and of any other individuals whose certificates have been deemed reasonable) will lose the "reasonable" status that has been conferred on them, and it will be open to them to apply to have the certificates quashed. If the government intends to employ a certificate after the one-year delay, it will need to seek a fresh determination of reasonableness under the new process devised by Parliament. Likewise, any detention review occurring after the delay will be subject to the new process."

[16] As noted, the Supreme Court did not suspend its declaration of invalidity of subsection 84(2) of the *Act*. In terms of this detention review the result is that the procedure for taking in and assessing confidential evidence by the Court are those in place under the *Act* before the Supreme Court issued its declaration of invalidity.

[17] Prior to the hearing of this application for judicial release I inquired of both counsel whether, in the circumstances, it would be appropriate for the Court to appoint an *amicus curiae* to vet the confidential material. Counsel for Mr. Almrei declined the invitation on the grounds it would unduly delay the hearing of this application for Mr. Almrei's release. Counsel for the Ministers made no comment on the Court's suggestion.

Applicable legal principles

[18] Counsel for Mr. Almrei and counsel for the Ministers were largely in agreement on the applicable legal principles flowing from the *Charkaoui/Almrei/Harkat* Supreme Court of Canada decision. I enumerate them below.

[19] First, under subsection 83(3) of the *Act*, the Ministers bear the initial evidentiary burden of establishing Mr. Almrei "continues to be a danger to national security or to the safety of any person, or is unlikely to appear at a proceeding or for removal." (see paragraph 100 in *Charkaoui/Almrei/Harkat*, above).

[20] Second, Mr. Almrei's detention review is governed by the guidelines enunciated by the Supreme Court of Canada in its recent decision. These factors are set out at paragraphs 110 through 121 in *Charkaoui/Almrei/Harkat*, above, and I quote:

> 110. I conclude that extended periods of detention under the certificate provisions of the IRPA do not violate ss. 7 and 12 of the Charter if accompanied by a process that provides regular opportunities for review of detention, taking into account all relevant factors, including the following:
>
> (a) Reasons for Detention
>
> 111. The criteria for signing a certificate are "security, violating human or international rights, serious criminality or organized criminality" (s. 77). Detention pursuant to a certificate is justified on the basis of a continuing threat to national security or to the safety of any person. While the criteria for release under s. 83 of the IRPA also include the likelihood that a person will appear at a proceeding or for removal, a threat to national security or to the safety of a person is a more important factor for the purpose of justifying continued detention. The more serious the threat, the greater will be the justification for detention.
>
> (b) Length of Detention
>
> 112. The length of the detention to date is an important factor, both from the perspective of the individual and from the perspective of national security. The longer the period, the less likely that an individual will remain a threat to security: "The imminence of danger may decline with the passage of time": Charkaoui (Re), 2005 FC 248, at para. 74. Noël J. concluded that Mr. Charkaoui could be released safely from detention because his long period of detention had cut him off from whatever associations with extremist groups he may have had. Likewise, in Mr. Harkat's case, Dawson J. based her decision to release Mr. Harkat in part on the fact that the long period of detention meant that "his ability to communicate with persons in the Islamic extremist network has been disrupted": Harkat, at para. 86.

113. A longer period of detention would also signify that the government would have had more time to gather evidence establishing the nature of the threat posed by the detained person. While the government's evidentiary onus may not be heavy at the initial detention review (see above, para. 93), it must be heavier when the government has had more time to investigate and document the threat.

(c) Reasons for the Delay in Deportation

114. When reviewing detentions pending deportation, judges have assessed whether the delays have been caused by the detainees or the government: Sahin, at p. 231 . In reviewing Mr. Almrei's application for release, the Federal Court of Appeal stated that a reviewing judge could "discount, in whole or in part, the delay resulting from proceedings resorted to by an applicant that have the precise effect of preventing compliance by the Crown with the law within a reasonable time": Almrei, 2005 FCA 54, at para. 58; see also Harkat, at para. 30. Recourse by the government or the individual to applicable provisions of the IRPA that are reasonable in the circumstances and recourse by the individual to reasonable Charter challenges should not count against either party. On the other hand, an unexplained delay or lack of diligence should count against the offending party.

(d) Anticipated Future Length of Detention

115. If there will be a lengthy detention before deportation or if the future detention time cannot be ascertained, this is a factor that weighs in favour of release.

(e) Availability of Alternatives to Detention

116. Stringent release conditions, such as those imposed on Mr. Charkaoui and Mr. Harkat, seriously limit individual liberty. However, they are less severe than incarceration. Alternatives to lengthy detention pursuant to a certificate, such as stringent release conditions, must not be a disproportionate response to the nature of the threat.

117. In other words, there must be detention reviews on a regular basis, at which times the reviewing judge should be able to look at all factors relevant to the justice of continued detention, including the possibility of the IRPA's detention provisions being misused or abused. Analogous principles apply to extended periods of release subject to onerous or restrictive conditions: these conditions must be subject to ongoing, regular review under a review process that takes into account all the above factors, including the existence of alternatives to the conditions.

> 118. **…**
>
> 119. Section 84(2) governs the release of foreign nationals. It requires the judge to consider whether the "release" of the detainee would pose a danger to security. This implies that the judge can consider terms and conditions that would neutralize the danger. The judge, if satisfied that the danger no longer exists or that it can be neutralized by conditions, may order the release.
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> 120. Section 83(3), which applies to permanent residents, has a slightly different wording. It requires the judge to consider not whether the release would pose a danger as under s. 84(2), but whether the permanent resident continues to be a danger. An issue may arise as to whether this difference in wording affects the ability of the judge to fashion conditions and hence to order conditional release. In my view, there is no practical difference between saying a person's release would be a danger and saying that the person is a danger. I therefore read s. 83(3), like s. 84(2), as enabling the judge to consider whether any danger attendant on release can be mitigated by conditions.
>
> 121. On this basis, I conclude that for both foreign nationals and permanent residents, the IRPA's certificate scheme provides a mechanism for review of detention, which permits the reviewing judge to fashion conditions that would neutralize the risk of danger upon release, and hence to order the release of the detainee. [Emphasis mine]

[21] Third, counsel for the Ministers and Mr. Almrei agree Mr. Almrei could bring his third release application unconstrained by the requirements imposed by the Federal Court of Appeal in *Almrei*, above, namely: the existence of new evidence or the existence of a material change from a previous release application. Both counsel agreed the FCA's pre-conditions for hearing another application for release were overtaken by the Supreme Court of Canada's view expressed at paragraph 123 of its reasons. I agree with the submissions of counsel on this point. At paragraph 123 of her reasons, the Chief Justice of Canada wrote:

> "In summary, the IRPA, interpreted in conformity with the Charter, permits robust ongoing judicial review of the continued need for and justice of the detainee's detention pending deportation. On this basis, I conclude that extended periods of detention pending deportation under the certificate provisions of the IRPA do not violate s. 7 or s. 12 of the Charter, provided that reviewing courts adhere to the guidelines set out above. Thus, the IRPA procedure itself is not unconstitutional on this ground. However, this does not preclude the possibility of a judge concluding at a certain point that a particular detention constitutes cruel and unusual treatment or is inconsistent with the principles of fundamental justice, and therefore infringes the Charter in a manner that is remediable under s. 24(1) of the Charter."
>
> [Emphasis mine]

Put another way, Mr. Almrei's third application for release from detention is a new application which the reviewing judge must consider afresh and *de novo* based on the evidence before him/her having regard, however, to judicial comity in respect of prior judicial findings of other colleagues in proceedings in which Mr. Almrei was involved. Such findings should be followed in the absence of strong reasons to the contrary. I will analyse the concept of judicial comity later in these reasons.

[22] Fourth, the concept of what constitutes "a danger to national security" is that expressed by the Supreme Court of Canada in *Suresh* v. *The Minister of Citizenship and Immigration et al.* [2002] 1 S.C.R. 3 at paragraph 90:

> "These considerations lead us to conclude that a person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible."
>
> [Emphasis mine]

[23] Fifth, the determination of whether the terms and conditions of release will mitigate the danger to national security of Canada posed by a detainee is to be gauged on the balance of probabilities.

[24] Sixth, a finding that a security certificate is reasonable does not translate automatically to a finding that the person is a danger to the security of Canada (see *Suresh*, above, at paragraph 83).

The case for the Ministers

[25] On June 18, 2007, the Canadian Security Intelligence Service, (the Service) on behalf of the Ministers, filed a public summary approved by the Court setting out their position with respect to Mr. Almrei's possible judicial release from detention. After meeting the Court in-camera, the Service filed, on July 10, 2007, an expanded public summary dated July 6, 2007 providing additional public disclosure. The positions set forth by the Ministers' in the public summary were:

> 1. The Canadian Security Intelligence Service (the Service) believes that the release of Hassan Almrei (Almrei) from detention will be injurious to the national security and to the safety of persons;
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> 2. Almrei's adoption of the extremist ideology espoused by Osama Bin Laden, his participation in jihad, his connections with other who share the extremist ideology of Osama Bin Laden, and his participation in an international document procurement network demonstrate that Almrei's application must be denied;
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> 3. Almrei has the ability and capacity to facilitate the movement of individuals in Canada and abroad who share the extremist ideology espoused by Osama Bin Laden and would commit terrorist acts. While Almrei's detention may have diminished the severity of the threat posed by him, it has not negated it;

> 4. The procurement of travel and identity documents continues to be essential for the undetected movement of individuals engaging in terrorism worldwide. Almrei's release would place him in a position to re-establish his fraudulent document activities;
>
> 5. The Service does not believe that any conditions of release can address the danger to the national security or to the safety of persons that Almrei's release will pose. [Emphasis mine]

[26] In support of the Ministers' position, the Service identified the following indicators of Mr. Almrei's adherence to and promotion of extreme Islamic ideals espoused by the Bin Laden Network (the Network) and by Osama Bin Laden, the head of Al-Qaeda, the Network's central core which marks Mr. Almrei as a danger to the security of Canada:

> (a) His admitted participation in jihad as reflected in his declaration of November 10, 2002, contained at Tab 5 of Volume 1 of the Reference Index in the Ministers' public record, coupled with his testimony before Justices Blanchard and Layden-Stevenson, the essential details of which are:
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> • In 1990, at the age of 16, he first travelled to Pakistan intending to go to Afghanistan to fight the vestiges of the former Soviet occupier who left in 1989 and the Communist puppet government it installed in 1990 which fell in 1992 at the hands of the Mujahidin Coalition forces. He did not reach Afghanistan because he contracted malaria. During his stay in Pakistan the Ministers say he resided in a guest house controlled by Al-Qaeda;
>
> • In 1991, at the age of 17, his travel to Afghanistan staying for several months during his summer vacations. He attended a military camp of Afghani mujahidin

forces under the command of Abdul Sayyaf where he acknowledges he received training in the use of an AK-47;

• In 1992, again during his summer vacations, returning to the same Sayyaf camp in Afghanistan;

• In 1994, a four to five month visit return trip to Afghanistan to do a new jihad in Tajikistan with ibn-Khattab and his attendance in his camp at Khunduz;

• In 1995 a return to Khunduz where he engaged in scouting Russian positions in Tajikistan and ultimately crossing the border and establishing with commander ibn-Khattab a camp there;

• In 1996 or 1997 other returns to Pakistan in the context of his honey business.

(b) His Arab-Afghan connections. The Service believes Mr. Almrei's release from detention will allow him to re-establish connections with Arab-Afghans who fought jihad in Afghanistan and who support the Islamic extremist ideals of Osama Bin Laden including ibn-Khattab's followers, Abdul Sayyaf, Nabil Al Marabh, Hoshem Al Taha and Ahmed Al Kaysee. The public summary describes who these individuals are. Ibn-Khattab is a seasoned Mujahidin commander who led jihad in Afghanistan and then in Tajikistan. He then subsequently led another jihad in Chechnya where, in 2002, he was killed by Russian forces. Russian authorities alleged Chechnyan rebels under his command were responsible for a series of bombings in various Russian cities in the

summer of 1999 which resulted in the deaths of hundreds of civilians. Mr. Sayyaf, as mentioned, was a leader of the mujahidin coalition which fought the Soviet occupier and its Afghani transplant. Mr. Nabil Al Marabh is an individual who Mr. Almrei met in Khunduz, Afghanistan in 1994 at ibn-Khattab's camp and for whom Mr. Almrei arranged the procurement of a false passport while he was in Canada. He is said to be in jail in Syria having been deported from the U.S. Hoshen Al Taha is the name of the individual whom Mr. Almrei said he was going to visit in Canada when he applied in Saudi Arabia for a visitor's visa to come to Canada. Mr. Ahmed Al Kaysee is an individual who did jihad in Afghanistan. He met Mr. Almrei at the airport when Mr. Almrei first came to Canada.

(c) Mr. Almrei's involvement in false documentation. The Service believes Mr. Almrei is involved in a forgery ring with international connections that produce false documents. As public support of this allegation, the public summary notes his personal use of false travel documents, his arranging for the false documentation for Mr. Al Marabh, the fact he testified he knew individuals in Montréal who could obtain false documents, his acknowledgment he has a reputation in the community for obtaining false documents, his travel in 1998 to Thailand to befriend an individual who was involved in human smuggling and his continued contact with that individual to discuss false passports after he came to Canada, his association with Ibrahim Ishak for whom he arranged a marriage of convenience in Toronto and to whom Mr. Almrei referred for the procurement of false identification documents. Mr. Ishak was arrested in Detroit in

possession of several packages of identity and other documents for sale including passports for individuals other than himself.

(d) Mr. Almrei's use of clandestine methodology. The Service alleges Mr. Almrei has used clandestine techniques and based on such use, is of the view if Mr. Almrei were released from detention it would be difficult to ensure that he abide by any conditions that may be imposed upon him.

(e) His release on terms and conditions. The Service does not believe that any terms and conditions will address the danger to national security that Mr. Almrei's release will pose. It states he has admitted on several occasions he lied to Canadian officials, to his own lawyer, that he refused to testify before Madam Justice Tremblay-Lamer and he was found by Justices Blanchard and Layden-Stevenson not to be credible demonstrates that he will not abide by any terms and conditions that could be imposed upon him. It cites the disappearance of individuals in the United Kingdom who were subject to control orders which show that conditions which intend to restrict the movements of individuals who support Islamic extremism or terrorism are not effective.

(f) The Service concludes by stating Mr. Almrei is a member of an international network of extremist individuals who support the Islamic extremist ideals espoused by Osama Bin Laden. It states these individuals have and will continue to rely on the procurement of false documents that will allow them to plan and execute terrorist

operations, and Mr.Almrei's release will place him in a position to assist these individuals.

[27] The Ministers' case was supported by oral and documentary evidence presented in public and in in-camera sessions. The Ministers called one witness in the pubic session: J.P., a Service Intelligence Officer who had testified previously before Justice Layden-Stevenson in *Almrei*. J.P. also testified before her in *Jaballah* and before Justice Noël in *Charkaoui*. The Ministers also called only one witness for the in-camera sessions.

[28] The Ministers' public documentary evidence consisted of:

- The Ministers' position with respect to Mr. Almrei's application for judicial release dated July 6, 2007, supported by a reference index of three public volumes;
- A will-say statement of J.P. who testified;
- Unofficial transcript of the interview held by CSIS with Mr. Almrei on July 10 -11, 2003;
- Article by Peter L. Bergen entitled, The Osama Bin Laden I Know;
- Article by John Esposito entitled, Unholy War-Terror in the Name of Islam;
- Article from www.globalsecurity.org, on Ustad Abdul Rashul Sayyaf;
- Article entitled Killing in the Name of Islam by Messrs. Kiktorowicz and Kaltner;
- The Ministers' further materials dated July 13, 2007, consisting of a number of articles;
- Three volumes of extracts from the transcripts of detention reviews involving Mr. Almrei; and one set of transcript extracts related to the detention review conducted by Justice Blanchard in November, 2003 and January, 2004. The extracts were of the testimony and cross-examination of J.P. who testified before me, as well as those of

Hassan Almrei and two proposed sureties, Diana Ralph and Hassan Ahmed, all three testifying before me. The other set of transcripts relate to the proceeding before Justice Layden-Stevenson. The individuals mentioned in the previous sentence also testified before Justice Layden-Stevenson;

- Article entitled, The Far Enemy.

[29] Counsel on behalf of the Ministers, in the in-camera sessions, filed the following documentary evidence: a confidential version of the document prepared by CSIS entitled Information Pertaining to the Application for Release of Hassan Almrei, dated June 18, 2007 (hereinafter the SIR). This document was accompanied by three volumes of confidential information essentially placing before me the confidential material which had been before Justices Tremblay-Lamer, Blanchard and Layden-Stevenson. In addition, the CSIS SIR document contained additional confidential material not contained in the three volumes of the reference index. As will be seen below, I rejected the admissibility of this new or fresh evidence.

Mr. Almrei's case

[30] The essence of Mr. Almrei's position is to categorically deny he espouses the philosophy of Al-Qaeda characterized by the indiscriminate killing of civilians in the West or in the Middle East to achieve political or religious objectives. He argues Al-Qaeda's actions are contrary to the teachings of Islam and its Prophet.

[31] He states Al-Qaeda's actions cannot really be considered a jihad because it is not directed at liberating Muslim countries from foreign oppressors as was the case in Afghanistan. He states

the killing of innocent civilians is not compatible with jihad properly understood in the Koran. Death through suicide bombing is alien to Islam, he says.

[32] He denies the guest house he first resided in Peshawar in 1990 was under the control of Al-Qaeda.

[33] He recognizes Osama Bin Laden participated in and supported the Mujahidin resistance triggered when the Soviet Union invaded Afghanistan in 1979. Shortly thereafter, Osama Bin Laden teamed up with Abdallah Azzam in 1984 to form the MAK which recruited fighters in Muslim countries to assist in liberating Afghanistan. Mr. Azzam was killed in Pakistan in November of 1989.

[34] He argues the Osama Bin Laden of the 1980's to 1992 in Afghanistan was a different and a less radical person than the one who emerged in 1996 to issue his fatwa against the U.S., who lent his support to the Talibans and preached intolerance and hate.

[35] Mr. Almrei's case also concentrated on several of the Arab-Afghans the Service said he associated with and who the Service submits support the extreme ideals of Osama Bin Laden and those of Al-Qaeda.

[36] In particular, he argues that the record shows Messers. Kattab and Sayyaf cannot be labelled as adherents to the Osama Bin Laden extremist views recognizing, however, that these

two individuals held views of Islam which were conservative or of a fundamentalist nature but were not extreme in the way Mr. Bin Laden professed.

[37] His case was supported by oral and documentary evidence presented in public sessions. Mr. Almrei testified by video-conferencing from KIHC. He was cross-examined. His views of jihad were supported by the testimony of Doctor Badawi who was tendered as an expert but whose recognition as such I withheld on the grounds he did not meet the test of necessity as explained by the Supreme Court of Canada in its decision of *Her Majesty the Queen* v. *Mohan* [1994] 2 S.C.R. 9. Doctor Badawi testified as an ordinary witness.

[38] In his application for judicial release, Mr. Almrei lists:

> • Erma Wolfe as the principal supervisory surety since it is in her basement apartment in Toronto he would reside. She is also prepared to put into place a performance bond of $3000.00. She testified before the Court.
>
> • Diana Ralph and her partner Jean Hanson who now live in Ottawa agree to step into Erma Wolfe's shoes when she is away from Toronto visiting, in particular, her grandchildren in Alberta. They are also prepared to put into place the sum of fifty thousand dollars as surety bail and the sum of ten thousand dollars as cash bail in order to ensure Mr. Almrei observes his conditions of release. They had previously

been proposed as principal supervisory sureties when they lived in Toronto. Dr. Ralph testified before the Court.

• Hassan Ahmed, who lives in Toronto, is also proposed as a supervisory surety who would stand in for Erma Wolfe when she is away from home visiting her friends and family in and around the Metro Toronto. The sum of fifteen thousand dollars would be deposited into the Court in his name as cash bail. This money was collected from the Muslim community in Toronto through the efforts spearheaded by Iman Hindy. Mr. Ahmed had previously been proposed as an escort supervisor. He testified before me.

• Alexandre Trudeau is willing to post bail in the amount of five thousand dollars cash; and

• The following members of Parliament have offered support:

  • Andrew Telegi, offering a surety of five hundred dollars;

  • Alexa McDonough is willing to post a conditional cash surety bond in the amount of two hundred and fifty dollars; and

  • Bill Siksay will post a surety of ten thousand dollars.

[39] In support of his release application, Mr. Almrei filed an affidavit in which he states at paragraph 27, “The terms of bail that will be proposed for me in order to permit my release from custody will be very similar to those imposed upon Mr. Harkat, Mr. Mahjoub, and Mr. Jaballah and will include the following aspects:

• Active GPS electronic monitoring;

• House arrest with limited approved outings with a surety;

• Geographic boundary restrictions;

• No contact except with persons approved by CBSA;

• No one can come into the house unless they are CBSA-approved;

• No computer access;

• No cell phone access;

• CBSA right to monitor phone calls and to enter the house at any time;

• CBSA right to check mail coming into the house;

•Stay away from airport, bus and train terminals;

• Keep the peace and be of good behaviour;

• Perhaps a non-association clause with certain named persons.

[40] During the hearings, video cameras outside Erma Wolfe's house were also proposed. Mr. Almrei also stated from discussions he had with his counsel he believed "Mr. Harkat almost, whenever he is outside his home on an outing, is followed by the CBSA."

[41] The documentary evidence filed in support of Mr. Almrei's case consisted of:

- His application for judicial release made up of Mr. Almrei's affidavit supported by the affidavits of proposed sureties namely, Diana Ralph, and her partner Alexandre (Sasha) Trudeau, Hassan Ahmed and Erma Wolfe, the principal supervising surety;

- Additional material relied upon by the applicant consisting of an extract of the Arar Commission Report, letters of support from three Members of Parliament and pictures of the basement apartment of the home of Erma Wolfe;

- Transcripts of evidence given by J.P. at the release hearings concerning Mr. Jaballah on October 6, 2006, and October 10, 2006;

- Transcript of proceedings heard by Justice Blanchard on January 5, 2004;

- Excerpts of an article entitled Blowing up Russia – the Secret Plot to Bring Back KGB Terror, by Alexander Litvinenko and Urie Felshteinsky;

- Excerpt of a book entitled Death of a Dissident – The Poisoning of Alexander Litvinenko and the Return of the JGB by Messrs. Goldfarb and Marina Litvinenko;

- Internet article entitled Background of the Tagik War, Cease-Fire in 1994;

- Transcript of P.G.'s evidence given at Mr. Harkat's release hearing on November 3, 2005; and;

- Extract from Mr. Sageman's book entitled Understanding Terror Networks.

Analysis

[42] As is seen from the Ministers' position, the centerpiece of their concern with Mr. Almrei is his embrace of the radical extremist Islamic ideology espoused by Osama Bin Laden, whose external manifestation is international terrorism constituting a danger or threat to the security of Canada by the use of violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign country. This is the essence of the definition of "threat to the security of Canada" found in section 2 of the *Canadian Security Intelligence Service Act* and reflects the comment previously cited in these reasons made by the Supreme Court of Canada in *Suresh*, above, on the meaning of "danger to the security of Canada" at paragraph 90 as follows:

> "These considerations lead us to conclude that a person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", in the sense

> that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible."
> [Emphasis mine]

and what constitutes "terrorism" at paragraph 98 of that same case where the Supreme Court of Canada wrote:

> "In our view, it may safely be concluded, following the International Convention for the Suppression of the Financing of Terrorism, that "terrorism" in s. 19 of the Act includes any "act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". Particular cases on the fringes of terrorist activity will inevitably provoke disagreement. Parliament is not prevented from adopting more detailed or different definitions of terrorism. The issue here is whether the term as used in the Immigration Act is sufficiently [page56] certain to be workable, fair and constitutional. We believe that it is.
> [Emphasis mine]

[43] In particular, the Ministers' concern is that as a member of the Osama Bin Laden Network (the Network), if released, Mr. Almrei will be able to reconnect with his former associates thus enabling him to promote terrorism, and, specifically, the facilitation of the movement of Islamic extremists through the use of falsified documents.

(1) The relevant detention review considerations

[44] The point of departure in the analysis is a consideration and weighing of the factors identified by the Supreme Court of Canada in *Charkaoui/Almrei/Harkat*, above as necessary to justify extended periods of detention.

[45] As indicated above, five relevant factors were suggested. The dispute between the parties centers on the factors of reasons for detention and availability of alternatives to detention. My assessment of the relevant factors is as follows:

(a) Reasons for Detention

[46] Mr. Almrei's detention is justified by the Service in part on the basis he is a continuing threat to Canada's national security. The other aspect is that he is a flight risk. He would go underground, be a sleeper and resume terrorist-related activities, but not commit acts of violence in Canada. The Supreme Court of Canada indicated a threat to national security is an important factor for the purpose of justifying continued detention. It added "the more serious the threat, the greater will be the justification for detention."

[47] The Ministers say Mr. Almrei represents a substantial threat to Canada's national security. Mr. Almrei argues he represents no such threat because he does not espouse the violent philosophy of Al-Qaeda and Osama Bin Laden which is the basis for the Ministers' case against him. For reasons discussed below under the heading "Is Mr. Almrei a continuing danger to the security of Canada?" I find that he represents a substantial continued threat to Canada's national security.

(b) Length of Detention

[48] The Supreme Court of Canada indicates length of detention to date is an important factor both from the perspective of the individual and from the perspective of national security. Mr.

Almrei has been in detention for over six years now. The Ministers agree this factor weighs in favour of Mr. Almrei's release. They also recognize that his detention may have diminished the severity of the threat he poses but has not negated it.

(c) Reasons for delay in deportation

[49] Since Mr. Almrei has been found to be inadmissible to be in Canada and a removal order has been made against him, he is being detained by Canada pending his deportation. In its reasons, the Supreme Court of Canada stated that "recourse by the government or the individual to applicable provisions of *IRPA* that are reasonable in the circumstances and recourse by the individual to reasonable *Charter* challenges should not count against either party. On the other hand, an unexplained delay or lack of diligence should count against the offending party." Justice Layden-Stevenson found, in 2005, that Mr. Almrei's deportation from Canada was not a "done deal". She made that finding in the context of the process initiated by the Minister of Citizenship and Immigration (the Minister) to obtain an opinion from a Minister's delegate that he could be deported to Syria, a country which the Immigration and Refugee Board had found in 2001 that he had a legitimate fear of persecution.

[50] The Canadian government previously had obtained two such opinions from two different Minister's delegates but those opinions were quashed by Judges of this Court on judicial review initiated by Mr. Almrei. One such opinion was set aside on consent. A third opinion, favourable to the government, has now been obtained but is the subject of judicial review proceedings, leave having been granted.

[51] As we also know, Mr. Almrei was one of the three appellants challenging the constitutionality of the security certificate scheme before the Supreme Court of Canada.

[52] I find that Mr. Almrei's challenges were reasonable and pursued with diligence as was the Ministers' defence of the statutory scheme. I do not find favour with counsel for Mr. Almrei's argument that some undue delay could be attributable to the Ministers because of its opposition to the appointment of an *amicus curiae*. I conclude this factor is neutral.

(d) Anticipated future length

[53] The Supreme Court of Canada held if future detention time cannot be ascertained this factor weighed in favour for release. The Ministers agree this factor favours Mr. Almrei. They conceded the time of his deportation cannot be ascertained. This is because of his judicial review of the Minister's delegate's opinion he should not be allowed to remain in Canada and may be deported to Syria. The Minister's delegate's opinion raises delicate questions in light of the Supreme Court of Canada's decision in *Suresh*, above. The second reason the time of his deportation cannot be ascertained is because of the fallout from the Supreme Court of Canada's decision in *Charkaoui/Almrei/Harkat*, above, particularly with reference to paragraph 140 of the reasons of that Court.

(e) Availability of alternatives to deportation

[54] In its judgment, the Supreme Court of Canada stated "stringent release conditions, such as those imposed on Mr. Charkaoui and Harkat seriously limit individual liberty. However, they are less severe than incarceration. Alternatives to lengthy detention pursuant to a certificate, such as stringent release conditions, must not be a disproportionate response to the nature of the threat." The Ministers' argue the conditions of release proposed by Mr. Almrei are inadequate and, indeed are the weakest release conditions ever presented to the Court for approval. On the other hand, Mr. Almrei argues the release conditions will be effective to contain the low level of threat he represents to national security and that it is impossible for him to put together a better package. For the reasons explained below, I find the conditions of release proposed by Mr. Almrei to be wholly inadequate.

(f) Other factors

[55] These five factors are non-exclusive. During his testimony Mr. Almrei referred to the difficult conditions of detention when he was incarcerated at the Metro-West Detention Centre (Metro-West) from October, 2001 to April, 2006. He makes no such claim about the conditions at the KIHC, particularly after the Chief Justice of this Court mediated a settlement of litigation initiated by the detainees concerning the conditions of detention there. I am prepared to recognize the difficult conditions of his past detention at Metro-West as a relevant factor favouring his release.

(g) Conclusion

[56] The weighing and balancing of all of these factors suggests that Mr. Almrei should be released from detention. The length of his detention he has now incurred and indeterminate future length of his detention in the future favour his release but for my finding the proposed conditions of

his release will not, on a balance of probabilities, contain or diminish the risk he represents. Therefore, he cannot be released.

(2) The standard of proof

[57] The one area where counsel diverged on issues of law is on question of the applicable standard of proof required to enable the Ministers to discharge their burden of initially establishing Mr. Almrei continues to be a danger to Canada's security.

[58] Counsel for Mr. Almrei submits that each underlying fact or element that underpins the Ministers' view he remains a danger to national security must be established on a balance of probabilities. He relies on Justice Layden-Stevenson's view expressed at paragraph 38 of her reasons in *Jaballah*, above:

> "The issue of danger to national security is fundamental to the "reasons for detention" factor. But for the Ministers' belief that Mr. Jaballah is a danger to national security, there would be neither a security certificate nor detention. Mr. Jaballah's concession that he constitutes a danger to national security certainly expedited the detention review hearing. However, it is important to state that, if Mr. Jaballah had not conceded this point, I would have concluded that he is a danger to national security in any event. I am satisfied, on a balance of probabilities, that there is sufficient credible and compelling information before me to found an objective basis that provides reasonable grounds to believe that he is such a danger."

[59] Counsel for the Ministers argue the test for the underlying facts is not on the balance of probabilities but on what Justice Layden-Stevenson stated in her reasons at paragraph 382 in *Almrei*, above:

> "In the circumstances as I have described them and in view of the findings that I have made, I conclude that Mr. Almrei's participation in jihad (specific to him) gives rise to an objectively reasonable suspicion that Mr. Almrei did adopt the Islamic

> extremist ideology espoused by Osama bin Laden. This standard does not require proof of the existence of the facts. It requires reasonable grounds to believe. There must be a serious possibility that the facts exist based on reliable, credible evidence. However, I arrive at the same result on a balance of probabilities standard. My conclusion is reinforced by reference to evidence contained in the confidential information, a copy of which is attached as Schedule "A" to an order signed contemporaneously with these reasons and order (the confidential order)."
>
> [Emphasis mine]

[60] Counsel for Mr. Almrei's reliance on *Jaballah*, above is, with respect, misplaced. In that case, Mr. Jaballah had conceded he was a danger to Canada's national security. What my colleague stated in *Jaballah* above, as she did in *Almrei*, at paragraph 382, is that she was satisfied there was sufficient credible and compelling information before her to have found an objective basis that provides reasonable grounds to believe that he is such a danger. Nowhere in her comment does Justice Layden-Stevenson say that the underlying facts must be established on the basis of a balance of probabilities. She stated the opposite. Moreover, in addition to applying the reasonable grounds to believe standard, looking at the totality of the evidence, she went on to express the view that the evidence disclosed Mr. Almrei was a danger to national security on the higher threshold of balance of probabilities. In other words, she found him to be a danger to national security on both standards. (See also the discussion on this point by Justice Noël in Charkaoui, 2005 FC 249 at paragraphs 30 to 40).

(3) The principle of judicial comity

[61] The principle of judicial comity is well-recognized by the judiciary in Canada. Applied to decisions rendered by judges of the Federal Court, the principle is to the effect that a

substantially similar decision rendered by a judge of this Court should be followed in the interest of advancing certainty in the law. I cite the following cases:

> • *Haghighi* v. *Canada (Minister of Public Safety and Emergency Preparedness),* 2006 FC 272;
>
> • *Benitez* v. *Canada (Minister of Citizenship and Immigration)* 2006 FC 461;
>
> • *Pfizer Canada Inc*. v. *Canada (Minister of Health),* 2007 FC 446;
>
> • *Aventis Pharma Inc*. v. *Apotex Inc*., 2005 FC 1283;
>
> • *Singh* v. *Canada (Minister Citizenship and Immigration)* [1999] F.C.J. No. 1008;
>
> • *Ahani* v. *Canada(Minister Citizenship and Immigration),* [1999] F.C.J. No. 1005;
>
> • *Eli Lilly & Co.*v. *Novopharm Ltd.* (1996), 67 C.P.R. (3d) 377;
>
> • *Bell* v. *Cessma Aircraft Co*. [1983] 149 DLR (3d) 509 (B.C.S.C.)
>
> • *Glaxco Group Ltd. et al*. v. *Minister of National Health and Welfare et al.* 64 C.P.R. (3d) 65;
>
> •*Steamship Lines Ltd*. v.*M.N.R*., [1966] Ex. CR 972.

[62] There are a number of exceptions to the principle of judicial comity as expressed above they are:

> 1. The existence of a different factual matrix or evidentiary basis between the two cases;
>
> 2. Where the issue to be decided is different;
>
> 3. Where the previous condition failed to consider legislation or binding authorities that would have produced a different result, i.e., was manifestly wrong; and
>
> 4. The decision it followed would create an injustice.

[63] For the reasons expressed below none of the exceptions to the rule of judicial comity are applicable in this case.

(4)Does M. Almrei continue to be a danger to national security?

[64] For the reasons that follow, I am of the view, as were my colleagues Justices Blanchard and Layden-Stevenson, that Mr. Almrei continues to be serious risk to national security notwithstanding the passage of time since his detention first commenced in October, 2001.

[65] The issue is whether the evidence grounds an objectively reasonable suspicion Mr. Almrei represents a substantial threat of harm to Canada's national security. If the evidence so shows, it will establish that Mr. Almrei is a danger to that national security (see, *Harkat*, 2006 FC 628 at paragraph 57).

[66] I accept what Justice Dawson said in that case that the Court's conclusion with respect to danger a person represents, to the extent possible, should be based upon the public record but reliance upon information put before the Court in confidence by the Ministers may be necessary. In the case at hand, consideration of that confidential material is necessary because J.P., on cross-examination, relied on it on several occasions in material respects, particularly since Mr. Almrei did not concede he was a danger to Canada's national security; indeed, he argued otherwise. It should be recalled that under section 83(3) of the *Act*, the evidentiary burden on this issue is on the Ministers.

[67] The confidential material that was put before me is, save for one exception, the same confidential material that has been scrutinized by Justice Tremblay-Lamer when examining the reasonableness of the security certificate issued against Mr. Almrei; by Justice Blanchard on Mr. Almrei's first detention review; by Justice Layden-Stevenson on Mr. Almrei's second detention review and by this Court on Mr. Almrei's third detention review.

[68] When it filed another SIR, dated July 18, 2007, in connection with Mr. Almrei's third detention review, the Service tendered new evidence not previously put on the record. The fresh confidential material touched upon three topics: the recent activities of a person; the recent activities of another person who is not relevant in these proceedings and the recent use of fraudulent documents to assist in the travel plans on newly minted terrorists.

[69] I did not take into account this fresh evidence being of the view it was very marginal evidence and did not enhance the evidentiary base already available to the Court. Pursuant to paragraph 78 (f) of the *Act*, I directed the Registry to return this evidence to the Ministers and have not taken it into account in these proceedings. The result of this ruling means that no new confidential information was made available to this Court which had not been previously scrutinized by other designated judge of this Court. Nevertheless, this Court undertook to scrutinize afresh the old confidential evidentiary record as if it had been newly tendered to the Court by the Ministers.

[70] The manner in which confidential material must be scrutinized by designated judges of this Court has been described several times by my colleagues.

[71] Such evidence must be rigorously and critically scrutinized for relevance, reliability and weight. The sources of the information must be carefully examined for reliability, credibility and the conditions under which that information was provided. Corroboration is essential in many cases. The existence of any exculpatory information in the possession of the Service must be explored.

[72] I scrutinized the confidential information in the record in accordance with the principles established by my colleagues. I found the confidential evidence to be relevant and reliable in terms of source; that such confidential evidence had been corroborated in many ways in cases where its materiality was crucial to support the Minsters' case. I was informed by the witness who testified in-camera on behalf of the Ministers' that the Service had in its possession no exculpatory evidence which would favour Mr. Almrei's position. Furthermore, I was assured by the witness the Service knew of no circumstance which would impeach the reliability of the information currently on the record, i.e. its being acquired by torture.

[73] I found the Ministers' witness in-camera highly credible, balanced and forthright and I accept without reservation his testimony. I make the same assessment of J.P.'s testimony.

[74] In considering the issue whether Mr. Almrei continues to be a danger to Canada's national security, I have taken into account the totality of the evidence in the record both public and confidential.

[75] As indicated, the essence of the Ministers' case is that Mr. Almrei continues to be a danger to Canada's national security because he espouses the terrorist ideals of Osama Bin Laden and Al-Qaeda, a proposition which Mr. Almrei strongly denies. As stated, his counsel acknowledged Osama Bin Laden and Al-Qaeda represented a threat to Canada's national security.

[76] The issue before this Court is whether the evidence grounds an objectively reasonable suspicion Mr. Almrei espouses the terrorist objectives of Al-Qaeda. If that evidence supports that suspicion, Mr. Almrei is a threat to Canada's national security.

[77] Mr. Almrei's counsel did not challenge all of the findings previously made by my colleagues during the first and second detention reviews. Essentially the Ministers put before me the same case as they did before Justices Blanchard and Layden-Stevenson: Mr. Almrei's participation in jihad, his Arab/Afghan connections, his pre-occupation with security, his use of clandestine methodologies and his involvement in false documentation.

[78] Specifically, Mr. Almrei challenged two findings made by Justice Layden-Stevenson during her review of his second detention application. The first finding is set out at paragraph

382 of her reasons where she states “in the circumstances as I have described them and in view of the findings that I have made, I conclude that Mr. Almrei’s participation in jihad (specific to him) gives rise to an objectively reasonable suspicion that Mr. Almrei did adopt the Islamic extremist ideology espoused by Osama Bin Laden”. In coming to this conclusion, Justice Layden-Stevenson referred to evidence contained in the confidential information, a copy of which was attached as Schedule “A” to her order dated December 5, 2005 (the confidential order).

[79] The second finding challenged by counsel for Mr. Almrei is stated at paragraph 396 of Justice Layden-Stevenson’s pubic reasons for order. There, she finds she has no hesitation in concluding that the totality of the evidence provides reasonable grounds to believe and gives rise to an objectively reasonable suspicion that Mr. Almrei participated in a network involved in forged documentation. In coming to her conclusion, she was reinforced by reference to evidence contained in the confidential information, a copy of which was attached as schedule”B” to her confidential order.

[80] Counsel for Mr. Almrei argues the evidence before me demonstrates that Justice Layden-Stevenson could not have reasonably come to the conclusion that she did because that evidence demonstrates Mr. Almrei’s participation in jihad in Afghanistan in 1991 and 1992 was a legitimate jihad which had nothing to do with the type of jihad which Al-Qaeda subsequently engaged in after the fall of the Soviet proxy government in Afghanistan in 1992. He argues in

cross-examination J.P. specifically acknowledged the legitimacy of the Afghan jihad launched by the mujahidin coalition. With respect, I disagree with Mr. Copeland's contention.

[81] The issue before me is not whether Mr. Almrei participated in a legitimate jihad in Afghanistan in 1991 and 1992 but whether, taking into account all of the circumstances and evidence behind the allegations made by the Ministers gives rise to an objectively reasonable suspicion he had espoused the ideology of Osama Bin Laden and Al-Qaeda.

[82] I assess all of that evidence, both public and confidential, as a continuum from the time the mujahidin coalition was formed in the early 1980's, the early involvement of Abdallah Azzam and Osama Bin Laden in the formation and operation of the MAK and their subsequent disagreement on tactics which emerged in the late 1980's which may have contributed to Mr. Azzam's death in November of 1989, the formation of Al-Qaeda by Abdallah Azzam and Osama Bin Laden in 1988 giving Osama Bin Laden, after Mr. Azzam's death the power to control and develop Al-Qaeda in the manner that he did , the appearance of Mr. Almrei in Afghanistan in 1991, and 1992 at a very young age, his association with Abdul Sayyaf, staying at his guest house in Peshawar and training at his camp recognizing the importance of Abdul Sayyaf 's participation in the mujahidin coalition as one of its leaders in command of a significant private army, Mr. Almrei's return to do a further jihad in Tajikistan in 1994 and 1995, jihad led by ibn-Khattab who then went on to do jihad in Chechnya, a person with whom Mr. Almeri had substantial relations with and whom he supported after he came to Canada, Mr. Almrei's links

with a passport forger and human smuggler in Thailand and the continuation of those activities of procuring false documentation after his arrival in Canada.

(5)The availability of alternatives to detention

[83] My colleague Justice Dawson, in *Harkat* v. *Canada (Minister of Citizenship and Immigration)* (2006) FC 628, decided to release Mr. Harkat from detention but not on the conditions he proposed being of the view that any terms and conditions for release must be based on something other than Mr. Harkat's assumed good faith or trustworthiness. In particular, she stated at paragraph 76 of her reasons: "This militates, in my view, against terms and conditions such as that proposed that would allow him to remain in his residence alone with unrestricted access to visitors…". I share her view and apply it to Mr. Almrei's situation.

[84] At paragraph 83 of her reasons, Justice Dawson stated that in considering whether there are terms and conditions that would neutralize or contain the danger [Mr. Harkat represented] there needed to be terms and conditions specific and tailored to his particular circumstances. These terms and conditions "must be designed to prevent Mr. Harkat's involvement in any activity that commits, encourages, facilitates, assists or instigates an act of terrorism, or any similar activity." She concluded by saying the terms and conditions must be proportionate to the risk posed by Mr. Harkat.

[85] In *Harkat*, above, Justice Dawson was persuaded Mrs. Harkat and her mother were capable of providing effective supervision so as to ensure the terms and conditions of release are

observed. At paragraph 81 of her reasons, she expressed the view sureties had to have sufficient connection with Mr. Harkat to ensure compliance namely, "sufficient controlling influence over Mr. Harkat if he is released from incarceration."

[86] In *Harkat* v. *Canada (Minister of Citizenship and Immigration)* 2007 FC 416, my colleague Justice Simon Noël, reviewing proposed amendments to Mr. Harkat's terms and conditions of release, accepted at paragraph 19 of his reasons the controlling influence test formulated by Justice Dawson whose decision was sustained by the Federal Court of Appeal in *Harkat* v. *Canada* (*Minister of Citizenship and Immigration)* 2006 FCA 259.

[87] After reviewing the testimony and the cross-examination of the proposed principal sureties, (Erma Wolfe, Diana Ralph and her partner and Hassan Ahmed), I am of the view the proposed surety plan submitted for Mr. Almrei release is insufficient and inadequate to contain either the risk to national security or risk of flight he represents. Realistically assessed, the evidence points to the absence of an effective security plan which Erma Wolfe in testimony recognised would be a work in progress. This is not acceptable.

[88] In my view, Erma Wolfe's circumstances make it such that she does not possess the necessary qualities to act as a principal supervisory surety. My colleague Justice Noël in Re: *Charkaoui*, 2006 FC 555 described the role of a supervisor and escort as one carrying a heavy burden which requires, in part, a connection with the person concerned. My reasons for coming to this conclusion are as follows:

• Erma Wolfe works full time on shift-work as a nurse. Currently, she works from 7:30 a.m. to 7:30 p.m., working 75 hours during a two-week period on scattered days which may be two, three, or four days a week in a six-week rotating schedule. This means Mr. Almrei will be alone at home for substantial periods of time;

• She has no real substantial connection to Mr. Almrei since she first contacted him by way of letter more than three years ago. She has never met Mr. Almrei personally although she attempted once to visit him when he was detained at Metro-West but failed. She has written him a few letters and communicates principally with him by telephone. In my view, she is not in a position to exercise a controlling influence over him. Moreover, the age gap between them is considerable;

• She travels to Alberta to visit her grandchildren a couple of times a year. She has grandchildren in Metro-Toronto she visits often. This again creates an away-from-home situation although, it is true, Doctor Ralph said she and Jean Hansen would cover for her when she took holidays and would visit Toronto as often as they could which she said might be every month and half or two months. For his part, Mr. Ahmed testified he would visit Mr. Almrei three times a week for a couple of hours in the afternoon.

• With respect, I do not believe Erma Wolfe really understands the onerous duties of being a principal supervisory surety. She must exercise effective supervision over Mr. Almrei which means a substantial commitment of time when she is at home. I did not hear that commitment from her when she testified. What I heard was that,

> except to do her laundry in the laundry room located in the basement of her house, she would keep locked the access door from the basement to the rest of her house where she lives. The effect is that, even if she is at home, Mr. Almrei would be alone in the basement apartment which has a separate side entrance. The risk of surreptitious communication by Mr. Almrei is too great.

[89] As noted, Doctor Ralph testified she and her partner would visit Toronto as often as they could, meaning perhaps six to eight times a year and would be prepared to act as his escort on CBSA authorized outings. She also stated she would be prepared to have Mr. Almrei live with them in their home in Ottawa.

[90] As mentioned, Doctor Ralph testified before Justice Layden-Stevenson who held "I am not satisfied that Doctor Ralph is an acceptable or appropriate surety in the circumstances of this matter. I am sure that Doctor Ralph means well and has Mr. Almrei's interests at heart. However, she is completely lacking in objectivity." (see paragraph 421).

[91] At paragraph 424, Justice Layden-Stevenson further held "I am not at all satisfied that Doctor Ralph possesses the requisite objectivity or necessary impartiality to stand as the primary supervising surety. She has had no experience with Mr. Almrei except when he was in a highly-regulated and controlled environment…I find Doctor Ralph's judgment to be clouded by her political beliefs. I am not convinced that she appreciates the onerous task that she has offered to assume. Moreover, Justice Layden-Stevenson held she was not confident that Doctor Ralph

exhibited respect for the Court, as an institution, given her comments on the hearing of the application before her (June 28, 2005, transcript page 273).

[92] Those findings were not substantially challenged by counsel for Mr. Almrei. He failed to convince me that I should come to a different view of Doctor Ralph than the one expressed by my colleague, appreciating, however, as I do Doctor Ralph is not being proposed here as a primary supervising surety at this time.

[93] I also find Mr. Ahmed not to be an appropriate supervisory surety or escort. He has not discussed the supervisory plan with Erma Wolfe. More importantly, he lacks objectivity being a very good personal friend of Mr. Almrei whom he met only two days after Mr. Almrei came to Canada in January of 1999. He was a business associate of Mr. Almrei in the operation of a restaurant which Mr. Almrei owned. I am satisfied he was aware of Mr. Almrei's extensive dealings in false documents. I am not confident at all Mr. Ahmed would or could dissuade Mr. Almrei from breaching the conditions of his release, particularly, in respect of Mr. Almrei's possible flight.

[94] In cross-examination, Mr. Copeland suggested to J.P. that it mattered not if Erma Wolfe was not at home because Mr. Almrei would be forced to wear a GPS monitoring bracelet which he would have to take off immediately sounding an alarm if he was to flee because otherwise the GPS monitor would trace him. J.P. resisted that suggestion. I agree with J.P. that before the authorities could apprehend Mr. Almrei, he could and may be long gone.

[95] Mr. Copeland suggested CBSA could perhaps fill in the holes of the supervisory plan by extensive monitoring of Mr. Almrei outside Erma Wolfe's house or on escorted outings. He was critical, as this Court is, that J.P. did not inform himself before testifying about what role CBSA monitors had in place in the supervision of other detainees who have now been released from detention.

[96] J.P. suggested that the Court could call the CBSA on this point. In the circumstances of this case, I did not deem necessary to call CBSA officials because I considered the supervisory plan to be fundamentally flawed. The gaps it contained were too large to fill. I also had in mind two findings made by my colleagues. The first one is by Justice Dawson in connection with modifying the terms of his release. Justice Noël in *Harkat*, above, indicated that Justice Dawson, in her September 26, 2006, order had expressly rejected the argument that since CBSA was monitoring Mr. Harkat there was no need for him to be with his supervising sureties while on approved outings. (See Justice Noël's decision reported at 2007 FC 416). Second, I have in mind Justice Layden-Stevenson's comment at paragraph 425 of her reasons that she was not convinced that law enforcement personnel, in the absence of an appropriate surety, can ensure compliance with the Court's order.

[97] Finally, I do not accept the argument put forward by his counsel that the supervisory plan offered by Mr. Almrei is the best possible that can be devised, given his particular circumstances. During the hearing, I made one suggestion which did not meet favour on possible legal or practical grounds. That option, perhaps may be worthy of exploration.

[98] I am far from being convinced that a supervisory plan cannot be put into place which minimizes or contains Mr. Almrei's risk of flight and risk to national security other than the plan which has been presented to the Court which, as I have said, fails to do either.

[99] Based on the continuum of the evidence described above and considering the evidence as a whole, I find the totality of that evidence grounds an objectively reasonable suspicion Mr. Almrei did adopt and has not renounced the ideology espoused by Osama Bind Laden and Al-Qaeda which constitutes a substantial threat to Canada's national security.

[100] The case before me is not substantially different than the one put before Justice Blanchard and more recently before Justice Layden–Stevenson. Indeed, when Mr. Almrei testified before her on July 20, 2005, Mr. Almrei denied sharing Osama Bin Laden's ideology, indicated he believed in the struggle in Afghanistan against the Soviet occupiers and their surrogate Afghan government and that the Al-Qaeda jihad of violence against civilians was contrary to Islam.

[101] There is no need for me to review the findings of Justice Blanchard and Layden-Stevenson. In particular, at paragraphs 347 to 402 she analysed and clearly expressed her findings in respect of Mr. Almrei's participation in jihad, his association with Arab-Afghans and his participation in document forgery which the evidence shows is a main tool used to cover up the travels of persons involved in international terrorism.

[102] I find that substantially the same evidence and arguments were made before me. Judicial comity mandates support of both Justice Blanchard and Justice Layden-Stevenson's findings. Moreover, my review of the entire evidentiary record shows that their conclusions were sound and unimpeachable when read in their totality.

[103] I conclude by saying that after scrutinizing the confidential information in the manner that I described, I then turned to Justice Layden-Stevenson's confidential order dated December 5, 2005 where she compiled an extensive list of reliable confidential information from various sources which were corroborated and upon which she relied to come to her conclusions. I am in complete agreement with the confidential information compiled in her confidential order in terms of both Schedule "A" and Schedule "B" to that order and make mine those schedules of her confidential order.

[104] I conclude the analysis of this item by stating that I do not find Mr. Almrei's testimony to be credible for the following reasons.

[105] First, he constantly lied or failed to disclose material information to Canadian officials or government agencies about his past activities.

[106] Second, the manner he testified before me was not reassuring. His curt and sharp answers suggested to me he was not truly forthcoming in his answers and was holding back. Justice Layden-Stevenson reached the same conclusion. My reading of Mr. Almrei's testimony before her supports

my conclusion and hers. Mr. Almrei only revealed his true activities when he felt trapped. He economized the truth.

[107] Third, a comparison of the confidential information with his testimony demonstrates he continues to hide truth.

[108] Fourth, even on the public record, contradictions arise between his testimony and the previous testimony he gave on his earlier detention reviews. I cite in particular when and where he first met ibn-Khattab and how he obtained a photo of Mr. Bin Laden discovered when his computer was seized. He denied the guest house was controlled by Al-Qaeda yet he stated Osama Bin Laden may have financed it. The same can be said whether he had a reputation in the community as a person who knew how to obtain false documents.

[109] His testimony is not plausible in many respects. I cite as an example his testimony before Justice Layden-Stevenson that he did not fight in Afghanistan and his purported role during the scouting missions. The same may be said of his explanation why he had certain photos of personages on his computer. He minimized the importance of being able to communicate via satellite with ibn-Khattab. He also minimized the fact that he had been trained by Sayyaf may have been a factor which impressed Mr. Khattab when he asked him to join jihad in Tajikistan.

[110] His testimony whether and when he heard of Osama bin Laden is confusing when contrasted with his previous testimony, as is his testimony as to how many times he stayed at or visited Bait-al Ansar, the guest house he first stayed at in Peshawar in 1990.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that: Mr. Hassan Almrei's application for release from detention is dismissed.

"François Lemieux"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	DES-5-01
STYLE OF CAUSE:	HASSAN ALMREI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	**TORONTO, ONTARIO**
DATE OF HEARING:	**Public Hearing**: **July 10, 11, 16, 17, 26, 27** **Ex Parte/In-Camera Hearing: July 6, & 25, 2007** **August 2, 2007**
REASONS FOR JUDGMENT & JUDGMENT:	JUSTICE LEMIEUX
DATED:	OCTOBER 5, 2007

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