

Date: 20071015

Docket: IMM-1565-07

Citation: 2007 FC 1049

Ottawa, Ontario, October 15, 2007

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

and

MOHAMMAD QURESHI

Applicant

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Minister seeks judicial review of a decision by the Immigration Appeal Division (IAD) that Mr. Qureshi was not inadmissible under s. 34(1)(f) of the *Immigration and Refugee Protection Act* (Act). The IAD had upheld a similar finding by the Immigration Division (ID).

[2] The Minister argues that the IAD erred (a) because it applied the incorrect test regarding “membership” by adopting a subjective component and (b) because the IAD acted as if it was dealing with a judicial review and not a *de novo* hearing.

II. BACKGROUND

[3] The Respondent is a citizen of Pakistan who arrived in Canada in 1988. His refugee claim was denied in 1999 and since then the Minister has been seeking to have him declared inadmissible because he was a member of a terrorist group, the Mohajir Quomi Movement (MQM).

[4] The IAD held that the Minister had not provided sufficient credible and trustworthy evidence so as to conclude that there were reasonable grounds to believe that the Respondent was or is a member of the MQM. The matter of whether the MQM was a terrorist organization was not in issue.

[5] The source of considerable concern to the Minister is the admission on the Respondent’s PIF and before the Refugee Protection Division that he was a member of the MQM. The IAD accepted the Respondent’s explanation that by the term “member”, he meant a “supporter”.

III. ANALYSIS

A. *Standard of Review*

[6] The decision dealt with the interpretation and application of the term “member” which has been held to be reviewable on a standard of reasonableness. (*Poshteh v. Canada (Minister of Citizenship and Immigration)* (2005), 252 D.L.R. (4th) 316) The decision also involves a factual determination, most particularly one of credibility, which is reviewable on a standard of patent unreasonableness. (*Adams v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 386) Lastly, the determination of whether the IAD performed a *de novo* review or not is one to be determined on the basis of correctness.

B. *Membership*

[7] Section 34(1)(f) of the Act is broadly worded. The whole provision of s. 34 is to accord the Minister considerable power to grant relief from the very broad net cast by s. 34(1).

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;

(b) engaging in or instigating the subversion

34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

a) être l’auteur d’actes d’espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s’entend au Canada;

b) être l’instigateur ou l’auteur d’actes visant au

by force of any government;	renversement d'un gouvernement par la force;
(c) engaging in terrorism;	c) se livrer au terrorisme;
(d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada;
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).
(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

[8] The case law is clear that the determination of membership is an objective test. There was evidence before the IAD on which a reasonable person could conclude that the Respondent was a member. However, there was evidence upon which a reasonable person could reach a different conclusion. It is not the Court's function to re-weigh the evidence. (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (T.D.) (QL))

[9] The IAD's reference to the Respondent's subjective belief of his "membership/support" did not establish that the IAD had made its determination of membership on a subjective basis. The Minister was attempting to rely upon the admission in the PIF as part of its proof of the Respondent's membership. The Respondent merely put forward his explanation of what he meant by that term. The IAD accepted the explanation – a matter of credibility.

[10] Therefore, I can find no error in the IAD's approach to the issue of membership.

C. De Novo Hearing

[11] The Minister attempted to show that the IAD did not approach this case as a *de novo* review because the Member referred to the absence of new facts and therefore the absence of any reason to alter the ID's finding.

[12] A review of the transcript shows that the Member understood that he was conducting a *de novo* review. I interpret the reference to "no new evidence" as simply the Member's way of concluding that he adopted the ID's view of the evidence.

[13] The Minister has not established that the IAD failed to conduct a *de novo* review of the ID's decision.

IV. CONCLUSION

[14] Therefore, for these reasons, this application for judicial review is dismissed. This case turned on the specific facts of the matter and therefore no question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1565-07

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

and

MOHAMMED QURESHI

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 3, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: October 15, 2007

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