Date: 20080222

Docket: IMM-924-07

Citation: 2008 FC 241

Ottawa, Ontario, February 22, 2008

PRESENT: The Honourable Barry Strayer, Deputy Judge

BETWEEN:

YOUSSEF KANAAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This is an application for judicial review of a decision of February 12, 2007 of the Minister of Public Safety and Emergency Preparedness refusing the Applicant's request for ministerial relief under subsection 34(2) of the *Immigration Refugee and Protection Act* (Act) from the status of inadmissibility prescribed under paragraph 34(1)(*f*) of the Act.

Facts

[2] Section 34 of the Act provides in part as follows:

34(1) A permanent resident or a foreign national is inadmissible on security grounds for …	34(1) Emportent interdiction de territoire pour raison de sécurité les faits suivants : …
(*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…(c) [terrorism]	*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 ...
(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.

[3] The Applicant is a stateless Palestinian from Lebanon. He came to Canada in 1993. He made an unsuccessful application for refugee status. He then applied for permanent resident status on humanitarian and compassionate grounds. This application was approved in principle on February 1, 2001. There then ensued a prolonged security check which focused on the question of inadmissibility under paragraph 34(1)(*f*), *supra*. At the suggestion of an Immigration Officer, the Applicant applied on May 29, 2002 for the exercise by the Minister [of Public Safety and

Emergency Preparedness] based on a requested finding that his presence in Canada would not be detrimental to the national interest. The matter thus was put in the hands of the Canada Border Services Agency (CBSA). Nearly four years later, on February 20, 2006 that Agency gave to counsel for the Applicant a draft of its briefing note which would be provided to the Minister to advise him as to the exercise of his power under subsection 34(2). This note recommended against a decision by the Minister in the Applicant's favour: that is, CBSA recommended against a finding that the Applicant's presence in Canada would not be detrimental to the national interest. The Applicant was given an opportunity to comment on this draft briefing note before it was sent to the Minister. On March 31, 2006 he submitted a statutory declaration and considerable other documentary material. On July 25, 2006 he submitted country reports on Lebanon. After receiving this material the CBSA on August 30, 2006 sent the briefing note to the Minister. That final version of the briefing note was, apart from a few editorial changes, identical to the draft briefing note given to the Applicant in February, 2006. The only recognition that further submissions and evidence had been provided to the Agency was an addition to the list of "enclosures" at the end of the briefing note which listed as an additional item:

> 11. Further submissions from disclosure process.

Attached to this briefing note was a decision form which simply stated "Based on my review of the materials submitted, Ministerial relief is": there then followed one line for the Minister to sign if he approved Ministerial relief and another line for him to sign if he denied Ministerial relief. The Minister signed on the "denied" line on February 12, 2007. There is no indication of any reasons

originating with the Minister and I must therefore assume that the briefing note upon which his decision was based provides the reasons for the decision.

[4] In his original claim for refugee status, and in subsequent interviews with immigration authorities, the Applicant had asserted that before leaving Lebanon he had lived all his life in a Palestinian refugee camp in that country, and that he had been induced to join the Abu Nidal Organization (ANO) in the camp, an organization that is considered terrorist. He said that he joined somewhat against his will and that he had never carried out any terrorist missions for the ANO when requested to do so. He eventually became frightened of the ANO and left Lebanon to come to Canada, leaving behind him a wife and two small children. Although he changed the details from time to time, it was not until his submissions and statutory declaration submitted on March 31, 2006 by way of comment on the draft briefing note that he denied ever having been a member of the ANO. He explained that he had on earlier occasions lied about his involvement with the ANO in order to strengthen his claims for refugee status based on fear of returning to Lebanon. He confirmed that he was by this time a pacifist and had joined the Mennonite Church in Canada, eschewing terrorist tactics and violence of any kind. He gave further information as to his establishment in Canada in the intervening four years since he had first applied for favourable consideration by the Minister under subsection 34(2) and this was confirmed by various testimonials also submitted. He also pointed out the hardship that would be involved were he to be excluded from Canada under section 34, being a stateless person without a travel document and no right of return to Lebanon. For that reason he probably would have to stay in Canada, but under these circumstances his wife and children could not be brought to Canada if he was refused

permanent residence by virtue of being an inadmissible person under section 34. He also pointed out the hardship of returning to Lebanon, even if that were possible, including his probable inability to get the medical care he needed as a result of an accident in Canada. There is not a single reference to any of this information in the final version of the briefing note. Counsel for the Respondent urges that the fact that the further submissions were listed as the 11th item of "enclosures" provided to the Minister indicates that the CBSA and the Minister must have read them. This is a conclusion to which I find it extremely difficult to jump. See, e.g. *Ogunfowora v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 456, paras. 25, 26.

Analysis

[5] While the Minister's power under subsection 34(2) is non-delegable and must be exercised by himself, it is proper to treat the CBSA's briefing note as his reasons: see e.g. *Miller v. Canada (Solicitor General)*, [2006] F.C.J. No. 1164. I also adopt the reasoning of other judges in this Court that the standard of review of such a decision of the Minister is that of patent unreasonability: see e.g. *Miller*, id at para. 42, *Soe v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 620 at para. 16.

[6] It is well established that the Minister has an obligation in exercising his power under subsection 34(2) to assess and balance all relevant factors: see *Naeem v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 173 at paras. 60-65. The further submissions and statutory declaration submitted on behalf of the Applicant on March 31, 2006 pertained to several

factors which should have been considered by the Minister. The new denial of membership in the ANO should have been considered even if it were ultimately disbelieved. Evidence of the claimant's further establishment in Canada since 2002 and the hardship he and his family had endured since that time, plus the particular hardship of the Applicant's status as a stateless person deserved consideration as did the evidence of his affirmation of opposition to terrorism and his new membership in the Mennonite Church of Canada. None of these factors were mentioned even for the purpose of dismissing them in balancing the exercise of the ministerial power.

[7] Of course, a tribunal need not mention every bit of evidence considered, but when the evidence is sufficiently important and is not mentioned, a Court may infer that it was not considered: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998) 157 F.T.R. 35. Instead, in the closing words of the briefing note (which must be taken to reflect the Minister's views) it is said that:

> … Mr. Kanaan's lengthy membership in an organization listed as a terrorist entity, coupled with his obvious lack of credibility, makes it impossible for CBSA to make a recommendation that his presence in Canada would not be detrimental to the national interest… .

This seems to negate the purpose of subsection 34(2) which contemplates that even persons who are or have been members of a terrorist organization might be admissible if "their presence in Canada would not be detrimental to the national interest". The assumption of the quoted rationale seems to be that if a person has wrongly denied membership in a terrorist organization he will always be a threat to the national interest of Canada. It does not consider, for example, that even if the Applicant

had been a member of ANO and whatever the quality of that membership, he had been absent from Lebanon and the activities of the ANO for 14 years prior to the Minister's decision.

[8] I therefore conclude that the Minister's decision was patently unreasonable in that it failed to take into account evidence and factors presented in the Applicant's submissions of March 31, 2006 and July 25, 2006. The decision seems to have turned on the simplistic view that the presence in Canada of someone who at some time in the past may have belonged to a terrorist organization abroad can never be in the national interest of Canada. I will therefore set aside the Minister's decision and refer the matter back to him for reconsideration.

[9] The Applicant requests that I set a deadline for the Minister's reconsideration under subsection 34(2). Considering the gross delay in the issuance of the last decision (nearly five years) I believe this would be appropriate. I recognize the exigencies of ministerial responsibility but I believe that a deadline of 90 days would not be unreasonable, considering the personal difficulties of the Applicant and his family.

Disposition

[10] I will therefore allow the application for judicial review, set aside the Minister's decision of February 12, 2007 and refer the matter back to him for reconsideration and decision within 90 days of this judgment.

[11] The Applicant requested that I certify a question as to whether a Minister's decision under subsection 34(2) has to show that reference was made to relevant submissions. Counsel for the Respondent argued that this would not be a question of general importance and I agree. It is a question which can only be answered in respect of a particular set of facts. I will therefore certify no question.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The decision of the Minister of Public Safety and Emergency Preparedness of February 12, 2007 refusing Ministerial relief under subsection 34(2) of the *Immigration and Refugee Protection Act* be set aside and the matter be referred back to the Minister for reconsideration and a decision no later than 90 days from the date of this judgment.

"B.L. Strayer"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-924-07
STYLE OF CAUSE:	**YOUSSEF KANAAN** **and** **THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**
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APPEARANCES:

Mr. Andrew Brouwer	FOR THE APPLICANT
Mr. Stephen H. Gold	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jackman & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT