Date: 20080801

Docket: IMM-5054-07

Citation: 2008 FC 907

Ottawa, Ontario, August 1st, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

MOHAMMED REZA SEPID
(A.K.A. MOHAMMED SEPID REZA)

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the *Act*), from the decision of an immigration officer (the Officer) to refuse the applicant's application for permanent residence on the basis of his inadmissibility to Canada pursuant to subsection 34(1) of the *Act*.

I. Facts

[2] A citizen of Iran, the applicant arrived in Canada on July 28, 1994 and filed an application for refugee status based on his political opinion and "membership in a particular social group". In

his interview at the port of entry and in his refugee claim, the applicant indicated that he was at risk due to his involvement with the Mujahedeen-e-Khalq organization (MEK) in Iran, listed as a terrorist entity by the government of Canada. He also filed an application for permanent residence.

[3] On May 7, 2002, the applicant was given notice to appear for an inadmissibility interview and invited to address the issue of his inadmissibility under section 34 of the *Act*, for having been a member of a terrorist organization. At the interview the applicant claimed he was not a member but only a "supporter" of the MEK, while admitting that he provided financial support as well as communication and propaganda distribution services for the MEK.

[4] Subsequently, the applicant applied for Ministerial Relief under subsection 34(2) of the *Act*. This request was refused by the Minister of Public Safety & Emergency Preparedness (the Minister) on October 11, 2007 and, in a decision dated November 13, 2007, the Officer denied the application for permanent residence on the basis that the applicant was inadmissible to Canada under section 34 of the *Act*.

[5] The applicant applied for leave and judicial review of both the Minister's and the Officer's decisions. The application for leave and judicial review of the Minister's decision having been denied on May 27, 2008, the only issue remaining for the Court to decide is limited to the Officer's refusal of the applicant's application for permanent residence on the basis of his inadmissibility to Canada pursuant to subsection 34(1) of the *Act* decision.

II. Impugned Decision

[6] In his decision, the officer assessed whether the applicant was a member of the MEK and also whether that organization was involved in terrorist activity.

[7] The Officer reviewed the evidence to assess whether or not the applicant was a member of the MEK, which included the applicant's Port-of-Entry interview consigned in the notes from the entry officer (POE notes), the applicant's Personal Information Form narrative (PIF), and the inadmissibility interview.

[8] The POE notes indicated to the Officer that upon arrival in Canada the applicant had admitted to being a member of the MEK since 1991. Moreover, these notes also indicated that the applicant's activities with the MEK consisted of receiving, copying and distributing video cassettes which encouraged people to join the MEK.

[9] The Officer also took note of relevant portions of the applicant's PIF to find that his refugee claim was completely based on his political opinion and membership in a social group known as the MEK.

[10] And in addition, with regards to the inadmissibility interview, the Officer noted that the applicant had admitted during the interview that his activities with the MEK consisted of recording videotapes and photocopying flyers containing information about the MEK political agenda and goals and then distributing them. But the Officer also retained that the applicant had provided

financial contributions to the MEK and had committed to that organization that he would travel to Iraq in order to be more educated in its goal and policy. The Officer acknowledged that the applicant denied membership in the MEK, but was not convinced by this denial.

[11] Finally, the Officer concluded that there were reasonable grounds to believe the applicant "was a member of the MEK, in that he belonged to the organization, voluntarily joined the MEK from 1989 to 1994 publicizing its policy and goals …contributing time and money". And since the status of MEK as a terrorist organization was not in dispute, and in light of the refusal of a waiver of inadmissibility by the Minister, the Officer determined that the applicant was inadmissible under section 34(1)(f) of the *Act* and refused his application for permanent residence.

III. Issues

[12] The present application raises the following issues:

a. Did the Officer err in interpreting the term "member" in paragraph 34(1)(f)?

b. Did the Officer err in fact in finding that the applicant was a member of the MEK?

IV. Standard of Review

[13] The appropriate standard of review is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9). The issue of membership is a finding of fact and thus the applicant is required to demonstrate that this finding was made in a perverse or capricious manner or without regards to the material before the Officer. The same standard applies to the Officer's interpretation of the term

"member" raised in the first issue (*Poshtech v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 381).

V. Analysis

a. Did the Officer err in interpreting the term "member" in paragraph 34(1) (f)?

[14] The Officer in the present case adopted a broad interpretation of "member" and considered factors relevant to the determination of membership such as the length of the involvement with the organization, the nature of the duties and responsibilities of the applicant in the organization, and the extent of his involvement. The Officer's interpretation of "member" is completely akin with the jurisprudence and is therefore reasonable (*Poshteh v. Canada (M.C.I.)* 2005 FCA 85). The Court sees no reason to interfere with the Officer's decision in this regard.

b. Did the Officer err in fact in finding that the applicant was a member of the MEK?

[15] The applicant appears manifestly dissatisfied that the Officer did not accept his assertion of having been only a "supporter of the MEK", and not a member. The issue is therefore whether there was sufficient evidence of fact upon which the Officer could reasonably conclude that the applicant was a member rather than a simple "supporter".

[16] The Officer accepted the applicant's own evidence of membership given at the port of entry, and also his own evidence of his activities in support of the MEK.

[17] Since it is not contested that the MEK is a terrorist organization, therefore the only way the applicant can evade the inadmissibility enacted by section 34 of the *Act*, is to claim that he is not a member of this organization. The mere labelling of his involvement as being that of a "supporter" or any other term than a "member" does not prevent *per se* the application of section 34.

[18] In the present case, the applicant's claim to refugee status was based on his political opinion and his "membership in a particular social group", the MEK, listed and recognized as a terrorist organization. He gave financial and material support to this organization for several years. The transcription of his Port-of-Entry interview includes his own statement that he was a member of the MEK. Also, relevant portions of the applicant's PIF summarize his activity in the MEK to support his claim of protection on the basis of his membership in this particular social group. In spite of the applicants denial, the Officer had more than sufficient evidence to find that the applicant admitted membership in the past, and that his admitted activities indicated that he was more than a simple "supporter" as he later claimed. The evidence provides ample "reasonable grounds" for the Officer to finally believe that the claimant was a *de facto* member of MEK.

[19] The fact that the Officer did not accede to the self-serving characterization of the applicant's involvement does not constitute a reviewable error of law. In his interview at the port of entry and his refugee claim the applicant sets out clearly that he was at risk due to his involvement with the MEK in Iran. Having reviewed the Officer's reasons in their entirety, the Court finds that the Officer clearly understood the importance and the length of the applicant's involvement with the

MEK, how it was initiated and as well how it eventually escalated to more participatory activities. It cannot be said that the Officer did not appreciate the fact that the applicant denied the accuracy of the POE notes as to his membership in the MEK

[20] Moreover, as previously stated, the Officer's reasons must be read as a whole, not as the applicant would have preferred them to be, but as the decider weighted the evidence before him. Given the above finding that the officer conducted a full and fair assessment of the facts, the Court must now assess the reasonability of the overall determination on membership. As stated in *Poshteh*, above at paragraph 36 "*In any given case, it will always be possible to say that although a number of factors support a membership finding, a number point away from membership. An assessment of these facts is within the expertise of the Immigration Division.*" There was more than ample evidence in the record upon which the Officer could reasonably find that the applicant was a member of the MEK. The Court sees no reason to interfere with the Officer's finding on this issue.

[21] Having reviewed the impugned decision in the context of the entire file and the decision as a whole, the Court concludes that the assessment of the Board falls entirely within a range of possible, acceptable outcomes which are more than defensible in respect of the facts and the law. The decision is found therefore not only reasonable, but it is also supported by the applicant's submissions in his POE interview, the PIF and the inadmissibility interview.

[22] The applicant failed to show that the impugned decision contains an error that could justify the intervention of the Court. The application for judicial review will therefore be dismissed.

Further, the Court agrees with the parties that this affair raises no question of general interest to certify; therefore no question will be certified.

JUDGMENT

FOR THE FOREGOING REASONS THE COURT dismisses the application.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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