Date: 20080909

Docket: IMM-827-08

Citation: 2008 FC 1011

Ottawa, Ontario, September 9, 2008

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

BASHEER KABLAWI

Applicant

and

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

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Minister of Public Safety and Emergency Preparedness (Minister) refusing Mr. Kablawi's application for Ministerial relief under s. 34(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (Act). Mr. Kablawi had earlier been found to be inadmissible to Canada because of his membership in the Syrian Socialist Nationalist Party (SSNP), a political organization that was believed to engage in acts of violence. Because of that finding Mr. Kablawi attempted unsuccessfully to

satisfy the Minister that his presence in Canada would not be detrimental to the national interest. It is from the Minister's refusal of Mr. Kablawi's application for relief that this proceeding arises.

I. Background

[2] Mr. Kablawi and his family came to Canada in 1995 and on March 20, 1998 they were determined by the Immigration and Refugee Board to be Convention Refugees. Mr. Kablawi's claim to refugee protection was based on a history of involvement in the SSNP dating back to at least 1972.

[3] In the Personal Information Form (PIF) narrative prepared for Mr. Kablawi's refugee claim his involvement with the SSNP was described as follows:

> In 1979, prior to settling in the UAE, I travelled to Lebanon and attended a course organized by the party the purpose of which was to instruct members as to how to recruit individuals and to explain to them party beliefs and ideas. This was for one month.
>
> After moving to the UAE [in 1979], I continued to be active within the party. While in the United Arab Emirates, I continued to support the party. I attended party meetings and joined in the party's "across the border" mission whose aim was to recruit members. The party and myself continued to receive party pamphlets and instructions on a regular basis. I was in charge of recruiting new members and spreading the party's ideas. I received my instructions from a person higher in authority in the party who was residing in the United Arab Emirates.
>
> During the summer holidays, I would go back to Syria in order to visit my mother and also to do my duties as a member of the party.

[4] According to Mr. Kablawi there was a serious attempt on his life in Lebanon in 1991 apparently motivated by his efforts to root out corruption in the SSNP. Mr. Kablawi then fled to Syria only to be warned by a family friend that he was about to be arrested by the Syrian authorities. From Syria, Mr. Kablawi and his family fled to the United Arab Emirates and from there they came to Canada.

[5] The record indicates that since coming to Canada Mr. Kablawi has led a peaceful and productive life and that he has severed his ties to the SSNP. In an admissibility interview report prepared by Citizenship and Immigration Canada in 2002, Mr. Kablawi's situation was described as follows:

> Mr. Kablawi vehemently opposed any violent actions or demonstrations to support the SSNP causes and principles. He genuinely did not seem aware of events that have been linked to violence and terrorist type activities with the SSNP as stated in the international compilation of terrorist organizations, violent political groups and issue-oriented militant movements supplied by NHQ/BCZ. Mr. Kablawi is a well-educated, well-spoken, intelligent individual, who by his own admission, admitted that he familiarizes himself on events and activities of SSNP via the Internet on a regular basis. To the best of his knowledge, he was not aware of such significant actions and activities that linked SSNP to possible terrorist acts and violence. Mr. Kablawi declared that he has ***never*** been involved in any acts and violence or terrorism and does not condone or support this type of action at any time, for any purpose.
>
> At the present time, Mr. Kablawi is working at the London Islamic School full-time as an Arabic Language teacher (since September 2001) with a monthly salary of approximately $2,000 per month. His wife is unemployed and his three daughters are attending Western University with the assistance of student loans. As well, his three daughters work part-time to help supplement the family income. Mr. Kablawi’s only outside activity is attending the mosque every Friday to attend prayer period.

> After interviewing Mr. Kablawi and examining all the supporting documentation, I am satisfied that Mr. Kablawi was a member of SSNP for 23 years, which publicly available documentation provided by our Legal Services indicates that this group meets the criteria of a terrorist organization. **This being said, I find Mr. Kablawi to be inadmissible 19(1)(f)(iii)(b) however, I recommend that Mr. Kablawi not be directed to Immigration Inquiry and be afforded the opportunity to remain in Canada under the protection of his Convention Refugee Status.**
>
> There is no evidence to suggest that Mr. Kablawi poses a security threat to Canada and he has not been involved in any political activities or memberships with SSNP since his arrival to Canada in 1995 (7 years). Mr. Kablawi indicated emphatically throughout the interview that he wishes to distance & completely remove himself from any activities, meetings, and/or agendas with the SSNP. He does not wish to place himself or his family at any risk, and his sole purpose for fleeing to Canada was to escape the situation in Syria and start a new life for himself and his family. It was very evident throughout the interview that Mr. Kablawi's primary purpose and goal in life, is to protect his family, and ensure they are afforded every opportunity to make a better life for themselves, free from any danger or threats due to his past activities with SSNP.
>
> [Emphasis in original.]

[6] Mr. Kablawi requested Ministerial relief in July 2002 but it was not until October 18, 2007 that the decision was made. The Minister's refusal is represented by his signature affixed to a briefing note prepared by the Canadian Border Services Agency (CBSA) dated August 29, 2006 recommending that relief be denied.

The Decision Under Review

[7] It is clear that the CBSA briefing note constitutes the reasons for the Minister's decision: see *Miller v. Canada (Solicitor General),* 2006 FC 912, [2007] 3 F.C.R. 438, at paras. 55-62. That briefing note summarized Mr. Kablawi's history of involvement with the SSNP and it also contained the following summary of the 2002 immigration admissibility report:

> Mr. Kablawi did not submit formal submissions with his relief application. However, the Immigration officer processing his case submitted a favourable recommendation on his behalf (Appendix 4).
>
> The officer stated that Mr. Kablawi was very co-operative and forthright during his interview with CIC and answered all questions posed to him without hesitation or exaggeration.
>
> The officer stated that Mr. Kablawi is a well-educated, well-spoken, intelligent individual, who is well established in Canada. Mr. Kablawi is employed on a full time basis as a language teacher and has three daughters attending Western University.
>
> The officer stated that Mr. Kablawi genuinely did not seem aware the SSNP had been linked to acts of violence or terrorism. The officer also stated that it was evident in the interview with Mr. Kablawi that his primary purpose and goal in life, is to protect his family and ensure they are afforded every opportunity to make a better life for themselves, free from any danger or threats due to his past activities with the SSNP.

[8] Notwithstanding the above-noted considerations, the CBSA briefing note recommended that Ministerial relief be refused to Mr. Kablawi. The CBSA concluded that Mr. Kablawi's denial of any knowledge of the SSNP's history of violence was improbable. It was also concerned about the length of his membership in the party and the strength of his commitment to its goals. The rationale for the CBSA's recommendation can be found in the following extract from its briefing note:

> Mr. Kablawi maintained his membership in the organization for over 23 years. His duties while not violent were significant in that he was responsible for recruitment and was considered a "lecture leader" which afforded him the right to speak on behalf of the SSNP. This indicates that he was in direct contact with the leadership who would direct him on what information should be presented. This also indicates that he was in a position of trust within the organization.
>
> Mr. Kablawi has been described as a well educated, intelligent individual who keeps abreast of SSNP activities. Taking this, his family ties to the organization and his long term membership into consideration, it is unrealistic that he would have no knowledge that the SSNP engaged in violence to achieve its goals.
>
> While there are significant humanitarian and compassionate grounds to consider in this case, they do not negate the fact that Mr. Kablawi was a dedicated member of a violent organization. Allowing individuals with these types of allegiances who have engaged in these types of activities to remain in Canada is against our national interest. We are of the opinion that Mr. Kablawi has failed to demonstrate that his presence in Canada is not detrimental to the national interest. His membership and activities on behalf of the SSNP outweigh any national interest that would enable the CBSA to make a recommendation that Mr. Kablawi be granted Ministerial relief. Therefore, we recommend that he not be granted relief.

II. Issues

[9] (a) Did the Minister breach a duty of fairness to Mr. Kablawi?

i. Does the Minister's decision contain reviewable errors of fact including unreasonable findings of fact or inference or by failing to take appropriate account of the evidence before him?

ii. Did the Minister fetter his discretion by placing undue or singular reliance on Mr. Kablawi's past involvement with the SSNP?

III. Analysis

[10] With respect to the standard of review which applies to the exercise of the Minister's statutory discretion, I would adopt the following views of Justice Anne Mactavish in *Tameh v. Canada (The Minister of Public Safety and Emergency Preparedness),* 2008 FC 884, [2008] F.C.J. No. 1111, at paras. 33-36:

> 33 As was noted at the outset of this decision, Mr. Momenzadeh Tameh raises two issues on this application. He asserts firstly that the Minister erred by failing to consider relevant factors in exercising the discretion conferred on him by subsection 34(2) of *IRPA*. Mr. Momenzadeh Tameh also says that the Minister breached the duty of fairness owed to him by failing to provide adequate reasons for his decision.
>
> 34 Insofar as the merits of the Minister's decision is concerned, a decision to grant or refuse an application for Ministerial relief is a discretionary one, and should thus be accorded significant deference: see *Miller*, at paragraph 42, and *Al-Yamani*, at paragraphs 38 and 39, both previously cited.
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> 35 As the Supreme Court of Canada observed at paragraph 51 of *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, the standard of reasonableness will generally apply when reviewing the exercise of a discretionary power. This is especially so where, as here, the power conferred on the Minister cannot be delegated, and the Minister himself has considerable expertise in matters of national security and the national interest.
>
> 36 As a consequence, I agree with the parties that the merits of the Minister's decision are to be reviewed against the standard of reasonableness. In reviewing a decision against the reasonableness standard, the reviewing court must consider the justification, transparency and intelligibility of the decision-making process. The court must also consider whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir*, at paragraph 47.

[11] Because I can identify no breach of the duty of fairness in this case, it is unnecessary to discuss the standard which applies to that issue.

[12] It was argued on behalf of Mr. Kablawi that the Minister's failure to provide him with copies of the open source references relied upon by the CBSA dealing with the SSNP's history of violence constituted a breach of the duty of fairness. I cannot agree with this submission.

[13] Mr. Kablawi was given the CBSA briefing note and he was well aware of its views on the SSNP. I also have no evidence that the attachments to the briefing note were not provided to Mr. Kablawi. His response to the briefing note sent to the Minister indicates that he did have those materials[1] and, in any event, he could have requested copies if there had been any such omission. Certainly he had sufficient information to permit meaningful participation in the decision-making process: see *In re Canadian Radio-Television Commission and in re London Cable TV Ltd.,* [1976] 2 F.C. 621 (C.A.) at pp. 624-25.

[14] Mr. Kablawi also maintained that the CBSA briefing note contains several reviewable evidentiary errors including unreasonable factual findings and the drawing of unreasonable inferences from the evidence. He also argues that the CBSA ignored material evidence thereby depriving the Minister of all of the facts necessary to base a decision.

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[1] His response states: "The Past should be history and the Present should be a gift. Please take into consideration the fact that my case is against the party and <u>all the appendix that is provided</u> about the party is not of any of my concern at this point."

[15] In particular, Mr. Kablawi takes issue with the CBSA's conclusion that his stated ignorance of the SSNP history of violence was improbable. In my view that was a reasonable inference to draw from the available evidence. Mr. Kablawi did not explicitly claim that the SSNP was wholly non-violent. His affidavit filed in this proceeding states only that "violence played no part in the official party mandate". It is also noteworthy that his claim to refugee protection was based largely on an alleged attempt on his life by a faction of the SSNP.

[16] The open source material relied upon by the CBSA includes references to a long history of violence connected to the SSNP during the period of Mr. Kablawi's party membership. Mr. Kablawi admitted in his PIF that he was a dedicated official member of the SSNP from 1972 (having been a so-called "active member" before that) and that he was laterally "in charge of recruiting new members and spreading the party's ideas". Nevertheless, when he responded to the CBSA briefing note, he described himself as a "media representative; meaning writing about the SSNP ideology and nothing more". Although Mr. Kablawi argues that he was not a leader within the SSNP, there is also nothing in the CBSA briefing note to suggest otherwise. Given Mr. Kablawi's admitted lengthy association with the SSNP and the extent of his dedication and support for its goals, there was ample evidentiary support for the CBSA's belief that Mr. Kablawi's claim of ignorance about its violent tendencies was not credible.

[17] Mr. Kablawi also says that the CBSA briefing note was unfairly selective and failed to draw attention to "significant humanitarian considerations" most notably involving his conduct since

coming to Canada and the worthy accomplishments of his family. His Brief to the Court summarizes this argument in the following passage:

> 54. The Applicant submits that he has demonstrated many of the items in the table under 13.7 and that the interviewing officer's notes recognized this. For example, there was evidence that he does not represent a danger to the public; he has never been involved in violence (or aware that the SSNP engaged in it as a party); his role in the SSNP exclusively involved media work; he did not benefit from membership in the organization (and in fact withdrew when he disagreed with their policies); he ceased to be a member in 1991; he has been credible and forthright; he has no contact with the SSNP, he has no criminal record and respects the rule of law; that he has always denounced the use of violence. There was also significant evidence of humanitarian and compassionate considerations, including the best interests of his five children, and the fact that he and his family members are all Convention Refugees. As a result, the Officer's failure to consider the totality of the evidence is a reviewable error since this Court has held in numerous cases that there cannot be selective reliance on evidence presented to the detriment of the person concerned, nor can relevant evidence be ignored.

[18] I do not agree that the CBSA briefing note was unfairly selective. Appropriate attention was given to the relevant humanitarian circumstances in the summary provided to the Minister. The Minister was also provided with copies of the immigration admissibility report, Mr. Kablawi's PIF and his response to the CBSA briefing note. These materials contain all of the relevant humanitarian considerations and there is no basis for me to conclude that the Minister did not read them. According to the decision in *Oberlander v. Canada (Attorney General),* 2004 FCA 213, [2005] 1 F.C.R. 3 (C.A.) at para. 58 it must generally be assumed that the decision-maker has examined all of the evidence unless the decision fails to refer to the competing factors which, in that case, were described as overwhelming. Here the CBSA briefing note contained a reasonable

summary of the humanitarian factors and described them as “significant”. In my view, the CBSA briefing note provides a balancing of the positive and negative considerations sufficient to address the “major points in issue” and it is reflective of a “consideration of the main relevant factors”: see *Via Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25, [2000] F.C.J. No. 1685 (C.A.) at para. 22.

[19] The only obvious factual error that I can identify in the decision under review is the reference to Mr. Kablawi giving up his association with the SSNP upon his arrival in Canada. The evidence is uncontradicted that Mr. Kablawi severed his ties with the SSNP in 1991 after the failed attempt on his life. I would add that the decision also notes both a 20-year and 23-year association with the SSNP. In my view nothing turns on this point. Mr. Kablawi’s party membership was longstanding and whether it was for 19, 20 or 23 years, it would not have displaced the stated concern that he “was a dedicated member of a violent organization”.

[20] Mr. Kablawi’s primary attack on the Minister’s decision is, as he puts it, that the determination of the “national interest” under ss. 34(2) of the Act was reduced to the single overriding consideration of his past membership in a violent organization. This, he says, fails to provide the kind of balancing of the relevant factors that was of concern to this Court in cases like *Naeem v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 123, [2007] F.C.J. No. 173, *Kanaan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 241, [2008] F.C.J. No. 301, *Esmaeili-Tarki v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 509, [2005] F.C.J. No. 633, *Soe v. Canada (The Minister of Public Safety and Emergency Preparedness),* 2007 FC

461, [2007] F.C.J. No. 620 and *Tameh*, above. In the *Soe* decision at paras. 32-36, Justice Michael Phelan framed the issue before him as follows:

> 32 More problematic is the conclusion that the Minister should not exercise his discretion because "Canada should not harbour individuals who have admitted to committing terrorist acts". Presumably this rationale is also applicable where the individual denied committing the terrorist act but the evidence confirms that he did. It is the commission of the terrorist act, not the admission of commission of the act, which grounds the refusal to exercise the Ministerial discretion.
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> 33 The Briefing Note goes on to observe that there are no compelling reasons to grant protection or permanent residence. The factors examined are largely those related to a close connection to Canadian society, including jobs and family in the country.
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> 34 The difficulty with this analysis is that it renders the exercise of discretion meaningless. It is tantamount to saying that an individual who commits an act described in s. 34(1) cannot secure Ministerial discretion because they committed the very act that confers jurisdiction on the Minister to exercise discretion under s. 34(2).
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> 35 Quite apart from this "Catch-22" conclusion, the Minister never adequately explains why the discretion should not be exercised because the individual committed an act prescribed by s. 34(1). An applicant is entitled to the real reasons for the refusal to exercise discretion other than that the person has committed an act described in s. 34(1).
>
> 36 Whether one describes this part of the Minister's decision as a failure to provide adequate reasons, a failure to address the proper legal issue or a fettering of discretion by limiting the scope of the analysis, the Minister's decision in this regard cannot be sustained.

To a similar effect are the observations by Justice Barry Strayer in *Kanaan*, above, at paras. 7-8:

> 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 ever admitted or 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.

In each of the above authorities there was a finding either that the Minister ignored or overlooked material evidence which favoured the applicants' interests or that the reasons given were inadequate to support the decision taken. I am not convinced that in this case the Minister's decision can be faulted for either of those reasons.

[21] A careful review of the CBSA briefing note including its appendices indicates that the Minister had all of the relevant evidence before him necessary to address the factors identified in the applicable Ministerial Guidelines (ENF 2/OP 18). It is also apparent that the Minister did place considerable if not overriding weight on the fact of Mr. Kablawi's past membership and involvement in the affairs of the SSNP. I do not agree, however, that the Minister's discretion was fettered by the application of a simple and single consideration of Mr. Kablawi's association with that group. If that had been shown, I would have had no hesitation in applying the above-noted authorities because the Minister is obliged to consider all of the relevant evidence. However, if the Minister decides that a person's past conduct is sufficiently troubling that it takes precedence over the competing humanitarian factors, it is not for the Court to interfere on judicial review.

[22] In my view, it is up to the Minister to assign the weight that should be attributed to the factors identified in the Ministerial Guidelines. He is entitled to give greater weight to one factor over others, and it was not unreasonable for him to emphasize the length of Mr. Kablawi's association and the level of his commitment to the purposes of the SSNP. It was also reasonable for the Minister to be sceptical about Mr. Kablawi's claimed ignorance of the SSNP's history of violent behaviour.

[23] In my view deference is owed to the exercise of the Minister's discretion under ss. 34(2) of the Act. The assessment of what is in the national interest involves the exercise of broad discretion: see *Miller*, above, at para. 73. It is necessarily a multi-faceted task importing considerations over which the Minister has particular expertise including national security, international relations, and

public confidence. I agree with Mr. Waldman that what is in the national interest is not determined solely by national security considerations. But it is not an error for the Minister to weigh national security considerations heavily in reaching a conclusion that an applicant has not met the evidentiary burden for relief.

[24] In my view, the circumstances of this case are not materially distinguishable from those arising in *Chogolzadeh v. Canada (The Minister of Public Safety and Emergency Preparedness),* 2008 FC 405, [2008] F.C.J. No. 544. In that case, Justice Michel Shore declined to interfere with the Minister's discretion for the following reasons, at paras. 37-45:

> 37 The national interest will also be shaped by the historical context at any given time and is not a static concept. Combating terrorism on the national and international front is a concern at the forefront of Canada's current national interest.
>
> 38 The Minister's decision not to admit Mr. Chogolzadeh to Canada, as a permanent resident, is reasonable and according to law. The Minister's reasons for that decision sets out an account of appropriate considerations. No issue requiring this Court's intervention is raised by the Minister's refusal.
>
> 39 Mr. Chogolzadeh is asking this Court to reweigh the evidence and to come to a conclusion that would be more favourable to him. All of the major points in issue had been properly addressed, in the Briefing Note, including Mr. Chogolzadeh's break from the MEK and his subsequent establishment in Canada. (Applicant's Record, Briefing Note, p. 10; *Miller*, above, para. 83; *VIA Rail Canada Inc. v. Canada (National Transportation Agency)* (2000), 193 D.L.R. (4th) 357 (F.C.A.), para. 22.)
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> 40 In *Miller*, above, Chief Justice Lutfy addressed this Court's inability to weigh factors that the Minister considered when deciding as he did:
>
>> [83] Although the applicant may disagree with the weight assigned in the memorandum to the factors

> she considered to be the more important, or with the extent to which certain points were developed, she has fallen short of demonstrating that the memorandum did not "address" the "major points in issue" (*VIA Rail Canada Inc. v. National Transportation Agency et al.* (2000), 193 D.L.R. (4th) 357, [2000] F.C.J. No. 1685, (F.C.A.) at paragraph 22).
>
> [84] As noted above at paragraph 41, the Supreme Court stated in *Suresh* at paragraph 37:
>
>> [...] *Baker* does not authorize courts reviewing decisions on the discretionary end of the spectrum to engage in a new weighing process, but draws on an established line of cases concerning the failure of ministerial delegates to consider and weigh implied limitations and/or patently relevant factors [...]
>
> In my view, the applicant has not demonstrated that the Minister failed to "consider and weigh" the "patently relevant factors" ...

41 Again, this is a balancing exercise, the Minister is called upon to assess and weigh the evidence presented by Mr. Chogolzadeh. It was open to the Minister to conclude that evidence favourable to an exemption did not outweigh the impact of Mr. Chogolzadeh's long-standing past membership in a terrorist organization. Mr. Chogolzadeh's break from the MEK and his family's establishment in Canada were before the Minister as was specified in the Reasons. The findings of fact in regard to Mr. Chogolzadeh's "membership" and activities in the MEK are reasonable and based on the record.

42 Mr. Chogolzadeh continually made reference to his alleged opposition to the MEK. Significantly though, his opposition was not to the MEK's terrorist tactics, but rather to the direction it took in supporting Saddam Hussein's campaign against Iraqi Kurds. Mr. Chogolzadeh's opposition only began after a decade of involvement in the MEK and awareness of its terrorist activities. These are significant aggravating factors. (Emphasis in original.)

> 43 The enumerated considerations, listed and alleged by Mr. Chogolzadeh, to have been ignored by the Minister, were before the Minister. Mr. Chogolzadeh's position is untenable and it does not give rise to any issue requiring this Court's intervention. Mr. Chogolzadeh took no issue with the facts as set out in the Briefing Note when it was circulated for his comment.
>
> 44 The Briefing Note clearly indicates that the Minister reviewed the material which Mr. Chogolzadeh had presented; it recognized that it was only after over a decade of support or membership in the MEK, that Mr. Chogolzadeh disassociated himself from it. It is also understood, thereby, that Mr. Chogolzadeh and his family have become established in Canada with no contact with the MEK since arriving in Canada. The Reasons also point out that the MEK is a listed terrorist organization and that Mr. Chogolzadeh had knowledge of the MEK's tactics while he was providing material support to the organization. The fact that Mr. Chogolzadeh gave strong allegiance to a terrorist organization, which used violence to advance its goals, outweighs any other national interest which could warrant a positive decision. (Applicant's Record, Briefing Note, p. 11.)
>
> 45 The Minister's rationale directs itself adequately to Mr. Chogolzadeh's application. Mr. Chogolzadeh insists that he is of no harm to the national interest and has never personally committed acts of violence; and, that he would benefit from acceptance of his application. There is, however, no requirement that relief be granted in these circumstances.

The views expressed above are equally applicable to the facts of this case. The exercise of the Minister's discretion in this situation does not lend itself to a particular result. Either possible outcome can be reasonably defended on the strength of the available evidence. The Minister's decision is transparent; it can be justified; and it is intelligible. It is also a decision arising in an area where the Minister and his advisors have a considerable degree of special knowledge involving sensitivity to the imperatives of public policy and to the nuances of the legislative scheme. In short,

this decision falls well within the range of possible, acceptable outcomes described by in *Dunsmuir v. New Brunswick*, above, and it is, therefore, deserving of respect.

[25] In the result, this application for judicial review is dismissed.

[26] The parties requested an opportunity to propose a certified question upon receipt of a decision in this case. In the result, I will allow the Applicant 10 days to propose a certified question. The Respondent shall then have 5 days to respond. Neither submission should exceed 5 pages in length.

JUDGMENT

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

THIS COURT FURTHER ORDERS that the Applicant shall have 10 days to propose a certified question. The Respondent shall then have 5 days to respond. Neither submission should exceed 5 pages in length.

" R. L. Barnes "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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