

Federal Court



Cour fédérale

Date: 20100907

Docket: IMM-4819-09

Citation: 2010 FC 878

Ottawa, Ontario, September 7, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

GHOLAM REZA AMELI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Gholam Reza Ameli is a citizen of Iran who arrived in Canada in October 2006. He has been in custody ever since.

[2] Immigration officials suspected that Mr. Ameli was inadmissible to Canada based on his serious criminal conduct and membership in a terrorist organization. In Iran, Mr. Ameli had been involved with a group called the Mahadaviyat and was convicted for his involvement in the group's

attempted assassination of the head of the Iranian judiciary. In 2007, the Immigration Division (ID) of the Immigration and Refugee Board found that Mr. Ameli was, indeed, inadmissible to Canada because of his membership in the Mahadaviyat.

[3] Each month, Mr. Ameli's detention is reviewed by the ID. His detention has been repeatedly found to be justified on the grounds that he represents a danger to the public and a flight risk. In this application for judicial review, Mr. Ameli challenges one such decision rendered on September 14, 2009. He argues that the ID treated him unfairly, applied the wrong legal test, unreasonably concluded that he represents a danger to the public, and failed to take account of the overall duration of his time in detention. He asks me to order another panel of the ID to reconsider his eligibility for release from custody.

[4] I agree with Mr. Ameli on one point – that the ID's conclusion regarding the danger he poses to the public was unreasonable – and will grant his application for judicial review on that ground.

[5] The issues are:

1. Is this application for judicial review moot?
2. Did the ID treat Mr. Ameli unfairly?
3. Was the ID's conclusion on dangerousness unreasonable?

[6] Given my conclusion that the ID's conclusion on dangerousness was unreasonable, I need not consider the final question raised by Mr. Ameli of whether the ID erred by failing to take proper account of the length of time Mr. Ameli has spent in custody. Nearly a year has passed since the ID's decision. The length of time Mr. Ameli has spent in custody will surely require reconsideration within his ongoing detention reviews.

II. Factual Background

[7] Mr. Ameli testified that, when he was 15, he joined a religious group that met weekly. At that time, the group had neither a name nor a leader. Later, in 1996 or 1997, he met a man named Ayatollah Malani and invited him to address the group. After that, Ayatollah Malani became the group's leader.

[8] Mr. Ameli was a writer, journalist and public speaker. He used his talents to promote the group's activities. He described himself as the commander of the central branch of the group.

[9] In 1998, Ayatollah Malani issued a fatwah against Mr. Ali Razini, head of the Iranian judiciary. Mr. Ameli said that he opposed the death order and tried to dissuade Ayatollah Malani from carrying it out. Nevertheless, early in 1999, someone attacked Mr. Razini's vehicle, leaving Mr. Razini paralyzed and killing his bodyguard. Mr. Ameli claims not to have been involved. After the attack, the group to which Mr. Ameli belonged was labelled the Mahadaviyat.

[10] In June 1999, Mr. Ameli left Iran for the United Arab Emirates. He claims that writers and journalists were being mistreated at the time in Iran. Still, after a few months, he returned. On arrival, he was arrested, detained, tortured, and compelled to provide a false confession about his involvement in the attempted assassination. On the strength of his coerced confession, Mr. Ameli was tried, convicted and sentenced to death. With the help of a court-appointed lawyer, his sentenced was reduced to life imprisonment on appeal.

[11] Mr. Ameli was permitted periodic absences from prison, and on one of those furloughs, he fled to Turkey but was returned to custody in Iran. On another, he managed to escape to Canada.

III. The ID's Decision

[12] The ID noted that Mr. Ameli had refused to sign the documents needed in order to obtain a travel document for him from the Embassy of Iran. Now, the Embassy has said, without reasons, that it will not issue a travel document for Mr. Ameli. For his part, Mr. Ameli has said that he is now prepared to sign the necessary papers. He wishes to return to Iran. Canadian government officials are negotiating with Iranian authorities to try to make removal arrangements for Mr. Ameli. The original estimate was that this might take 6-8 months. The ID noted that this was far less than the amount of time Mr. Ameli had already spent in custody and, had he cooperated earlier, he would have been released sooner. The ID felt that officials should be allowed more time to effect Mr. Ameli's removal from Canada. (As of the date of the hearing of this judicial review, the 6-8 month time period had already elapsed and no further progress had been made.)

[13] The ID then observed that other members had found Mr. Ameli to be a danger to the public based on his membership in the Mahadaviyat. The ID also noted that Mr. Ameli had been part of this group before the assassination attempt and remained involved in it thereafter. Mr. Ameli had testified that he was wary of leaving the group immediately after the attack because he thought he would be suspected of being a spy. But the ID found that this explanation was contradicted by another statement in which Mr. Ameli said that he could not avoid associating with members of the group since all of his friends were members. The ID concluded that Mr. Ameli's conscious decision to continue to associate with the group was enough, on its own, to support a finding that he was a danger to the public.

[14] The ID went on to discuss Mr. Ameli's criminal conviction in Iran. The panel member noted that Mr. Ameli's lawyer was able to have his sentence reduced on appeal. Further, Mr. Ameli was able to obtain a number of passes to leave prison premises. The ID suggested that Mr. Ameli therefore "had access to all of the steps that could be taken in his favour". His case was unlike those where prisoners were denied basic legal rights. Therefore, the ID was entitled to rely on Mr. Ameli's conviction to find him a danger to the public in Canada.

[15] The ID also commented on Mr. Ameli's credibility. It referred to the findings in the inadmissibility proceedings where the panel had found that Mr. Ameli adhered to the beliefs of the group to which he had belonged, except for its call to violence. However, the ID did not accept that this meant that Mr. Ameli was ideologically opposed to violence.

[16] The ID found further evidence of danger to the public in the form of a letter Mr. Ameli had written to a friend. In that letter, Mr. Ameli said he could return to Iran “opening fire on the tyrants”. When asked what he meant by that, Mr. Ameli explained that he would return to Iran and use his skills as a writer to criticize the government. His friend, the intended recipient of the letter, was also a writer. The ID concluded that this was a possible interpretation of Mr. Ameli’s intent but it was a self-serving one; another more violent interpretation was also possible.

[17] Based on these findings, the ID found Mr. Ameli to be a danger to the public.

[18] The ID went on to find that Mr. Ameli would be unlikely to appear for removal if he was released from custody. The ID noted again that the fact that Mr. Ameli’s removal was not imminent was due to his previous lack of cooperation. Accordingly, he could not use the overall duration of his detention to argue that he should now be released. Permitting him to do so would reward his past conduct. Further, the ID interpreted Mr. Ameli’s current willingness to facilitate his removal as self-serving given that it comes at a point when his removal seems unlikely. Finally, the ID noted that Mr. Ameli had escaped from prison in Iran. Based on these factors, the ID concluded that Mr. Ameli would be unlikely to appear for removal.

[19] The ID also considered whether there was an alternative to detention. The proposed bondspersons put forward by Mr. Ameli had previously been found to be unsuitable. The ID saw no reason to depart from that conclusion.

IV. Issues

(1) Is this application for judicial review moot?

[20] The Minister argues that this application for judicial review is moot because Mr. Ameli had a chance to raise concerns about the ID's analysis in subsequent detention reviews, in particular, at a hearing in December 2009.

[21] Because detention reviews take place at 30-day intervals, an application for judicial review in respect of any one of those reviews will always be heard after subsequent reviews have taken place. However, this does not mean that the application is necessarily moot. Only this Court can judicially review a decision of the ID. Individual members of the ID do not review each other's decisions. While there may well be cases where an alleged error in one detention review is cured in a subsequent one (which could make an application for judicial review to this Court moot), that is not the case here. Different issues arose in the subsequent detention review cited by the Minister, and different conclusions were reached.

(2) Did the ID treat Mr. Ameli unfairly?

[22] Mr. Ameli maintains that his conviction in Iran was based on a confession obtained by torture. He argues that the ID treated him unfairly when it denied him the opportunity to describe in detail the torture he had suffered while in detention in Iran. He had also asked the ID to close the

proceedings while he testified on this subject. He said he was worried about the repercussions for his family back in Iran if his claims of torture were publicly disclosed.

[23] In my view, the ID's decision did not render the proceedings unfair. Mr. Ameli was free to claim that his conviction in Iran was based on a tortured confession. The ID did not have to hear the particulars of the torture in order to decide whether it could rely on the conviction.

[24] Indeed, the ID went on to find that it could rely on Mr. Ameli's conviction to support a finding that he was danger to the public. Below, I consider whether that conclusion was unreasonable on the evidence.

(3) Was the ID's conclusion unreasonable?

[25] In my view, the ID's conclusion that Mr. Ameli represented a danger to the public was not reasonable in light of the evidence before it.

[26] It is important to view the ID's decision against the backdrop of the earlier inadmissibility decision rendered by Member Gratton. Member Gratton found Mr. Ameli to be inadmissible to Canada by virtue of his membership in the Mahadaviyat. It is important to note, however, that she also made the following findings:

- Mr. Ameli believed in the tenets of the group, except for its willingness to use violence;

- It was implausible that Mr. Ameli could be a member of the Martyrdom Lover's Brigade - which is made up of persons willing to serve as suicide bombers – given his view that religion should not be involved in politics or violence;
- Mr. Ameli was not inadmissible on grounds of serious criminality since there was no Canadian equivalent to the charge on which he was convicted in Iran (“violations of security and terror”);
- Similarly, there was no evidence that Mr. Ameli committed an offence in Iran by failing to return to prison to complete his sentence.

[27] In essence, therefore, Member Gratton concluded that, while Mr. Ameli was a member of the group responsible for the attack, he did not support its violent aims. The finding of inadmissibility was based solely on his membership in the group, not on any violent act or inclination on his part.

[28] The ID seemed to accept Member Gratton's conclusion that Mr. Ameli did not subscribe to the Mahadaviyat's violent tendencies. The main basis for its conclusion that Mr. Ameli represented a danger to the public was his conviction in Iran. The ID found that it could rely on the conviction because Mr. Ameli appeared to have benefited from the legal remedies available to him.

[29] However, those legal remedies amounted merely to a successful appeal of his sentence and some unescorted absences from prison. This evidence did not establish that Mr. Ameli's conviction

for being a party to the group's involvement in the attack was sound; nor did it contradict his claim that his conviction was secured by way of a coerced confession. While he had the assistance of a court-appointed lawyer, Mr. Ameli testified that the lawyer did not challenge the court's reliance on that confession. Mr. Ameli explained that the lawyer was obliged to do what the court told him to do.

[30] The ID also found that Mr. Ameli's decision to continue to associate with members of the Mahadaviyat after the attack supported a finding of dangerousness in itself. But in making that finding, the ID pointed to a supposed contradiction in Mr. Ameli's testimony. He said that, on the one hand, he was fearful of leaving the group immediately because it would arouse suspicions and, on the other hand, that it was natural for him to continue to associate with people involved in the group because all of his friends were members. First, I do not share the ID's conclusion that these statements are contradictory. Second, the ID accepted that Mr. Ameli did not share the group's interest in violence. It is not clear, therefore, why his brief association with other members who shared his views supports a finding that he now represents a danger to the public.

[31] The remaining evidence of a potential danger to the public consisted of statements uttered by Mr. Ameli, which the ID conceded were somewhat ambiguous.

V. Conclusion and Disposition

[32] Overall, the ID's conclusion that Mr. Ameli was a danger to the public was unreasonable, in the sense that it did not fall within the range of defensible outcomes based on the facts and the law.

[33] Mr. Ameli has not specifically challenged the ID's conclusion that he was unlikely to appear for removal. Ordinarily, that finding would provide an independent basis for detention. Here, however, the ID relied in part on the fact that Mr. Ameli had escaped from custody in Iran when it concluded that he would be unlikely to appear for removal from Canada. To my mind, the fact that a person may be inclined to escape torture and punishment for an unjust conviction does not necessarily support a conclusion that the person would flout a Canadian removal order. In other words, here again the ID felt it was safe to rely on Mr. Ameli's conviction and to draw an adverse inference from his subsequent conduct. Given my concerns about the Board's reliance on the conviction, I would remit both the issues of dangerousness and likelihood to appear for removal to a different panel of the ID. No question of general importance arises for certification.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is allowed. The matter is sent back to the Immigration Division for review by a different panel.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4819-09

STYLE OF CAUSE: AMELI v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: June 29, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: September 7, 2010

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