

Federal Court



Cour fédérale

**Date: 20120202**

**Docket: IMM-2591-11**

**Citation: 2012 FC 131**

**Ottawa, Ontario, February 2, 2012**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**BAHAR MALEKI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Ms. Bahar Maleki was found to be inadmissible to Canada by a panel of the Immigration and Refugee Board on the basis that she was a member of a group believed on reasonable grounds to have engaged in subversion by force against the government of Iran.

[2] Ms. Maleki argues that the Board made factual errors that rendered its conclusion unreasonable. She asks me to quash the Board's decision and order another panel of the Board to reconsider the question of her inadmissibility to Canada. However, I can find no grounds for overturning the Board's decision. Its conclusion was supported by the evidence. I must, therefore, dismiss this application for judicial review.

[3] The sole issue is whether the Board's decision was unreasonable.

## II. Factual Background

[4] Ms. Maleki sought refugee protection in Canada based on her fear of persecution in Iran due to her past political activities, and for having a child outside of marriage (an offence punishable by imprisonment or death by stoning). Ms. Maleki left Iran 10 years ago when she was 16 years old, and lived in Iraq and Turkey before arriving in Canada in 2010.

[5] On her arrival, Ms. Maleki was interviewed by a Canada Border Services Agency officer. She told the officer that she was "a member of an Iranian Communist Party, Komolei". Komolei, also referred to as Komala, is an organization that allegedly sought to subvert the government of Iran by force.

[6] A delegate of the Minister of Citizenship and Immigration prepared a report alleging that Ms. Maleki was inadmissible as a member of a group involved in subversion by force according to s

34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (statutory references are set out in an Annex).

[7] The matter was referred to the Board which, after a hearing, determined that there were reasonable grounds to believe that Ms. Maleki was a member of a group involved in subversion by force, and was therefore inadmissible.

### III. The Board's Decision

[8] The Board referred to case law in which “subversion” was defined as “accomplishing change by illicit means or for an improper purpose related to an organization” (*Suleyman v Canada (Minister of Citizenship and Immigration)*, 2008 FC 780, at para 63), and as “[a]ny act that is intended to contribute to the process of overthrowing a government” (*Shandi (Re)*, [1991] FCJ No 1319). The words “by force” include “coercion or compulsion by violent means, coercion or compulsion by threats to use violent means, and ... reasonably perceived potential for the use of coercion by violent means” (*Oremade v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077, at para 27).

[9] The Board then reviewed the history of Komala as described by Jane's Information Group [Jane's]:

- Komala was founded in Iranian Kurdistan in 1969. It was forced to operate underground except for a brief spell after the 1979 revolution. In 1979, it took up arms for the first time.

- In 1984, Komala merged with the Union of Communist Militants, forming the Communist Party of Iran (CPI), with Komala acting as the group's Kurdish Branch.
- Later, Komala split. One faction opposed Komala's participation in the CPI and splintered off from the main group, naming itself the Komala Party of Iranian Kurdistan (Komala-PIK) and adopting a socialist ideology.
- The remaining elements were then reconstituted as the Komala Communist Party of Iran (Komalah-CPI). Komalah-CPI retained the organization's original Marxist-Leninist ideology. Ms. Maleki belonged to this group.

[10] Jane's also explained that Komala had been involved in subversion by force. In 1979, Komala supported and participated in the overthrow of the Shah. Komala also refused to support the Islamic Republic and mounted a rebellion that was crushed. Indeed, when interviewed on her arrival in Canada in 2010, Ms. Maleki stated that Komala had been involved in violent activities against the government of Iran in the past, but changed its policy regarding violence at a later point.

[11] The Board was satisfied that there were reasonable grounds to believe that Komala, at least in its original incarnation, was involved in subversion by force. However, the Board then had to determine whether the group to which Ms. Maleki belonged (Komalah-CPI) was the same group as the original Komala. If so, the activities of the original Komala would be attributable to the Komalah-CPI (*Al Yamani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1457).

[12] The Board acknowledged that there was little evidence that Komalah-CPI engaged in subversion by force. Jane's reported that "Komalah still retains a military capacity and carries out sporadic cross-border attacks", which the Board assumed referred to both Komalah-CPI and Komala-PIK. It went on to say that Komalah-CPI is an armed group, but only uses violence to

defend itself against the Iranian government. This corroborated Ms. Maleki's contention that Komalah-CPI possessed weapons purely for self-defence.

[13] However, there was also some evidence that Komalah-CPI was the same group as the original Komala, which clearly did engage in subversion by force. Komalah-CPI had the same leader as Komala, and its goals and ideology remained the same. The only significant change was the apparent retreat from the use of violence. The Board found that Komala and Komalah-CPI were the same group. There was no evidence, however, that Ms. Maleki engaged in acts of violence, as her membership in the group began when it was moving away from aggression to achieve its goals.

#### IV. Was the Board's Decision Unreasonable?

[14] Ms. Maleki argues that the Board's decision was unreasonable because it made factual errors. Ms. Maleki contends that the Board conflated Komalah-CPI with the pre-1984 Komala. There was evidence in the record contradicting the Board's conclusion on this point, which the Board failed to cite. In particular, there was evidence of a transitional Komala group that existed between 1984 and the late 1980s when Komalah-CPI and Komala-PKI were formed. There was no evidence that the transitional group was engaged in any subversive activity.

[15] The only evidence contradicting the Board's finding was a statement in *A Modern History of the Kurds*, by D. McDowall, stating that "[f]ormally Komala ceased to exist" after its merger with the Communist Party of Iran in 1984. However, this passage was followed by another statement suggesting that Komala did continue to exist:

When it finally resumed its Kurdish identity in 1991, Komala was weaker numerically than those smaller groups with which it had united in 1982.

[16] Ms. Maleki submits that the Board failed to distinguish Komalah-CPI from the pre-1984 Komala. The Board assumed that Komalah-CPI and the transitional organization were one and the same, but only mentioned acts of violence that were attributable to the pre-1984 group.

[17] In my view, it is apparent from its reasons that the Board used the term “pre-split organization” to include both the pre-1984 Komala and the transitional organization. The Board traced the organization’s history dating back to its founding in 1969. It recognized that Komala had merged with the Communist Party in 1984 and relied on evidence from Jane’s suggesting that Komala was one continuous organization, including after the split in the late 1980s or early 1990s. I cannot conclude that its analysis was unreasonable.

[18] Ms. Maleki also contends that the Board erred by finding that Komala had been involved in subversion by force. She points out that the Board did not refer to any specific acts that could be described as subversive.

[19] However, reference to specific acts of subversion is not necessary so long as the Board applies the correct definition, as it did here. Furthermore, the evidence supported the Board’s conclusion. It indicated that Komala had taken up arms against both the Shah and the Islamic Republic. Ms. Maleki herself stated that Komala “would fight against the government of Iran by using weapons”.

[20] Accordingly, the Board relied on evidence that provided reasonable grounds to believe that Komala had engaged in subversion by force, and that Ms. Maleki was a member. Its determination was therefore reasonable.

[21] This Court has recognized, in similar circumstances, that this result can be harsh (*Al Yamani*, above, at para 13). However, an exception to a finding of inadmissibility is available under s 34(2) of IRPA.

#### V. Conclusion and Disposition

[22] The Board's decision was based on the preponderance of evidence before it on the nature of Komala through its various incarnations. Therefore, I cannot conclude that the decision was unreasonable based on the facts and the law. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge



## Annex

*Immigration and Refugee Protection Act, SC 2001, c 27*

*Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27*

**Security****Sécurité**

**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 :

...

[...]

(b) engaging in or instigating the subversion by force of any government;

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

...

[...]

(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).

**Exception****Exception**

(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.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2591-11

**STYLE OF CAUSE:** BAHAR MALEKI  
v  
MCI

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** November 16, 2011

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

**DATED:** February 2, 2012

**APPEARANCES:**

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