

Federal Court



Cour fédérale

Date: 20120419

Docket: IMM-2130-11

Citation: 2012 FC 460

Toronto, Ontario, April 19, 2012

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

AL-GHAZALI FOUAD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Fouad Al-Ghazali seeks judicial review of the decision of a visa officer finding him to be inadmissible to Canada because there were reasonable grounds to believe that he was a member of the *al-Jabha al-Wataniya Lilmu'ardha* (or "MOG"), an organization that engaged in the subversion of a government by force.

[2] Mr. Al-Ghazali asserts that he was treated unfairly in the inadmissibility process, as the visa officer precluded him from adducing evidence to show that the MOG was not an

organization that had engaged in the subversion of a government by force. He further submits that the visa officer's membership finding was unreasonable.

[3] For the reasons that follow, I am not persuaded that Mr. Al-Ghazali was treated unfairly or that the visa officer's inadmissibility finding was unreasonable. As a result, the application for judicial review will be dismissed.

Background

[4] Mr. Al-Ghazali is a citizen of Yemen. He left Yemen for Switzerland in 1999. On his arrival in Switzerland he made an application for refugee protection. The basis for his refugee claim was his membership in the MOG. Mr. Al-Ghazali's refugee claim was dismissed on credibility grounds.

[5] Mr. Al-Ghazali married a Canadian citizen in 2003, and his wife subsequently submitted an application to sponsor him for permanent residence as a member of the family class.

[6] In an interview with Canadian immigration authorities in 2005, Mr. Al-Ghazali denied having ever been a member of MOG in Yemen. He claimed that he had left Yemen for family reasons, and that he had fabricated his story of MOG involvement to support his refugee claim in Switzerland.

[7] Mr. Al-Ghazali was interviewed again in 2010, this time by the visa officer. In the course of this interview, the officer asked him to resolve the discrepancies in his story and to provide

evidence to corroborate his claim not to have been a member of the MOG. Mr. Al-Ghazali declined the officer's offer of additional time to adduce such evidence, submitting that the only evidence available to him was the rejection of his Swiss refugee claim on credibility grounds.

The Visa Officer's Decision

[8] The visa officer found Mr. Al-Ghazali to be inadmissible to Canada under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and refused his application for permanent residence.

[9] The officer found that there were reasonable grounds to believe that Mr. Al-Ghazali was a member of the MOG, an organization that had engaged in the subversion of the Yemeni government by force. The officer was satisfied that Mr. Al-Ghazali associated with members of the MOG over a lengthy period of time, and that he was involved in writing slogans, distributing flyers and instigating people against the government of Yemen on behalf of the MOG.

[10] The visa officer based his finding on the sworn declarations that Mr. Al-Ghazali had provided to the Swiss government in connection with his refugee claim. The officer was of the view that these statements created a presumption that Mr. Al-Ghazali was a member of the MOG, and that he now bore the burden of rebutting that presumption which he had failed to do simply by recanting his earlier claims.

[11] Nor was the visa officer persuaded that the rejection of Mr. Al-Ghazali's refugee claim by the Swiss authorities was enough to establish that he had fabricated his claim of MOG

involvement. The officer observed that the two cases involved different standards of proof and that the evidence before him was sufficient to satisfy the lower “reasonable grounds to believe” threshold.

Was Mr. Al-Ghazali Treated Unfairly by the Visa Officer?

[12] Mr. Al-Ghazali submits that the visa officer treated him unfairly by failing to afford him an opportunity to adduce evidence that the MOG was not an organization that had engaged in the subversion of the Yemeni government by force.

[13] Where an issue of procedural fairness arises, the task for the Court is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 43.

[14] The content of the duty of procedural fairness owed by the visa officer in this case was at the lower end of the spectrum. The Federal Court of Appeal has held that inadmissibility determinations give rise to a lesser duty of fairness where they involve the refusal of a visa to a person outside Canada. The interests at stake in such cases are less serious, and the visa applicant always bears the burden of proving admissibility: *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297, [2000] F.C.J. No. 2043 (QL) at para. 54 (F.C.A.); *Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, [2001] F.C.J. No. 1699 (QL) at para. 30; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 S.C.R. 539 at para. 46.

[15] In this case, the visa officer's concerns arose from the wording of the statute. Mr. Al-Ghazali was thus on notice of the determinative issues by virtue of the wording of paragraph 34(1)(f) of *IRPA*.

[16] There is no obligation on officers to give notice of any concerns arising directly from the provisions of the Act or its Regulations: *Patel v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55, 288 N.R. 48 at para. 10; *Pan v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 838, 90 Imm. L.R. (3d) 309 at para. 26; *Johnson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 2, 163 A.C.W.S. (3d) 439 at para. 34; *Ayyalasangmayajula v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 248, 155 A.C.W.S. (3d) 941 at para. 18.

[17] Indeed, the evidentiary options open to Mr. Al-Ghazali to establish his admissibility to Canada were obvious from a reading of subsection 34(1) of *Immigration and Refugee Protection Act*, and the officer was not required to help Mr. Al-Ghazali make his case for him.

[18] Even if the visa officer should have expressly advised Mr. Al-Ghazali that it was open to him to adduce evidence with respect to the nature of the MOG as an organization, Mr. Al-Ghazali has failed to persuade me that he was prejudiced in any way by the failure of the officer to do so.

[19] Mr. Al-Ghazali has produced some country condition information which refers to the MOG in support of his application for judicial review. I have reviewed this information

carefully. There is nothing in that documentation that contradicts or otherwise calls into question the officer's finding that the MOG was engaged in the subversion of the Yemeni government by force. Indeed, much of the information relied upon by Mr. Al-Ghazali actually reinforces the visa officer's finding in this regard.

Was the Visa Officer's Finding that Mr. Al-Ghazali was a Member of the MOG Reasonable?

[20] Mr. Al-Ghazali also argues that the visa officer's membership finding was unreasonable as it was made in the absence of a compelling or credible evidentiary base as required by *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100 at para. 114.

[21] According to Mr. Al-Ghazali, the only evidence supporting the officer's membership finding was his sworn statements given to the Swiss authorities, which he has since recanted. Mr. Al-Ghazali argues that his contention that he lied about his MOG involvement is corroborated by the Swiss authorities' finding that his refugee claim was not credible.

[22] I do not accept this argument. It was reasonably open to the visa officer to find that there were reasonable grounds to believe that Mr. Al-Ghazali had been a member of the MOG based upon his sworn declaration to that effect in the context of his Swiss refugee claim.

[23] Even though the Swiss authorities found that Mr. Al-Ghazali's refugee claim was not credible, it does not follow that the visa officer had to accept Mr. Al-Ghazali's new and alternative account of events: *Shkabari v. Canada (Minister of Citizenship and Immigration)*,

2006 FC 856, 150 A.C.W.S. (3d) 201 at paras. 19, 28-29; *Cheung v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 710, 235 F.T.R. 150 at paras. 3-4, 7, 20; *Dust Parast v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 660, 153 A.C.W.S. (3d) 1210 at paras. 13-14.

[24] Moreover, it is apparent from a review of the Swiss refugee decision that a different standard of proof was applied to Mr. Al-Ghazali's refugee claim than is applicable to an inadmissibility finding under subsection 34(1) of *IRPA*. Mr. Al-Ghazali was required to establish his Swiss refugee claim on a balance of probabilities, whereas the visa officer only needed to have reasonable grounds to believe that Mr. Al-Ghazali was a member of the MOG.

[25] The Supreme Court of Canada described the "reasonable grounds to believe" evidentiary standard in *Mugesera* as requiring "something more than mere suspicion, but *less than the standard applicable in civil matters of proof on the balance of probabilities*". [my emphasis] The Court went on to hold that reasonable grounds will exist "where there is an objective basis for the belief which is based on compelling and credible information": at para. 114.

[26] Mr. Al-Ghazali has told two fundamentally different stories regarding his involvement with the MOG, changing his story only when it was in his interest to do so. It is clear that at least one of his stories is not true. The officer concluded that the other story was true.

[27] I recognize that it may be difficult for Mr. Al-Ghazali to understand how he can be found to have been lying about being a member of the MOG by the Swiss authorities, and then be found to have been lying about not being a member of the MOG by the visa officer.

[28] However, as the Federal Court of Appeal observed in *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FCA 103, 415 N.R. 121 at para. 73, this absurdity “is more apparent than real. Mr. Al-Ghazali claimed to be a member of the MOG when it suited his purposes and then denied being a member of the organization when it suited a different purpose.

[29] The visa officer interviewed Mr. Al-Ghazali in person, and was thus in a position to assess his credibility and decide which of his stories was to be believed. The officer concluded that the information provided by Mr. Al-Ghazali under oath to the Swiss authorities was credible, and that his subsequent recantation was not. That was an assessment that the visa officer was best positioned to make, and Mr. Al-Ghazali has not persuaded me that the officer’s credibility assessment was unreasonable.

[30] Having determined that Mr. Al-Ghazali’s statements to the Swiss authorities were credible, the visa officer clearly had reasonable grounds to believe that Mr. Al-Ghazali was a member of the MOG.

Conclusion

[31] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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