

Federal Court



Cour fédérale

**Date: 20131212**

**Docket: IMM-7916-13**

**Citation: 2013 FC 1251**

**Ottawa, Ontario, December 12, 2013**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Applicant**

**and**

**MOHAMMAD NASEEM EJAZ**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] A release of an individual who is suspected of presenting a danger to the public is a risk that the Court, under its obligation to interpret the legislation, cannot take. Parliament has established key principles in section 3.(1)(h) and 4.(2) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA] that the Court has an obligation to interpret in its application and it is not for a Court to reformulate the legislation:

3. (1) The objectives of this Act with respect to immigration are

3. (1) En matière d'immigration, la présente loi a pour objet :

...	[...]
( <i>h</i> ) to protect public health and safety and to maintain the security of Canadian society;	<i>h</i> ) de protéger la santé et la sécurité publiques et de garantir la sécurité de la société canadienne;
...	[...]
4.	4.
...	[...]
Minister of Public Safety and Emergency Preparedness	Compétence du ministre de la Sécurité publique et de la Protection civile
(2) The Minister of Public Safety and Emergency Preparedness is responsible for the administration of this Act as it relates to	(2) Le ministre de la Sécurité publique et de la Protection civile est chargé de l'application de la présente loi relativement :
( <i>a</i> ) examinations at ports of entry;	<i>a</i> ) au contrôle des personnes aux points d'entrée;
( <i>b</i> ) the enforcement of this Act, including arrest, detention and removal;	<i>b</i> ) aux mesures d'exécution de la présente loi, notamment en matière d'arrestation, de détention et de renvoi;
( <i>c</i> ) the establishment of policies respecting the enforcement of this Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; or	<i>c</i> ) à l'établissement des orientations en matière d'exécution de la présente loi et d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou pour activités de criminalité organisée;
( <i>d</i> ) declarations referred to in section 42.1.	<i>d</i> ) aux déclarations visées à l'article 42.1.

[2] The Judgment is in response to a motion for an Order to stay the release of the Respondent from detention, until the determination of the Applicant's underlying application for leave and for judicial review of a decision by a member of the Immigration and Refugee Board [IRB], dated December 11, 2013, by which the member ordered the release of the Respondent under certain terms and conditions.

[3] It has come to the attention of the Court that the most recent decision in regard to the detention, subsequent to a first decision rendered approximately one week ago, is in complete contradiction to that first decision. It appears that the member in the most recent decision rendered such without knowledge of the Respondent's background.

[4] The Court recognizes that the Respondent has been in Canada less than two weeks; upon the Respondent's arrival, he stated that his passport was stolen, a check of his belongings demonstrated that he possessed a membership card for the Jammu Kashmir Liberation Front organization [JKLF]. The JKLF, as it is recognized, is an organization known to have been involved in terrorist activities with violent outcomes against the Pakistani government in the 1990s until the year 2000.

[5] Upon verification of the membership card on his person, the Respondent had admitted to having been a Chapter President of the organization from 1995 until 2000. This period of time coincides with the militant insurgency in Pakistan.

[6] In subsequent questioning, the Respondent denied his previous statements in respect to his leadership role and involvement in the said terrorist organization.

[7] Thus, at first, the Respondent stated that he belonged to a cultural or social group; then he specified that he did play a role and was President of a Chapter of the organization. Subsequently, he denied all involvement therein. All of which led to contradictory answers, although a membership card of the organization on his person was found in that regard.

[8] The Respondent claimed refugee status at the airport subsequent to which the Minister took the necessary steps to begin an investigation. It appears that, due to the facts as specified, a reasonable suspicion of the Respondent's inadmissibility existed on the grounds of security as per section 58.(1)(c) of the *IRPA*, specifically, that he was suspected of being a member of the JKLF; and that he was not credible in his denial, subsequent to having specified his role in the organization.

[9] The Canada Border Services Agency has requested a five country protocol for security checks in Pakistan and the U.K., due to JKLF presence.

[10] As it is recognized that the Respondent has been in detention for less than two weeks, this is a matter where inadmissibility on grounds of security is at issue with a suspicion that has initiated an investigation, all of which appears reasonable under the circumstances of the evidence found on the person of the Respondent as well as his own statements to immigration officials.

[11] Recognizing that a member of the IRB is under obligation to provide clear and compelling reasons to demonstrate a change of opinion on a matter of detention; that has not been done in the most recent decision of the IRB in regard to the Respondent's detention. As Justice Marshall Rothstein J.A. (as he then was) has said in *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2004 FCA 4:

[12] The best way for the Member to provide clear and compelling reasons would be to expressly explain what has given rise to the changed opinion, i.e. explaining what the former decision stated and why the current Member disagrees.

[13] However, even if the Member does not explicitly state why he or she has come to a different conclusion than the previous Member, his or her reasons for doing so may be implicit in the subsequent decision. What would be unacceptable would be a cursory decision which does not advert to the prior reasons for detention in any meaningful way.

[12] Furthermore, if the Respondent is released, the application for leave and for judicial review becomes moot and the Applicant will be unable to present arguments in regard to the legality of the member's release order. In addition, a release of an individual who is suspected of presenting a danger to the public is a risk that the Court, under its obligation to interpret the legislation, cannot take. Parliament has established key principles in section 3.(1)(h) and 4.(2) that the Court has an obligation to interpret in its application and it is not for a Court to reformulate the legislation.

[13] Recognizing that the Applicant has satisfied the three conjunctive criteria of the *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) decision test, therefore, the motion of the Applicant is granted and the stay of detention is to remain in effect until the Respondent's next statutory required detention review or until this Court has had an opportunity to complete all that is necessary in respect of the outcome of the Applicant's application for leave and for judicial review.

**ORDER**

**THIS COURT ORDERS that** the motion of the Applicant be granted and the stay of detention is to remain in effect until the Respondent's next statutory required detention review or until this Court has had an opportunity to complete all that is necessary in respect of the outcome of the Applicant's application for leave and for judicial review.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** IMM-7916-13

**STYLE OF CAUSE:** THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS v MOHAMMAD  
NASEEM EJAZ

**MOTION HELD VIA TELECONFERENCE ON DECEMBER 12, 2013 FROM  
OTTAWA, ONTARIO, CALGARY AND EDMONTON, ALBERTA**

**REASONS FOR ORDER AND  
ORDER:** SHORE J.

**DATED:** DECEMBER 12, 2013

**APPEARANCES:**

Brad Hardstaff FOR THE APPLICANT

Birjinder Mangat FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE APPLICANT  
Deputy Attorney General of Canada  
Edmonton, Alberta

Mangat Law Office FOR THE RESPONDENT  
Barrister and Solicitor  
Ottawa, Ontario