

Federal Court



Cour fédérale

Date: 20150916

Docket: IMM-1484-15

Citation: 2015 FC 1085

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 16, 2015

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

ROGHAYEH AZIZI MIRMAHALEH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Roghayeh Azizi Mirmahaleh is an Iranian citizen, born in 1956. She is challenging a decision of the Immigration and Refugee Board of Canada finding that she was inadmissible to

Canada because of her membership in a group that there are reasonable grounds to believe engaged in acts of terrorism.

[1] When she lived in Iran, Ms. Mirmahaleh was a teacher in a village. In the late 1970s, she was involved in an organization called the Mujahedin-e-Khalq [MEK]. She read and distributed MEK publications. She taught the children in her classes, as well as the women in her region, about their rights. She lost her job because of these activities, and she and her husband were forced to live a secret life, constantly changing addresses for three years. In 1984, she was arrested and imprisoned for several years, as was her husband, who was also an activist. In 1988, the Iranian regime executed her husband. Later, their son was harassed because of his parents' political activities.

[2] Ms. Mirmahaleh came to Canada in October 2012, on a one-year temporary visitor's visa. After arriving in Canada, she took part in meetings and protests, particularly for a group of Iranian political refugees killed by the Iraqi regime.

[3] In November 2013, she filed a claim for refugee protection in Canada on the basis of the persecution to which she says she was subjected by the Iranian authorities because of her political activities in support of the MEK. The Minister intervened in this case and filed an inadmissibility report. On March 12, 2015, a member of the IRB's Immigration Section rejected Ms. Mirmahaleh's refugee protection claim. He determined that she is inadmissible to Canada for being a member of a terrorist group, under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[4] Ms. Mirmahaleh is now seeking judicial review of the member's decision rejecting her refugee protection claim. She argues that the decision is unreasonable and that the tribunal erred in characterizing the MEK as a terrorist group and in concluding that she was a member of that group. Ms. Mirmahaleh also states that the member, in his decision, shifted the burden of proof from the Minister to her.

[5] The issues are the following:

- Did the tribunal err in concluding that the MEK is a terrorist organization?
- Did the tribunal err in its assessment of Ms. Mirmahaleh's membership in the MEK?
- Did the tribunal err in law in shifting the burden of proof in its analysis?

[6] For the reasons that follow, Ms. Mirmahaleh's application for judicial review must fail, as the Court finds that the tribunal's decision is reasonable and falls within the range of possible, acceptable outcomes in the circumstances. Its findings on both the terrorist nature of the MEK and Ms. Mirmahaleh's membership in the group are supported by the evidence in the record. Moreover, when read as a whole, the decision in no way reflects a shift of the burden of proof to Ms. Mirmahaleh.

II. Background

A. *Decision*

[7] In his decision, the member began by describing the test that he must apply under paragraph 34(1)(f) of the IRPA to determine whether a person should be declared inadmissible for security reasons. This test has two branches: it must be determined whether there are reasonable grounds to believe that Ms. Mirmahaleh is a member of the organization in question, and whether the organization committed, is committing or will commit terrorist acts.

[8] In his analysis, the member responded to the six grounds raised by Ms. Mirmahaleh and her counsel to attack the Minister's conclusion regarding Ms. Mirmahaleh's inadmissibility.

[9] First, the member found that merely being a member of a terrorist organization is sufficient to meet the membership requirements under paragraph 34(1)(f). More specifically, he refused to apply the complicity test from *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*] to the interpretation of "member" and to inadmissibility under paragraph 34(1)(f). He relied on recent case law establishing that criteria for finding membership in a terrorist group are relatively easy to meet (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 [*Kanagendren*] at para 22); *Haqi v Canada (Citizenship and Immigration)*, 2014 FC 1167 [*Haqi*] at paras 36-37).

[10] Relying on the definition of "member" established in *Jalloh v. Canada (Citizenship and Immigration)*, 2014 FC 317, the member found that Ms. Mirmahaleh is a member of the MEK.

She did indeed carry out acts in furtherance of the group's goals, such as organizing information sessions with her students and with women in the region, distributing propaganda and participating in political activities. Furthermore, Ms. Mirmahaleh's ideals were consistent with the group's objectives. The member also noted that Ms. Mirmahaleh continued to support the MEK's cause after her arrival in Canada at the beginning of this decade.

[11] The member then determined that the MEK is a terrorist organization on the basis of the documentary evidence. This evidence ties the MEK to, among other things, indiscriminate killings, bomb or mortar attacks causing civilian casualties, suicide attacks and hostage takings.

[12] The member rejected Ms. Mirmahaleh's assertion that she is against violence. He found this statement not to be credible because nothing in her "Basis of Crime", her interview with the immigration officer or her testimony before the tribunal indicated that Ms. Mirmahaleh had protested or objected to the MEK's violent methods. The member referred to, among other things, Ms. Mirmahaleh's claim that she condemned the MEK's use of violence to further its political goals. From this condemnation of the use of violence, the member drew a different conclusion, finding that Ms. Mirmahaleh therefore had at least some knowledge of the MEK's violent actions.

[13] Finally, the member dismissed Ms. Mirmahaleh's argument that the MEK is no longer on the lists of terrorist organizations kept by Canada and several other countries. He stated that temporal considerations do not come into play under paragraph 34(1)(f) and that, in any event, Ms. Mirmahaleh shared the MEK's objectives when she was actively supporting them.

B. Standard of review

[14] The standard of review applicable to the test for determining inadmissibility for security reasons is reasonableness. Neither party contests this. Questions concerning the terrorist nature of an organization and an individual's membership in a terrorist organization are questions of fact or questions of mixed fact and law that must be considered in accordance with the reasonableness standard (*Farkohondehfall v Canada (Citizenship and Immigration)*, 2010 FC 471 [*Farkohondehfall*] at paras 25-26; *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 [*Poshteh*] at paras 21-24).

[15] As for the standard of proof to be met to establish "reasonable grounds to believe", it requires more than a flimsy suspicion, but less than the civil test of a "balance of probabilities". It is a *bona fide* belief in a serious possibility based on credible evidence, which is also assessed in light of the reasonableness standard (*Jalil v Canada (Citizenship and Immigration)*, 2006 FC 246 at para 27).

[16] Reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process, and it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland Nurses*]). In this context, the Court must defer to the tribunal's decision and not substitute its own reasons. However, the Court may, if it finds it necessary, look to the record for the purpose of assessing the reasonableness of the outcome (*Newfoundland Nurses* at para 15).

III. Analysis

A. *Is the MEK a terrorist organization?*

[17] Ms. Mirmahaleh submits that the tribunal erred in finding that the MEK is a terrorist organization. She argues that the tribunal ignored the recent decision of the Canadian government to remove the MEK from the list of terrorist organizations. She also points to the evidence to the effect that several foreign governments no longer consider it to be a terrorist group. Ms. Mirmahaleh adds that this supports her claims that the Iranian government was spreading disinformation about the MEK during the period she took part in its activities. For all these reasons, she asserts that the member's conclusion is unreasonable.

[18] The Court cannot agree with these arguments. I find, on the contrary, that in light of the evidence available to the member, his decision is within the range of possible, reasonable outcomes in respect of the facts and law. Ms. Mirmahaleh is simply asking the Court to reassess

the evidence and substitute its own reading of it for that of the member. This is not the Court's role on judicial review.

[19] In his decision, the member reviewed the abundant documentary evidence regarding the terrorist acts committed by the MEK. He mentioned bombings, murders of civilians between 1973 and 1976, the hostage-taking at the United States embassy in Teheran in 1979, suicide attacks, a bombing that killed 70 people and simultaneous attacks against Iranian delegations in ten different countries, including at the United Nations in New York. These acts are consistent with the definition of terrorism laid down in *Suresh v Canada (Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*], cited by the member in his analysis: a terrorist act is an “act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act” (at para 98).

[20] The fact that the MEK is no longer classified as a terrorist organization is not relevant in the circumstances, since paragraph 34(1)(f) does not require a temporal connection between membership and the acts of terrorism (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 [*Najafi*] at para 101; *Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2010 FCA 274). Furthermore, the MEK was removed from the list of terrorist organizations because it no longer resorts to violence, not because the evidence on which the previous classifications were based was reassessed. In other words, its removal from the list does not erase the MEK's terrorist past.

[21] Finally, I note that the courts have previously identified the MEK as a terrorist organization (*Poshteh* at para 5; *Motehaver v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 141 at para 3). It is therefore clear that the member's finding in this regard is not unreasonable.

[22] The member founded his analysis on reasonable grounds to believe that the MEK was a terrorist organization and performed an objective assessment of the evidence. It is true that the "reasonable grounds to believe" standard requires something more than a mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114). Ms. Mirmahaleh submits that the member ignored several items of evidence tendered by her, particularly newspaper articles commenting on the dropping of terrorism charges against the MEK in France, excerpts from Canadian regulations removing the MEK from the list of terrorist organizations, and American, European and British decisions to take the MEK off their lists of terrorist organizations. She claims that the tribunal did not assess and consider all the evidence.

[23] I disagree.

[24] A tribunal is presumed to have considered all the evidence and is not required to refer to each constituent element of that evidence (*Newfoundland Nurses* at para 16). Failure to refer to every piece of evidence does not mean that not all the evidence was considered (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 16). It is only when a tribunal is silent on evidence clearly pointing to the opposite conclusion that the

Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact (at para 17).

[25] The member's decision, however, mentions several documents to which the tribunal ascribed more significance than Ms. Mirmahaleh would have liked. He relied on evidence from an article by the National Defense Research Institute and from reports by Jane's World Insurgency and Terrorism, the US Department of Justice and other government sources. These documents describe indiscriminate killings, bomb and mortar attacks that caused civilian casualties, suicide attacks and hostage-takings. There can be no doubt that, in light of this evidence, the tribunal's decision falls within the range of possible, acceptable outcomes available to the member.

B. *Did the tribunal err in its assessment of Ms. Miramaleh's membership in the MEK?*

[26] With regard to her membership in the MEK, Ms. Mirmahaleh submits that in Iran, she supported the MEK for a very short period only, in a limited capacity in which she was not aware of the organization's violent activities. She adds that in Canada, she limited her participation to protests and did not become any more deeply involved in the MEK's activities than that.

[27] Ms. Mirmahaleh argues that in Iran, she knew nothing of the MEK's terrorist activities and was, rather, attracted by the message of freedom of the press, equality for men and women and the right to free elections that the organization espoused. Her work involved holding discussions with her students and the women in her village and distributing the MEK's

documentation. According to her, the MEK's publications did not mention resorting to violence to achieve its goals. She submits that it was up to the Minister to show that the MEK's publications advocated violence and terrorist activities, which he did not do. Ms. Mirmahaleh states that she was unaware of the terrorist activities attributed to the MEK because she lived in a small, remote village which the news did not reach at that time, and that she did not have access to reliable sources regarding the organization's true activities. Her activities were therefore insufficient for the member to reasonably conclude that she was a member of the MEK.

[28] I cannot agree with Ms. Mirmahaleh's position. Once again, I cannot conclude that the tribunal's assessment of the evidence could be characterized as unreasonable in the circumstances.

[29] The term "member" of an organization in paragraph 34(1)(f) of the IRPA must be given an unrestricted and broad interpretation (*Poshteh* at para 27). A person who distributes propaganda leaflets meets this membership test even if he or she does this only once or twice a month (*Poshteh* at para 5). Moreover, this test does not require any complicity or knowing participation in an act of terrorism (*Kanapathy v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 459 [*Kanapathy*] at para 35). In *Kanapathy*, a journalist working for a newspaper that supported and was controlled by a terrorist organization was considered to belong to that organization. The Court also stressed the importance of media propaganda to an organization's activities and reaffirmed the very broad scope of the concept of membership under paragraph 34(1)(f) of the IRPA (*Kanapathy* at para 36).

[30] The member found Ms. Mirmahaleh's claim that she was unaware of the MEK's use of violence to not be credible. In light of the evidence in the record, I am of the opinion that such a finding is not unreasonable. I note that Ms. Mirmahaleh was one of the most educated women in her village and had been attracted to the MEK after studying its publications. Furthermore, she was assigned to publicizing and disseminating the MEK's activities and propaganda in her village. This was not a trivial or insignificant role. In such circumstances, to find that it was improbable that Ms. Mirmahaleh was unaware of the MEK's violence clearly falls within the range of acceptable, possible outcomes that were open to the member. Indeed, it is difficult to imagine how Ms. Mirmahaleh could have had no knowledge of the generalized violence that was gripping Iran at the time while being trusted enough to be the MEK's standard bearer in her village.

[31] Moreover, Ms. Mirmahaleh's claim that she supported the MEK for a very limited period (from 1979 to 1982) is of little assistance to her. First, her activities lasted long enough to cause her to lose her job and be imprisoned. Second, her support for the MEK's activities continued in Canada, if only in the context of protests.

[32] Finally, I should mention that the motivations behind Ms. Mirmahaleh's political involvement, as laudable as they might be, are not a saving factor recognized by the case law that would make a terrorist activity more acceptable. That a group has legitimate objectives does not justify engaging in terrorist activities (*Najafi* at paras 89-90; *Kanagendran v Canada (Citizenship and Immigration)*, 2014 FC 384 at para 21; *Erbil v Canada (Citizenship and Immigration)*, 2008

FC 780 at paras 60-61; *Oremade v Canada (Citizenship and Immigration)*, 2006 FC 1486 at para 12).

[33] In her oral arguments before the Court, Ms. Mirmahaleh talked about how the Supreme Court's judgment in *Ezekola* should apply in this case. On this point, it is sufficient to recall the words of Justice Gagné in *Haqi*, which I adopt. In that case, she stated at para 37 that *Ezekola*, being a case dealing with the notion of complicity in the context of an international convention, had no impact on the interpretation the Federal Court of Appeal gave to paragraphs 34(1)(b) and (f) of the IRPA. This conclusion was also explicitly reaffirmed by the Federal Court of Appeal in *Kanagendren*, at para 28.

[34] The member relied on Ms. Mirmahaleh's active participation in the MEK's activities to conclude that there were reasonable grounds to believe that she was a member of the organization within the meaning of paragraph 34(1)(f) of the IRPA. It was therefore not unreasonable in the circumstances that the member would gather from the evidence that Ms. Mirmahaleh was a member of the MEK.

C. *Did the tribunal err in law in shifting the burden of proof to Ms. Mirmahaleh?*

[35] Under section 33 of the IRPA, it is clear that the Minister bears the burden of proving inadmissibility on security grounds and must have reasonable grounds to believe that the facts or acts mentioned have occurred, are occurring or may occur. Ms. Mirmahaleh criticizes the approach adopted by the member in his decision, who proceeded to respond to each of the arguments raised by her counsel before the IRB. She argues that, in so doing, the member erred by not analyzing the evidence submitted by the Minister and by shifting the burden of proof to her.

[36] I am of the view that such a reading of the decision has no merit. It is clear from the decision that the tribunal set out and applied the correct test. It determined that the test's two components (the terrorist nature of the MEK and Ms. Mirmahaleh's membership in the group) had been met. That the tribunal did so by repeating each of the arguments made by Ms. Mirmahaleh instead of opting for a structure more directly based on the test itself does not mean that the burden of proof was reversed. It is obvious, upon reading the decision, that the analysis of Ms. Mirmahaleh's arguments allowed the member to review all the evidence and draw from it all the reasons for which the requirements under paragraph 34(1)(f) of the IRPA were met.

[37] In response to the Minister, Ms. Mirmahaleh submits that it is not the structure of the decision that reversed the burden of proof, but the application of the test to the facts, particularly with regard to the designation of the MEK as a terrorist organization. According to

Ms. Mirmahaleh, the evidence before the member regarding the designation of the MEK should have been interpreted differently. Once again, Ms. Mirmahaleh is asking the Court to reassess the evidence and substitute its own opinion for that of the member. This is not the Court's role in an application for judicial review.

IV. Conclusion

[38] For the foregoing reasons, Ms. Mirmahaleh's application for judicial review is dismissed. The member's decision finding reasonable grounds to believe that the MEK is a terrorist organization of which Ms. Mirmahaleh is a member is transparent and intelligible and falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. The parties did not raise any questions for certification in their oral and written submissions, and I agree that there are none in this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review be dismissed, without costs;
2. No serious question of general importance will be certified.

“Denis Gascon”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1484-15

STYLE OF CAUSE: ROGHAYEH AZIZI MIRMAHALEH v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 3, 2015

JUDGMENT AND REASONS: GASCON J.

DATED: SEPTEMBER 16, 2015

APPEARANCES:

Stéphanie Valois

FOR THE APPLICANT

Émilie Tremblay

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Valois et Associés
Counsel
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT