Cour fédérale Federal Court

Date: 20190829

Docket: IMM-4913-18

Citation: 2019 FC 1118

Ottawa, Ontario, August 29, 2019

PRESENT: Madam Justice Walker

BETWEEN:

S. R.

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision (Decision) of the Immigration Division (ID) of the Immigration and Refugee Board of Canada finding him inadmissible on security grounds pursuant to section 34 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The ID concluded that there are reasonable grounds to believe that the Applicant is a danger to the security of Canada as described in paragraph 34(1)(d) of the IRPA.

[2] The application will be allowed. The Decision focuses on the Applicant's very troubling online conduct with little analysis of the relationship between that conduct and the threat or danger that the Applicant poses to the security of Canada. More specifically, the ID erred in concluding that the Applicant's threats against three individual bloggers in itself satisfied the test for conduct that constitutes a danger to the security of Canada established by the Supreme Court of Canada (SCC) in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 (*Suresh*).

I. Background

[3] The record in this application is voluminous. The admissibility hearing before the ID followed a comprehensive investigation of the Applicant by the Royal Canadian Mounted Police (RCMP). The hearing was conducted over a number of days from July 28, 2016 to January 10, 2018. In this section of the judgment, I will provide a summary of the events and evidence that were central to the ID's Decision and that the parties relied on in their submissions to the Court.

[4] The Applicant is a citizen of Iran. He was born on September 21, 1994 and immigrated to Canada with his family under the investor category when he was 17. He became a permanent resident of Canada in November 2011. The Applicant lives with his younger brother and mother, both of whom are Canadian citizens. His father returned to Iran to continue his medical practice to support the family. The Applicant attended high school and university in eastern Canada, graduating with a Bachelor of Science degree in chemistry in May 2018.

[5] Following his arrival in Canada, the Applicant cultivated a significant online presence, describing himself during the course of the ID hearing as a “nerd”. While the parties characterize the Applicant’s interests and intentions very differently, there is no dispute that he created online avatars, characters and numerous blogs and websites containing macabre and unsettling content. Over time, the Applicant’s online world grew to include the blogs, videos and posts regarding chemical weapons, gore, threats and violence, including violence against women, that are at the heart of this application.

[6] In early 2013, the Applicant’s online postings came to the attention of various self-described counter-jihad websites, including “Your Daily Muslim” (YDM).

[7] On March 21, 2013, on one of his websites, Chemical Weapons Industries (CWI), the Applicant posted a picture of a bottle containing amber liquid and a message offering the sale of nerve agents.

[8] On April 1, 2013, YDM posted an article about the Applicant and certain of his websites. In the article, YDM accused the Applicant of being associated with CWI and selling chemical weapons. The YDM blogger denounced the Applicant and published his home address and phone number. The Applicant testified that he subsequently received numerous threatening phone calls at home. During the month of April, the Applicant engaged with YDM online using both his own name and other fictitious characters. His posts became increasingly vitriolic and included death threats against the YDM bloggers.

[9] In June 2013, the Applicant used his website, Islamic Socialist Network (ISN), to publish posters seeking the contact information for three YDM bloggers. In August 2013, he added the pictures and names of the bloggers along with a reward of $1 million “for each dead or alive” (the “Wanted Poster”).

[10] During the dispute with YDM, the Applicant made a video (the “Bandana Video”) in which he poses as one of his characters wearing a camouflage t-shirt as a bandana and a headscarf. In the video, the Applicant makes anti-western statements and threatens the YDM bloggers by name. He holds up three vials of brown liquid and claims that they contain nerve agent from CWI. He states that each vial has enough nerve agent to kill ten people and that innocent people will die. The Applicant deleted the video before uploading it publicly. The video was recovered from his hard drive by the RCMP during their investigation.

[11] Following the publication of the Wanted Poster, two complaints were made to the RCMP and an investigation was initiated. One aspect of the RCMP’s investigation was an extensive analysis of the Applicant’s online presence, part of which had been deleted by the time the RCMP became involved. Nevertheless, RCMP experts were able to access sufficient information to conclude that the Applicant controlled a number of online accounts and websites, including CWI and ISN, and that he used various characters and online identities.

[12] RCMP officers first met with the Applicant on August 16, 2013. During the interview, the Applicant acknowledged that he controlled some of the websites the RCMP associated with him but denied having anything to do with other sites and identities, including CWI, contrary to

the results of the RCMP's investigation. The Applicant later admitted to controlling CWI and ISN and to using a number of online identities.

[13] A posting by the Applicant on October 18, 2013 was of particular concern to the RCMP. The post contained a photograph of the Applicant in front of a plant with the caption: "Me and one of the most poisonous plants on Earth. So excited :D [smile emoticon]". The Applicant explained that this was a castor bean plant he had noticed growing between two businesses and that his excitement derived from his interest in botany. Later in October 2013, the Applicant posted another picture detailing the deadly effects of castor beans, which are used to produce ricin, a deadly poison.

[14] In December 2013, the RCMP began video surveillance of the Applicant's home. The RCMP also sought and received a tracking warrant for the family vehicle. As part of the surveillance, the RCMP conducted a bi-weekly collection of household garbage. One search revealed a discarded formula for making calcium phosphide, hand-written by the Applicant. The RCMP characterized calcium phosphide as a dangerous and explosive compound.

[15] On April 29, 2014, the RCMP executed a warrant and conducted a covert search of the Applicant's residence. During the search, they found approximately 50 castor beans and 2 castor bean plants.

[16] On June 25, 2014, the RCMP arrested the Applicant at his home and executed another search warrant. He gave a statement to investigators and was released without charge. At that

time, the RCMP found 65 castor beans and seized a variety of electronic devices. The officers did not find any processing apparatus for the extraction of ricin from the castor beans. The Applicant explained that he had collected and studied the castor beans because of his interest in chemistry and plants, and that he had no ill intent.

[17] The RCMP reviewed the content of the Applicant's various electronic devices and found documents discussing chemicals, chemical reactions and explosions and noted that "[m]any of them [were] from such sites as Wikipedia and saved as .pdfs". In addition, the RCMP discovered downloaded copies of the *"Mujahideen Poisons Handbook"* and the *"Mujahideen Explosives Handbook"*. The RCMP also found the Bandana Video, literature and documentation relating to firearms and Nazi ideology, and materials depicting violence against women and other generalized violence.

[18] On March 24, 2015, the RCMP arrested the Applicant. On the recommendation of the RCMP, the Public Prosecution Service of Canada requested a peace bond pursuant to section 810.01 of the *Criminal Code*. The Applicant signed a Recognizance, agreeing to abide by its terms for one year. The RCMP did not make an application for a new peace bond at the end of the one-year period.

[19] On March 21, 2016, a Minister's Delegate signed a referral for an admissibility hearing before the ID under subsection 44(2) of the IRPA. The referral requested the hearing to determine whether the Applicant is inadmissible as a person described in paragraph 34(1)(d) of the IRPA.

[20] The Applicant was arrested by the Canadian Border Services Agency on May 17, 2016 in connection with the admissibility hearing. He was released subject to a number of conditions after his first detention review hearing.

II. Decision under review

[21] The Decision is dated September 25, 2018. The ID first reviewed the timeline, evidence and parties' submissions at length. The member fairly summarized the parties' respective explanations of the Applicant's online content and conduct and drew her own conclusions, emphasizing the threats made against the YDM bloggers. Ultimately, the ID found the Applicant to be inadmissible to Canada on security grounds for being a danger to the security of Canada pursuant to paragraph 34(1)(d) of the IRPA.

[22] The ID reviewed the Minister's arguments in six categories:

(a) Public threats against specific individuals on the internet (the three YDM bloggers; the Wanted Poster; the Bandana Video);

(b) Public threats against the general population, voiced hatred against women, postings inciting violence, postings regarding gore;

(c) The Applicant indicated specifically the kinds of weapons he intended to use against his future victims, namely different forms of poisons or chemical weapons (the nerve agents; ricin; calcium phosphide);

(d) The Applicant was found in possession of literature on how to produce and use poisons and chemical weapons, and literature supporting Nazi ideology;

(e) The Applicant was found in possession of compounds to produce poisons or chemical weapons (the castor beans), made people believe he had those substances, and offered the products for purchase; and

(f) The Applicant's characteristics emphasized the risk that he could produce and use poisons or chemical weapons on the people he threatened.

[23] The ID summarized the submissions of the Applicant's counsel who described the Applicant's objectionable online actions as foolish decisions to post shocking and disturbing comments and material on the internet. He argued that the postings were nothing more than the immature musings of a young man who had unsupervised and unregulated access to the internet for the first time. The ID recounted the Applicant's testimony that he is not religious, does not follow religious practices and does not attend places of worship.

[24] The ID set out the Applicant's submissions in respect of each of the Respondent's categories. The Applicant argued that, in the absence of compelling evidence that he intended to produce ricin, he cannot be characterized as a danger to the safety of Canada simply because he could attempt to make the poison. There was no evidence he was in possession of any chemical weapons. The Applicant stated that the RCMP did not proceed with any criminal charges and that the Minister could not rely on his fictitious world to justify a finding of inadmissibility. He also argued that the mere possession of books, with no evidence that they had been obtained from the dark web, was not in itself nefarious.

[25] The ID began its analysis with an overview of the jurisprudence regarding the meaning of "a danger to the security of Canada" and cited the statement by the SCC in *Suresh* that the phrase should be given a fair, large and liberal interpretation in accordance with international norms. The member stated that she would focus on the period beginning September 21, 2012, when the Applicant reached the age of majority, and ending with his second interview with the RCMP on December 18, 2014.

[26] The ID found the Applicant generally credible. However, there were instances when he did not give satisfactory explanations for his online presence and unsavoury characters. The member stated that the Applicant did not explain why he wanted his internet characters to be perceived as individuals and entities to be feared by the general public. The ID did not accept the Applicant's explanation that he did not think anyone would take the Wanted Poster seriously, stating that "this reckless action put the bloggers [*sic*] safety in jeopardy, regardless of what his motivation for doing so was". The fact the Applicant had not posted the Bandana Video was a mitigating factor but the ID could not ignore the fact that he wrote an alarming script and disguised himself like a terrorist holding vials of imaginary nerve agent.

[27] The ID agreed that there was no objective evidence that the Applicant was involved in the dark web but found that there was no reasonable explanation as to how the downloading of the two Mujahideen books had any academic value. These books, coupled with the castor beans found at his house and his posts regarding the deadly effects of ricin, showed an unusual interest in collecting information about toxins and poisonous plants.

[28] Based on the Applicant's online presence, the ID described his profile as someone who wants to be viewed as a dangerous person:

> [99] ... The image he publicly posted, sometimes anonymously through the fictitious characters from his invented universe, was one of a person well versed in the subjects of pesticides, toxic substances, poisons, chemical weapons and nerve agents and the like. Although he was in a dark place, having been broken hearted from a failed relationship, he publicly showed rage against women and posted offensive and violent images including gore and death. [The Applicant] showed his state of mind of being very angry at the bloggers who published his personal information on the Internet. ...

[29] The ID found that the following facts had been established on the basis of reasonable grounds to believe:

1. In April 2013, the Applicant became embroiled in a dispute with YDM about his postings on CWI. Specifically, YDM captured a post showing a picture of a bottle containing liquid with the message "Nerve agents for everyone…best quality…best prices…please join and share", suggesting that CWI would have enough nerve gas by 2016 to wipe out the world's population.

2. On April 16, 2013, the Applicant responded to YDM using an alias, stating that YDM had no place in the future and that CWI had a plan to remove them once and forever. Later, he referred to YDM and its followers as the "dead YDM".

3. On June 6, 2013, a website unrelated to the Applicant posted an article about four individuals (in fact, the Applicant and three of his aliases) who had issued a reward of up to $1.1M for the names, pictures and addresses of individuals involved in counter-jihad blogs.

4. In August 2013, the Applicant posted the Wanted Poster naming and threatening the YDM bloggers and made the Bandana Video.

5. The RCMP was concerned with posts on the Applicant's Facebook page relating to castor beans. On June 25, 2014, the RCMP searched the Applicant's house and found 65 castor beans although no processing materials or chemicals were found that would enable the extraction of ricin from the beans. The Applicant's electronic devices were seized and searched and the RCMP found the *Mujahideen Poisons Handbook*, which included a recipe for ricin, and the *Mujahideen Explosives Handbook* among many other documents on the devices.

6. The Applicant put the lives of the YDM bloggers in danger by posting a reward to obtain their true identities and then by offering a substantial reward using their actual names on the Wanted Poster. Any person on the internet could have acted on these postings, resulting in serious harm to the bloggers.

7. The Bandana Video, while not uploaded to the internet, would cause a reasonable person to think that the Applicant was a terrorist and to be terrified.

8. Although much of the Applicant's online behaviour was boastful posturing, he was of the age of majority at the time of his interactions with the YDM bloggers and was responsible for his words and actions.

9. In addition to the threats to the YDM bloggers, the Applicant posted chilling and disturbing comments on chemical weapons, poisons and nerve agents, posts that would cause the general population to be afraid. Based on the Bandana Video, the ID concluded that the Applicant "identified himself with a fanatical ideology through his entity Islamic Socialist Network".

10. The Applicant "had in his possession several books that contained disturbing information". Specifically, the ID referred to the books from the Mujahideen concerning how to make explosives and homemade poisons. This latter was of particular concern as the Applicant had 65 castor beans in his home and had posted about the terrifying effects of castor beans.

11. The ID rejected the Applicant's assertion that the Mujahideen books served an academic purpose. The ID stated that the "books contain no information that is of academic value, and the fact that [the Applicant] collected such literature without any valid explanation, demonstrates that he has a keen interest in the type of ideology espoused by the Mujahideen".

[30] Based on the foregoing findings, the ID concluded as follows:

> There are reasonable grounds to believe that [the Applicant] constitutes a danger to the security of Canada due to his actions of openly publishing on the internet substantial rewards in the summer of 2013 against three (3) bloggers. This, and [his] previous online activity that preceded the postings, put in danger the security and well-being of the bloggers targeted. The threatened harm from [the Applicant]'s specific actions with regard to the three (3) bloggers was substantial rather than negligible and grounded on an objectively reasonable suspicion based on credible

> evidence. This in itself meets the test in the Supreme Court case of *Suresh v. Canada* 2002 SCC (paragraphs 85-90). However, combined with [the Applicant]'s political ideology and interest in groups such as the Mujahideen, his interest in Nazi ideology, his publishing of countless online posts on poisons, nerve agents, chemical weapons, gore and the like, this all establishes reasonable grounds to believe that he constitutes a danger to the security of Canada.

[31] The ID stated that the Applicant was a danger to the security of Canada as described in paragraph 34(1)(d) of the IRPA and issued a deportation order against him.

III. Issues

[32] The Applicant raises the following issues in this application:

1. Did the ID err by conflating "danger to the security of Canada" with danger to particular individuals?
2. Were the ID's credibility findings unreasonable?
3. Was the ID's finding that the Applicant "identified himself with a fanatical ideology" unreasonable?
4. Did the ID engage in a selective assessment of the evidence?

[33] I have found that the ID unreasonably conflated the concept of a danger to the security of Canada with a danger to particular individuals. Although this finding is determinative of the application, I will review certain other findings made by the ID because the same questions may arise upon reconsideration of the Applicant's admissibility by a new ID panel. As any new ID panel will make its own assessment of the evidence, I will not address all of the ID's credibility findings, nor will I address the fourth issue raised by the Applicant.

IV. Standard of review

[34] The parties agree that the issues raised by the Applicant involve the ID's interpretation and application of paragraph 34(1)(d) of the IRPA and questions of mixed fact and law and are subject to review by this Court against the standard of reasonableness (*S.A. v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494 at para 9; *Hadian v Canada (Citizenship and Immigration*), 2016 FC 1182 at para 15 (*Hadian*)).

[35] The facts giving rise to inadmissibility must be established on the standard of "reasonable grounds to believe" pursuant to section 33 of the IRPA. Therefore, the Court's role in reviewing the ID's findings pursuant to paragraph 34(1)(d) is to determine whether the panel's conclusion that "reasonable grounds to believe" exist was itself reasonable (*S.N. v Canada (Citizenship and Immigration)*, 2016 FC 821 at para 44; *Niyungeko v Canada (Citizenship and Immigration)*, 2019 FC 820 at paras 10-11).

V. Legislative Background

[36] Section 33 and paragraph 34(1)(d) of the IRPA provide as follows:

INADMISSIBILITY	**INTERDICTIONS DE TERRITOIRE**
Rules of interpretation	**Interprétation**
33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are	**33.** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent

occurring or may occur.	survenir.
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 :
[…]	[…]
(d) being a danger to the security of Canada;	**d)** consister un danger pour la sécurité du Canada;

VI. General Principles – *Paragraph 34(1)(d) of the IRPA*

[37] An analysis of the scope of paragraph 34(1)(d) of the IRPA begins with the SCC's statement in *Suresh* that the phrase "danger to the security of Canada" must be afforded "a fair, large and liberal interpretation in accordance with international norms" (*Suresh* at para 85). The SCC accepted in *Suresh* that a determination of what may constitute a danger to the security of Canada is highly fact-based and is political in a general sense. This suggested to the Court a broad approach to national security and a deferential approach to judicial review. The SCC stated that direct proof of a specific threat to Canada is not required but that "there must be a real and serious possibility of adverse effect to Canada" (*Suresh* at para 88). These considerations led the SCC to conclude that (*Suresh* at para 90):

> [90] … [A] person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible.

[38] The SCC distinguished the concept of “danger to the security of Canada” from that of “danger to the public”, while recognizing that the two phrases may overlap (*Suresh* at para 84; see also *Re Almrei*, 2009 FC 1263 at para 80, stating “it does not mean the same as danger to the public or any member of the public”).

[39] There is no requirement that the danger to the security of Canada be current in order to establish inadmissibility (section 33 of the IRPA; *Harkat v Canada (Citizenship and Immigration)*, 2012 FCA 122 at para 152; *A.A. v Canada (Citizenship and Immigration)*, 2017 FC 1066 at para 34). The Minister must have reasonable grounds to believe that the facts giving rise to inadmissibility may have occurred in the past, are occurring in the present or may occur in the future (*Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37 at para 30). Evidence of a person’s anticipated future activities can ground their inadmissibility.

[40] The facts giving rise to inadmissibility must be established on the standard of “reasonable grounds to believe” pursuant to section 33 of the IRPA. Reasonable grounds to believe require “something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities” and will exist where “there is an objective basis for the belief which is based on compelling and credible information” (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paras 114-117; see also *Hadian* at para 17)).

[41] A number of recent decisions of this Court have considered the scope of paragraph 34(1)(d) of the IRPA in the context of individuals who were associated with research institutions that worked on the Iranian government's nuclear programs (*Moghaddam v Canada (Citizenship and Immigration)*, 2018 FC 1063 (*Moghaddam*); *Hadian*, *supra*). Although the factual context of those decisions is very different from the facts before me, my colleagues' statements regarding the need for an evidentiary basis linking the actions or conduct of the individual in question to the fact that they represent a danger to the security of Canada are nonetheless relevant. Justice Roy stated (*Moghaddam* at para 55):

> [55] … There is a need for evidence that the person has done something or might do something that would support the conclusion on dangerousness. Short of evidence we remain in the world of conjectures.

[42] In summary, the ID must give the concept of a "danger to the security of Canada" in paragraph 34(1)(d) a fair, large and liberal interpretation, bearing in mind that the phrase requires a consideration of national security and is distinct from a danger to the public. The threat to Canada's security must be substantial and be grounded on objectively reasonable suspicion based on the evidence before the ID. The resulting decision of the ID is to be afforded deference on judicial review bearing in mind that it is the reasonableness of the ID's "reasonable grounds to believe" finding that is in issue.

VII. Analysis

1. Did the ID err by conflating "danger to the security of Canada" with danger to particular individuals?

Parties' Submissions

[43] The Applicant submits that the ID erred in concluding that he is a danger to the security of Canada under paragraph 34(1)(d) of the IRPA principally on the basis that he had recklessly endangered the safety of the three YDM bloggers. Although the member supplemented her conclusion with other adverse findings, the Applicant argues that her finding that the endangerment of the bloggers in itself met the *Suresh* test is a reviewable error. The Applicant emphasizes that the SCC stated that there must be evidence of a serious threat to Canadian national security for purposes of paragraph 34(1)(d). He argues that the ID incorrectly applied the *Suresh* test "to find a risk of harm to three individuals and without a finding with respect to Canadian security".

[44] The Applicant also contests the ID's two supplemental findings: (a) that his online speech was disturbing and potentially frightening; and (b) that he identified with a dangerous ideology. The Applicant argues that disturbing online speech falls short of what has been recognized as a danger to Canada's national security. While the Respondent argues that his online behaviour constituted a public threat, the ID actually made no finding in this regard, stating only that his online speech may be frightening to a reasonable person. The Applicant submits that the ID made no finding that he had any connection to any real entity that might pose a danger to

Canada. He states that the jurisprudence requires the ID to connect him to real activities that pose a danger to the security of Canada.

[45] The Respondent submits that the Minister's reasonable grounds to believe that the Applicant is a danger to the security of Canada were based on six categories of evidence and that the Minister did not allege that the threats to the YDM bloggers were by themselves sufficient to justify an inadmissibility finding. The Respondent argues that the ID found that there were a set of facts and course of conduct that led to the conclusion that the Applicant is inadmissible. The Applicant's online conduct establishes a series of threats to kill other people, not solely the YDM bloggers, using nerve agents as his weapons. The Respondent states that the issue before the Court is not whether the threat to the YDM bloggers justified an inadmissibility conclusion for security reasons. Rather, the Court must determine whether the ID rendered a reasonable decision in concluding that all of the circumstances in the case established reasonable grounds to believe that the Applicant is a danger to the security of Canada.

Preliminary Remarks

[46] The evidence in this case presents a picture of a young man who created an online presence replete with vulgarity, reckless threats, violence and misogyny. This leads me to make two preliminary remarks as context for my analysis. First, the issue before me is whether the ID reasonably found that there are reasonable grounds to believe the Applicant is a danger to the security of Canada under paragraph 34(1)(d) of the IRPA. The issue is not whether the Applicant's conduct was offensive or unsettling.

[47] Second, my analysis focuses on the Decision rendered by the ID and not the submissions of the Minister in support of an inadmissibility finding. I am mindful of the principle set out by the SCC in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (*Newfoundland Nurses*) that the reasons given by a decision-maker must be read together with the outcome of a case and that a decision must be considered in light of the evidentiary record to determine whether the result falls within the range of possible outcomes. However, as Justice Rennie, as he then was, stated in *Pathmanathan v Canada (Citizenship and Immigration)*, 2013 FC 353 at paragraph 28 (cited by the SCC in *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 24), *Newfoundland Nurses* does not authorize a reviewing court to rewrite the decision before it:

> [28] … The reviewing court may look to the record in assessing whether a decision is reasonable and a reviewing court may fill in gaps or inferences reasonably arising and supported by the record. *Newfoundland Nurses* is a case about the standard of review. It is not an invitation to the supervising court to re-cast the reasons given, to change the factual foundation on which it is based, or to speculate as to what the outcome would have been had the decision maker properly assessed the evidence.

Analysis – Threats against the YDM bloggers

[48] As stated above, the ID comprehensively summarized and considered both parties' submissions in the Decision. The ID also distilled the voluminous evidence before it regarding the Applicant's online activities and made a series of factual findings that are not in dispute. In contrast, the ID's analysis of those submissions and factual findings against the question of whether the Applicant is a danger to the security of Canada under paragraph 34(1)(d) consists of one paragraph. At the risk of repetition, the critical paragraph from the Decision is as follows:

> There are reasonable grounds to believe that [the Applicant] constitutes a danger to the security of Canada due to his actions of openly publishing on the internet substantial rewards in the summer of 2013 against three (3) bloggers. This, and [his] previous online activity that preceded the postings, put in danger the security and well-being of the bloggers targeted. The threatened harm from [the Applicant]'s specific actions with regard to the three (3) bloggers was substantial rather than negligible and grounded on an objectively reasonable suspicion based on credible evidence. This in itself meets the test in the Supreme Court case of *Suresh v. Canada* 2002 SCC (paragraphs 85-90). However, combined with [the Applicant]'s political ideology and interest in groups such as the Mujahideen, his interest in Nazi ideology, his publishing of countless online posts on poisons, nerve agents, chemical weapons, gore and the like, this all establishes reasonable grounds to believe that he constitutes a danger to the security of Canada.
>
> (Emphasis added.)

[49] For the reasons that follow, I find that the ID's conclusion that there are reasonable grounds to believe that the Applicant's specific threat of harm to the three YDM bloggers in itself meets the *Suresh* test is a reviewable error and warrants the intervention of the Court. The ID supplemented its primary conclusion with reference to the Applicant's political ideology and his threatening online presence but this supplemental reasoning does not alter the ID's finding that a series of threats against three individuals alone established reasonable grounds to believe that the Applicant is a danger to the security of Canada. The ID provided no explanation as to how the individualized threats related to any issue of national security. As a result, the Decision is not intelligible or transparent as the required application of the evidence to the test is missing. Neither the outcome of the Applicant's case nor the reasons provided by the ID satisfy the *Dunsmuir* criteria.

[50] The Respondent argues that my review of the Decision must not be undertaken with blinders focused on the one paragraph set out above. However, the sum of the ID's analysis of the evidence against the provisions of section 33 and paragraph 34(1)(d) of the IRPA is contained in the paragraph cited. Earlier in the Decision, the ID did state that "all of these elements combined" constituted reasonable grounds to believe that the Applicant's actions met the threshold of being a danger to the security of Canada. In my opinion though, this generalized statement did not further the ID's analysis and cannot overcome the specific finding in the ID's conclusory paragraph.

[51] The Respondent also argues that the Applicant did not raise the issue of national security as a necessary element of the concept of a danger to the security of Canada in his arguments before the ID and should not now be permitted to do so. I do not agree. The Applicant properly submits that he makes the distinction between a danger to national security and a danger to individuals in this application in answer to an alleged error in the Decision itself.

[52] In *Suresh*, the SCC drew a distinction between danger to the security of Canada and danger to the Canadian public, stating that the latter phrase is intended to address threats to individuals in Canada (*Suresh* at para 84). The Court stated (*Suresh* at para 91):

> [91] This definition of "danger to the security of Canada" does not mean that Canada is unable to deport those who pose a risk to individual Canadians, but not the country. A different provision, the "danger to the public" provision, allows the government to deport those who pose no danger to the security of the country *per se* — those who pose a danger to Canadians, as opposed to a danger to Canada — provided they have committed a serious crime. […]
>
> (Emphasis in original.)

[53] The IRPA has been amended since *Suresh* but the SCC's interpretation of the phrase "a danger to the security of Canada" and its explanation of the evidence required to establish such a danger remain unchallenged. In addition, the distinction between a danger to the security of Canada and a danger to individual Canadians highlighted by the SCC is maintained in paragraphs 34(1)(d) and (e) of the current IRPA which speak, respectively, to "a danger to the security of Canada" and "engaging in acts of violence that would or might endanger the lives or safety of persons in Canada". I note also the Applicant's observation in his written submissions that other provisions of the IRPA distinguish between national security, public safety and the safety of individuals (e.g., section 81 and paragraphs 83(1)(c), (d) and (e) of the IRPA).

[54] The concept of a "danger to the security of Canada" must be given a liberal and broad interpretation but paragraph 34(1)(d) of the IRPA should not be interpreted so broadly as to cover any threatening activity. Such an interpretation ignores both the words of the provision and the jurisprudence which speaks to Canada's national security. Although there is overlap between what may constitute a danger to the security of Canada and a danger to the public (e.g. threats of violence against the general population), the concepts remain distinct.

[55] The Minister chose to proceed on the basis of paragraph 34(1)(d) in the Applicant's case and bore the burden of establishing reasonable grounds to believe he poses a serious threat or danger to the security of Canada. The ID's obligation in concluding that the Applicant is inadmissible as a danger to the security of Canada was to explain how its factual findings regarding the threats to the YDM bloggers threatened Canada's security. It did not do so. The ID made no finding that the threats were anything other than threats of harm to three individuals.

[56] The Applicant's threats against the YDM bloggers were not political, nor were the bloggers themselves in any way associated with the Canadian state apparatus. Although not determinative, it appears that the bloggers did not reside in Canada. They were not politicians, bureaucrats, military leaders or personnel, or law enforcement agents. There was no evidence of any political aspect to the Applicant's threats such that they could reasonably be characterized as direct or indirect threats against Canada or the Canadian government. The ID's conclusion that there were reasonable grounds to believe that the threats against the YDM bloggers were sufficient to constitute a serious and substantial danger to the security of Canada was not reasonable.

Analysis – The ID's supplemental finding

[57] Having found that the Applicant's threats against the YDM bloggers were sufficient to make a finding of inadmissibility, the ID then continued:

> However, combined with [the Applicant]'s political ideology and interest in groups such as the Mujahideen, his interest in Nazi ideology, his publishing of countless online posts on poisons, nerve agents, chemical weapons, gore and the like, this all establishes reasonable grounds to believe that he constitutes a danger to the security of Canada.

[58] I find that the ID's supplemental finding does not overcome its flawed reliance on the threats to the YDM bloggers for two reasons. First, the ID's conclusion that the harm from the Applicant's threats against the YDM bloggers alone constituted him a danger to the security of Canada was unequivocal. Second, the supplemental finding itself suffers from the same lack of analytical rigour as the ID's primary conclusion. The ID failed to link its adverse findings regarding the Applicant's interests and actions to a substantial threat to the security of Canada.

The member listed a number of disparate findings and concluded, "this all" established reasonable grounds to believe the Applicant is a danger to Canada. The unanswered question is why? The ID does not explain what the danger is or how the Applicant is likely to carry out his alleged ideologies and threats. I echo the comments of my colleague Justice Roy in *Moghaddam* that we are in the land of conjecture.

[59] The Respondent submits that the conduct and threats that led the ID to conclude on reasonable grounds that the Applicant is a danger to the security of Canada are self-evident. The Respondent argues that the Applicant's repeated references to the use of nerve agents to kill people, his possession of castor beans, his posturing as a terrorist and his extremist postings are clear public threats to harm the general Canadian population.

[60] The Respondent's argument must be assessed against the ID's factual findings in the Decision:

- Credibility: While accepting that the Applicant was generally credible, the ID found that he never addressed why he felt compelled to invent his fictitious universe. The member stated that the Applicant "spent countless hours posting chilling and disturbing comments and information via the fictitious entities on subjects such as chemical weapons, poisons and nerve agents without any valid reason for doing so".

- Bandana Video: The ID focused its comments on the Applicant's threats against the YDM bloggers. The member accepted that the video had not been posted publicly but stated that the Applicant had taken steps to "write an alarming script, disguise himself like a terrorist, and hold vials of imaginary nerve agents". The ID stated that "he did go

through the motions of taking steps to look and sound like a terrorist such that […] any reasonable person viewing the video would be terrified".

- Possession of Mujahideen literature: The ID stated that there was no reasonable explanation for the Applicant's downloading and possession of the *Mujahideen Poisons Handbook* and the *Mujahideen Explosives Handbook* as they had no academic value. The member acknowledged that there was no objective evidence that the books were obtained from or that the Applicant was involved in the dark web.

- Possession of castor beans: The ID found that the Applicant's interest in botany and toxicology did not explain why he would collect 65 castor beans and make videos alluding to the deadly effects of ricin, for which he had a recipe. The member stated:

> Although [the Applicant] testified that he could not produce any such toxic substance because he did not have the necessary safety equipment, the tribunal agrees with the Minister that it is possible to be made at home. At the very least, it shows [the Applicant] had an unusual interest in spending so much time collecting information on toxins and poisonous plants. … The tribunal does take into consideration, however, as counsel aptly pointed out, that [the Applicant] was not in possession of any tubes, flasks or other laboratory equipment that would have permitted him to safely produce any toxic substances. The tribunal does not have before it any credible evidence that [the Applicant] was on the verge of preparing any toxic substance.

- Nazi ideology: The ID made no finding regarding the Applicant's possession of books regarding the Nazi regime, nor did the ID make a finding that he had ascribed to Nazi ideology.

- Gender-based violence: The ID stated only that the Applicant had publicly shown rage against women and posted offensive and violent images including gore and death.

- General finding: The ID concluded as follows:

> In addition to the threats to the bloggers, [the Applicant] posted numerous chilling and disturbing comments via his fictitious entities on subjects such as chemical weapons, poisons and nerve agents that would cause the general population to be afraid. From his audio-video recording [the Bandana Video] we see that he has identified himself with a fanatical ideology through his entity Islamic Socialist Network (ISN). …

[61] The ID supplemental conclusion was that these various findings ("*this all*") combined to form reasonable grounds that the Applicant is a danger to the security of Canada. However, the ID did not explain how these findings relate to the risk required by *Suresh*: that of a serious and substantial risk of adverse effect to Canada grounded on objectively reasonable suspicion based on evidence. The fact that reasonable people would be disturbed, scared or would think that the Applicant disguised himself "to look and sound like a terrorist", is not a basis upon which to find that he poses a risk to national security.

[62] The cursory nature of the ID's conclusion gives rise to any number of questions: Did the ID believe that the Applicant posed a serious threat to the security of Canada because he was likely to execute on his threats to use ricin to kill people, notwithstanding the ID's finding that there was no credible evidence that he was on the verge of preparing any toxic substance?; Did the ID believe that, by posing as a terrorist in the Bandana Video, which was not publicly posted, he was likely to act as a terrorist?; Were his misogynistic posts reflective of a serious threat against the women of Canada?; What does the combination of his interest in the Mujahideen and Nazi literature mean in terms of a danger to Canada's security?

[63] Put simply, the ID made no finding regarding what the Applicant may do based on his online conduct. As a result, the Respondent's argument that the ID based its ultimate conclusion on all of the evidence is not helpful.

[64] A useful counterpoint is the ID's analysis in a case put before the Court by the Respondent (*Hamdan v Canada (Public Safety and Emergency Preparedness)*, ID decision dated October 18, 2018; application for leave denied January 31, 2019 (*Hamdan*)). Mr. Hamdan promoted Islamic jihadism on social media. The ID's analysis of whether he was a danger to the security of Canada was, in part, as follows:

> [167] […] Mr. Hamdan however did not merely report news; he identified with and allied himself with a terrorist organization and he served that organization's social media agenda by relying its messages. He strayed even further from a journalistic slant by praising Lone Wolf terrorist attacks, calling for them and providing instructions on how to carry them out. […]
>
> [168] […] Mr. Hamdan identified infrastructure in Canada which could be targets for attack. He encouraged Lone Wolves in the West who could not travel abroad to carry out attacks at home. He shared a detailed how-to manual for Lone Wolves to follow in serving the terrorist agenda of the Islamic State. Additionally many posts appear as recruitment initiatives for the Islamic State […]
>
> […]
>
> [170] […] There is no doubt that Mr. Hamdan intentionally made all of the posts and was aware of their contents. He was aware of the context in which he was making these posts, in which the Islamic State was using Lone Wolf attacks in Western countries in order to spread their influence and spread fear. Despite this global context, and despite knowing that this posts would be read by his online followers, Mr. Hamdan still chose to make the posts in question in the hopes that his posts would further the Islamic State's influence, and aware that his readers might follow through on the terrorist acts that he promoted. Accordingly, I find Mr. Hamdan is a danger to the security of Canada on the basis of his encouragement of others to commit terrorist acts.

[65] The ID in *Hamdan* linked the individual's online actions directly to a serious threat or danger to the security of Canada (the encouragement of others to commit terrorist acts). In the present case, the ID did not link the Applicant's posts to a threat of attack or danger, other than the threats against the YDM bloggers, or find that he was aligned with any real terrorist or extremist group or that he encouraged others to commit violent acts. This omission results in an unreasonable decision as I am unable to understand the basis of the ID's supplemental finding (*Newfoundland Nurses* at para 16).

2. Were the ID's credibility findings unreasonable?

[66] The Applicant has raised a number of concerns regarding the ID's assessment of his credibility. He submits that the ID failed to make clear credibility findings, limiting itself to statements that the Applicant's explanations of certain aspects of his behaviour and possessions were unsatisfactory or insufficient (contrary to the requirement of "clear and unmistakable" findings in *Hilo v Canada (Employment and Immigration*), (FCA) [1991] FCJ No 228). As the Applicant's credibility will be assessed anew in any reconsideration of his case, I will limit my analysis to the ID's treatment of: (1) the Applicant's explanation for his possession of castor beans; and (2) his possession of the two Mujahideen handbooks and three books on the subject of Nazi ideology.

[67] The ID found that the Applicant's testimony that he had a keen interest in botany and toxicology did not explain why he would collect castor beans and post a picture of castor beans accompanied by threatening comments about their poisonous effects. Unfortunately, the member

made no finding as to what the Applicant's reasons were for collecting the castor beans or the risk posed by his possession of the beans. In one sense, the inference is obvious: the Applicant collected the castor beans in order to make ricin which he would then use to threaten the security of Canada. However, the ID specifically found that there was no "credible evidence that [the Applicant] was on the verge of preparing any toxic substance". In light of this conclusion, the ID was required to make a specific finding as to why and to what extent his possession of the castor beans, without any current ability to produce ricin, was a factor its paragraph 34(1)(d) analysis.

[68] More troubling for a number of reasons is the ID's reference to the "vast collection of such literature as the Mujahideen books" and Nazi literature in the Applicant's possession to substantiate its findings of fanatical ideology. By way of preface, the extent of the ID's explanation of the role of the Applicant's ideology in its paragraph 34(1)(d) conclusion was its reference to his "political ideology and interest in groups such as the Mujahideen, his interest in Nazi ideology".

[69] The ID placed significant emphasis on the Applicant's possession of the two Mujahideen handbooks, downloaded from the internet but not the dark web, in establishing his interest in the violence espoused by the Mujahideen. The ID referred to the Applicant's possession of "many manuals" but did not indicate the source or contents of any other books of concern. In addition, the ID provided little explanation of the content of the two handbooks, why it found that the Applicant adhered to the ideology expressed in the books, and why it reasonably believed that such adherence would translate into a danger to the security of Canada. The member stated that the books had no academic value but the fact a book may espouse a dark and extreme ideology

does not mean it has no academic interest, nor does it mean that someone who reads the book has adopted the ideology.

[70] The three books relating to Nazism found on the Applicant's electronic devices were as follows:

(i) *Nazi Ideology and the Holocaust* by the United States Holocaust Memorial Museum.

(ii) *The Occult Roots of Nazism: Secret Aryan Cults and their Influence on Nazi Ideology* by Nicholas Goodrick-Clarke who is described as a specialist on Nazi ideology at the University of Wales.

(iii) *The Face of the Third Reich* by Joachmin C. Fest which is described by Hannah Arendt as "Perhaps the most important recent addition to the literature on the Third Reich".

[71] The books are not the product of the dark web; they are not a call to arms for Nazi adherents. I find that the ID's conclusion that the Applicant ascribed to Nazi ideology based on his possession of the books clearly unreasonable. Further, the ID undertook no analysis in the Decision of the Applicant's alleged adherence to Nazi ideology but referred to it as one of the reasons for which he is a danger to the security of Canada. The ID's apparent and unexplained reliance on the Applicant's possession of three reputable books on the subject of Nazism as a factor in its conclusion contributes to the lack of clarity and justification in the Decision.

VIII. Conclusion

[72] The application is allowed.

[73] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-4913-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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