Date: 20061201

Docket: IMM-7289-05

Citation: 2006 FC 1457

Ottawa, Ontario, December 1, 2006

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

ISSAM AL YAMANI

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Issam Al Yamani, the Applicant, is a permanent resident of Canada who wishes to remain in Canada. In a decision dated November 22, 2005, a panel of the Immigration and Refugee Board, Immigration Division (the Board) found Mr. Al Yamani to be a person who is inadmissible to Canada on security grounds for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism. This determination was made

pursuant to s. 34(1)(f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (*IRPA*), set out below in these reasons. Mr. Al Yamani requests that this Court quash the decision of the Board.

Issues

[2] The background to this application is lengthy and, in my view, largely irrelevant to the application before me. The focus, therefore, is not on what previous or subsequent determinations may have been made with respect to Mr. Al Yamani, but on the particulars of the decision of the Board that is the subject of this application. In that regard, Mr. Al Yamani submits that there are 5 issues:

1. Did the Board err in law in concluding that there were reasonable grounds to believe that Mr. Al Yamani was a member of the Popular Front for the Liberation of Palestine (PFLP) from the time he joined the youth study ring to 1991/92?

2. Did the Board err in law in determining that the PFLP had engaged in terrorist activities during the time that Mr. Al Yamani was a member?

3. Did the Board err in law in concluding that s. 34(1)(f) of *IRPA* was not a violation of s. 2 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, *1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 (the *Charter*)?

4. Did the Board err in law in concluding that s. 34(1)(f) of *IRPA* was not a violation of s. 15 of the *Charter*?

5. Did the Board breach the duty of fairness in failing to provide reasons which addressed the issues raised before it?

[3] The first two issues relate to the merits of the Board's findings. I will deal with these two issues together followed by a consideration of the *Charter* issues. I will then conclude with a consideration of the adequacy of the reasons given by the Board.

Relevant Statutory Provisions

[4] The Board's finding of inadmissibility was made, after an oral hearing, pursuant to s. 34(1)(f) of *IRPA*. That provision states that:

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 :
…	…
f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).

[5] In making its finding, the Board is to be guided by the rules of interpretation set out in s. 33 of *IRPA*:

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 survenir.

occurring or may occur.

[6] Finally, I would refer to the exception to an inadmissibility finding set out in s. 34(2) of *IRPA*.

(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

Analysis of the issues related to the merits of the decision

1. *What is the applicable standard of review*?

[7] The question of whether an organization is one described in s. 34(1)(a), (b) or (c) has been dealt with previously by this Court according to the standard of reasonableness (*Kanendra v. Canada* (*Minister of Citizenship and Immigration*), 2005 FC 923, [2005] F.C.J. No. 1156 at para. 12 (F.C.)). In *Kanendra*, above, Justice Simon Noël, relying upon a pragmatic and functional analysis conducted by Justice Marshall Rothstein of the Federal Court of Appeal in *Poshteh v. Canada* (*Minister of Citizenship and Immigration*), 2005 FCA 85, [2005] F.C.J. No. 381 at para. 23 (F.C.A.) applied the reasonableness standard to a finding of "membership" in an organization described in paragraph 34(1)(f). The facts and issues before me are no different than those considered in those cases and, accordingly, I see no reason to depart from the standard of reasonableness.

[8] Accordingly, the findings of the Board, in this case, must be supported by reasons that will withstand a somewhat probing examination (*Canada* (*Director of Investigation and Research, Competition Act*) *v. Southam*, [1997] 1 S.C.R. 748, 144 D.L.R. (4th) 1 at para. 56).

[9] In considering the reasonableness standard in *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at para. 56, Justice Iacobucci cautioned that the reasons should be taken as a whole and that a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole. In my view, even if a court finds that one or more elements of a decision are unreasonable, it does not follow that the decision as a whole is unreasonable. It would then be necessary to examine the impact of those elements on the decision to assess whether, in spite of any errors, the decision, as a whole, is "tenable".

2. *What is the proper meaning of s. 34(1)(f)*?

[10] The question before the Board involved an interpretation of s. 34(1)(f). Accordingly, it is necessary to examine that provision. In my view, the words of s. 34(1)(f) are clear and unambiguous. The provision requires that the Board carry out two separate assessments:

1. The Board must determine whether there are reasonable grounds to believe that the organization in question engages, has engaged or will engage in acts referred to in (a), (b) or (c). In this case, s. 34(1)(c) "engaging in terrorism" is applicable.

2. The Board must also consider whether the individual is inadmissible for "being a member" of such an organization. To assist in responding to this question, s. 33 sets out that the facts that constitute inadmissibility include facts for which there are reasonable grounds to believe that "they have occurred, are occurring or may occur". Thus, pursuant to s. 33, the fact of membership is determined whether that membership has occurred or is occurring.

[11] Quite simply, and contrary to the arguments made by Mr. Al Yamani, there is no temporal component to the analysis in s. 34(1)(f). If there are reasonable grounds to believe that an organization engages today in acts of terrorism, engaged in acts of terrorism in the past or will engage in acts of terrorism in the future, the organization meets the test set out in s. 34(1)(f). There is no need for the Board to examine whether the organization has stopped its terrorist acts or whether there was a period of time when it did not carry out any terrorist acts.

[12] Membership by the individual in the organization is similarly without temporal restrictions. The question is whether the person is or has been a member of that organization. There need not be a matching of the person's active membership to when the organization carried out its terrorist acts.

[13] The result may seem harsh. An organization may change its goals and methodologies and an individual may choose to leave the organization, either permanently or for a period of time. The provision seems to leave no option for changed circumstances by either the organization or the individual. Fortunately, Parliament, in including s. 34(2) in *IRPA*, provided means by which an exception to a finding of inadmissibility under s. 34(1) can be made. Under that provision, a permanent resident or a foreign national may apply to satisfy the Minister that "their presence in Canada would not be detrimental to the national interest". Parliament has provided all persons, who would otherwise be inadmissible under s. 34(1), with an opportunity to satisfy the Minister that their presence in Canada is not detrimental to the national interest. Under this procedure, factors such as the timing of membership or the present characterization of the organization may be taken into account.

[14] In sum, s. 34 of *IRPA* provides a comprehensive approach to inadmissibility determinations. The section addresses the goals of maintaining the security of Canadian society (*IRPA*, s. 3(1)(h)) and denying access to our country to persons who are security risks (*IRPA*, s. 3(1)(i)) while providing (through s. 34(2)) an avenue for all persons to have an individualized assessment of their impact on the national interest. The Board carries out a factual analysis as to the nature of an organization and the individual's membership. The Minister determines whether the individual, notwithstanding his or her inadmissibility, should be allowed to remain in Canada. In my view, that is what Parliament intended with s. 34.

[15] With this interpretation of s. 34(1)(f) in mind, I will consider the specifics of Mr. Al Yamani and the Board's decision.

3. Was Mr. Al Yamani a member of the PFLP?

[16] I now turn to the application before me, dealing first with the question of Mr. Al Yamani's membership in the PFLP. Was it reasonable for the Board to conclude that there were reasonable grounds to believe that Mr. Al Yamani was a member of the PFLP? In its reasons, the Board stated, at para. 30, that:

> It is an acknowledged fact that Mr. Al Yamani was a member of the PFLP and the evidence supports this. At a minimum he was a member from the time he joined a student study group affiliated with this organization until he publicly distanced himself from it in 1991/1992.

[17] Mr. Al Yamani argues that the Board erred in concluding that there were reasonable grounds to believe that he was a member of the PFLP from the time he joined the youth study ring to 1991/92. Mr. Al Yamani concedes that he was a member of the PFLP from: 1972 to 1974, 1974 to later that year or early 1975, 1979 to 1982 and 1987 to 1991 or early 1992. However, he submits that the Board did not take issue with his credibility but concluded that he was a member of the PFLP during times when he had testified that he was not a member. Consequently, Mr. Al Yamani submits that the Board was obligated to explain its apparent inconsistency or explain why it did not believe him.

[18] At the hearing before the Board and in submissions before this Court, Mr. Al Yamani acknowledged that he had been a member of the PFLP. References are contained throughout the admissibility hearing transcripts to Mr. Al Yamani's membership in the PFLP. At one point in the admissibility hearing, counsel for Mr. Al Yamani conceded that Mr. Al Yamani's past involvement with the PFLP would satisfy the reasonableness grounds for membership; her disagreement was with the characterization of the PFLP (Certified Tribunal Record at 2409-2410).

[19] Mr. Al Yamani asserts that the Board erred by failing to exclude those periods of time when he stated that he was not a member of the PFLP. The first response to this is that whether or not he was a member for the entire period of time is not determinative. All that has to be established for the purposes of s. 34(1)(f) is that he was or is a member of the organization. His acknowledged membership even for the abbreviated times is sufficient to establish membership for purposes of the statutory provision. Thus, even if the Board erred in stating that he was a member for the entire period, this error is immaterial.

[20] Further, I am not persuaded that the Board erred. Mr. Al Yamani's evidence appears to have been that he was not actively involved with the PFLP during certain periods of time. His own testimony was that the reason for his inactivity was that the countries that he traveled to and stayed in did not have active PFLP cells in which he could participate. As soon as he reached a location where he could participate in member activities, he resumed his own activities within the PFLP. On this evidence, it was not unreasonable for the Board to conclude that, while Mr. Al Yamani's direct activities may have ceased for certain periods of time, his membership did not. The Board's conclusion is tenable.

[21] I am satisfied that the Board's conclusion that Mr. Al Yamani was a member of the PFLP is not unreasonable.

4. *Is the PFLP a terrorist organization*?

[22] I move to the second question. Did the Board err in concluding that there were reasonable grounds to believe that the PFLP engages or has engaged in acts of terrorism? Mr. Al Yamani points to a number of alleged errors. Specifically, he alleges that the Board erred by:

- considering acts of terrorism that took place while he was not a member of the PFLP;

- not applying the correct test of "terrorism";

- failing to understand the various factions that operate within the PFLP and the Palestinian Liberation Organization (PLO) and erroneously attributing the acts of other factions to the PFLP group to which Mr. Al Yamani belonged; and

- finding that certain acts were acts of terrorism on the basis of inadequate evidence.

[23] I will consider each of these alleged errors.

[24] Mr. Al Yamani submits that the Board erred by considering acts of terrorism that occurred before or after the time of his membership or during the times of his inactivity. As discussed above, this temporal aspect is not relevant to a s. 34(1)(f) determination. For purposes of s. 34(1)(f), the question of whether the PFLP engages, has engaged or will engage in acts of terrorism is independent of Mr. Al Yamani's membership in the organization.

[25] Mr. Al Yamani's arguments appear to infer that a terrorist organization is only a terrorist organization on the days when a specific act of terrorism occurs. This point of view is illogical. The fact that there are time lags between terrorist acts does not render the group "non-terrorist" during the intervening periods. Indeed, the unpredictability of terrorists and terrorist organizations has been succinctly summarized by W. Michael Reisman, Professor of Law, Yale Law School:

> […] Sometimes, the terrorists in a particular state will remain inactive for extended periods, but that should not make their presence there any less cognizable under international law. The terrorists are being kept, like any other weapon in an arsenal, from side-arms to nuclear missiles in a silo, for future

> contingencies. As such, they should be viewed as active weapons whose per se unlawfulness, in contrast to the other weapons mentioned, makes their mere retention by a government a continuing violation of international law […]
>
> W. Michael Reisman, "International Legal Responses to Terrorism" (1999) 22 Hous. J. Int'l L. 3 at 41

[26] Even if I were to give a narrow and temporal interpretation of s. 34(1) (which I do not), I would point out that the question of the temporal aspects of s. 34(1) may not be directly relevant to the situation of Mr. Al Yamani. That is because the record demonstrates that there is linkage between the periods of Mr. Al Yamani's admitted membership in the PFLP and the time when the organization carried out terrorist acts. For example, in June 1989, the PFLP kidnapped an American aid worker. This action could be clearly characterized as a terrorist act. Mr. Al Yamani has admitted to being a member of the PFLP at that time.

[27] Mr. Al Yamani further submits that the Board committed a reviewable error since it did not clearly indicate what definition of 'terrorism' was being applied (*Ali v. M.C.I.*, 2004 FC 1174, [2004] F.C.J. No. 1416 at para. 63 (F.C.)). A review of the reasons of the Board demonstrates that there was no such error.

[28] In its reasons for decision, the Board cited the Supreme Court of Canada's definition of terrorism in *Suresh v. Canada* (*Minister of Citizenship and Immigration*) [2002] 1 S.C.R. 3. The Board wrote at para. 31:

> At paragraph 98 of the *Suresh* decision (*Suresh v. Canada* (*Minister of Citizenship and Immigration*) [2002] 1 S.C.C. 3), there is found a definition of terrorism; one which has been referred to in subsequent decisions on the issue. The Court said:

> 98.) In our view, it may safely be concluded, following the *International Convention for the Suppression of the Financing of Terrorism*, that "terrorism" in s. 19 of the *Act* includes any "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 international organization to do or abstain from doing any act. This definition captures the essence of what the world understands by "terrorism". …"

[29] The Board carried on to apply that definition to the acts that were described in the documentary evidence. In *Ali*, above, cited by Mr. Al Yamani in support of this argument, the situation was very different. In that case, Justice Anne MacTavish found that there was "no indication in either the officer's notes, or in her letter, as to what she means when she says that Mr. Ali is a member of an organization that is engaged in 'terrorism', as it is impossible to discern how the officer defines the term". The Board, in its reasons, clearly set out the definition of "terrorism" that is being applied and reviewed the alleged acts of terrorism against that standard. Consequently, there is no error.

[30] Next, Mr. Al Yamani argues that the Board's conclusion that the PFLP was a terrorist organization was not made with regards to the evidence. Mr. Al Yamani submits that the decision should be set aside because of the inadequacy of the evidentiary foundation to support a finding that the PFLP engaged in acts of terrorism. He cites the decision in *Fuentes v. Canada* (*Minister of Citizenship and Immigration*), [2003] F.C.J. No. 540 (F.C.), wherein Justice François Lemieux stated, at para. 69, that the "evidence lacks the specificity of who, what, when and where and in what circumstances which is necessary to meet the test of sufficiency in assessing the Minister's burden of proof gauged in relation to its appropriate standard".

[31] The Board had significant documentary evidence before it, much of which was referred to in its reasons for decision. With respect to terrorist acts, the Board referred to the following:

- the bombing of a Marks and Spencer retail store in London;
- several instances of plane hijacking between the time of the group's inception and the time [Mr. Al Yamani] "joined" the student ring in 1972;
- an attack, in 1972, by the PFLP together with a faction of the Red Army on Lod Airport in Israel resulting in the deaths of about 24 persons;
- the hijacking, in July 1973, of a Japanese airliner;
- a hand grenade attack, in December 1974, on a theatre in Tel Aviv that killed three persons and injured over 50;
- attacks on buses in Israel in 1984 and 1985;
- the kidnapping, in 1989, of a U.S. aid worker; and
- since 1999, car bombings and suicide bombings.

[32] The Board acknowledged that the activities of the PFLP – GC, a group which splintered off from the PFLP in 1973 and was led by Wadi Haddad, should not be considered as activities of the PFLP faction with which Mr. Al Yamani has been associated.

[33] The Board concluded its analysis by stating that:

> The documentary evidence supports the assertion that from time to time the PFLP has engaged in activities commonly associated with terrorism such as airline hijackings, shootings and suicide bombings. The targets of the violence are not solely military but civilian. It is a fact that the PFLP is listed as a terrorist organization within provisions of current Canadian anti-terrorism legislation.

[34] In the face of the evidence before it, it is difficult to imagine how the Board could have concluded differently on the nature of this organization. Mr. Al Yamani argues that there was no evidence to demonstrate that the targets of the activities were civilians. He submits that the PFLP is fighting for self-determination for Palestinians and that, as such, military targets are excluded from the definition of terrorism. Even giving a wide margin to allow the PFLP to target buses in Israel because they may have contained soldiers (which I cannot accept on the facts in the record), Mr. Al Yamani's argument is preposterous with respect to the kidnapping of an aid worker or the bombing of a department store in London or the hijacking of numerous civilian aircraft.

[35] As noted earlier, Mr. Al Yamani argues that the Board did not satisfy the test set out in *Fuentes*, above, that the Board must, in respect of each alleged act, analyze "the who, what, when and where and in what circumstances". My problem with Mr. Al Yamani's argument is that he fails to read the remarks of Justice Lemieux in the context of that decision. As I read the decision, the evidence before the Adjudicator was woefully inadequate. For example, the Adjudicator referred to

casualties in one instance where the documentary evidence showed that the casualties were security forces rather than civilians. At one point, the Adjudicator, herself, acknowledged that the information was “lacking in information and detail”. In contrast, the documentary evidence before the Board was relatively detailed and, in my view, supports the Board’s conclusion. It was not vague. Further, many of the incidents described by the Board would certainly fall within the *Suresh* definition of terrorism, as attacks on civilians. With the notoriety and obvious civilian targets of most of the incidents – such as, for example, the hijacking of Pan-Am, TWA, Swissair and BOAC planes in early September 1970 – the “who, what, when and where and in what circumstances” are clear.

[36] I agree with Mr. Al Yamani that the Board may have erred by including the 1972 attack at Lod Airport in Israel. The documentary evidence shows that this attack and other actions taken in conjunction with a faction of the Japanese Red Army were committed by the PFLP-GC faction. As noted above, the Board acknowledged that the acts of the PFLP-GC, after its split from the PFLP, should not be attributed to the PFLP. Nevertheless, even if I exclude this event from the list of terrorist activities, there is no change in the totality of the evidence before the Board. The error, if there is one, is not sufficient to overturn the decision.

[37] In sum, the Board’s decision that there were reasonable grounds to believe that the PFLP had engaged in terrorism was based on the application of the definition of terrorism as set out in *Suresh* and an adequate assessment of the evidence before it. The one possible error related to the PFLP-GC does not render the decision, as a whole, untenable. The Board’s conclusion on the nature of the PFLP was reasonable.

5. *Conclusion*

[38] In conclusion, the Board found that Mr. Al Yamani "is a person who is inadmissible on security grounds for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism". Having reviewed the decision and the record before the Board, I am satisfied that the Board's decision stands up to a somewhat probing examination and should not be overturned.

Analysis of the Charter Issues

1. *What is the applicable standard of review*?

[39] The Board considered and rejected the arguments of Mr. Al Yamani that his rights under s. 2 and s. 15 of the *Charter* were violated. Mr. Al Yamani submits that the Board erred in its conclusions. The parties agree that the standard of review to be applied to the *Charter* determinations made by the Board is that of correctness.

2. *Relevant Charter provisions*

[40] Mr. Al Yamani submits that his *Charter* rights under both s. 2 and s. 15 of the *Charter* are violated by the application of s. 34(1)(f) of *IRPA*. Those provisions are as follows:

2. Everyone has the following fundamental freedoms:

a) freedom of conscience and religion;

b) freedom of thought, belief, opinion and expression, including freedom of the press and other

2. Chacun a les libertés fondamentales suivantes :

a) liberté de conscience et de religion;

b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et

media of communication;	des autres moyens de communication;
c) freedom of peaceful assembly; and	*c*) liberté de réunion pacifique;
d) freedom of association.	*d*) liberté d'association.
15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.	**15.** (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.
(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.	(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

3. *Is s. 34(1)(f) of IRPA in violation of s. 2 of the Charter*?

[41] Mr. Al Yamani argues assertively before me (and apparently before the Board) that his activities within the PFLP are necessary for him to express his political views and to support Palestinian self-determination. Much time was spent in argument describing the role of the PLO in the Middle East. Mr. Al Yamani describes the PLO as a legitimate organization, recognized by the Canadian Government as a representative of the Palestinian people. Within the PLO, there are a number of sub-organizations, including the PFLP. Mr. Al Yamani equates the PLO to our Parliament and likens the various sub-organizations, including the PFLP, to our political parties.

One can only participate, argues Mr. Al Yamani, in the PLO (the "Palestinian Parliament") by being a member of a group such as the PFLP (a "Palestinian political party"). Mr. Al Yamani asserts that the right to self-determination is protected internationally and that there is an internationally recognized right to belong to an organization that asserts self-determination, even where one or more organizations within the umbrella organization may be classified as "terrorist". In his view, s. 34(1)(f) is too broadly worded; as worded the provision would include someone working as a clerk in a medical clinic operated by the PFLP. In sum, Mr. Al Yamani argues that s. 34(1)(f) violates his s. 2 *Charter* right to "freedom of thought, belief, opinion and expression".

[42] The first general problem that I have with Mr. Al Yamani's argument is the attempt to re-characterize his membership as being in the PLO. The application of s. 34(1)(f) is made in respect to his membership in the PFLP, an organization that has been found – in the Board's decision and, on a broader base, by the Government of Canada – to be a terrorist organization. As pointed out by the Board at para. 43:

> Mr. Al Yamani has not been and is not subject to Immigration proceedings because he is a Palestinian who engages in activities of a political nature. He is not the subject of these proceedings based on any association he may have to the PLO and his support for the Palestinian cause, but based on his involvement and membership in an organization (the PFLP) which has engaged in terrorist activities.

Accordingly, when assessing the merits of Mr. Al Yamani's *Charter* arguments, the starting point is that Mr. Al Yamani's membership is in the PFLP.

[43] The question posed by Mr. Al Yamani is, in my view, completely on all fours with the issue before the Supreme Court of Canada in *Suresh*. In that case, the Supreme Court was considering the deportation of Mr. Suresh who was a member and fundraiser of the Liberation Tigers of Tamil Eelam (the LTTE), an organization alleged to be engaged in terrorist activity in Sri Lanka. The provisions in question under the former *Immigration Act* and the issues before the Supreme Court were substantially identical to those before me. Mr. Suresh's arguments to the Supreme Court were summarized at para. 100:

> Suresh argues that the Minister's issuance of the certificate under s. 40.1 of the *Immigration Act* and the order declaring him a danger to the security of Canada under s. 53(1)(b) on the ground that he was a member of the LTTE violate his *Charter* rights of free expression and free association and cannot be justified. He points out that he has not been involved in actual terrorist activity in Canada, but merely in fund-raising and support activities that may, in some part, contribute to the civil war efforts of Tamils in Sri Lanka. He also points out that it is not a criminal offence to belong to such an organization and that the government seeks to deport him for something that Canadian citizens may lawfully do without sanction. He suggests that inclusion of mere membership in an organization that has been or will be involved in acts of terrorism unjustifiably limits the freedom of Convention refugees to express their views on dissident movements outside the country, as well as their freedom to associate with other people in Canada who come from similar backgrounds. He points out that the alleged terrorist organizations he was found to have been a [page 57] member of are engaged in many positive endeavours to improve the lives of people in Canada and are not involved in violence here.

[44] The Supreme Court rejected these arguments completely concluding that there was no breach of Mr. Suresh's rights under s. 2 of the *Charter*. At paras. 107-111, the reasons of the Supreme Court are set out:

> **107.** It is established that s. 2 of the *Charter* does not protect expressive or associational activities that [page 59] constitute violence: *Keegstra*, *supra*. This Court has, it is true, given a broad interpretation to freedom of expression, extending it, for example, to hate speech and perhaps even threats of violence:

Keegstra; *R. v. Zundel*, [1992] 2 S.C.R. 731. At the same time, the Court has made plain that the restriction of such expression may be justified under s. 1 of the *Charter*: see *Keegstra*, at pp. 732-33. The effect of s. 2(b) and the justification analysis under s. 1 of the *Charter* suggest that expression taking the form of violence or terror, or directed towards violence or terror, is unlikely to find shelter in the guarantees of the *Charter*.

108. The Minister's discretion to deport under s. 53 of the *Immigration Act* is confined, on any interpretation of the section, to persons who have been engaged in terrorism or are members of terrorist organizations, and who also pose a threat to the security of Canada. Persons associated with terrorism or terrorist organizations -- the focus of this argument -- are, on the approach to terrorism suggested above, persons who are or have been associated with things directed at violence, if not violence itself. It follows that so long as the Minister exercises her discretion in accordance with the *Act*, there will be no ss. 2(b) or (d) *Charter* violation.

109. Suresh argues that s. 19 is so broadly drafted that it has the potential to catch persons who are members of or participate in the activities of a terrorist organization in ignorance of its terrorist activities. He points out that many organizations alleged to support terrorism also support humanitarian aid both in Canada and abroad. Indeed, he argues that this is so of the LTTE, the association to which he is alleged to belong. While it seems clear on the evidence that Suresh was not ignorant of the LTTE's terrorist activities, he argues that it may be otherwise for others who were members or contributed to its activities. Thus without knowingly advocating terrorism and violence, they may be found to be part [page 60] of the organization and hence subject to deportation. This, he argues, would clearly violate ss. 2(b) and 2(d) of the *Charter*.

110. We believe that it was not the intention of Parliament to include in the s. 19 class of suspect persons those who innocently contribute to or become members of terrorist organizations. This is supported by the provision found at the end of s. 19, which exempts from the s. 19 classes "persons who have satisfied the Minister that their admission would not be detrimental to the national interest". Section 19 must therefore be read as permitting a refugee to establish that his or her continued residence in Canada will not be detrimental to Canada, notwithstanding proof that the person is associated with or is a member of a terrorist organization. This permits a refugee to establish that the alleged association with the terrorist group was innocent. In such case, the Minister, exercising her discretion constitutionally, would find that the refugee does not fall within the targeted s. 19 class of persons eligible for deportation on national security grounds.

> **111.** It follows that the appellant has not established that s. 53's reference to s. 19 unjustifiably violates his *Charter* rights of freedom of expression and freedom of association. Moreover, since there is no s. 2 violation, there is no basis to interfere with the s. 40.1 certificate that was issued in October 1995.

[45] In spite of Mr. Al Yamani's efforts, I can see nothing to distinguish the decision in *Suresh* from the facts before me. For example, Mr. Suresh's activities within the organization, like Mr. Al Yamani's, were administrative rather than directly involved in acts of terrorism. Mr. Suresh argued that his organization engaged in humanitarian activities as well as alleged terrorism; so does Mr. Al Yamani. The LTTE, like the PFLP, was described as "multi-faceted". In *Suresh*, the Supreme Court referred to the ministerial exemption as allowing a claimant to assert his innocent association with a terrorist organization. Similarly, ministerial exemption is available to Mr. Al Yamani pursuant to s. 34.2 of *IRPA*.

[46] Thus, the Board's decision is consistent with the Supreme Court of Canada's findings in *Suresh* and is supported by the evidence. In my view, the Board correctly concluded that the provisions of s. 34(1)(f) of *IRPA* did not breach Mr. Al Yamani's rights under s. 2 of the *Charter*.

4. *Is s. 34(1)(f) of IRPA in violation of s. 15 of the Charter*?

[47] Mr. Al Yamani also argues that s. 34(1)(f) results in discrimination as contemplated by s. 15 (1) of the *Charter*. In his view, s. 34(1)(f) proscribes associations and activities that are lawful for Canadian citizens but are not lawful for non-citizens. Mr. Al Yamani asserts that non-citizenship falls within an "analogous ground" to those set out in s. 15 of the *Charter*. He also submits that, as a non-citizen and a stateless Palestinian, he is already in a disadvantageous position within Canadian

society and that the discriminatory treatment he receives under s. 34(1)(f) provides for substantially different treatment between him and Canadian citizens.

[48] In my view, there are a number of reasons why the Board was correct in rejecting these arguments.

[49] An analysis under s. 15(1) involves two steps (see, for example, *Law Society British Columbia v. Andrews*, [1989] 1 S.C.R. 143, and *R. v. Turpin*, [1989] 1 S.C.R. 1296). First, the claimant must show a denial of "equal protection" or "equal benefit" of the law, as compared with some other person. Second, the claimant must show that the denial constitutes discrimination. At this second stage, in order for discrimination to be made out, the claimant must show that the denial rests on one of the grounds enumerated in s. 15(1) or an analogous ground and that the unequal treatment is based on the stereotypical application of presumed group or personal characteristics.

[50] It appears that Mr. Al Yamani, as a non-citizen, is not equally treated under the law. Accordingly, there may be some argument that he satisfies the first part of the s. 15 *Charter* analysis, since s. 34 does not apply to Canadian citizens. However, in that regard, I would note that the *Charter* recognizes the distinction between Canadian citizens and non-citizens. As stated by the Supreme Court of Canada in the leading case of *Canada* (*Minister of Employment and Immigration*) *v. Chiarelli*, [1992] S.C.J. No. 27 at para. 32:

> [Section] 6 of the *Charter* specifically provides for differential treatment of citizens and permanent residents in this regard. While permanent residents are given various mobility rights in s. 6(2), only citizens are accorded the right to enter, remain in and leave Canada in s. 6(1). There is therefore no discrimination contrary to s. 15 in a

> deportation scheme that applies to permanent residents, but not to citizens.
> [Emphasis added.]

[51] Even if I were to conclude that Mr. Al Yamani demonstrates a denial of equal treatment, the key to the second step of the analysis is in the nature of Mr. Al Yamani's membership. Was his membership in the PFLP one that is referred, directly or by analogy, to those interests protected under s. 15? If the answer to that is negative, s. 15 is not engaged.

[52] In my view, no analogy can be made between the grounds of discrimination listed in s. 15(1) and membership in a terrorist organization. As discussed above, the case before me is not about membership in the governing PLO; rather, it is a case about membership in a terrorist organization.

[53] Membership in the PFLP cannot be described as an immutable characteristic, such as race or sex (*Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241; *Miron v. Trudel*, [1995] 2 S.C.R. 418). Mr. Al Yamani's existence as a Palestinian is, I agree, a constant. The same cannot be said about his voluntary membership in the PFLP. The record demonstrates that, as Mr. Al Yamani found it expedient to do so, he ceased his PFLP activities or, as of 1992, resigned from the organization. The ability to opt in or out of a group is entirely inconsistent with the grounds – both stated and analogous – set out in s. 15. On this basis, Mr. Al Yamani's claim that s. 34(1)(f) violates his s. 15 rights is without merit. His right to belong to a terrorist organization do not fall within the rights protected by s. 15.

[54] I do not disagree with Mr. Al Yamani that the Supreme Court, in *Andrews* above, determined that the distinction made on the basis of citizenship is an analogous ground under s. 15

of the *Charter*. This was affirmed by the Supreme Court in *Lavoie v. Canada*, [2002] 1 S.C.R. 769. However, these cases do not assist Mr. Al Yamani for the simple reason that s. 34(1)(f) is not about a person's citizenship; rather, it is about the rights of Canada to refuse admission to Canada of a person who belongs to an organization that engages, has engaged or will engage in terrorist acts.

[55] Moreover, Justices MacLachlin and l'Heureux-Dube in *Lavoie*, at para. 2, pointed out that "[a] discriminatory distinction is one that violates human dignity". Although the discriminatory distinction of citizenship has been found to violate human dignity, it is hard to imagine how discriminating against a non-citizen because of his association with a terrorist organization violates that person's human dignity. As pointed out by the Respondent, "terrorist activity is directly inimical to s. 15(1)'s purposes of ensuring the dignity of all persons".

[56] There is no need to carry out any further s. 15 *Charter* analysis. Mr. Al Yamani fails to meet the threshold requirement of s. 15 that membership in a terrorist organization is a right that is protected by s. 15.

[57] The Board correctly concluded that "the provisions of s. 34(1) of *IRPA* do not violate s. 15 *Charter* rights of Mr. Al Yamani".

Adequacy of the Reasons

[58] In Mr. Al Yamani's view, the Board breached the duty of fairness in failing to provide reasons which addressed the issues raised before it. Mr. Al Yamani submits that the Board merely recited the submissions and evidence of the parties and stated a conclusion as was found inadequate

by the Federal Court of Appeal in *Via Rail Canada Inc. v. Canadian National Transportation Agency* [2001] 2 F.C. 25 at para. 22, 193 D.L. R. (4th) 357. Specifically, Mr. Al Yamani argues that the Board: (a) failed to address the "quality of the evidence before her as to the acts of the PFLP"; (b) "did not take issue with Mr. Al Yamani's credibility yet finds that he was a member of the PFLP when he had testified that he was not"; and (c) failed to address the complex issues raised in respect of the *Charter*.

[59] There is no doubt that there is an obligation on the Board to provide adequate reasons. In this case, I am satisfied that the reasons meet the standard of adequacy. The Board's reasons – 25 pages in length – are comprehensive and detailed. Having reviewed those reasons, I am not persuaded that they are simply a recitation of the submissions and evidence followed by a conclusion as was the case in *Via Rail*, above. Rather, the Board engaged in a thorough analysis of the arguments made to it. Further, the reasons make very clear the basis upon which the determination of inadmissibility was made and are sufficient to allow a review of the legality of the decision. This is true in respect of both the merits-based and the *Charter* arguments.

[60] In terms of the specific complaints of Mr. Al Yamani, I am satisfied that the Board addressed the "quality of the evidence". Mr. Al Yamani's argument regarding his credibility and membership in the PFLP ignores his own admission of membership. Finally, the s. 2 and s. 15 *Charter* analyses were directly on point. The arguments of Mr. Al Yamani on the *Charter* issues were answered, regardless of their complexities, by applying well-established legal principles that were explained in the decision. In any event, since this Court has reviewed the *Charter*

determinations on a standard of review of correctness, the adequacy of the reasons is of less importance.

[61] Reasons can always be “better”. However, in this case, the reasons meet the threshold for adequacy. There was no breach of the duty of fairness.

Conclusion

[62] For these reasons, the application for judicial review will be dismissed.

Certified Questions

[63] Mr. Al Yamani proposes three questions for certification. The first question is:

1. [For purposes of s. 34(1)(f)], do the principles of statutory interpretation require that membership in an organization engaged in terrorism correspond in time with the actual engagement of the organization in such activities?

The problem with this question is that it is not determinative of the case before me. The Board, in its reasons, referred to a number of acts of terrorism carried out by the PFLP during periods of Mr. Al Yamani’s admitted membership in the organization. Thus, even if one were to apply the restricted meaning of s. 34(1)(f) adopted by Mr. Al Yamani (which I do not accept), the facts of this case demonstrate that there was a correspondence between the engagement of the PFLP in terrorism and Mr. Al Yamani’s membership. This question will not be certified.

[64] The second and third questions are:

2. Does s. 34(1)(f) of *IRPA* breach s. 2 of the *Charter* where the organization at issue is a multi-faceted member of a recognized representative – a national liberation movement (NLM) – of a stateless people, the person concerned on the facts before the Court has only engaged in political, non-violent expression, and the only way of participating in an organized, political and non-violent fashion in the NLM is through one of the political parties, including the organization at issue, who are members of it?

3. Does s. 34(1)(f) of *IRPA* breach s. 15 of the *Charter* where the organization at issue is a multi-faceted member of a recognized representative – a national liberation movement (NLM) – of a stateless people and the only way of participating in an organized, political and non-violent fashion in the NLM, as in the case at bar, is through one of the political parties, including the organization at issue, who are members of it?

[65] The first problem with these proposed questions consists of the underlying premises. Mr. Al Yamani describes the PFLP as a "multi-faceted member of a recognized representative [of the Palestinian people]" and as a "political party". Further, he asserts that membership in such a political party is the only way to participate in the Palestinian's "recognized representative" (which I take to be the PLO). That may or may not be true. Nevertheless, even Mr. Al Yamani, in the above proposed questions, acknowledges that other "political parties" of the PLO exist; presumably, "political, non-violent expression" and participation could be effected through any of those organizations. Thus, s. 34(1)(f) does not prevent Mr. Al Yamani from participation in the NLM through other, non-terrorist organizations. Mr. Al Yamani has not presented evidence that all organizations that come within the umbrella of the PLO meet the definition of "terrorist organization". Accordingly, the facts upon which the question is premised do not necessarily give rise to the alleged breaches of *Charter* rights that are claimed.

[66] Further, as discussed above, the Supreme Court in *Suresh*, above, and in *Chiarelli*, above, has answered these questions. The desire of Mr. Al Yamani (or, more appropriately on this

argument, his counsel) to have another opportunity to address the Supreme Court's decision in *Suresh* is not a valid reason for certifying the second question.

[67] Accordingly, neither of the *Charter* questions will be certified.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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