Ahani *v.* Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 72, 2002 SCC 2

Mansour Ahani *Appellant*

v.

The Minister of Citizenship and Immigration and the Attorney General of Canada *Respondents*

Indexed as: Ahani *v.* Canada (Minister of Citizenship and Immigration)

Neutral citation: 2002 SCC 2.

File No.: 27792.

2001: May 22; 2002: January 11.

Present: McLachlin C.J. and L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

on appeal from the federal court of appeal

Constitutional law — Charter of Rights — Fundamental justice — Immigration — Deportation — Risk of torture — Whether deportation of refugee facing risk of torture contrary to principles of fundamental justice — Canadian Charter of Rights and Freedoms, s. 7 — Immigration Act, R.S.C. 1985, c. I-2, s. 53(1)(b).

Constitutional law — Charter of Rights — Fundamental justice — Vagueness — Whether terms "danger to the security of Canada" and "terrorism" in deportation provisions of immigration legislation unconstitutionally vague — Canadian Charter of Rights and Freedoms, s. 7 — Immigration Act, R.S.C. 1985, c. I-2, ss. 19(1), 53(1)(b).

Constitutional law — Charter of Rights — Freedom of expression — Freedom of association — Whether deportation for membership in terrorist organization infringes freedom of association and freedom of expression – Canadian Charter of Rights and Freedoms, ss. 2(b), 2(d) — Immigration Act, R.S.C. 1985, c. I-2, ss. 19(1), 53(1)(b).

Constitutional law — Charter of Rights — Fundamental justice — Procedural safeguards — Immigration — Convention refugee facing risk of torture if deported — Whether procedural safeguards provided to Convention refugee satisfy requirements of fundamental justice — Canadian Charter of Rights and Freedoms, s. 7 — Immigration Act, R.S.C. 1985, c. I-2, s. 53(1)(b).

Administrative law — Judicial review — Ministerial decisions — Standard of review — Immigration — Deportation — Approach to be taken in reviewing decisions of Minister of Citizenship and Immigration on whether refugee's presence constitutes danger to security of Canada and whether refugee faces substantial risk of torture upon deportation — Immigration Act, R.S.C. 1985, c. I-2, s. 53(1)(b).

The appellant is a citizen of Iran who entered Canada in 1991 and was granted Convention refugee status. In 1993, the Solicitor General of Canada and the Minister of Citizenship and Immigration filed a certificate under s. 40.1 of the

Immigration Act with the Federal Court, Trial Division, alleging that the appellant was a member of an inadmissible class specified in the anti-terrorism provisions of the Act. The appellant was arrested and has remained in custody ever since. The appellant was later informed of the Minister's intention to issue a danger opinion under s. 53(1)(*b*) of the Act and was given an opportunity to make submissions. He claimed that if he is sent back to Iran, he will likely face torture. A memorandum was prepared for the Minister's consideration with the appellant's submissions and other relevant documents. That memorandum was accompanied by an opinion letter from the Minister's legal services unit. The Minister issued her opinion, under s. 53(1)(*b*), that the appellant constituted a danger to the security of Canada. The appellant filed an application for judicial review of the Minister's decision in which he raised, among other things, various constitutional questions relating to s. 53(1)(*b*). He also commenced an action raising the same constitutional questions, which was heard with the application for judicial review. The Federal Court, Trial Division granted the Minister's preliminary motion requesting that the motion judge's decision in *Suresh* be applied to these proceedings to the extent that it decided the same constitutional questions. The court subsequently dismissed the application for judicial review. The Federal Court of Appeal dismissed the appellant's appeal.

Held: The appeal should be dismissed.

When the analytical framework set out in *Suresh* is applied, the appellant has not cleared the evidentiary threshold required to access the protection guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*. The appellant has not made out a *prima facie* case that there was a substantial risk of torture upon deportation. The provisions allowing the Minister to deport a refugee for membership in a terrorist organization do not unjustifiably infringe *Charter* rights of freedom of expression and

association. In this case, unlike *Suresh*, the Minister provided adequate procedural protections. The appellant was fully informed of the Minister's case against him and given a full opportunity to respond. Insofar as the procedures followed may not have precisely complied with those suggested in *Suresh*, this did not prejudice him. The process accorded to the appellant was consistent with the principles of fundamental justice. Lastly, it was not patently unreasonable for the Minister to conclude that the appellant would constitute a danger to the security of Canada under s. 53(1)(*b*) of the *Immigration Act* since there was ample support for the Minister's decision. There is also no basis to interfere with the Minister's decision that the appellant's deportation to Iran would only expose him to a "minimal risk" of harm. The Minister applied the proper principles and took into account the relevant factors.

Cases Cited

Applied: *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 2002 SCC 1; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, s. 7.

Immigration Act, R.S.C. 1985, c. I-2, ss. 19(1)(*e*)(iii), (iv)(C), (*f*)(ii), (iii)(B) [am. 1992, c. 49, s. 11(2)], (*g*), 40.1, 53(1)(*b*) [rep. & sub. *idem*, s. 43].

APPEAL from a judgment of the Federal Court of Appeal (2000), 252 N.R. 83, 3 Imm. L.R. (3d) 159, 73 C.R.R. (2d) 156, [2000] F.C.J. No. 53 (QL),

upholding a judgment of the Trial Division (1999), 1 Imm. L.R. (3d) 124, [1999] F.C.J. No. 1020 (QL). Appeal dismissed.

Barbara Jackman and *Ronald Poulton*, for the appellant.

Urszula Kaczmarczyk and *Donald A. MacIntosh*, for the respondents.

The following is the judgment delivered by

1 THE COURT — In this appeal we hold that the appellant, Mansour Ahani, is not entitled to a new deportation hearing under the *Immigration Act*, R.S.C. 1985, c. I-2. Ahani is a citizen of Iran who entered Canada in 1991 and claimed Convention refugee status. The Canadian government now seeks to deport him to Iran, because of his association with the Iranian Ministry of Intelligence and Security ("MOIS"), which the government alleges is an Iranian terrorist organization. Ahani claims that if he is sent back to Iran, he will likely face torture.

2 This appeal raises the same constitutional issues as *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 2002 SCC 1 (released concurrently). Applying the analytical framework set out in *Suresh* to the facts of this case, we conclude that Ahani has not cleared the evidentiary threshold required to access the s. 7 protection guaranteed by the *Canadian Charter of Rights and Freedoms*. As found in *Suresh*, the provisions allowing the Minister of Citizenship and Immigration to deport a refugee for membership in a terrorist organization do not unjustifiably infringe *Charter* rights of freedom of expression and association. In this case, unlike *Suresh*, the Minister provided adequate procedural protections. The appeal is therefore dismissed.

I. Facts

3 Ahani is a citizen of Iran. He entered Canada on October 14, 1991 and was granted Convention refugee status based on his political opinion and membership in a particular social group. After arriving, the Canadian Security Intelligence Service ("CSIS") began to suspect that Ahani was a member of the MOIS, which sponsors a wide range of terrorist activities, including the assassination of political dissidents worldwide. CSIS also believed that Ahani received specialized training in the MOIS that qualified him as an assassin.

4 Shortly after his refugee hearing, Ahani was contacted by an intelligence officer from Iran, who is alleged to be a commander of the MOIS. Ahani arranged for a false passport, and met the commander in Zurich, Switzerland. From there, they traveled separately, but met again in Fermignano, Italy, which is apparently the home of a number of Iranian dissidents. Ahani returned to Switzerland, then traveled to Istanbul, Turkey, where he obtained another false passport and returned to Canada.

5 Upon his return to Canada, Ahani met with CSIS agents. CSIS alleges that during those meetings, Ahani admitted that his military training was part of his recruitment into the MOIS, and that the intelligence officer he met in Europe was a previous associate.

6 After receiving a report from CSIS, the Solicitor General of Canada and the Minister of Citizenship and Immigration filed on June 17, 1993 a s. 40.1 security certificate with the Federal Court, Trial Division, alleging that Ahani was a member of the inadmissible classes described in ss. 19(1)(*e*)(iii), 19(1)(*e*)(iv)(C), 19(1)(*f*)(ii),

19(1)(*f*)(iii)(B) and 19(1)(*g*) of the Act. Ahani was arrested under s. 40.1(2)(*b*) of the Act and has remained in custody ever since.

7 Ahani challenged the constitutional validity of s. 40.1 of the Act before the Federal Court, Trial Division. McGillis J. found the s. 40.1 statutory scheme to be valid: [1995] 3 F.C. 669 (aff'd (1996), 201 N.R. 233 (F.C.A.), application for leave to appeal dismissed, [1997] 2 S.C.R. v). Ahani also challenged the reasonableness of the certificate, and Denault J. found that the certificate was reasonable, and that Ahani lacked credibility: (1998), 146 F.T.R. 223.

8 Ahani was later informed of the Minister's intention to issue a danger opinion under s. 53(1)(*b*) of the Act. At the Minister's invitation, Ahani made submissions that he would be put at risk for having made a refugee claim and divulging information to the Canadian authorities with respect to his work with the Iranian government. Ahani denied the allegation that he was an assassin with the MOIS.

9 Shortly thereafter, an analyst with the Case Management Branch of the Department of Citizenship and Immigration, prepared a memorandum for both the Acting Deputy Minister and the Minister's consideration and attached Ahani's submissions together with other relevant documents. That memorandum was accompanied by an opinion letter from the Minister's legal services unit. The Minister later issued her opinion, under s. 53(1)(*b*) of the Act, that Ahani constituted a danger to the security of Canada, following which Ahani filed an application for leave and for judicial review of the Minister's decision. Ahani raised a number of constitutional questions relating to s. 53(1)(*b*) of the Act. Ahani also commenced an action in which he raised the same constitutional questions.

10 On June 15, 1999, at the outset of the proceedings, counsel for the Minister made a preliminary motion requesting the court to apply the recent decision of McKeown J. in *Suresh v. Canada (Minister of Citizenship and Immigration)* (1999), 65 C.R.R. (2d) 344 (F.C.T.D.), insofar as it decides the same constitutional issues raised in the present cases. This motion was granted: (1999), 170 F.T.R. 153.

11 On the remaining issues, the Federal Court, Trial Division concluded on June 23, 1999 that there was ample evidence in the record to support the Minister's discretionary decision that the appellant constituted a danger to the security of Canada: (1999), 1 Imm. L.R. (3d) 124. The Minister's decision was found to be reasonable, and no error was committed that required the intervention of the court.

12 Ahani subsequently appealed. Robertson J.A. determined that the declatory relief being sought in the action was available in the context of the judicial review application. The Federal Court of Appeal dismissed all of the constitutional challenges. Ahani also sought judicial review of the Minister's s. 53(1)(*b*) opinion, but that application was also dismissed: (2000), 3 Imm. L.R. (3d) 159. Ahani now appeals to this Court.

II. Legislation

13 *Immigration Act*, R.S.C. 1985, c. I-2

> **19.** (1) No person shall be granted admission who is a member of any of the following classes:
>
> . . .

(*e*) persons who there are reasonable grounds to believe

. . .

(iii) will engage in terrorism, or

(iv) are members of an organization that there are reasonable grounds to believe will

. . .

(C) engage in terrorism;

(*f*) persons who there are reasonable grounds to believe

. . .

(ii) have engaged in terrorism, or

(iii) are or were members of an organization that there are reasonable grounds to believe is or was engaged in

. . .

(B) terrorism,

except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;

. . .

(*g*) persons who there are reasonable grounds to believe will engage in acts of violence that would or might endanger the lives or safety of persons in Canada or are members of or are likely to participate in the unlawful activities of an organization that is likely to engage in such acts of violence;

53. (1) Notwithstanding subsections 52(2) and (3), no person who is determined under this Act or the regulations to be a Convention refugee, nor any person who has been determined to be not eligible to have a claim to be a Convention refugee determined by the Refugee Division on the basis that the person is a person described in paragraph 46.01(1)(*a*), shall be removed from Canada to a country where the person's life or freedom would be threatened for reasons of race, religion, nationality, membership in a particular social group or political opinion unless

. . .

(*b*) the person is a member of an inadmissible class described in paragraph 19(1)(*e*), (*f*), (*g*), (*j*), (*k*) or (*l*) and the Minister is of the opinion that the person constitutes a danger to the security of Canada;

III. Issues

14 We propose to consider the issues in the following order:

1. Did the Minister err in the exercise of her discretion?

2. Are the conditions for deportation in the *Immigration Act* constitutional?

3. Are the procedures for deportation set out in the *Immigration Act* constitutionally valid?

IV. Analysis

1. *Did the Minister Err in the Exercise of her Discretion?*

15 We are asked to review decisions of the Minister on: (1) whether Ahani constitutes a danger to the security of Canada; and (2) whether he faces a substantial risk of torture on deportation.

16 For the reasons discussed in *Suresh*, the standard of review on the first decision is whether the decision is patently unreasonable in the sense that it was made arbitrarily or in bad faith, cannot be supported on the evidence, or did not take into account the appropriate factors. A reviewing court should not reweigh the factors or interfere merely because it would have come to a different conclusion. Applying the functional and pragmatic approach mandated by *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, we conclude that the Parliament

intended to grant the Minister a broad discretion in issuing a s. 53(1)(*b*) opinion, reviewable only where the Minister makes a patently unreasonable decision.

17 Likewise, on the second question, we conclude that the court may intervene only if the Minister's decision is not supported on the evidence, or fails to consider the appropriate factors. The reviewing court should also recognize that the nature of the inquiry may limit the evidence required. While the issue of deportation to risk of torture engages s. 7 of the *Charter* and hence possesses a constitutional dimension, the Minister's decision is largely fact-based. The inquiry into whether Ahani faces a substantial risk of torture involves consideration of the human rights record of the home state, the personal risk faced by the claimant, any assurances that the claimant will not be tortured and their worth and, in that respect, the ability of the home state to control its own security forces, and more. Such issues are largely outside the realm of expertise of reviewing courts and possess a negligible legal dimension. Considerable deference is therefore required.

18 Returning to the first question, we find that it was not patently unreasonable for the Minister to conclude that Ahani would constitute a danger to the security of Canada under s. 53(1)(*b*) of the Act. McGillis J. found that the Minister's decision with respect to whether Ahani constitutes a danger to the security of Canada was reasonable and did not warrant any intervention of the court. Robertson J.A. did not decide the standard of review, but concluded that even on the stringent standard of correctness, the Minister's decision should be upheld. We agree that on any standard of review there was ample support for the Minister's decision.

19 We are of the view that the Minister's decision is also unassailable on the second question.

20 Mr. Alldridge, an analyst with the Case Management Branch of the Department of Citizenship and Immigration, prepared a memorandum for both the Minister and the Acting Deputy Minister and attached the appellant's submissions together with other relevant documents for their consideration. Mr. Alldridge correctly noted that there must be substantial grounds for believing that the individual would face torture upon deportation. He notes that: (a) Ahani's risk submissions were found to be "suspect" during the s. 40.1 hearings; (b) Ahani's submissions refer to conditions in Iran which are applicable to opponents of the regime and not to persons such as the appellant; and (c) Ahani was in contact with the Iranian government after his refugee hearing. He concluded that the serious risk to Canadian security was outweighed against the minimal risk of harm to Ahani if returned to Iran.

21 Based on this memo and supporting information, the Minister issued her opinion on August 12, 1998 under s. 53(1)(*b*) of the *Immigration Act* that Ahani constitutes a danger to the security of Canada.

22 We conclude that the Minister applied the proper principles and took into account the relevant factors. We find no basis to interfere with her decision.

2. *Are the Conditions for Deportation in the Immigration Act Constitutional?*

23 We have dealt with this issue in *Suresh*, and need not repeat the analysis.

3. *Was Ahani Fairly Dealt With?*

24 In *Suresh*, we found that in circumstances where a Convention refugee makes out a *prima facie* case that there may be a substantial risk of torture upon deportation, the duty of fairness requires greater procedural protection than required by the Act under s. 53(1)(*b*). In cases of that kind, a person facing a declaration under s. 53(1)(*b*) and, accordingly, deportation to a country in which he or she may face torture, must be provided with all relevant information and advice produced for the Minister's consideration by the Department of Citizenship and Immigration and other sources, with an opportunity to address that evidence in writing and with written reasons.

25 Ahani was made aware of the allegations against him and was provided with the opportunity to make written submissions. Specifically, by letter dated April 22, 1998, he was informed of the intention of the Minister to issue an opinion under s. 53(1)(*b*) and that the effect of that opinion would be the removal of the prohibition against returning persons, who have been found to be Convention refugees, to the country from which they fled. In the April 22, 1998 letter, Ahani was also informed that the Minister would assess the risk that the appellant represented to the security of Canada and the possible risk to which the appellant would be exposed if returned to Iran. Ahani was then given 15 days to make written submissions, which he did. On July 31, 1998, an analyst with the Case Management Branch of the Department of Citizenship and Immigration prepared a memorandum for both the Acting Deputy Minister and the Minister's consideration and attached the appellant's submissions together with other relevant documents. In that memorandum, the analyst set out Ahani's various legal arguments and dealt with them in light of the jurisprudence. That memorandum was accompanied by an opinion letter from the Minister's legal services unit. This process culminated in the opinion issued by the

Minister, under s. 53(1)(*b*), that Ahani constitutes a danger to the security of Canada and that he faced only a minimal risk of harm upon deportation.

26 We are satisfied that Ahani was fully informed of the Minister's case against him and given a full opportunity to respond. Insofar as the procedures followed may not have precisely complied with those we suggest in *Suresh*, we are satisfied that this did not prejudice him. We conclude that the process accorded to Ahani was consistent with the principles of fundamental justice, and would reject this ground of appeal.

V. Conclusion

27 The appeal is dismissed. The respondents are entitled to costs.

28 The constitutional questions are answered as in *Suresh*.

Appeal dismissed with costs.

Solicitors for the appellant: Jackman, Waldman & Associates, Toronto.

Solicitor for the respondents: The Deputy Attorney General of Canada, Toronto.