

Immigration and
Refugee Board of Canada

Immigration Division



Commission de l'immigration
et du statut de réfugié du Canada

Section de l'immigration

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Public Hearing – Audience publique

Reasons and Decision – Motifs et décision

Between	The Minister of Public Safety and Emergency Preparedness Le ministre de la Sécurité publique et de la Protection civile	Entre
and		et
Person(s) Concerned	Muhammad Aqeeq ANSARI	Intéressé(e)(s)
Date(s) of Hearing	24 February 2015 25 February 2015 3 March 2015 4 March 2015	Date(s) de l'audience
Place of Hearing	Toronto	Lieu de l'audience
Date of Decision	8 May 2015	Date de la décision
Panel	A. Seifert	Tribunal
Counsels for the Person(s) Concerned	J. Lourenco N. Ishmael	Conseil(s) pour l'intéressé(e)/les intéressés
Counsel for the Minister	D. Lee	Conseil du (de la) ministre

IN THE MATTER OF the *Immigration and Refugee Protection Act* and an Admissibility Hearing concerning MUHAMMAD AQEEQ ANSARI.

REASONS FOR DECISION

[1] These are the reasons for a decision rendered under paragraph 45(d) of the *Immigration and Refugee Protection Act (IRPA)* concerning Muhammad Aqeeq Ansari, following an Admissibility Hearing that was conducted under the authority of subsection 44(2) of the *IRPA*.

[2] Muhammad Aqeeq Ansari was reported on August 6, 2014 as inadmissible to Canada pursuant to paragraph 34(1)(f) of the *IRPA*, in that he is alleged to be a permanent resident 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 acts referred to in paragraph 34(1)(c), namely, engaging in terrorism.¹ The report was reviewed by the Minister's Delegate and a referral of the matter to the Immigration Division was signed on October 24, 2014.²

[3] The subsection 44(1) report alleges that Mr. Ansari is described pursuant to paragraph 34(1)(f) as a member of the Sipah-e-Sahaba Pakistan (SSP) also known as the Ahl-e-Sunnat Wal Jamaal (ASWJ). The Minister alleges that the SSP/ASWJ is an organization that engages, has engaged or will engage in terrorism pursuant to paragraph 34(1)(c) of the *IRPA*.

[4] Mr. Ansari was also reported on October 27, 2014 as inadmissible to Canada pursuant to paragraph 34(1)(d) of the *IRPA* in that he is alleged to be a permanent resident who is inadmissible on security grounds for being a danger to the security of Canada.³ The report was reviewed by the Minister's Delegate and a referral of the matter to the Immigration Division was signed on October 27, 2014.⁴

¹ Exhibit #1, pp. 2-3.

² Exhibit #1, p. 4.

³ Exhibit #1, pp. 5-6.

⁴ Exhibit #1, p. 7.

[5] Muhammad Aqeeq Ansari is admittedly not a Canadian citizen. It is an undisputed fact that he is a Permanent Resident of Canada and a citizen of Pakistan.

The Evidence

[6] The evidence being considered in this matter includes the sworn testimony heard from the subject of the proceedings, Muhammad Aqeeq Ansari, the documentary evidence provided by the parties and entered into the record representing Exhibits #1-9, and the submissions received from parties with respect to the evidence.

Constitutional Question

[7] At the outset of this matter, Mr. Ansari challenged the constitutional validity of sections 45(d), 55(1), 64(1), 72, 162(2) and 173(c) of the *IRPA*. Submissions were heard orally and an oral decision was rendered on February 24, 2015.

[8] It was communicated to the parties by way of letter from the Division on February 17, 2015 that I am of the view that I do not have jurisdiction to review the constitutional validity of sections 55(1), 64(1) and 72. None of the submissions that I have heard with respect to those sections have established my jurisdiction in regards to the ability of the Minister to arrest and detain under subsection 55(1); the fact that if a removal order is made, Mr. Ansari would have no right of appeal under subsection 64(1) to the Immigration Appeal Division; and that in order to have any order judicially reviewed, he would be required to make an application for leave to the Federal Court of Canada as per section 72. The fact that I am of the view that I do not have jurisdiction regarding subsection 55(1) does not mean that this Division is ignoring the fact that Mr. Ansari is detained. This Division carries the statutory responsibility for ensuring that Mr. Ansari receives regular detention reviews as set out in the *IRPA* and it is my understanding, based even on statements that have been made within this proceeding that those reviews have been taking place. The fact of Mr. Ansari's detention and how he appears at the admissibility

hearing has no bearing on the decision I must make, and does not influence my decision with respect to the issues that I must consider.

[9] The *Act* has constructed the scheme and determined the parameters that guide how the Immigration and Refugee Board is required to conduct its business. Intrinsic in the statute, is a requirement that we conduct our affairs taking into consideration issues of fairness and natural justice.

[10] The Supreme Court of Canada case in Bedford⁵ set out the criteria that must be considered when deciding if a section of legislation is contrary to the *Charter* and therefore constitutionally invalid. In basic terms, Bedford states that when a law is arbitrary, overbroad or disproportionate, than it violates the *Charter* and cannot remain.⁶ Arbitrariness describes a situation where there is no connection between the effect and the object of the law.⁷ Overbreadth occurs when the law goes too far and interferes with some conduct that bears no connection to its objective.⁸ And finally, laws are in violation of our basic values when the effect of the law is grossly disproportionate to the state's objective.⁹

[11] Counsel has made submissions to establish how sections 45(d), 162(2) or 173(c) of the *IRPA* fit into any or all of those categories. Counsel has indicated that Section 7 is engaged by this proceeding, but has failed to draw any parallel between the sections that he points to as demonstrating how this is the case. The fact that Mr. Ansari is detained renders it even more important and to his benefit that the matter be decided as is required by paragraph 45(d) in a manner that is as informal and quick as considerations of fairness and natural justice permit as is required by subsection 162(2). The issues that have been raised by Counsel have been dealt with at length in the jurisprudence and in fact have been largely decided with respect to their

⁵ Canada (Attorney General) v. Bedford, 2013 SCC 72

⁶ Bedford, paragraph 105-110.

⁷ Bedford, paragraph 111.

⁸ Bedford, paragraph 112.

⁹ Bedford, paragraph 120.

applicability to Section 7 of the *Charter*.¹⁰ I am not satisfied that it has been established how the case of Mr. Ansari is distinguishable from that which has already been decided by higher courts up to and including the Supreme Court of Canada.

[12] The Charkaoui¹¹ case that Counsel has referred to at length in his submissions was decided within the context of Security Certificates. Under that detention scheme, a federal court judge was required to review the reasons for continued detention. This is not a parallel circumstance. As far as I am aware, Mr. Ansari is now detained under section 58 of the *Act* and benefits from reviews of detention that occur pursuant to that section. That the Immigration Division is the administrative tribunal that has jurisdiction to conduct both the admissibility hearing and the detention reviews is apparent in law and recognized by the Court. The fact that they are not conducted by a judge does not make the findings or outcomes of these proceedings any less lawful nor does it establish, in and of itself a section 7 *Charter* violation.

[13] All activities carried out by this Division are subject to review by the Federal Court of Canada. That is the body that has judicial oversight of the decisions made by the Board. It has not been established, nor is it within my jurisdiction to decide that this matter ought to be decided by a judge and not by a Member of the Immigration Division as set out in the *IRPA*. Counsel has not established how Mr. Ansari is prejudiced by the current statutory scheme of having the matter decided by a Member of the Immigration Division.

[14] Counsel has raised strong objections to Mr. Ansari participating in these proceedings via videoconference and I would note that that too has been dealt with by the Higher Courts.¹² Section 164 of the *Act* allows for hearings to be conducted by means of live telecommunication with the person who is the subject of the proceedings, in this case, Mr. Ansari. In Gonzales v. Canada, the federal court upheld a decision by the Immigration and Refugee Board that natural justice is not compromised by this means of communication and that the applicant could testify

¹⁰ Medovarski v. Canada (M.C.I.), 2005 SCC 51 and Chiarelli v. Canada (M.E.I.), [1992] 1 SCR 711 are 2 leading cases dealing with paragraph 45(d).

¹¹ Charkaoui v. Canada [2007] 1 SCR 350.

¹² R. v. Gibson [2003] B.C.J. No. 812; Bradley v. Bradley [1999] B.C.J. No. 2116; R. v. Heynen [2000] Y.J. No. 6; Gonzales v. Canada (M.C.I.) [2002] F.C.J. No. 1683; U.S.J.(Re) [2004] R.P.D.D. No. 33.

and respond clearly to the questions put to him. The Board has previously, dealt with the constitutionality of videoconferencing and found that there was no violation of section 7 rights by holding a hearing in this manner. I do not have any information before me to rebut that finding.

[15] In reviewing this matter previously, the Court has found that there need not be perfect conditions in order for *Charter* rights to be viewed to be upheld. The fact that Counsel has had limited time to meet with his client and review the documentation does not, in and of itself establish that sufficient time to prepare for this hearing has not been provided. This matter was initially scheduled for February 2, 2015 and postponed for three weeks based on the application of Counsel for additional time to prepare. Further, Counsel has acknowledged that Mr. Ansari has had the opportunity to review some of the documentation that has been put forward by the Minister to substantiate her case against him.

[16] And so, for all of these reasons, I am not satisfied that sections 45(d), 162(2) or 173(c) of the *IRPA* are constitutionally invalid.

The Standard of Proof

[17] Section 33 of the *Immigration and Refugee Protection Act* provides that:

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 occurring or may occur.

[18] The applicable standard of proof to assess the evidence and establish the allegations under paragraph 34(1)(f) for 34(1)(c) and paragraph 34(1)(d) has been determined by section 33 of the *IRPA*, to be the standard “reasonable grounds to believe.” This standard of “reasonable grounds” has been extensively discussed in Federal Court jurisprudence, and a working summation is that it is less than the balance of probabilities which is the normal civil litigation standard of proof, but there must be an objective basis for the belief, something going beyond speculation or conjecture. It is a bona fide belief in a serious possibility based on compelling,

credible and corroborated evidence. In Chiau v. Canada [1998] 2 F.C. 642, F.C.J. No.131, the Federal Court stated that:

The standard of proof required to establish reasonable grounds is more than a flimsy suspicion but less than the civil test of balance of probabilities. And of course, a much lower threshold than the criminal standard of beyond a reasonable doubt. It is a bona fide belief in a serious possibility based on credible evidence.¹³

[19] The rationale for the application of this lower standard of proof lies in the need to avoid the distraction and escapism that could potentially be generated by the application of higher standards of proof, and to ensure that person who are active members in, and support, organizations that engage in acts of terrorism, subversion, espionage, and human rights violations are easily identified and denied access to Canada.¹⁴

[20] The Minister has the burden of proving that there are reasonable grounds to believe that Muhammad Aqeeq Ansari is described under the *IRPA*.

“Danger to the Security of Canada”

[21] The *Act* does not define the phrase “danger to the security of Canada” as per paragraph 34(1)(d) of the *IRPA*. The leading jurisprudence available to guide me in this decision is the Supreme Court decision in Suresh v. Canada.¹⁵ In Suresh the Court found:

- “a fair, large and liberal interpretation in accordance with international norms must be accorded to “danger to the security of Canada” in deportation legislation...” and that “what constitutes a “danger to the security of Canada” is highly fact-based and political in a general sense. All this suggests a broad and flexible approach to national security...”¹⁶
- With respect to the link between terrorist activity abroad and the potential threat to national security in Canada, the Court found that:
 - “the support of terrorism abroad raises a possibility of adverse repercussions on Canada’s security;”¹⁷

¹³ See also Ramirez v. Canada [1992] 2 F.C. 306 (C.A.) and Sivakumar v. M.E.I. [1994] 1 F.C. 433 (C.A.).

¹⁴ See also Sabour v. Canada (M.C.I.) (2000) 9 Imm. L.R. (3d) 61, [2000] F.C.J. No. 1615, 195 F.T.R. 69 (Fed.T.D.).

¹⁵ Suresh v. Canada (M.C.I.) [2002] 1 S.C.R. 3.

¹⁶ Suresh, paragraph 85.

¹⁷ Suresh, paragraph 87.

- “the global transport and money networks that feed terrorism abroad have the potential to touch all countries, including Canada, and to thus implicate them in the terrorist activity;”¹⁸
- “terrorism itself is a worldwide phenomenon;”¹⁹
- “preventive or precautionary state action may be justified; not only an immediate threat but also possible future risks must be considered;”²⁰
- “Canada’s national security may be promoted by reciprocal cooperation between Canada and other states in combating international terrorism...”²¹
- The Court thereby concluded that “to insist on direct proof of a specific threat to Canada as the test for “danger to the security of Canada” is to set the bar too high. And that there “must be a real and serious possibility of adverse effect to Canada. But the threat need not be direct...”²²
- The Court concluded that:
 - **“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.”²³
(added emphasis)

Membership

[22] Membership is a critical element of a finding of inadmissibility under paragraph 34(1)(f) for 34(1)(c). The term “membership” is not defined in *IRPA*. The case law has, however, provided some guidance regarding what constitutes membership. In Poshteh v. Canada (Minister of Citizenship and Immigration) [2005] F.C.J. No. 381 (C.A.), Rothstein, J.A. held that membership should be given a broad interpretation. He stated as follows:

(27) There is no definition of the term “member” in the *Act*. The courts have not established a precise and exhaustive definition of the term. In interpreting the term “member” in the former *Immigration Act*, R.S.C. 1985, c. I-2, the Trial Division (as it then was) has said that the term is to be given an unrestricted and broad

¹⁸ Suresh, paragraph 88.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ Suresh, paragraph 90.

interpretation. The rationale for such an approach is set out in *Canada (Minister of Citizenship and Immigration) v. Singh* (1998), 151 F.T.R. 101 at paragraph 52 (T.D.):

The provisions deal with subversion and terrorism. The context in immigration legislation is public safety and national security, the most serious concerns of government. It is trite to say that terrorist organizations do not issue membership cards. There is no formal test for membership and members are not therefore easily identifiable. The Minister of Citizenship and Immigration may, if not detrimental to the national interest, exclude an individual from the operation of s. 19(1)(f)(iii)(B). I think it is obvious that Parliament intended the term “member” to be given an unrestricted and broad interpretation.

(28) The same considerations apply to paragraph 34(1)(f) of the *Immigration Refugee and Protection Act*. As was the case in the *Immigration Act*, under subsection 34(2) of the *Immigration and Refugee Protection Act*, membership in a terrorist organization does not constitute inadmissibility if the individual in question satisfies the Minister that their presence in Canada would not be detrimental to the national interest. Subsection 34(2) provides:

34(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.

Thus, under subsection 34(2), the Minister has the discretion to exclude the individual from the operation of paragraph 34(1)(f).

(29) Based on the rationale in *Singh* and, in particular, on the availability of an exemption from the operation of paragraph 34(1)(f) in appropriate cases, I am satisfied that the term “member” under the *Act* should continue to be interpreted broadly.

[23] There is not a need for a person to be formally recognized as a member of an organization alleged to have engaged in terrorism. Simply belonging to the organization may be sufficient in certain cases in order to be found described or complicit in its acts by association.²⁴

²⁴ In *Chiau v. Canada (Minister of Citizenship and Immigration)* F.C.T.D. (1998) 2 FC 642 IMM 441-96, it was held that membership should be interpreted as meaning actual or formal membership coupled with active participation in unlawful acts; simply belonging may be sufficient.

[24] A person may be considered a member of an organization if he/she devotes himself/herself significantly to the organization and to the furtherance of the aims and purposes of the organization or if he/she has associated with members of the organization for a substantial period of time.²⁵

[25] Belonging to the organization may also be assumed where a person joins voluntarily and remains in the group for the common purpose of actively adding his/her personal efforts to the group's cause. In this sense, membership may require more than a nominal involvement in the activities of the organization.

[26] Pursuant to section 33 of the *IRPA* which makes reference to facts which have occurred, are occurring or will occur, there is no temporal component to being recognized as a member of an organization that is alleged to be responsible for such acts and so ceasing to be a member or distancing oneself from the organization in question at a point in time does not exempt that person from the application of paragraph 34(1)(f).

[27] Canadian case law has been very clear that when it comes to interpreting "membership" in a terrorist organization on security grounds for immigration purposes, the term "member" must be interpreted broadly. There is no requirement that a person be a card-carrying member of an organization in order for there to be reasonable grounds to believe that the person was in fact a member.

Terrorism

[28] The *Act* does not provide a definition of terrorism. I am of the view that the Supreme Court of Canada decision in Suresh v. Canada (M.C.I.) [2002] 1 S.C.R. 3 is applicable in this proceeding. In Suresh, the Supreme Court provides a definition, though not exhaustive, of the term terrorism that has remains authoritative in Canadian case law until the present day. At

²⁵ See Suresh v. Canada (Minister of Citizenship and Immigration) F.C.T.D. DES 3-95 (November 14, 1997) paragraph 21.

paragraph 98 the Court found that:

“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 an international organization to do or to abstain from doing any act”. This definition catches the essence of what the world understands by “terrorism”. Particular cases on the fringes of terrorist activity will inevitably provoke disagreement. Parliament is not prevented from adopting more detailed or different definitions of terrorism. The issue here is whether the term as used in the *Immigration Act* is sufficiently certain to be workable, fair and constitutional. We believe that it is.”

[29] In the *Criminal Code of Canada*, we have a more detailed definition of “terrorist activity” and “terrorist group” in subsection 83.01(1):

“terrorist activity” means

(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

- (i) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on December 16, 1970,
- (ii) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on September 23, 1971,
- (iii) the offences referred to in subsection 7(3) that implement the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, adopted by the General Assembly of the United Nations on December 14, 1973,
- (iv) the offences referred to in subsection 7(3.1) that implement the *International Convention against the Taking of Hostages*, adopted by the General Assembly of the United Nations on December 17, 1979,
- (v) the offences referred to in subsection 7(3.4) or (3.6) that implement the *Convention on the Physical Protection of Nuclear Material*, done at Vienna and New York on March 3, 1980,
- (vi) the offences referred to in subsection 7(2) that implement the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, supplementary to the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on February 24, 1988,

- (vii) the offences referred to in subsection 7(2.1) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, done at Rome on March 10, 1988,
 - (viii) the offences referred to in subsection 7(2.1) or (2.2) that implement the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, done at Rome on March 10, 1988,
 - (ix) the offences referred to in subsection 7(3.72) that implement the *International Convention for the Suppression of Terrorist Bombings*, adopted by the General Assembly of the United Nations on December 15, 1997, and
 - (x) the offences referred to in subsection 7(3.73) that implement the *International Convention for the Suppression of the Financing of Terrorism*, adopted by the General Assembly of the United Nations on December 9, 1999, or
- (b) an act or omission, in or outside Canada,
- (i) that is committed
 - (A) in whole or in part for a political, religious or ideological purpose, objective or cause, and
 - (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and
 - (ii) that intentionally
 - (A) causes death or serious bodily harm to a person by the use of violence,
 - (B) endangers a person's life,
 - (C) causes a serious risk to the health or safety of the public or any segment of the public,
 - (D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or
 - (E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),
- and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state

in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

“terrorist group” means

- (a) an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or
 - (b) a listed entity,
- and includes an association of such entities.

[30] There is no question that the above definitions offered by Suresh and the *Criminal Code*, as well as international instruments such as *Protocols I & II* of the *1949 Geneva Convention* are applicable in consideration of Muhammad Aqeeq Ansari’s admissibility. It is clear from subsequent Federal Court of Canada decisions such as Fuentes v. Canada that the key element within the definition of terrorism focuses on the protection of civilians and that there must be specific terrorist acts identified as being attributed to this group.²⁶

Sipah-e-Sahaba (SSP) / Ahl-e-Sunnat Wal Jamaat (ASWJ)

[31] Mr. Ansari testified that the SSP is not a violent organization. He stated that the leaders do not endorse violence, but that individual members of the organization have acted on their own to engage in violent activities. The documents that have been entered in this matter paint a very different picture with respect to the nature of this organization and the activities it has been responsible for. In fact, the militant actions attributed to this group lead to their being banned in Pakistan in 2002.²⁷ The documents do agree that there is a group within SSP that does not support sectarian violence, but that this appears to be the “extreme minority” and is not, in fact in line with the original mission of the group’s founder Haq Nawaz Jhangvi which included pursuing their efforts using all means, including terrorism.²⁸

²⁶ See Fuentes v. Canada (M.C.I.), [2003] F.C.J. No 540 (F.C.T.D.) paragraphs 65 and 73-74.

²⁷ Exhibit #2, p. 3.

²⁸ Exhibit #2, p. 4.

[32] The SSP was founded in 1985 in response to a rise in political solidarity of the Shia community in Pakistan.²⁹ This is a Muslim group founded with the view that Sunnis are the only true Muslims and that the Deobandi school of thought and the Hanafi school of jurisprudence represent the correct teaching of Islam.

[33] After the SSP was banned in January 2002, the group was renamed in April 2003 as the Millat-e-Islamia Pakistan (MIP). After they were again banned in November 2003, they were renamed the Ahl-e-Sunnat Wal Jamaat (ASWJ). As of March 10, 2012, the ASWJ has been designated a banned organization.³⁰ Mr. Ansari testified that the ban was lifted in 2014. Some of the acts attributed to this organization include:

- targeted killings of prominent Shias – including political activists, doctors, businessmen and intellectuals...³¹
- indiscriminant attacks on worshippers at non-Deobandi mosque...Shias as well as members of the Ahmadi sect and followers of the Barelvi school of Sunni Islam³²
- December 1990 – murder of Iranian consul-general in Lahore.³³ This was believed to have been in revenge for the assassination of Maulana Haq nawaz Jhangvi.
- the massacre of hundreds of Hazaras (Afghan Shias) and more than a dozen Iranian diplomats in northern Afghanistan in August 1998³⁴
- January 11, 1998 – 3 SSP operatives open fire on a group of Shia mourners at the Morninpura graveyard killing 27 and wounding 34. An SSP member, Muhammad Aslam Muawia was sentenced to life in prison for the attack;³⁵
- October 28, 2001 – gunmen walk into a Catholic church in Bahawalpur and open fire on worshippers killing 18 and wounding 9;³⁶
- March 2, 2004 – 3 people attack a procession of Shias commemorating the holy day of Ashura in Quetta with grenades and automatic weapons killing 40 and wounding more than 150 people – SSP members were among those who were later arrested in connection to the attack;³⁷

²⁹ Exhibit #2, p. 2.

³⁰ Exhibit #2, p. 33.

³¹ Ibid.

³² Ibid.

³³ Exhibit #2, p. 25.

³⁴ Ibid.

³⁵ Exhibit #2, p. 8.

³⁶ Ibid.

³⁷ Ibid.

- March 19, 2005 – a bomb exploded in a Shia shrine in Gandhawa, Baluchistan province killing 50 and wounding 100 – 4 SSP members were later arrested for alleged involvement in the attack;³⁸

Lashkar e Jhangvi (LeJ)

[34] The Lashkar e Jhangvi (LeJ) is widely known as a splinter group of the SSP/ASWJ. It is believed to have been formed in 1990 after the murder of the SSP founder, Haq Nawaz Jhangvi, in his honour.³⁹ The group has a solely violent modus operandi for achieving its aims and those who accept that there is a division between this group and the SSP date the separation as occurring in 1996.⁴⁰ The LeJ was banned in Pakistan on August 14, 2001 and was listed as a terrorist entity by the U.S. Department of State on January 31, 2003.⁴¹ This group is also a listed entity in Canada.⁴² An inexhaustive list of terrorist activities attributed to the LeJ include:

- Massacres and targeted assassinations of Shia and Christians;⁴³
- Bombing Western targets, and in the high profile kidnap and murder of US Jewish journalist, Daniel Pearl;⁴⁴
- January 1997 – accused jointly with SSP of attacking the Iranian Cultural Centre in Lahore resulting in the murder of 7 people;⁴⁵
- May 2001 – 15 Christians slaughtered in St. Dominic’s Church;⁴⁶
- March 2004 – Shia procession attacked, 46 people killed;⁴⁷
- September 20, 2008 – suicide car bomb attack at Marriott Hotel in Islamabad that killed 53 people and wounded 250;⁴⁸
- April 2010 – double suicide attack in Khot district which left 44 civilians dead.⁴⁹ The attack targeted a refugees at a camp for internally displaced persons that included the presence of Shia Muslims;

³⁸ Ibid.
³⁹ Exhibit #1, p. 71.
⁴⁰ Ibid.
⁴¹ Exhibit #2, p. 18.
⁴² Exhibit #2, p. 45.
⁴³ Exhibit #2, p. 20.
⁴⁴ Ibid.
⁴⁵ Exhibit #2, p. 25.
⁴⁶ Exhibit #2, p. 26.
⁴⁷ Exhibit #2, p. 27.
⁴⁸ Ibid.
⁴⁹ Exhibit #2, p. 19 and p. 28.

- October 2010 – 7 LeJ militants arrested for allegedly planning to assassinate Prime Minister Yousef Raza Gilani and launch attacks on dams, bridges and military installations;⁵⁰
- December 6, 2011 – 80 people killed and 160 wounded in a suicide bomber attack at a Shia Muslim shrine in the Afghan capital Kabul;⁵¹

[35] There is some dispute as to whether the LeJ ever left the SSP/ASWJ or if they did, when that split occurred. Regardless of the status of the LeJ as it relates to the SSP/ASWJ, there appears to be general consensus among the documents that the groups remained close and continued to work together even though the LeJ appears to have been a group directed to a limited brutal purpose. With or without the continued violent mentality of the LeJ, the SSP/ASWJ continued to be linked to violent attacks on the civilian population even as they sought to elevate their political agenda.

[36] I am, therefore, satisfied that much more than reasonable grounds have established that the SSP/ASWJ and LEJ were organizations engaged in terrorist activity as per paragraph 34(1)(c).

Maulana Ilyas Ghuman

[37] Mr. Ghuman is relevant to this hearing insofar as he is a person that Mr. Ansari supports and follows. Based on the documents and Mr. Ansari's testimony, he has a close relationship with Mr. Ghuman and has spent significant periods of time with him when visiting Pakistan. Evidence of Mr. Ansari's devotion to the cause of Mr. Ghuman lies in the fact that he allowed his PayPal account to be used for collecting donations for Mr. Ghuman's school. He also testified that he had intended to start a charity in Canada in support of the school and Mr. Ghuman's work there.

[38] My review of Mr. Ghuman's history and activities lead me to conclude that there are more than reasonable grounds to believe he is and was engaged in terrorist activity. Mr. Ansari

⁵⁰ Ibid.

⁵¹ Exhibit #2, p. 29.

has been a vocal proponent of Mr. Ghuman's cause and testified that Mr. Ghuman does not promote violence. His history, however, tells a completely different story given that he joined the jihad in the mid-90's and held leadership positions in known terrorist groups that have ties to prominent groups such as Al Qaida and Osama bin Laden. This history includes:

- He joined mujahideen in Pakistan for jihad from 1993 to 1996 on the platform of Harkat ul Mujahidin (a listed entity in Canada);⁵²
- Previously held the position of Provincial Leader in the Harkat ul Ansar (a listed entity in Canada);⁵³
- Was the Deputy-General Secretary of the Harkat ul Mujahideen (a listed entity in Canada);⁵⁴
- Rector of madrassa (school) Markaz Ahle Sunnat wal Jamaat in 2002;⁵⁵
- Became Chief Operating Officer of the organization Ittehaad Ahle Sunnat wal Jamaat in 2005;⁵⁶
- Being a guest speaker at SSP events;⁵⁷
- Making a speech legitimizing the killing of those who do not follow the Deobandi school of thought;⁵⁸

[39] My review of these facts as it relates to Mr. Ghuman lead me to believe that he is not only an advocate of violence but by making speeches that legitimize the killing of those who do not follow the Deobandi and Hanafi schools of thought and jurisprudence, he has more likely than not been active in inciting violence. In addition, knowing that he runs a madrassa and that these schools are used to indoctrinate and recruit future members of terrorist organizations,⁵⁹ Mr. Ghuman is also active in creating the mindset that leads to the murder of thousands of people each year through terrorist acts. His participation as a guest speaker at events held by well-known terrorist organizations, such as the SSP/ASWJ, is an indication to me that those groups view him as an ally. In fact, we have within Exhibit #6 a speech given by Mr. Ghuman that Mr. Ansari testified that he believed was given at the funeral of Hyderi, one of the former leaders of the group. Nothing in that speech suggests that Mr. Ghuman does not advocate violence, but it

⁵² Exhibit #1, p. 78.

⁵³ Exhibit #1, p. 78.

⁵⁴ Exhibit #1, p. 56.

⁵⁵ The curriculum of this madrassa focusses on Deoband teachings. Exhibit #1, p. 78.

⁵⁶ Exhibit #1, p. 78. Mr. Ansari testified that he created the website for this organization in 2006 – ittehaad.org

⁵⁷ Exhibit #1, p. 79 & Mr. Ansari's testimony.

⁵⁸ Exhibit #1, p. 85.

⁵⁹ Exhibit #2, 10.

does appear to encourage the audience to continue in the quest to achieve the aims of the organization.

Muhammad Aqeeq Ansari's Activities

[40] Mr. Ansari has been engaged in activities dating back to 2004 which raise very serious concerns regarding whether he has an extremist mindset and whether he supports or has supported terrorist activities. These activities have, in fact lead to his being reported by the Minister and this matter coming before this Division. They include:

- Mr. Ansari's internet activity revealed the following:
 - January 1, 2004 – made statements opposing military operations against Afghanistan and Iraq;
 - October 1, 2011 – statement regarding extolling the virtue of Jihad;
 - Facebook postings:
 - Photos of Mr. Ansari posing with and displaying firearms;⁶⁰
 - Picture of the Scotiabank Tower in Toronto with the caption “if only I had a plane”;⁶¹
 - Sunniforum.com postings:
 - 2007 postings detailing the biographical details of M. Ghuman which include his participating in Jihad in Afghanistan and positions previously held in listed terrorist organization, Harkat ul Mujahideen;
- May – August 2012 – amassed \$20k in weapons and ammunition;⁶²
- July – August 2012 – Mr. Ansari traveled to the gun range to shoot without proper licensing to transport firearms;
- July 24, 2012 – Mr. Ansari was observed by investigators to have inquired about purchasing a “large capacity magazine for a Savage 308 pistol and a flash suppressor for an unknown gun;”⁶³
- A search of the thumb drive in Mr. Ansari's possession at the time of his arrest revealed:⁶⁴
 - Files labeled with the words “Taliban” and “Shahadat” (Martyr);
 - Information about Kashmir;⁶⁵

⁶⁰ Exhibit #1, pp. 92, 94, 95, 96-99.

⁶¹ Exhibit #1, p. 93.

⁶² Both the documentary evidence and Mr. Ansari's testimony have confirmed this information.

⁶³ Exhibit #1, p. 53.

⁶⁴ All documents referenced from thumb drive located in Exhibit #1, p.54.

⁶⁵ Kashmir is a disputed area on the border of Pakistan and India that is the location of conflict between the 2 nations.

- Audio songs supporting Jihad;⁶⁶
- Audio files of religious sermons conducted by Maulana Muhammad Ilyas Ghuman;
- Purchase of spy equipment by Mr. Ansari;⁶⁷
- PALTALK comments:
 - Referring to his own activity for SSP;
 - Defending SSP activities as being unfairly viewed as “extremist;”
 - Acknowledging membership in the ASWJ;
- An audio file on Mr. Ansari’s seized electronic devices and computer on which he indicates that he was sent back to Canada from Pakistan on a military mission, goal or objective that he cannot speak of;
- The same audio recording includes his statements of hatred against Canada and the United States;
- Extremist publications found on Mr. Ansari’s computer include:
 - “In Fight”
 - “Conquest of Khurassan”
 - “haq char yaar”
 - 18 religious chants with militant extremist content in Arabic
 - CD cover designs with an SSP flag and Mr. Ansari’s e-mail address;
- Negative commentary on Twitter against the Prime Minister, NATO and recent terrorist attacks in Canada;⁶⁸
- Mr. Ansari testified to having given donations to Ahle Sunnat Wal Jamaat (the school run by Mr. Ghuman).

FINTRAC Reports

[41] The Minister, in her submissions, has asked me to find that the substantial amounts of money being funneled through Mr. Ansari’s accounts over a 50-month period beginning in July 2011 establish that he was providing significant financial support to the SSP/ASWJ from donations received in his PayPal account. Mr. Ansari acknowledges having made available use of his PayPal account to the madrassa run by Ilyas Ghuman. He testified that he received no donations on the school’s behalf. I have not been provided any evidence that Mr. Ansari received donations on the school’s behalf. The period where Mr. Ansari was receiving and spending these funds coincides with the period wherein he was under contract for BMO. There is no evidence that the funds came from any source other than Mr. Ansari’s employment. The

⁶⁶ Jihad = Islamic holy war against the West (Nasheeds).

⁶⁷ Exhibit #1, p. 16.

⁶⁸ Exhibit #1, pp. 138-143.

writer of FINTRAC report acknowledges that the money received by Mr. Ansari during that period was received by legitimate means.⁶⁹ There is zero evidence to connect the monies moved around by Mr. Ansari as reflected in the FINTRAC report with any alleged donations received in his PayPal account on behalf of Markaz Ahle Sunnat wal Jamaat. The only transaction information that I have from Mr. Ansari's PayPal account involves the purchases he made, not money transferred. As a result, I am not satisfied that the Minister has provided sufficient evidence to establish that there is a connection between the FINTRAC transactions and PayPal donations to Markaz Ahle Sunnat wal Jamaat or the SSP/ASWJ.

Websites

[42] The documents and hearing dealt at length with a variety of websites that Mr. Ansari is alleged to be connected to and I will attempt now, to untangle the web.

1. Ahnaf.com:

- The Minister has brought forward this website as evidence of Mr. Ansari's support of the SSP.
- Based on the information before me, this is a website that is like the Islamic version of YouTube. The content is user-submitted. There is content on this site that is representative of both sides of the SSP conflict and cause.⁷⁰ In fact, Mr. Ansari has provided screen shots of ahnaf.com-branded videos that have also been uploaded to YouTube.
- Mr. Ansari testified that he purchased the domain in 2011 but did not have an opportunity to do anything with the site.

2. Ahnaf.org:

- A website that Mr. Ansari acknowledges that he ran from August 2004-March 2007
- He testified that he used this website to publish books and audio of Hanafi scholars because he felt that the information about the Hanafi school of thought was inaccurate.

3. Ahnafmedia.com

- A website started by Mr. Ghuman to spread the teaching of Sunnis
- The registered owner is Abid Jamshaid.
- Mr. Ansari testified that he provided advice and English translation to assist from time to time.

⁶⁹ Exhibit #3, p.19.

⁷⁰ Exhibit #8, Tab 16.

- Mr. Ansari testified that when he was last in Pakistan he spent some time with Mr. Ghuman traveling around and video recording his appearances and then handed the recordings to Mr. Jamshaid for upload to the website.

[43] The Minister is asking me to find that the fact that Mr. Ansari owned ahnaf.com is an indication that he is a member of the SSP/ASWJ based on their belief that the website is the media source of the organization. The information before me supports Mr. Ansari's evidence that the website is in fact an Islamic version of YouTube. He has provided information that suggests that the content is provided by the users and screen shots of ahnaf.com-branded videos that are also available on YouTube. While it is true, that Mr. Ansari did not really have much of an explanation for why he purchased the domain, when I assess his background, past activities and the value of a site like ahnaf.com to someone like Mr. Ansari, I do not find it wholly unreasonable that he would purchase this domain. This was a popular website. Mr. Ansari has a history of developing websites, it is part of his background and training. Mr. Ansari is interested in spreading the Hanafi teachings as he had done previously with ahnaf.org. It makes sense to me that he would purchase the website, develop it and continue to do this work knowing the internet value it held to his community. However, in view of my findings with respect to Mr. Ghuman, I do find that any work that Mr. Ansari did on ahnafmedia.com in support of Mr. Ghuman's dissemination of his message and cause, does constitute involvement in terrorist activity.

Is Muhammad Aqeeq Ansari a danger to the security of Canada?

[44] As stated above, to meet the reasonable grounds requirement, I must find that there is credible and trustworthy evidence to establish that the allegation is well-founded. By virtue of section 33 of the *IRPA*, there is no temporal requirement attached to this allegation so it could be a past, present or future danger. I am satisfied, based on the evidence before me that there are reasonable grounds to establish that Mr. Ansari is a danger to the security of Canada and therefore described pursuant to paragraph 34(1)(d).

[45] It is true that Mr. Ansari is free to hold any opinions, political, religious or otherwise, that he chooses to. In Suresh, however, the Supreme Court enunciates that there are limits to how this freedom is expressed.⁷¹ It is also true, that if some of facts that exist to support the Minister's allegation, were to be viewed in isolation than some of Mr. Ansari's explanations may have been viewed to be plausible. For example, if the guns were the only evidence before me, it could be acceptable that a person gets interested in guns from playing video games. Mr. Ansari disclosed evidence of the thousands of hours that he spent playing shooting video games.⁷²

[46] It could have been acceptable that the reason he spent \$20,000 purchasing guns and ammunition was the result of the financial irresponsibility of youth and the novelty of having hundreds of thousands of dollars at his disposal for the first time on account of his contract with BMO. The fact, however that he amassed \$20,000 in guns and ammunition over such a short period raises questions and concerns, that remain plausibly unanswered, regarding his motives and whether there was an underlying plan given that he also spent a fair amount of time at the gun range practicing his shot.

[47] It could even have been plausible that his Facebook statement wishing he had a plane in reference to the Scotiabank Towers could have been viewed as simply being a comment in poor taste. It may also have been plausible that the CD covers that Mr. Ansari designed which bear the SSP flag in the background are nothing more than the work of someone who was contracted by a print shop to do graphic design work, and that his contact information on the bottom of the cover was a form of advertisement.⁷³

⁷¹ Suresh, paragraph 107 states: "It is established that s. 2 of the *Charter* does not protect expressive or associational activities that 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*."

⁷² Exhibit #8, Tab 5

⁷³ Exhibit 1, pp. 81-82. Exhibit #8, Tab 6, pp. 127-129.

[48] What I do not find to be plausible, is that all of these circumstances, coupled with his keen interest in extremist literature, avid commentary against the West and his strong ties to Maulana Ilyas Ghuman, who, based on his history and continued activities is strongly tied to terrorism and terrorist groups, would be attached to the same person unless there was a real connection between that person and terrorism. It is also not plausible in view of the fact that Mr. Ansari has been inconsistent in his explanations regarding his motivations for attaining this very substantial collection of firearms and his storage of said weapons at detention reviews before my colleague Member Laut and during sworn testimony at the admissibility hearing. Further, Mr. Ansari has failed to plausibly explain why his contact information is not on all of the CD covers that he created if it was just a form of advertisement.⁷⁴ Why would he advertise on SSP/ASWJ propaganda materials and not on others? In my view, even if he was just the hired help as he would like this Tribunal to believe, this self-advertising on SSP/ASWJ propaganda points to a connection to the SSP/ASWJ that did not exist with the work he did for other groups.

[49] In fact, Mr. Ansari dates his period of deeper faith exploration into the teachings of Islam and his commitment to the Deobandi sect and Hanafi school of thought to be dated to that period in and around 2002 when he was studying in Pakistan and doing this work. Much of the facts associated with his alleged association with the SSP/ASWJ begin a few years later. It is concerning that Mr. Ansari completely fails to recognize the fact that the SSP/ASWJ has been responsible for egregious terrorist activities, apart from their offshoot the LeJ, that have murdered thousands of people in Pakistan for not sharing their religious views. This, in my view is a reflection of either wilful blindness or a shared mentality that it is permissible to eliminate anyone who does not share your faith perspective.

[50] In his testimony, Mr. Ansari minimized the impact of the views Mr. Ghuman expressed in a speech saying that capital punishment should be the penalty imposed on anyone who is not a “true Muslim.” Mr. Ansari stated that Mr. Ghuman was saying that it is a penalty that should be imposed by the government, not individuals or groups taking matters into their own hands. The problem is that the fact that Mr. Ghuman espouses such views in the first place negates any

⁷⁴ Designs for SSP reference found in footnote 33. Other designs found at Exhibit #8, Tab 6, p. 126, 130-131.

credit that could be given for his appearance of being involved in government negotiations for peace between groups and factions in Pakistan. It renders any work he does as disingenuous, especially if the groups represented do not include non-Muslim and/or non-Deobandi Hanafi Muslim groups. I have very limited evidence before me of which groups were at those meetings and no evidence that the groups represented were of a different faith perspective. In addition, the reality is that regardless of whether Mr. Ghuman intended that the capital punishment ought to be meted out by the government or not, he was speaking to a group with a history drowning in the blood of the innocent lives they had been responsible for taking for the sole purpose that their victims did not share their religious stance.

[51] So, I am satisfied that the constellation of facts before me with respect to both Mr. Ansari's own words and actions, as well as his devotion to Mr. Ghuman and his cause, establish that Mr. Ansari in fact represents a danger to the security of Canada.

[52] A central issue in this circumstance goes even beyond the question of whether or not Mr. Ansari has an "extremist mindset." He has a very real connection to terrorism and his actions reflect specific circumstances quoted in the Suresh decision that point to behaviours that constitute a danger to the security of Canada.

[53] In Suresh the Court found that "the support of terrorism abroad raises a possibility of adverse repercussions on Canada's security." I find that Mr. Ansari's actions involving the assistance he provided with the development of ahnafmedia.com and his work and support of Mr. Ghuman, including making available the use of his PayPal account to receive donations (even though he testified he never received any money), constitutes supporting terrorism abroad because I find that Mr. Ghuman has been intricately connected to and involved in terrorist activity.

[54] I find his comments on online forums and in his use of social media not be jokes in poor taste, but to be reflections of his views of hatred toward the Western world, including Canada, and his ongoing support of the extremist activities of groups like the SSP/ASWJ. I find that

those views are also reinforced by the reading materials that he chooses to expose himself to which extol and legitimize terrorist activity. Further, the fact that in his testimony he failed to recognize the SSP/ASWJ as a group that has engaged in terrorist activity despite being aware of the organization is a further indicator that he endorses the extremist views that they espouse.

[55] I am satisfied, that based on his history, there are reasonable grounds to believe that Mr. Ansari's shared ideology, coupled with his clear love for and the extensive collection of firearms that he was able to amass in 2012, and his devotion to the terrorism platform that Mr. Ghuman represents and his own connection to the SSP/ASWJ that will be discussed below, he is a danger to the security of Canada.

Is Mr. Ansari a Member of a Terrorist Organization?

[56] All of the reasons relating to why I find Mr. Ansari to be a danger to the security of Canada also apply to my assessment of why I believe that he is also described pursuant to paragraph 34(1)(f). I have also detailed above my reasons for finding that the SSP/ASWJ is a terrorist organization. I find that the following facts sufficiently connect Mr. Ansari to the SSP/ASWJ to establish that his assistance to the group amounts to membership:

- CD Covers:
 - In the discussion above, I found that the fact that Mr. Ansari put his contact information on the CD covers he created in 2005 establish a connection beyond that of graphic designer/client given that he did not do the same on other CD covers he designed. His involvement in the creation of products that facilitated the dissemination of SSP/ASWJ propaganda and therefore furtherance of their cause establishes, in and of itself, reasonable grounds to find him to be a member of this group.
- Comments made on PALTALK:
 - Mr. Ansari confirmed through his testimony that the profile names and e-mail addresses attributed to him in the police investigation reports were in fact his.

- Mr. Ansari acknowledged having recorded conversations without the knowledge of the persons to whom he was speaking.
- Comments attributed to him through audio files found on his computer from internet discussions on PALTALK dating back to 2005 reveal Mr. Ansari acknowledging the following:⁷⁵
 - Work that he did within SSP;
 - His creation of ahnaf.org
 - That he received an e-mail from PALTALK administration accusing him of spreading terrorism;
 - That the SSP is unfairly viewed as extremists – Mr. Ansari is heard to be defending the SSP;
 - The work that he had begun doing on behalf of his friend M. Ghuman.

[57] During testimony, Mr. Ansari said that he had never been on PALTALK. He also expressed some trouble remembering some of his earlier comments given that they had been so dated. As a result, I am going to rely more heavily on the evidence provided by the police investigation as establishing that these statements were made by Mr. Ansari. The fact that the files were found on his computer lends strong credibility to the finding that they were statements that he made. In addition, other facts reflected here have been confirmed by Mr. Ansari during his testimony, specifically that in 2005 he had been running ahnaf.org and that during that period he had met and befriended Mr. Ghuman. Mr. Ansari clearly has a shared ideology regarding Sunnis being the only true Muslims and that Deobandi and Hanafi are the correct schools of thought and jurisprudence. Further, his recorded statements defending the SSP are consistent with his testimony at the admissibility hearing that he does not believe that this is an organization that engages in violence. So I find that this information, as well as other statements made by Mr. Ansari found on his electronic devices, establishes reasonable grounds that he was intimately connected to and a member of the SSP/ASWJ.

⁷⁵ Exhibit #1, p. 60.

[58] So for all of these reasons, I find Muhammad Aqeeq Ansari to be a danger to the security of Canada and a member of a terrorist organization pursuant to paragraphs 34(1)(d) and 34(1)(f) for 34(1)(c) of the *Immigration and Refugee Protection Act*.

(signed)

A. Seifert

8 May 2015

Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.