



SUPREME COURT OF CANADA

CITATION: Agraïra v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 36

DATE: 20130620

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BETWEEN:

Muhsen Ahmed Ramadan Agraïra

Appellant

and

Minister of Public Safety and Emergency Preparedness

Respondent

- and -

British Columbia Civil Liberties Association,

Ahmad Daud Maqsudi, Canadian Council for Refugees,

Canadian Association of Refugee Lawyers,

Canadian Arab Federation and Canadian Tamil Congress

Interveners

CORAM: McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Moldaver and Karakatsanis JJ.

REASONS FOR JUDGMENT:
(paras. 1 to 103)

LeBel J. (McLachlin C.J. and Fish, Abella, Rothstein, Moldaver and Karakatsanis JJ. concurring)

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AGRAIRA v. CANADA

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2013 SCC 36

File No.: 34258.

2012: October 18; 2013: June 20.

Present: McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Moldaver and Karakatsanis JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Administrative law — Judicial review — Standard of review — Ministerial decisions — Immigration — Citizen of Libya found to be inadmissible based on membership in terrorist organization — Application for ministerial relief denied — Appropriate standard of review to apply to Minister's decision — Whether, in light of this standard, Minister's decision is valid — Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 34(2).

Administrative law — Natural justice — Doctrine of legitimate expectations — Citizen of Libya found to be inadmissible based on membership in terrorist organization — Application for ministerial relief denied — Whether there was failure to meet legitimate expectations — Whether there was failure to discharge duty of procedural fairness.

Immigration — Inadmissibility and removal — Ministerial relief — Citizen of Libya found to be inadmissible based on membership in terrorist organization — Application for ministerial relief denied — Interpretation of term "national interest" — Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 34(2).

A, a citizen of Libya, has been residing in Canada continuously since 1997, despite having been found to be inadmissible on security grounds in 2002. The finding of inadmissibility was based on his membership in the Libyan National Salvation Front ("LNSF") — a terrorist organization according to Citizenship and Immigration Canada ("CIC"). A applied in 2002 under s. 34(2) of the *Immigration*

and Refugee Protection Act, S.C. 2001, c. 27 (“*IRPA*”), for ministerial relief from the determination of inadmissibility, but his application was denied in 2009. The Minister of Public Safety and Emergency Preparedness (“Minister”) concluded that it was not in the national interest to admit individuals who have had sustained contact with known terrorist and/or terrorist-connected organizations. A’s application for permanent residence was denied.

A applied to the Federal Court for judicial review of the Minister’s decision regarding relief. The Federal Court granted the application for judicial review. The Federal Court of Appeal allowed the appeal, dismissed the application for judicial review and concluded the Minister’s decision was reasonable.

Held: The appeal should be dismissed and the Minister’s decision under s. 34(2) of the *IRPA* allowed to stand.

Courts deciding an application for judicial review must engage in a two-step process to identify the proper standard of review. First, it must consider whether the level of deference to be accorded with regard to the type of question raised on the application has been established satisfactorily in the jurisprudence. The second inquiry becomes relevant if the first is unfruitful or if the relevant precedents appear to be inconsistent with recent developments in the common law principles of judicial review. At this second stage, the court performs a full analysis in order to determine what the applicable standard is. The standard of review applicable in the case at bar has been satisfactorily determined in past decisions to be reasonableness.

The Minister, in making his decision, did not expressly define the term “national interest”. Although this Court is not in a position to determine with finality the actual reasoning of the Minister, it may consider what appears to have been the ministerial interpretation of “national interest”, based on the Minister’s “express reasons” and Chapter 10 of the CIC’s *Inland Processing Manual*: “Refusal of National Security Cases/Processing of National Interest Requests” (the “Guidelines”), which inform the scope and context of those reasons, and whether this implied interpretation, and the Minister’s decision as a whole, were reasonable. Had the Minister expressly provided a definition of the term “national interest” in support of his decision on the merits, it would have been one which related predominantly to national security and public safety, but did not exclude the other important considerations outlined in the Guidelines or any analogous considerations. The Guidelines did not constitute a fixed and rigid code. Rather, they contained a set of factors, which appeared to be relevant and reasonable, for the evaluation of applications for ministerial relief. The Minister did not have to apply them formulaically, but they guided the exercise of his discretion and assisted in framing a fair administrative process for such applications.

The Minister is entitled to deference as regards this implied interpretation of the term “national interest”. The Minister’s interpretation of the term “national interest” is reasonable. The plain words of the provision favour a broader reading of the term “national interest” rather than one which would limit its meaning to the protection of public safety and national security. The words of the statute, the

legislative history of the provision, the purpose and context of the provision, are all consistent with the Minister's implied interpretation of this term. Section 34 is intended to protect Canada, but from the perspective that Canada is a democratic nation committed to protecting the fundamental values of its *Charter* and of its history as a parliamentary democracy. Section 34 should not be transformed into an alternative form of humanitarian review; however, it does not necessarily exclude the consideration of personal factors that might be relevant to this particular form of review. An analysis based on the principles of statutory interpretation reveals that a broad range of factors may be relevant to the determination of what is in the "national interest", for the purposes of s. 34(2) of the *IRPA*.

The Minister's reasons were justifiable, transparent and intelligible. Although brief, they made clear the process he had followed in ruling on A's application for ministerial relief. He reviewed and considered all the material and evidence before him. Having done so, he placed particular emphasis on: A's contradictory and inconsistent accounts of his involvement with the LNSF, a group that has engaged in terrorism; the fact that A was most likely aware of the LNSF's previous activity; and the fact that A had had sustained contact with the LNSF. The Minister's reasons revealed that, on the basis of his review of the evidence and other submissions as a whole, and of these factors in particular, he was not satisfied that A's continued presence in Canada would not be detrimental to the national interest. The Minister's reasons allow this Court to clearly understand why he made the decision he did.

The Minister's decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law. The burden was on A to show that his continued presence in Canada would not be detrimental to the national interest. The Minister declined to provide discretionary relief to A, as he was not satisfied that this burden had been discharged. His conclusion was acceptable in light of the facts which had been submitted to him. Courts reviewing the reasonableness of a minister's exercise of discretion are not entitled to engage in a new weighing process. The Minister reviewed and considered (i.e. weighed) all the factors set out in A's application which were relevant to determining what was in the "national interest" in light of his reasonable interpretation of that term. Given that the Minister considered and weighed all the relevant factors as he saw fit, it is not open to the Court to set the decision aside on the basis that it is unreasonable.

The Minister's decision was not unfair, nor was there a failure to meet A's legitimate expectations or to discharge the duty of procedural fairness owed to him. In this case, the Guidelines created a clear, unambiguous and unqualified procedural framework for the handling of relief applications, and thus a legitimate expectation that that framework would be followed. The Guidelines were published by CIC, and, although CIC is not the Minister's department, it is clear that they are used by employees of both CIC and the Canada Border Security Agency for guidance in the exercise of their functions and in applying the legislation. The Guidelines are and were publicly available, and they constitute a relatively comprehensive procedural code for dealing with applications for ministerial relief. Thus, A could

reasonably expect that his application would be dealt with in accordance with the process set out in them. A has not shown that his application was not dealt with in accordance with this process outlined in the Guidelines. If A had a legitimate expectation that the Minister would consider certain factors, including the Guidelines and humanitarian and compassionate factors, in determining his application for relief, this expectation was fulfilled.

Cases Cited

Applied: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; **referred to:** *Abdella v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 1199, 355 F.T.R. 86; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Telfer v. Canada Revenue Agency*, 2009 FCA 23, 386 N.R. 212; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23; *Esmaili-Tarki v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 509 (CanLII); *Miller v. Canada (Solicitor General)*, 2006 FC 912, [2007] 3 F.C.R. 438; *Naeem v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 123, [2007] 4 F.C.R. 658; *Al Yamani v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 381, 311 F.T.R. 193; *Soe v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 461 (CanLII); *Kanaan v. Canada (Minister of Public Safety*

& Emergency Preparedness), 2008 FC 241, 71 Imm. L.R. (3d) 63; *Chogolzadeh v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 405, 327 F.T.R. 39; *Tameh v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 884, 332 F.T.R. 158; *Kablawi v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1011, 333 F.T.R. 300; *Ramadan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1155, 335 F.T.R. 227; *Afridi v. Canada (Minister of Public Safety & Emergency Preparedness)*, 2008 FC 1192, 75 Imm. L.R. (3d) 291; *Ismeal v. Canada (Minister of Public Safety & Emergency Preparedness)*, 2008 FC 1366, 77 Imm. L.R. (3d) 310; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708; *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 440; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 S.C.R. 539; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *Lake v. Canada (Minister of Justice)*, 2008 SCC 23, [2008] 1 S.C.R. 761; *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281; *Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504; *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539.

Statutes and Regulations Cited

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APPEAL from a judgment of the Federal Court of Appeal (Blais C.J. and Noël and Pelletier J.J.A.), 2011 FCA 103, 415 N.R. 121, 96 Imm. L.R. (3d) 20, [2011] F.C.J. No. 407 (QL), 2011 CarswellNat 639, setting aside a decision of Mosley J., 2009 FC 1302, 357 F.T.R. 246, 87 Imm. L.R. (3d) 135, [2009] F.C.J. No. 1664 (QL), 2009 CarswellNat 4438. Appeal dismissed.

Lorne Waldman, Jacqueline Swaisland and Clare Crummey, for the appellant.

Urszula Kaczmarczyk and Marianne Zoric, for the respondent.

Written submissions only by *Jill Copeland and Colleen Bauman*, for the intervener the British Columbia Civil Liberties Association.

Leigh Salsberg, for the intervener Ahmad Daud Maqsudi.

John Norris and Andrew Brouwer, for the interveners the Canadian Council for Refugees and the Canadian Association of Refugee Lawyers.

Barbara Jackman and Hadayt Nazami, for the interveners the Canadian Arab Federation and the Canadian Tamil Congress.

The judgment of the Court was delivered by

LEBEL J. —

I. Introduction

[1] The appellant, Muhsen Ahmed Ramadan Agraira, a citizen of Libya, has been residing in Canada continuously since 1997, despite having been found to be inadmissible on security grounds in 2002. The finding of inadmissibility was based on the appellant's membership in the Libyan National Salvation Front ("LNSF") — a terrorist organization according to Citizenship and Immigration Canada ("CIC"). The appellant applied in 2002 under s. 34(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("*IRPA*"), for ministerial relief from the determination of inadmissibility, but his application was denied in 2009. The Minister of Public Safety and Emergency Preparedness ("Minister") concluded that it was not in the national interest to admit individuals who have had sustained contact with known terrorist and/or terrorist-connected organizations. The appellant's application for permanent residence was accordingly denied, and he is now at risk of deportation.

[2] Mr. Agraira appeals to this Court from a decision in which the Federal Court of Appeal dismissed an application for judicial review of the Minister's decision denying relief from the determination of inadmissibility. He contends that the Minister took an overly narrow view of the term "national interest" in s. 34(2) of the *IRPA* by equating it with national security and public safety. He adds that the Minister's decision failed to meet his legitimate expectations that certain procedures would be followed and certain factors would be taken into account in determining his application for relief.

[3] The question raised by this appeal is whether the Minister's decision to deny relief can be successfully challenged. Two central issues are raised. First, what is the appropriate standard of review to apply to the Minister's decision? Second, in light of this standard, should the Minister's decision be set aside? This appeal also raises two other issues incidental to these central issues, namely the interpretation of the term "national interest" in s. 34(2) of the *IRPA* and the impact of any legitimate expectations created by Chapter 10 of the CIC's *Inland Processing Manual: "Refusal of National Security Cases/Processing of National Interest Requests"* (the "Guidelines").

[4] I agree with the Federal Court of Appeal, but for reasons differing in part, that the Minister's decision was reasonable and that the application for judicial review should be dismissed.

II. Background

[5] The appellant left Libya in 1996. He first sought refugee status in Germany on the basis of his connection with the LNSF, but his application was denied. He entered Canada in 1997, at Toronto, using a fake Italian passport. He applied for Convention Refugee status in this country on the basis of his affiliation with the LNSF. On his personal information form, he described his activities with that organization as follows: as a member of an 11-person cell, he had delivered envelopes to members of other cells, raised funds, and watched the movements of

supporters of the regime then in power. As part of his training, he was taught how to engage people in political discourse and how to raise funds.

[6] The appellant was heard by the Convention Refugee Determination Division of the Immigration and Refugee Board. At the hearing, he provided a letter from the LNSF confirming his membership in that organization. On October 24, 1998, he was denied Convention Refugee status on the basis that he lacked credibility.

[7] While his application for refugee status was pending, the appellant married a Canadian woman in a religious ceremony in December 1997. He later married her in a civil ceremony in March 1999. His wife sponsored his application for permanent residence in August 1999.

[8] In May 2002, the appellant was advised by CIC that his application for permanent residence might be refused, because there were grounds to believe that he was or had been a member of an organization that was or had been engaged in terrorism, contrary to s. 19(1)(f)(iii)(B) of the *Immigration Act*, R.S.C. 1985, c. I-2 (“IA”), which was then in force.

[9] Later in May 2002, the appellant was interviewed by an immigration officer. In the course of that interview, he confirmed that he had been a member of the LNSF, but claimed that he had previously exaggerated the extent of his involvement in order to bolster his refugee claim. Although he now claimed that he

did not know very much about the LNSF, he was able to name its founder and its current leader. Also, after stating that he had attended LNSF meetings in Libya, he said that he had only discussed the group with friends. Finally, he stated that he had had no contact with the LNSF after leaving Libya, but then acknowledged having received newsletters from chapters in the United States since that time. These contradictions led the immigration officer to conclude that the appellant was or had been a member of an organization that engaged in terrorism. He was found to be inadmissible on that basis.

[10] On May 22, 2002, CIC sent the appellant a letter advising him of the possibility of requesting ministerial relief. In July of that year, the appellant applied for that relief. The immigration officer noted, while preparing her report on the interview, that, once again, there were statements in the appellant's application for relief that contradicted earlier statements he had made. For example, the appellant indicated in this application that he had attended meetings of the LNSF at which he had been trained to approach potential members and raise funds. However, in his interview with the immigration officer, the appellant said that he was unaware how the LNSF funded itself or how it recruited members. The officer concluded that the appellant had been and continued to be a member of the LNSF, but that his involvement had been limited to distributing leaflets and enlisting support for the organization. She therefore recommended that he be granted relief.

[11] At the same time (July 2002), the officer prepared a Report on Inadmissibility regarding the appellant under s. 44(1) of the *IRPA*. Her report indicated that he was inadmissible to Canada pursuant to s. 34(1)(f) of the *IRPA* because he was a member of a terrorist organization.

[12] Next, in August 2005, a briefing note for the Minister was prepared by the Canada Border Services Agency (“CBSA”). After having been reviewed by counsel for the appellant, who made no further comment, the note was submitted to the Minister on March 9, 2006. It contained a recommendation that the appellant be granted relief, as there was “not enough evidence to conclude that Mr. Ramadan Agraira’s continued presence in Canada would be detrimental to the national interest” (A.R., vol. I, at p. 9). This recommendation was based on the following considerations:

Mr. Ramadan Agraira admitted to joining the LNSF but was only a member for approximately two years. There is some information to suggest that he became a member at a time when the organization was not in its most active phase and well after it was involved in an operation to overthrow the Libyan regime. He initially stated that he had participated in a number of activities on behalf of the organization but later indicated that he had exaggerated the extent of his involvement so that he could make a stronger claim to refugee status in Canada. This is supported to some extent by the fact that his attempts to obtain refugee status in Germany and Canada were rejected on the basis of credibility. Mr. Ramadan Agraira denied having been involved in any acts of violence or terrorism and there is no evidence to the contrary. He appears to have been a regular member who did not occupy a position of trust or authority within the LNSF. He does not appear to have been totally committed to the LNSF specifically as he indicated to the immigration officer at CIC Oshawa that he would support anyone who tried to remove the current regime in Libya through non-violent means. [A.R., vol. I, at p. 9]

[13] On January 27, 2009, the Minister rejected the recommendation in the briefing note. The response he gave was as follows:

After having reviewed and considered the material and evidence submitted in its entirety as well as specifically considering these issues:

- The applicant offered contradictory and inconsistent accounts of his involvement with the Libyan National Salvation Front (LNSF).
- There is clear evidence that the LNSF is a group that has engaged in terrorism and has used terrorist violence in attempts to overthrow a government.
- There is evidence that LNSF has been aligned at various times with Libyan Islamic opposition groups that have links to Al-Qaeda.
- It is difficult to believe that the applicant, who in interviews with officials indicated at one point that he belonged to a “cell” of the LNSF which operated to recruit and raise funds for LNSF, was unaware of the LNSF’s previous activity.

It is not in the national interest to admit individuals who have had sustained contact with known terrorist and/or terrorist-connected organizations. Ministerial relief is denied. [A.R., vol. I, at p. 11]

[14] On March 24, 2009, the appellant received notice that his application for permanent residence was denied. He then applied to the Federal Court for judicial review of the Minister’s decision regarding relief.

III. Judicial History

A. *Federal Court, 2009 FC 1302, 357 F.T.R. 246*

[15] Mosley J. began his analysis by ruling on the standard of review. He held that the appropriate standard was reasonableness, citing the discretionary nature of the decision, the fact that it was not delegable, and the Minister's expertise in matters of national security and the national interest. He added that the political nature of the decision and the Minister's special knowledge involving sensitivity to the imperatives of public policy and the nuances of the legislative scheme also weighed in favour of deference.

[16] In applying the reasonableness standard, Mosley J. considered the fact that the Minister had focused on evidence that the LNSF had engaged in terrorism and been aligned with Libyan Islamic groups that had links to Al-Qaeda. He found, on the contrary, that the evidence of the LNSF's engagement in terrorism was minimal at best. In particular, the LNSF did not appear on the lists of terrorist organizations of the United Nations, Canada and the United States. Although several Libyan opposition groups had direct links with Al-Qaeda, there was no evidence in the record that LNSF was one of them. Because it had been previously determined that the LNSF was a terrorist group for the purposes of s. 34(1)(f) of the *IRPA*, the court could not review that finding. However, Mosley J. found it difficult to understand why the Minister had given so much weight to the LNSF's engagement in terrorism and its alignment with Libyan Islamic groups that had links to Al-Qaeda.

[17] Mosley J. then referred to the Federal Court's decision in *Abdella v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 1199, 355 F.T.R. 86, in which Gibson J. had relied on the Guidelines to set aside the Minister's decision to deny relief under s. 34(2). Appendix D to the Guidelines contains five questions to be addressed in the context of an application for such relief:

1. Will the applicant's presence in Canada be offensive to the Canadian public?
2. Have all ties with the regime/organization been completely severed?
3. Is there any indication that the applicant might be benefiting from assets obtained while a member of the organization?
4. Is there any indication that the applicant might be benefiting from previous membership in the regime/organization?
5. Has the person adopted the democratic values of Canadian society?

[A.R., vol. III, at pp. 437-39]

[18] Mosley J. noted that in the instant case, the Minister had not addressed these questions in the reasons he gave for his decision, nor had he balanced the factors the Federal Court had in past cases identified as being relevant to the determination of what is in the national interest, namely: whether the appellant posed a threat to Canada's security; whether the appellant posed a danger to the public; the period of time the appellant had been in Canada; whether the determination is consistent with Canada's humanitarian reputation of allowing permanent residents to settle in Canada; the impact on both the appellant and all other members of society of the denial of permanent residence; and adherence to all Canada's international

obligations. He criticized the Minister for not considering in his decision the facts that the appellant had been residing in Canada since 1997 and had been a productive member of society, that he had no criminal record, and that he owned a business earning over \$100,000 a year. In Mosley J.'s view, the exercise of the Minister's discretion seemed to have been rendered meaningless by the Minister's "simplistic view that the presence in Canada of someone who at some time in the past may have belonged to a terrorist organization abroad can never be in the national interest" (para. 27).

[19] Mosley J. granted the application for judicial review and certified the following questions for consideration by the Federal Court of Appeal:

When determining a ss. 34(2) application, must the Minister of Public Safety consider any specific factors in assessing whether a foreign national's presence in Canada would be contrary to the national interest? Specifically, must the Minister consider the five factors listed in the Appendix D of IP10? [para. 32]

B. Federal Court of Appeal, 2011 FCA 103, 415 N.R. 121

[20] In the Federal Court of Appeal, Pelletier J.A. (Blais C.J. and Noël J.A. concurring) considered the issues separately in ruling on the standard of review. He held that establishing the meaning of the term "national interest" for the purposes of s. 34(2) is a question of law in respect of which the Minister has no particular expertise and for which the appropriate standard is therefore correctness. The

appropriate standard for reviewing the exercise of the Minister's discretion, on the other hand, is reasonableness.

[21] Pelletier J.A. confirmed that, in an application for ministerial relief, the onus is on the applicant to satisfy the Minister that his or her presence in Canada would not be detrimental to the national interest. Because this onus was reversed in the briefing note, he held that it was open to the Minister to disregard the recommendation made in the note.

[22] Pelletier J.A. next turned to the interpretation of s. 34(2) of the *IRPA*. He tracked the legislative evolution of s. 34(2) to find what, in his view, was the correct interpretation of this subsection. He noted that Parliament had transferred the responsibility for exercising the discretion from the Minister of Citizenship and Immigration ("MCI") to the Minister. As a result of this change, s. 34(2) has to be read in light of the objects of the *Department of Public Safety and Emergency Preparedness Act*, S.C. 2005, c. 10 ("*DPSEPA*") (the Minister's enabling statute), the *Canada Border Services Agency Act*, S.C. 2005, c. 38 ("*CBSAA*") (the statute governing the CBSA, the organization that assists the Minister in his or her duties), and the *IRPA*. These statutes work together as part of a statutory scheme to which the presumption of coherence must be applied.

[23] In May 2002, when the appellant's admissibility interview took place, the *IA* was in force. Under the *IA*, the MCI was responsible both for the determination of inadmissibility and for the decision on granting relief. He or she was also responsible

for deciding whether to grant exemptions from the *IA* on humanitarian and compassionate (“H&C”) grounds.

[24] On June 28, 2002, the *IRPA* replaced the *IA*. Under the transitional provisions of the *IRPA*, the appellant’s application for relief would now be governed by the *IRPA*, and more specifically by s. 34 of that Act. At that time, the MCI was still responsible for deciding whether to grant relief under s. 34(2). After the *CBSAA* was passed in 2005, the responsible minister became “[t]he Minister as defined in section 2” of the *CBSAA* (s. 118). In 2008, the Minister was specifically identified as the responsible minister. The MCI retained the ability to grant exemptions from the *IRPA* on H&C grounds.

[25] This review led Pelletier J.A. to conclude that under the statutory scheme, the Minister was responsible for deciding whether to grant relief, whereas the MCI continued to be responsible for deciding whether to grant exemptions on the basis of H&C considerations. Hence, Parliament intended that ministerial relief would be granted or denied on the basis of considerations other than those that could support an application for H&C relief. The proper procedure for making an application based on H&C considerations is that under s. 25 of the *IRPA*, not that of an application for ministerial relief under s. 34(2).

[26] Pelletier J.A. then equated the “national interest”, for the purposes of s. 34(2), with national security and public safety. He found support for this proposition in the *DPSEPA* and the *CBSAA*. The *DPSEPA* emphasizes the Minister’s

responsibility for public safety and emergency preparedness. Under the *CBSAA*, the Minister is also responsible for the CBSA, whose purpose is, *inter alia*, to provide “integrated border services that support national security and public safety priorities” (*CBSAA*, s. 5). Pelletier J.A. found that this statutory scheme supports the view that the exercise of the Minister’s discretion under s. 34(2) must be primarily, if not exclusively, guided by his or her national security and public safety role.

[27] Pelletier J.A. next considered the effect of the Guidelines, in which the following definition of the term “national interest” appears: “The consideration of national interest involves the assessment and balancing of all factors pertaining to the applicant’s admission against the stated objectives of the Act as well as Canada’s domestic and international interests and obligations” (s. 6).

[28] Pelletier J.A. noted that the Guidelines cannot alter the law as enacted by Parliament and found that they are of limited application now that the Minister, as opposed to the MCI, has become responsible for decisions on granting ministerial relief under s. 34(2). This conclusion was based on s. 4(2)(c) of the *IRPA*, which provides that the Minister is responsible for the establishment of policies regarding “inadmissibility on grounds of security”. As a consequence, the five factors set out in the Guidelines need not be considered in disposing of relief applications. For Pelletier J.A., this Court’s dictum in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 72, to the effect that guidelines are “a useful indicator of what constitutes a reasonable interpretation of the power conferred

by the section” does not apply in the case of the Guidelines. This is because the Guidelines serve to identify foreign nationals whose presence in Canada would be detrimental to the national interest, and thus to eliminate unsuitable candidates for relief. They do not serve, as was the case in *Baker*, to identify suitable candidates for relief.

[29] Pelletier J.A. then went on to hold that the fact that a finding of inadmissibility under s. 34(1) might negate the possibility of relief under s. 34(2) does not render that relief illusory. Rather, on the basis of *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3, the relief under s. 34(2) was meant to apply only in exceptional cases in which the applicant’s association with a terrorist group was innocent or coerced.

[30] Finally, Pelletier J.A. concluded that the Minister’s decision was reasonable. The Minister had addressed the appellant’s submission that his involvement with the LNSF was either non-existent, innocent or trivial and had found the appellant’s account of his involvement to be “contradictory and inconsistent” (para. 69). Ultimately, because the appellant lacked credibility as a result of these contradictions and inconsistencies, the Minister had had no faith in any of his representations. Accordingly, the Minister had not acted unreasonably in reaching the conclusion he had. The application for judicial review was dismissed, and the certified questions were answered as follows:

1- When determining a subsection 34(2) application, must the Minister of Public Safety consider any specific factors in assessing whether a foreign national's presence in Canada would be contrary to the national interest?

Answer: National security and public safety, as set out in para. 50 of these reasons.

2- Specifically, must the Minister consider the five factors listed in the Appendix D of IP-10?

Answer: No. [para. 74]

IV. Analysis

A. *Issues*

[31] The issues to be resolved in this appeal are as follows:

(1) Is the standard of review for the Minister's decision reasonableness or correctness?

(2) Is the Minister's decision valid?

(3) Was the decision unfair, and did it fail to meet the appellant's legitimate expectations?

[32] As I mentioned above, a corollary issue related to the first and second issues is the meaning of the term "national interest" in s. 34(2) of the *IRPA*.

B. *Positions of the Parties*

(1) Position of the Appellant

[33] The appellant submits that the standard of review applicable to all the issues before this Court is correctness, because they all constitute questions of pure law and natural justice. The Minister's decision was incorrect in that it was based on an erroneous view of the meaning of the term "national interest" in s. 34(2) of the *IRPA* and it failed to meet the appellant's legitimate expectations as to what factors would be considered in assessing his application for relief.

[34] The appellant contends that the Federal Court of Appeal relied too heavily on the legislative transfer of ministerial responsibility in interpreting the term "national interest" for the purposes of s. 34(2). This shift in responsibility between governmental departments does not indicate a concomitant legislative intent to change the interpretation of the *IRPA*. He also argues that the term "national interest" should be given a broader meaning than the one ascribed to it by the Federal Court of Appeal. Although public security and national defence should both be taken into account as relevant factors in the Minister's exercise of discretion, they should not be the only factors considered in applying the "national interest" test. In taking an unduly narrow view of the term "national interest" by equating it with one aspect of that interest (national security and public safety), the Federal Court of Appeal set a precedent which unlawfully fetters the Minister's discretion by requiring that he or she consider only that one aspect when dealing with future applications for relief.

[35] Finally, the appellant submits that the Minister's decision was unfair in that it failed to meet legitimate expectations created by the Guidelines. The Guidelines were clear and unambiguous representations made by the government to the public inasmuch as they were publicly available, had been routinely used by the Minister, and had been issued to ensure consistency. They created an expectation that certain factors extrinsic to national security would be considered in assessing s. 34(2) applications by instructing applicants to address, *inter alia*, the following factors in their submissions: the reason why the applicant is seeking admission to Canada, any special circumstances related to the application, and any current activities in which the applicant is involved. The appellant further contends that a letter he received from CIC in May 2002 created a legitimate expectation that H&C factors would be considered in assessing his application for relief. It stated that a decision under s. 34(2) would require the Minister to assess both the detriment the appellant posed to the national interest of Canada and any H&C circumstances pertinent to his situation. According to the appellant, this legitimate expectation was not met, because the Minister did not, in assessing his application, consider the factors he had been told were relevant.

(2) Position of the Respondent

[36] The respondent submits that the standard of review is reasonableness and that the Minister's decision was reasonable. The Minister's interpretation of the term "national interest" is entitled to deference, as the *IRPA* does not specify any factors

that must be considered in this regard, and the term is found in the Minister's enabling statute, with which the Minister has particular familiarity. A decision on an application for relief under s. 34(2) falls at the political end of the spectrum, is discretionary, and concerns matters in which the Minister has expertise.

[37] According to the respondent, the legislative history of the *IRPA* and the related legislation supports the view that the national security and public safety aspects of the national interest are to be the predominant considerations in determining whether to grant s. 34(2) relief, but these remain subject to any other considerations the Minister deems appropriate, except for H&C factors. The purpose of s. 34 is to ensure the safety and security of Canadians, while s. 34(2) provides for relief for innocent or coerced members of terrorist organizations who would otherwise be inadmissible. Section 34(2) must be seen as complementary to s. 34(1). Since s. 34(1) deals with inadmissibility on security grounds, the dominant considerations under s. 34(2) must be national security and public safety. H&C factors are not relevant to a determination of the "national interest" under s. 34(2), as they are properly dealt with in H&C applications under s. 25 of the *IRPA*. This interpretation of s. 34(2) is bolstered by the legislative transfer of responsibility for decisions on applications for relief to the Minister, whose mandate is the protection of public safety.

[38] Ultimately, the respondent argues, the Minister's decision in this case was reasonable. It was transparent, intelligible and justifiable. It also fell within the range

of possible acceptable outcomes that meet the standard of reasonableness in accordance with *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190. The appellant had offered self-serving and contradictory explanations of his role in, and activities for, the LNSF, and therefore lacked credibility. It was also clear that he had had sustained contact with a group that had committed terrorist acts.

[39] The respondent also contends that there was no failure to meet legitimate expectations in this case. The Guidelines emphasize the exceptional and discretionary nature of ministerial relief, and their stated objectives emphasize national security and public safety. They created expectations with respect to procedures, but not to substantive rights. They could not alter the law as laid down by Parliament and so could not mandate the consideration of factors not relevant to the national interest analysis. In any event, immigration officials did follow the procedures they were expected to follow in this case. A letter sent from CIC to the appellant in May 2002 stated that the ministerial relief process would require an assessment of the detriment he posed to the national interest, and of any relevant H&C circumstances. The appellant had a sufficient opportunity to present evidence and submissions in support of his case. He was then provided with a further opportunity to respond to information officials had obtained and provided to the Minister. The Minister reviewed the application and the briefing note, and exercised his statutory discretion as he saw fit. He provided sufficient reasons for his decision, in which he indicated that he had “reviewed and considered the material and evidence submitted in its entirety”.

C. Forms of Ministerial Relief

(1) Sections 25 and 25.1 of the IRPA

[40] Before I turn to the Minister's decision, it will be helpful to explain the two forms of ministerial relief currently available to foreign nationals in Canada who are deemed to be inadmissible. The first form, H&C relief, is provided for in ss. 25 and 25.1 of the *IRPA*:

25. (1) Subject to subsection (1.2), the [MCI] must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the [MCI] is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

...

25.1 (1) The [MCI] may, on the [MCI's] own initiative, examine the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the [MCI] is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

[41] These provisions contemplate the granting of ministerial relief to foreign nationals seeking permanent resident status who are inadmissible or otherwise do not meet the requirements of the *IRPA*. Under them, the MCI may, either upon request or

of his own accord, “grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of” the *IRPA*. However, relief of this nature will only be granted if the MCI “is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national”. H&C considerations include such matters as children’s rights, needs, and best interests; maintaining connections between family members; and averting the hardship a person would suffer on being sent to a place where he or she has no connections (see *Baker*, at paras. 67 and 72).

(2) Section 34(2) of the *IRPA*

[42] Section 34(2) of the *IRPA* contemplates a different form of ministerial relief based upon the “national interest”. Section 34 reads as follows:

34. (1) [Security] A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;

(b) engaging in or instigating the subversion by force of any government;

(c) engaging in terrorism;

(d) being a danger to the security of Canada;

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or

(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).

(2) [Exception] 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.

[43] As I mentioned above, the appellant was found to be inadmissible on security grounds for having been, in the words of s. 34(1)(f), “a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph . . . (c)”, namely acts of terrorism. He sought relief under s. 34(2), which provides that the Minister may make an exception where a person has been found to be inadmissible, on being satisfied that the person’s continued “presence in Canada would not be detrimental to the national interest”. As the wording of the section (“who satisfies the Minister”) implies, the onus is on the person who applies for relief to prove that his or her continued presence in Canada would not be detrimental to the national interest.

[44] In short, s. 34(2) of the *IRPA* establishes a pathway for relief which is conceptually and procedurally distinct from the relief available under s. 25 or s. 25.1. It should be borne in mind that an applicant who fails to satisfy the Minister that his or her continued presence in Canada would not be detrimental to the national interest under s. 34(2) may still bring an application for H&C relief. Whether such an application would be successful is another matter.

D. *Standard of Review*

(1) Relationship Between the Administrative Law Standards of Review and the Appellate Standards of Review

[45] The first issue in this appeal concerns the standard of review applicable to the Minister's decision. But, before I discuss the appropriate standard of review, it will be helpful to consider once more the interplay between (1) the appellate standards of correctness and palpable and overriding error and (2) the administrative law standards of correctness and reasonableness. These standards should not be confused with one another in an appeal to a court of appeal from a judgment of a superior court on an application for judicial review of an administrative decision. The proper approach to this issue was set out by the Federal Court of Appeal in *Telfer v. Canada Revenue Agency*, 2009 FCA 23, 386 N.R. 212, at para. 18:

Despite some earlier confusion, there is now ample authority for the proposition that, on an appeal from a decision disposing of an application for judicial review, the question for the appellate court to decide is simply whether the court below identified the appropriate standard of review and applied it correctly. The appellate court is not restricted to asking whether the first-level court committed palpable and overriding error in its application of the appropriate standard.

[46] In *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23, at para. 247, Deschamps J. aptly described this process as “step[ping] into the shoes’ of the lower court” such that the “appellate court’s focus is, in effect, on the administrative decision” (emphasis deleted).

[47] The issue for our consideration can thus be summarized as follows: Did the application judge choose the correct standard of review and apply it properly?

(2) What Is the Standard of Review?

[48] As this Court held in *Dunsmuir*, a court deciding an application for judicial review must engage in a two-step process to identify the proper standard of review. First, it must consider whether the level of deference to be accorded with regard to the type of question raised on the application has been established satisfactorily in the jurisprudence. The second inquiry becomes relevant if the first is unfruitful or if the relevant precedents appear to be inconsistent with recent developments in the common law principles of judicial review. At this second stage, the court performs a full analysis in order to determine what the applicable standard is.

Determination of the Standard in Light of the Jurisprudence

[49] In my view, the standard of review applicable in the case at bar has been satisfactorily determined in past decisions to be reasonableness. A host of cases from the Federal Court indicate that reasonableness is the standard for reviewing decisions on applications for ministerial relief under s. 34(2) of the *IRPA*: *Esmaeili-Tarki v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 509 (CanLII); *Miller v. Canada (Solicitor General)*, 2006 FC 912, [2007] 3 F.C.R. 438; *Naeem v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 123, [2007] 4 F.C.R. 658; *Al*

Yamani v. Canada (Minister of Public Safety and Emergency Preparedness), 2007 FC 381, 311 F.T.R. 193; *Soe v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 461 (CanLII); *Kanaan v. Canada (Minister of Public Safety & Emergency Preparedness)*, 2008 FC 241, 71 Imm. L.R. (3d) 63; *Chogolzadeh v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 405, 327 F.T.R. 39; *Tameh v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 884, 332 F.T.R. 158; *Kablawi v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1011, 333 F.T.R. 300; *Ramadan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1155, 335 F.T.R. 227; *Afridi v. Canada (Minister of Public Safety & Emergency Preparedness)*, 2008 FC 1192, 75 Imm. L.R. (3d) 291; *Ismeal v. Canada (Minister of Public Safety & Emergency Preparedness)*, 2008 FC 1366, 77 Imm. L.R. (3d) 310; *Abdella*. This jurisprudence is well established, and the appellant has not shown why it should not be relied on in this appeal.

[50] The applicability of the reasonableness standard can be confirmed by following the approach discussed in *Dunsmuir*. As this Court noted in that case, at para. 53, “[w]here the question is one of fact, discretion or policy, deference will usually apply automatically”. Since a decision by the Minister under s. 34(2) is discretionary, the deferential standard of reasonableness applies. Also, because such a decision involves the interpretation of the term “national interest” in s. 34(2), it may be said that it involves a decision maker “interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity”

(*Dunsmuir*, at para. 54). This factor, too, confirms that the applicable standard is reasonableness.

(3) Meaning of Reasonableness

[51] In *Dunsmuir*, the Court defined reasonableness as follows:

. . . a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. [para. 47]

[52] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, Abella J., for a unanimous Court, returned to the meaning of reasonableness and deference. She stated:

This, I think, is the context for understanding what the Court meant in *Dunsmuir* when it called for “justification, transparency and intelligibility”. To me, it represents a respectful appreciation that a wide range of specialized decision-makers routinely render decisions in their respective spheres of expertise, using concepts and language often unique to their areas and rendering decisions that are often counter-intuitive to a generalist. . . .

Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the “adequacy” of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and 12:5510). It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at “the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes” (para. 47).

In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show “respect for the decision-making process of adjudicative bodies with regard to both the facts and the law” (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

. . . if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met. [paras. 13-16]

[53] In one of its most recent comments on this point, in *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 440, the Court emphasized that the reviewing court must consider the tribunal’s decision as a whole, in the context of the underlying record, to determine whether it was reasonable:

. . . administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons. For reviewing courts, the issue remains whether the decision, viewed as a whole in the context of the record, is reasonable (*Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 [para. 3]).

[54] I will now consider whether the Minister's decision was reasonable. The remainder of my reasons will focus on this issue.

E. *Meaning of "National Interest" Under Section 34(2) of the IRPA*

[55] The meaning of the term "national interest" in s. 34(2) of the *IRPA* was central to the Minister's exercise of discretion in this case. As is plain from the statute, the Minister exercises this discretion by determining whether he or she is satisfied by the applicant that the applicant's presence in Canada would not be detrimental to the national interest. The meaning of "national interest" in the context of this section is accordingly key, as it defines the standard the Minister must apply to assess the effect of the applicant's presence in Canada in order to exercise his or her discretion.

[56] The Minister, in making his decision with respect to the appellant, did not expressly define the term "national interest". The first attempt at expressly defining it was by Mosley J. in the Federal Court, and he also certified a question concerning this definition for the Federal Court of Appeal's consideration. We are therefore left in the position, on this issue, of having no *express* decision of an administrative decision maker to review.

[57] This Court has already encountered and addressed this situation, albeit in a different context, in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654. In that case, Rothstein J.

held that a decision maker's decision on the merits may imply a particular interpretation of the statutory provision at issue even if the decision maker has not expressed an opinion on that provision's meaning.

[58] The reasoning from *Alberta Teachers' Association* can be applied to the case at bar. It is evident from the Minister's holding that "[i]t is not in the national interest to admit individuals who have had sustained contact with known terrorist and/or terrorist-connected organizations" that the Minister made a determination of the meaning of "national interest". An interpretative decision as to that term is necessarily implied within his ultimate decision on ministerial relief, although this Court is not in a position to determine with finality the actual reasoning of the Minister. In these circumstances, we may "consider the reasons that could be offered for the [Minister's] decision when conducting a reasonableness review" of that decision (*Alberta Teachers' Association*, at para. 54). Accordingly, I now turn to consider, what appears to have been the ministerial interpretation of "national interest", based on the Minister's "express reasons" and the Guidelines, which inform the scope and context of those reasons. I will then assess whether this implied interpretation, and the Minister's decision as a whole, were reasonable.

[59] The Minister stated in his reasons that he had "reviewed and considered the material and evidence submitted in its entirety". This material included the following information set out in the CBSA's briefing note, which addressed many of the questions presented in the Guidelines:

1. The extent of the appellant's membership in, and activities on behalf of, the LNSF are in question.
2. At most, the appellant was a "passive member" of the LNSF who carried out "basic functions". He was never involved in violent acts.
3. The appellant joined the LNSF in 1994 to support democracy, freedom of speech, and human rights in Libya. At that time, the organization was, by and large, no longer engaged in violence. In any event, the appellant claimed to have no knowledge of the LNSF's involvement in violence and would not have supported the LNSF had it espoused the use of violence to achieve political change.
4. There is evidence to suggest that the appellant severed all ties with the LNSF when he came to Canada in 1997.
5. Throughout, the appellant's goal has been to support the establishment of a democratic system of government in Libya.
6. The appellant has two children, attended English as a second language classes, and owns his own transport business.

(A.R., vol. I, pp. 5-9)

[60] The Guidelines did not constitute a fixed and rigid code. Rather, they contained a set of factors, which appeared to be relevant and reasonable, for the evaluation of applications for ministerial relief. The Minister did not have to apply them formulaically, but they guided the exercise of his discretion and assisted in framing a fair administrative process for such applications. As a result, the Guidelines can be of assistance to the Court in understanding the Minister's implied interpretation of the "national interest".

[61] Moreover, the Minister placed particular emphasis on matters related to national security and public safety in the reasons he gave for his decision. These included: the appellant's contradictory and inconsistent accounts of his involvement with the LNSF, a group that has engaged in terrorism; the fact that the appellant was most likely aware of the LNSF's previous activity; and the fact that the appellant had had sustained contact with the LNSF.

[62] Taking all the above into account, had the Minister expressly provided a definition of the term "national interest" in support of his decision on the merits, it would have been one which related predominantly to national security and public safety, but did not exclude the other important considerations outlined in the Guidelines or any analogous considerations (see Appendix 1 (the relevant portions of the Guidelines)).

[63] As a result of my comments above on the standard of review, I am of the view that the Minister is entitled to deference as regards this implied interpretation of

the term “national interest”. As Rothstein J. stated, “[w]here the reviewing court finds that the tribunal has made an implicit decision on a critical issue, the deference due to the tribunal does not disappear” (*Alberta Teachers’ Association*, at para. 50).

[64] In my view, the Minister’s interpretation of the term “national interest”, namely that it is focused on matters related to national security and public safety, but also encompasses the other important considerations outlined in the Guidelines and any analogous considerations, is reasonable. It is reasonable because, to quote the words of Fish J. from *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, it “accords . . . with the plain words of the provision, its legislative history, its evident purpose, and its statutory context” (para. 46). That is to say, the interpretation is consistent with Driedger’s modern approach to statutory interpretation:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

(*Construction of Statutes* (2nd ed. 1983), at p. 87)

(1) Plain Words of the Provision

[65] There is no dispute between the parties that the term “national interest” refers to matters which are of concern to Canada and to Canadians. There is no doubt that public safety and national security are matters which are of concern to Canada and to Canadians. It is equally clear, however, that more than just public safety and

national security are of concern to Canada and to Canadians. For example, the plain meaning of the term “national interest” would also include the preservation of the values that underlie the *Canadian Charter of Rights and Freedoms* and the democratic character of the Canadian federation, and in particular the protection of the equal rights of every person to whom its laws and its Constitution apply. The plain words of the provision therefore favour a broader reading of the term “national interest” than the one suggested by the respondent and by the Federal Court of Appeal, which would limit its meaning to the protection of public safety and national security. The words of the statute are consistent with the Minister’s implied interpretation of this term, which relates predominantly to national security and public safety, but does not exclude the other important considerations outlined in the Guidelines or any analogous considerations. The legislative history of the provision is also relevant to an understanding of the range of values and interests underlying the concept of the national interest.

(2) Legislative History of the Provision

[66] The legislative history of s. 34(2) is a long one. In these reasons, I will only discuss the salient points of this history, those which serve to demonstrate that the Minister’s implied interpretation of the term “national interest” is consistent with it.

[67] Ministerial relief from a finding of inadmissibility first became available in 1952. Relief was available to persons who were members of or associated with

any organization, group or body that was or had been involved in the subversion by force or other means of democratic government, institutions or processes. Those who sought such relief had to satisfy the minister that they had ceased to be members of or associated with the organization, group or body in question and that their admission “would not be detrimental to the security of Canada” (*Immigration Act*, R.S.C. 1952, c. 325, s. 5(*l*)). Parliament made it clear at the time that it intended the focus of an application for ministerial relief to be national security.

[68] In 1977, the provisions of the *Immigration Act* on inadmissibility were revised to read, in part, as follows:

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

...

(*e*) persons who have engaged in or who there are reasonable grounds to believe will engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada, except persons who, having engaged in such acts, have satisfied the Minister that their admission would not be detrimental to the national interest;

(*Immigration Act*, 1976, S.C. 1976-77, c. 52, s. 19(1)(*e*))

[69] Thus, in 1977, Parliament made a clear decision to change the approach to ministerial relief. The test would no longer focus solely on national security, as access to relief would instead be premised on a broader array of domestic and international considerations constituting the “national interest”. Since then, the

provisions on ministerial relief in both the *IA* and the *IRPA* have at all times referred to the “national interest”.

[70] Parliament was (or at least must be taken to have been) aware of the previous “detrimental to the security of Canada” test when it decided to enact, and later to keep, the “national interest” test for ministerial relief. The fact that, at all material times, the wording of s. 34(2) referred to the applicant’s not being detrimental to the “national interest”, as opposed to not being detrimental to the “security of Canada”, strongly suggests that Parliament did not intend the term “national interest” to relate exclusively to national security and public safety. Had that been the case, Parliament could have returned to the expression “security of Canada” in enacting s. 34(2).

[71] The *IRPA* replaced the *IA* in 2002. As it was enacted in a post-9/11 world, the *IRPA* was clearly in part a response to the threats of the complex and dangerous environment which had been developing internationally. In support of his contention that the interpretation of the term “national interest” should focus on national security and public safety, the respondent quotes the following passage from a Senate Committee report in his factum:

The Committee recognizes that Bill C-11 represents a major overhaul of Canada’s immigration and refugee protection legislation, and it will thus likely set the standard for many years to come. The Committee also fully appreciates that the current context in which the Bill is being considered is one of heightened security concerns following the profoundly tragic events of 11 September 2001 in the United States. In this context the Committee realizes that the Bill must embody a balance that will respect

the needs and rights of individuals while simultaneously serving the public interest particularly with respect to security concerns and meeting Canada's international obligations. [Emphasis added.]

(Standing Committee on Social Affairs, Science and Technology, "Ninth Report", 1st Sess., 37th Parl., October 23, 2001 (online))

[72] This passage certainly highlights the *IRPA*'s role in "serving the public interest . . . with respect to security concerns". However, it does not limit the national interest to security concerns. It also highlights the fact that meeting Canada's international obligations (including, presumably, obligations stemming from rules of customary and conventional international human rights law) is an important part of the national interest.

[73] In 2005, the *DPSEPA* formally established both the Department of Public Safety and Emergency Preparedness and the Minister's post. The respondent submits that the creation of this new department and of the CBSA, as well as the transfer of ministerial responsibility for decisions under s. 34(2), formed part of a new national security policy instituted by Parliament in response to the events of September 11, 2001. In particular, he argues that the legislative transfer of the responsibility for making such decisions from the MCI to the Minister, occurring as it did in the broader context of national security and public safety, supports the Federal Court of Appeal's interpretation of the term "national interest".

[74] I am not persuaded that the transfer of ministerial responsibility for s. 34(2) applications serves as a sufficient basis for upholding the Federal Court of

Appeal's interpretation of the term "national interest". On its own, this transfer should not be read as changing, nor does it change, the substantive law governing relief applications under s. 34(2). Ministerial responsibilities may be reassigned for a wide variety of reasons. If this argument was valid, it would imply that the meaning of a law might change whenever ministerial responsibilities are reassigned. This would be a new and perplexing principle of interpretation. There is a presumption against the implicit alteration of the law according to which, absent an explicit change in the wording of a provision, it is presumed that Parliament did not intend to amend its meaning. Although the ministerial responsibility for deciding relief applications under s. 34(2) was transferred in 2005, Parliament did not amend the wording of this provision. Therefore, the presumption against implicit alteration applies, and there was no intent to amend the meaning of the term "national interest". As the appellant points out in his factum, this presumption is not rebutted by a mere transfer of ministerial responsibility:

It does not make sense that every time Parliament decides to change the responsibilities of particular Ministers for administrative purposes, or without indicating that there is a substantive reason for a change, the words of a statute should be given different meanings. A mere transfer in Ministerial responsibility is not sufficient to establish that the change is meant to have a substantive effect on the rights of persons who are affected by legislation administered by the various ministers. The Court of Appeal's interpretation of national interest effectively amends section 34(2). Amending legislation is a legislative function, and falls outside of the judicial function. [para. 76]

[75] In summary, this review demonstrates that the Minister's implied interpretation of the term "national interest" — that it relates predominantly to

national security and public safety, but does not exclude the other important considerations outlined in the Guidelines or any analogous considerations — is consistent with the legislative history of the provision.

(3) Purpose of the Provision

[76] The respondent argues that the *IRPA* is concerned with public safety and national security. More specifically, he argues that the purpose of s. 34(1)(c) and (f) is to ensure the safety and security of Canadians, while s. 34(2) provides for relief only for innocent or coerced members of terrorist organizations who would otherwise be inadmissible.

[77] The respondent is correct in saying that the *IRPA* is concerned with national security and public safety. In fact, the Court recognized this in *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 S.C.R. 539:

The objectives as expressed in the *IRPA* indicate an intent to prioritize security. . . . Viewed collectively, the objectives of the *IRPA* and its provisions concerning permanent residents, communicate a strong desire to treat criminals and security threats less leniently than under the former Act. [para. 10]

[78] That said, the respondent's argument that s. 34(2) is focused exclusively on national security and public safety, and that it provides for relief only for innocent or coerced members of terrorist organizations, fails to give adequate consideration to

the other objectives of the *IRPA*. Section 3(1) of the *IRPA* sets out 11 objectives of the Act with respect to immigration. Only two of these are related to public safety and national security: to protect public health and safety and to maintain the security of Canadian society (s. 3(1)(h)), and to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks (s. 3(1)(i)). The other nine objectives relate to other factors that properly inform the interpretation of the term “national interest” (e.g. “to permit Canada to pursue the maximum social, cultural and economic benefits of immigration” (s. 3(1)(a))). The explicit presence of these other objectives in the *IRPA* strongly suggests that this term is not limited to public safety and national security, but that the Parliament of Canada also intended that it be interpreted in the context of the values of a democratic state. Section 34 is intended to protect Canada, but from the perspective that Canada is a democratic nation committed to protecting the fundamental values of its *Charter* and of its history as a parliamentary democracy.

[79] Accordingly, the Minister’s broad implied interpretation of the term “national interest” is also consistent with the purpose of the provision.

(4) Context of the Provision

[80] As the Court noted in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, “[t]he preferred approach [to statutory interpretation] recognizes the important role that context must inevitably play when a court construes

the written words of a statute” (para. 27). The context of s. 34(2) provides much guidance for the interpretation of the term “national interest”.

[81] First, according to the presumption of consistent expression, when different terms are used in a single piece of legislation, they must be understood to have different meanings. If Parliament has chosen to use different terms, it must have done so intentionally in order to indicate different meanings. The term “national interest” is used in s. 34(2), which suggests that what is to be considered by the Minister under that provision is broader than the considerations of whether the individual is “a danger to the security of Canada” (s. 34(1)(d)) or whether he or she “might endanger the lives or safety of persons in Canada” (s. 34(1)(e)), both of which appear in s. 34(1). If Parliament had intended national security and public safety to be the only considerations under s. 34(2), it could have said so using the type of language found in s. 34(1). It did not do so, however.

[82] In a similar vein, the terms “national security”, “danger to the public” and “endanger the safety of any person” each appear several times elsewhere in the *IRPA*. In light of the presumption of consistent expression, “national interest” cannot be synonymous with any of these terms. Rather, the use of the term “national interest” implies that the Minister is to carry out a broader analysis under s. 34(2). Contrary to what the Federal Court of Appeal held in the case at bar, in determining whether a person’s continued presence in Canada would not be detrimental to the national

interest, the Minister must consider more than just national security and whether the applicant is a danger to the public or to the safety of any person.

[83] Second, if s. 34(2) were concerned solely with the danger an applicant poses to the security of Canada, it would be impossible for a person found to be inadmissible under s. 34(1)(d) (“being a danger to the security of Canada”) to obtain relief under s. 34(2). This is an absurd interpretation which must be avoided.

[84] Third, the respondent argues that, because of the possibility of H&C relief under s. 25 of the *IRPA*, the principle of consistent expression dictates that H&C factors should not be relevant to a determination of what is in the national interest under s. 34(2). I agree, but with some qualifications. H&C considerations are more properly considered in the context of a s. 25 application, and s. 34 should not be transformed into an alternative form of humanitarian review. But s. 34 does not necessarily exclude the consideration of personal factors that might be relevant to this particular form of review. For example, such considerations may have an impact on the assessment of the applicant’s personal characteristics for the purpose of determining whether he or she can be viewed as a threat to the security of Canada. Of the considerations in the Guidelines unrelated to national security and public safety which formed part of the Minister’s implied interpretation, only very few are H&C factors. The fact that the Minister considered such factors did not render his interpretation of the term “national interest” unreasonable.

[85] Finally, the broader context of s. 34(2) of the *IRPA* also includes the Guidelines. Although not law in the strict sense, and although they are liable to evolve over time as the context changes, thus giving rise to new requirements adapted to different contexts, guidelines are “a useful indicator of what constitutes a reasonable interpretation of the . . . section” (*Baker*, at para. 72). The Guidelines were published in 2005, and they applied to applications for ministerial relief under s. 34(2) at the time the Minister reached his decision on the appellant’s application. As is evident from the numerous considerations contained in Appendix 1, the Guidelines represent a broad approach to the concept of the “national interest”. They do not simply equate the “national interest” with national security and public safety, as the Federal Court of Appeal did. Rather, they suggest that the national interest analysis is broader than that, although its focus may properly be on national security and public safety.

[86] Thus, the Minister’s implied interpretation of the term “national interest” — that it relates predominantly to national security and public safety, but does not exclude the other important considerations outlined in the Guidelines or any analogous considerations — is consistent with all these contextual indications of the meaning of this term.

[87] In summary, an analysis based on the principles of statutory interpretation reveals that a broad range of factors may be relevant to the determination of what is in the “national interest”, for the purposes of s. 34(2). Even excluding H&C

considerations, which are more appropriately considered in the context of a s. 25 application, although the factors the Minister may validly consider are certainly not limitless, there are many of them. Perhaps the best illustration of the wide variety of factors which may validly be considered under s. 34(2) can be seen in the ones set out in the Guidelines (with the exception of the H&C considerations included in the Guidelines). Ultimately, which factors are relevant to the analysis in any given case will depend on the particulars of the application before the Minister (*Soe*, at para. 27; *Tameh*, at para. 43).

[88] This interpretation is compatible with the interpretation of the term “national interest” the Minister might have given in support of his decision on the appellant’s application for relief. It is consistent with that decision. The Minister’s implied interpretation of the term related predominantly to national security and public safety, but did not exclude the other important considerations outlined in the Guidelines or any analogous considerations. In light of my discussion of the principles of statutory interpretation, this interpretation was eminently reasonable.

F. Is the Minister’s Decision Valid?

[89] Having concluded that the Minister’s implied interpretation of the term “national interest” is reasonable, I should also confirm that the decision as a whole is valid. The Minister’s reasons were justifiable, transparent and intelligible. Although brief, they made clear the process he had followed in ruling on the appellant’s application. He reviewed and considered all the material and evidence before him.

Having done so, he placed particular emphasis on: the appellant's contradictory and inconsistent accounts of his involvement with the LNSF, a group that has engaged in terrorism; the fact that the appellant was most likely aware of the LNSF's previous activity; and the fact that the appellant had had sustained contact with the LNSF. The Minister's reasons revealed that, on the basis of his review of the evidence and other submissions as a whole, and of these factors in particular, he was not satisfied that the appellant's continued presence in Canada would not be detrimental to the national interest. In short, his reasons allow this Court to clearly understand why he made the decision he did.

[90] Furthermore, the Minister's decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law. The burden was on the appellant to show that his continued presence in Canada would not be detrimental to the national interest. The Minister declined to provide discretionary relief to the appellant, as he was not satisfied that this burden had been discharged. His conclusion was acceptable in light of the facts which had been submitted to him.

[91] As this Court held in *Suresh*, a court reviewing the reasonableness of a minister's exercise of discretion is not entitled to engage in a new weighing process (para. 37; see also *Lake v. Canada (Minister of Justice)*, 2008 SCC 23, [2008] 1 S.C.R. 761, at para. 39). As the Minister stated in his reasons, he had "reviewed and considered" (i.e. weighed) all the factors set out in the appellant's application which were relevant to determining what was in the "national interest" in light of his

reasonable interpretation of that term. He gave particular weight to certain factors pertaining to national security and public safety and emphasized them in his reasons, namely: the appellant's contradictory and inconsistent accounts of his involvement with the LNSF; the fact that the appellant was most likely aware of the LNSF's previous activity; and the fact that the appellant had had sustained contact with the LNSF. Given that the Minister considered and weighed all the relevant factors as he saw fit, it is not open to the Court to set the decision aside on the basis that it is unreasonable.

[92] In all the circumstances, it cannot be said that either the result or the Minister's decision as a whole was unreasonable. But a final issue remains: it relates to an allegation of a failure to meet the requirements of procedural fairness.

G. Was the Decision Unfair, and Did it Fail to Meet the Appellant's Legitimate Expectations?

[93] As this Court noted in *Dunsmuir*, at para. 79, "[p]rocedural fairness is a cornerstone of modern Canadian administrative law. Public decision makers are required to act fairly in coming to decisions that affect the rights, privileges or interests of an individual." The Court's comment that "[p]rocedural fairness has many faces" (*Dunsmuir*, at para. 77) is also relevant to this case.

[94] The particular face of procedural fairness at issue in this appeal is the doctrine of legitimate expectations. This doctrine was given a strong foundation in

Canadian administrative law in *Baker*, in which it was held to be a factor to be applied in determining what is required by the common law duty of fairness. If a public authority has made representations about the procedure it will follow in making a particular decision, or if it has consistently adhered to certain procedural practices in the past in making such a decision, the scope of the duty of procedural fairness owed to the affected person will be broader than it otherwise would have been. Likewise, if representations with respect to a substantive result have been made to an individual, the duty owed to him by the public authority in terms of the procedures it must follow before making a contrary decision will be more onerous.

[95] The specific conditions which must be satisfied in order for the doctrine of legitimate expectations to apply are summarized succinctly in a leading authority entitled *Judicial Review of Administrative Action in Canada*:

The distinguishing characteristic of a legitimate expectation is that it arises from some conduct of the decision-maker, or some other relevant actor. Thus, a legitimate expectation may result from an official practice or assurance that certain procedures will be followed as part of the decision-making process, or that a positive decision can be anticipated. As well, the existence of administrative rules of procedure, or a procedure on which the agency had voluntarily embarked in a particular instance, may give rise to a legitimate expectation that such procedures will be followed. Of course, the practice or conduct said to give rise to the reasonable expectation must be clear, unambiguous and unqualified. [Emphasis added.]

(D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §7:1710; see also *Mount Sinai Hospital Centre v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281, at para. 29; *Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504, at para. 68.)

[96] In *Mavi*, Binnie J. recently explained what is meant by “clear, unambiguous and unqualified” representations by drawing an analogy with the law of contract (at para. 69):

Generally speaking, government representations will be considered sufficiently precise for purposes of the doctrine of legitimate expectations if, had they been made in the context of a private law contract, they would be sufficiently certain to be capable of enforcement.

[97] An important limit on the doctrine of legitimate expectations is that it cannot give rise to substantive rights (*Baker*, at para. 26; *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525, at p. 557). In other words, “[w]here the conditions for its application are satisfied, the Court may [only] grant appropriate procedural remedies to respond to the ‘legitimate’ expectation” (*C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539, at para. 131 (emphasis added)).

[98] In the case at bar, the Guidelines created a clear, unambiguous and unqualified procedural framework for the handling of relief applications, and thus a legitimate expectation that that framework would be followed. The Guidelines were published by CIC, and, although CIC is not the Minister’s department, it is clear that they are “used by employees of [both] CIC and the CBSA for guidance in the exercise of their functions and in applying the legislation” (R.F., at para. 108). The Guidelines are and were publicly available, and, as Appendix 2 to these reasons illustrates, they constitute a relatively comprehensive procedural code for dealing

with applications for ministerial relief. Thus, the appellant could reasonably expect that his application would be dealt with in accordance with the process set out in them. In brief, this process is as follows:

1. Following the receipt of an application for relief, the CIC officer provides the applicant with a copy of the “National Interest Information Sheet”. The applicant is given 15 days to send his or her submission to the local CIC office.

2. Upon receipt of the applicant’s submission, the CIC officer prepares a report which discusses the current situation regarding the applicant’s ground for inadmissibility, the details of the applicant’s application for relief, and any personal or exceptional circumstances of the applicant that should be considered.

3. The CIC report is forwarded to the National Security Division, Intelligence Directorate, CBSA, along with the applicant’s submission and all supporting documents. The CBSA may conduct further investigations at this stage.

4. The CBSA analyst prepares a recommendation to the Minister, which includes all supporting documentation.

5. A copy of the recommendation to the Minister is disclosed to the applicant, who may then make additional submissions or provide additional documents in response.

6. The applicant's original submission and its supporting documentation, the CIC officer's report, the CBSA's recommendation, and any additional submissions or documents received from the applicant in response to that recommendation are all forwarded to the Minister.

7. The Minister renders a decision on the application. The decision is entirely within the Minister's discretion.

8. If the decision is negative, CIC issues a refusal letter to the applicant.

[99] The appellant has not shown that his application was not dealt with in accordance with this process outlined in the Guidelines. In May 2002, he was advised of the ministerial relief process by way of a letter akin to the National Interest Information Sheet. He responded to this letter by making submissions through his counsel, and CIC then prepared its report. The CBSA prepared a briefing note for the Minister, which contained its recommendation, and this note was disclosed to the appellant. The appellant declined to make additional submissions or provide additional documents in response to the recommendation. The appellant's submission and its supporting documentation, the CIC officer's report, and the

CBSA's recommendation were all forwarded to the Minister, and the Minister rendered a decision on the application. As counsel for the appellant rightly acknowledges, "[i]n the Appellant's case, the Ministerial relief process followed the process set out in the IP 10 guidelines" (A.F., at para. 53). His legitimate expectation in this regard was therefore fulfilled.

[100] The appellant raises a further argument to the effect that he had a legitimate expectation that the Minister would consider certain factors in determining his relief application. The source of this alleged expectation is twofold. First, the appellant argues that the Guidelines created an expectation that the pertinent factors set out in Appendix 1 to these reasons would be considered. Second, he alleges that he had a legitimate expectation that H&C factors would be considered in determining his application as a result of a letter CIC had sent him on May 22, 2002. That letter read, in part, as follows:

The Minister will consider whether granting you permanent residence to Canada would be contrary to the National Interest to Canada. This will require an assessment of the detriment that you pose to the National Interest of Canada, as well as any humanitarian and compassionate circumstances pertinent to your situation. [Emphasis added.]

(A.R., vol. III, at p. 287)

[101] Even were I to assume that the Guidelines and the letter unambiguously promised the appellant that certain factors would be considered in assessing his application for relief and that, at law, someone in his position might in fact have a legitimate expectation that certain factors would be considered in making a

discretionary decision, his argument would nevertheless fail. As I mentioned above, the Minister's implied interpretation of the term "national interest" encompasses all the factors referred to in the Guidelines. Also as I mentioned above, and as the appellant acknowledges, these factors include H&C factors (A.F., at para. 122). In a manner consistent with this interpretation of the term "national interest", the Minister "reviewed and considered the material and evidence submitted in its entirety". Therefore, if the appellant had a legitimate expectation that the Minister would consider certain factors, including H&C factors, in determining his application for relief, this expectation was fulfilled.

[102] In my opinion, there was no failure to meet the appellant's legitimate expectations or to discharge the duty of procedural fairness owed to him. The Minister's decision cannot therefore be set aside on this basis.

V. Conclusion

[103] As a result, I would dismiss the appeal and allow the Minister's decision under s. 34(2) of the *IRPA* to stand. In the circumstances, and taking particular account of the Minister's inordinate delay in rendering a decision that was of the utmost importance to Mr. Agraira, I would make no order as to costs.

Appendix 1 — Relevant Portions of the Guidelines re: “National Interest”

9.2. Processing the request

...

Upon receipt of the applicant’s submission, the officer should prepare a report, which consists of the following:

- the applicant’s current situation regarding the ground of inadmissibility (refer to Appendix D for an outline of the questions and considerations that must be addressed in preparing this information);
- the details of the application and any personal or exceptional circumstances to be taken into consideration; this would include:
 - ◆ details of immigration application;
 - ◆ basis for refugee protection, if applicable;
 - ◆ other grounds of inadmissibility, if applicable;
 - ◆ activities while in Canada;
 - ◆ details of family in Canada or abroad;
 - ◆ any Canadian interest.

...

Appendix B National interest information sheet

...

You may be exempted from this ground of inadmissibility if the Minister decides that your presence in Canada would not be detrimental to Canada’s national interest. The consideration of national interest involves the assessment and balancing of all factors pertaining to your admission to Canada against the stated objectives in Canada’s *Immigration and Refugee Protection Act*, as well as Canada’s domestic and international interests and obligations.

If you wish to be considered for this exemption, you must prepare a submission along with any supporting documentation that you deem relevant. To assist you in preparing your submission, it is suggested that you address the following:

- Why are you seeking admission to Canada?
- Are there any special circumstances surrounding your application?
- Provide evidence that you do not constitute a danger to the public.
- Explain current activities you are involved in (employment, education, family situation, involvement in the community, etc.).

If the ground of inadmissibility involves membership in a regime or organization, explain the purpose of the organization, your role in the organization and activities in which you were involved. You must provide extensive detail and be very thorough in explaining this, including dates, locations and impact of these activities. When and for how long were you a member? Did these activities involve violence? If you are claiming to no longer be a member of this regime or organization, you must provide evidence. Explain when and why you disassociated yourself from the regime/organization and whether you are still involved with persons who are members of the regime/organization.

Lastly, explain your current attitude towards this regime/organization, its goals and objectives and how you feel about the means it has chosen to achieve its objectives.

Your submission need not be restricted to the above. You may provide any information and documents that you think may strengthen your request for an exemption. . . .

Appendix D Preparing the request for relief report

A request to the Minister should consist of three parts:

1. The client's submission and all supporting documentation;
2. A report prepared by the officer addressing the applicant's current situation with respect to the ground of inadmissibility and any exceptional circumstances to be taken into account. This includes:
 - details of the immigration application;
 - basis for refugee protection, if applicable;

- other grounds of inadmissibility, if applicable;
- activities while in Canada;
- details of family in Canada or abroad;
- any Canadian interest;
- any personal or exceptional circumstances to be considered.

3. A recommendation to the Minister prepared by the CBSA, NHQ. In order to assess the current situation regarding the ground of inadmissibility, evidence must be produced to address the questions stated in the following table:

Question	Details
<p>Will the applicant's presence in Canada be offensive to the Canadian public?</p>	<ul style="list-style-type: none"> • Is there satisfactory evidence that the person does not represent a danger to the public? • Was the activity an isolated event? If not, over what period of time did it occur? • When did the activity occur? • Was violence involved? • Was the person personally involved or complicit in the activities of the regime/organization? • Is the regime/organization internationally recognized as one that uses violence to achieve its goals? If so, what is the degree of violence shown by the organization? • What was the length of time that the applicant was a member of the regime/organization? • Is the organization still involved in criminal or violent activities? • What was the role or position of the person within the regime/organization?

	<ul style="list-style-type: none"> • Did the person benefit from their membership or from the activities of the organization? • Is there evidence to indicate that the person was not aware of the atrocities/criminal/terrorist activities committed by the regime/organization?
<p>Have all ties with the regime/organization been completely severed?</p>	<ul style="list-style-type: none"> • Has the applicant been credible, forthright, and candid concerning the activities/membership that have barred admission or has the applicant tried to minimize their role? • What evidence exists to demonstrate that ties have been severed? • What are the details concerning disassociation from the regime/organization? Did the applicant disassociate from the regime/organization at the first opportunity? Why? • Is the applicant currently associated with any individuals still involved in the regime/organization? • Does the applicant's lifestyle demonstrate stability or is there a pattern of activity likely associated with a criminal lifestyle?
<p>Is there any indication that the applicant might be benefiting from assets obtained while a member of the organization?</p>	<ul style="list-style-type: none"> • Is the applicant's lifestyle consistent with Personal Net Worth (PNW) and current employment? • If not, provide evidence to establish that the applicant's PNW did not come from criminal activities.
<p>Is there any indication that the applicant may be benefiting from previous membership in the regime/organization?</p>	<ul style="list-style-type: none"> • Does the applicant's lifestyle demonstrate any possible benefits from former membership in the regime/organization?

	<ul style="list-style-type: none"> • Does the applicant’s status in the community demonstrate any special treatment due to former membership in the regime/organization?
<p>Has the person adopted the democratic values of Canadian society?</p>	<ul style="list-style-type: none"> • What is the applicant’s current attitude towards the regime/organization, their membership, and their activities on behalf of the regime/organization? • Does the applicant still share the values and lifestyle known to be associated with the organization? • Does the applicant show any remorse for their membership or activities? • What is the applicant’s current attitude towards violence to achieve political change? • What is the applicant’s attitude towards the rule of law and democratic institutions, as they are understood in Canada?

Appendix 2 — Relevant Portions of the Guidelines re: Legitimate Expectations

1. What this chapter is about

In addition to the general procedures for processing applications for permanent residence in Canada this chapter outlines procedures to be applied in cases involving possible inadmissibility on grounds of national security. It describes the process to be followed when an applicant requests relief under the national interest provisions. These guidelines are issued to ensure consistency in the application of procedural fairness requirements.

7.2. Specific requirements

The procedural fairness requirements when assessing inadmissibility and processing requests for ministerial relief are as follows:

- The decision-maker must make the decision on complete information. All documents provided by the applicant must be considered by the decision-maker. It is not acceptable that the contents of such documentation be summarized for the decision-maker without attaching the primary documentation.
- The applicant is entitled to be provided with all the relevant information that will be considered by the decision-maker to challenge the information and to present evidence and submissions. This entitlement is limited where disclosure of the information would be injurious to national security or to the safety of any person.
- The applicant is entitled to be made aware of concerns raised by the officer and to respond to those concerns.

9. Procedure - Requests for relief

At the interview with CIC, the applicant may request information about the national interest provision or apply for ministerial relief. The officer should be guided by the following principles and guidelines.

9.1. Principles

The national interest provisions are intended to be exceptional. A6(3) precludes any delegation from the Minister. The following principles apply:

- The decision to grant relief is entirely within the discretion of the Minister. The role of the officer is primarily to ensure that accurate and complete information is placed before the Minister so that the Minister can make an informed decision.
- The officer should not encourage or discourage the applicant from applying for relief, nor should the officer provide an opinion regarding the merits of the application.

The request for relief under the national interest provisions must be initiated by the applicant. The request for relief is usually made after the applicant has been informed that they may be inadmissible to Canada on grounds of national security. Officers are not required to notify or advise the applicant of the possibility of requesting ministerial relief. . . .

9.2. Processing the request

...

Following the receipt of an application for relief, the officer should provide the applicant with a copy of the *National Interest Information Sheet* (Appendix B). The applicant should normally be given 15 days (excluding mailing time) to send their submission to the local CIC office.

Upon receipt of the applicant's submission, the officer should prepare a report, which consists of the following:

- the applicant's current situation regarding the ground of inadmissibility (refer to Appendix D for an outline of the questions and considerations that must be addressed in preparing this information);
- the details of the application and any personal or exceptional circumstances to be taken into consideration; this would include:
 - ◆ details of immigration application;
 - ◆ basis for refugee protection, if applicable;
 - ◆ other grounds of inadmissibility, if applicable;
 - ◆ activities while in Canada;
 - ◆ details of family in Canada or abroad;
 - ◆ any Canadian interest.

This report should be signed by the officer and forwarded to the National Security Division, Intelligence Directorate, CBSA, with the applicant's submission and all supporting documents. A recommendation should not be provided at this stage as the CBSA NHQ may conduct further investigations and acquire additional information before the matter is put before the Minister. For this reason, the recommendation to the Minister will be made by the National Security Division, Intelligence Directorate, CBSA at that time.

9.3. Disclosure to client

The CBSA NHQ analyst will conduct any further inquiries that may be necessary and then prepare a recommendation to the Minister. The recommendation will include all supporting documentation. At this juncture, a copy of the recommendation to the Minister and all the supporting

documentation (except classified information) will be returned to the CIC for disclosure to the client.

The CIC will deliver these documents by courier with a covering letter as provided in Appendix E. The person must sign the acknowledgment of receipt.

9.4. After disclosure

The CIC should return the following documents to the National Security Division, Intelligence Directorate, CBSA:

- a copy of the letter sent to the client;
- any additional submissions or documents received from the client.

9.5. After issuance of Minister's decision

A faxed copy of the Minister's decision will be forwarded to the CIC. Where the decision is positive, the client should be informed that they are not inadmissible on grounds of national security and processing of the application for permanent residence should continue.

Where the decision is negative, the client should be issued a refusal letter and action taken pursuant to section 8.8 above. The refusal letter (see Appendix F) should indicate that the application for permanent residence is refused as the applicant was determined to be inadmissible and the Minister did not grant relief.

Appendix B National interest information sheet

You have asked to be considered by the Minister of Public Safety and Emergency Preparedness for relief under paragraph _____ of Canada's *Immigration and Refugee Protection Act* which reads as follows: *(Insert appropriate paragraph)*

You may be exempted from this ground of inadmissibility if the Minister decides that your presence in Canada would not be detrimental to Canada's national interest. The consideration of national interest involves the assessment and balancing of all factors pertaining to your admission to Canada against the stated objectives in Canada's *Immigration and Refugee Protection Act*, as well as Canada's domestic and international interests and obligations.

If you wish to be considered for this exemption, you must prepare a submission along with any supporting documentation that you deem relevant. To assist you in preparing your submission, it is suggested that you address the following:

- Why are you seeking admission to Canada?
- Are there any special circumstances surrounding your application?
- Provide evidence that you do not constitute a danger to the public.
- Explain current activities you are involved in (employment, education, family situation, involvement in the community, etc.).

If the ground of inadmissibility involves membership in a regime or organization, explain the purpose of the organization, your role in the organization and activities in which you were involved. You must provide extensive detail and be very thorough in explaining this, including dates, locations and impact of these activities. When and for how long were you a member? Did these activities involve violence? If you are claiming to no longer be a member of this regime or organization, you must provide evidence. Explain when and why you disassociated yourself from the regime/organization and whether you are still involved with persons who are members of the regime/organization.

Lastly, explain your current attitude towards this regime/organization, its goals and objectives and how you feel about the means it has chosen to achieve its objectives.

Your submission need not be restricted to the above. You may provide any information and documents that you think may strengthen your request for an exemption. Your submission, in English or French, should be provided to the local immigration office within 15 days. If we do not receive your submissions, your request for relief may be considered abandoned.

An officer will review your request, seek any required clarification and forward it to our National Headquarters with a report. National Headquarters will review the matter and make a recommendation to the Minister. You will be provided an opportunity to review the recommendation for any errors or omissions prior to it being referred to the Minister.

Appendix D Preparing the request for relief report

A request to the Minister should consist of three parts:

1. The client's submission and all supporting documentation;

2. A report prepared by the officer addressing the applicant's current situation with respect to the ground of inadmissibility and any exceptional circumstances to be taken into account. This includes:

- details of the immigration application;
- basis for refugee protection, if applicable;
- other grounds of inadmissibility, if applicable;
- activities while in Canada;
- details of family in Canada or abroad;
- any Canadian interest;
- any personal or exceptional circumstances to be considered.

3. A recommendation to the Minister prepared by the CBSA, NHQ. . . .

Appendix E Final disclosure letter

(Insert letterhead)

Our ref:

(Insert address)

Dear:

This is further your request to seek relief under the national interest provisions of Canada's immigration legislation.

You will find attached a copy of releasable information* on this matter that will be presented to the Minister. This consists of:

- a report with relevant documents from the immigration office handling your file;
- a recommendation from the President, Canada Border Services Agency, to the Minister of Public Safety and Emergency Preparedness;
- *(other documents as applicable)*.

Your original submission and supporting documentation, which are not attached to this letter, will also be presented to the Minister. The Canada Border Services Agency is prepared to present this matter to the Minister for a decision. However, before doing so, we invite you to review these documents and provide us with any further comments you deem necessary. These comments will be included for consideration by the Minister.

We would request that your comments be provided to this office within 15 days. Should we not receive any comments from you by that time, we will proceed to put the matter before the Minister.

Sincerely,

* Confidential information cannot be disclosed if the disclosure would be injurious to national security or to the safety of any person.

Appendix F Refusal letter (Application for permanent residence refused based on A34, A35 or A37; request for ministerial relief denied)

(Insert letterhead)

Our ref:

(Insert address)

Dear:

This refers to your application for permanent residence. A letter dated *(insert date)* was sent to you inviting you to respond to concerns about your admissibility. The information you provided *(in your letter of ___ or at the interview on ____)* has been carefully reviewed together with all other information in your application.

It appears that you are a person described in section *(34, 35 or 37)* of the *Immigration and Refugee Protection Act*. I have come to the conclusion that you are inadmissible to Canada based on *(provide details concerning individual circumstances as they relate to the finding of inadmissibility. Exact content may be developed in consultation with NHQ)*.

When client has requested ministerial relief and the Minister has not granted relief, officers should insert the following paragraph:

Furthermore, you have not satisfied the Minister of Public Safety and Emergency Preparedness that your presence in Canada would not be detrimental to the national interest. As a result, your application for permanent residence is refused.

Sincerely,

[Text in italics in original.]

Appeal dismissed.

Solicitors for the appellant: Waldman & Associates, Toronto.

Solicitor for the respondent: Attorney General of Canada, Toronto.

Solicitors for the intervener the British Columbia Civil Liberties Association: Sack Goldblatt Mitchell, Toronto.

Solicitor for the intervener Ahmad Daud Maqsudi: Leigh Salsberg, Toronto.

Solicitors for the interveners the Canadian Council for Refugees and the Canadian Association of Refugee Lawyers: Simcoe Chambers, Toronto; Refugee Law Office, Toronto.

Solicitors for the interveners the Canadian Arab Federation and the Canadian Tamil Congress: Jackman Nazami & Associates, Toronto.