DES-1-00

2001 FCT 1095

The Minister of Citizenship and Immigration and **The Solicitor General of Canada** (*Applicants*)

v.

Mohamed Zeki Mahjoub (*Respondent*)

INDEXED AS: CANADA (MINISTER OF CITIZENSHIP AND IMMIGRATION) V. MAHJOUB (T.D.)
Trial Division, Nadon J.—Toronto, February 26, 27, 28, March 1, 2, 5, 6, 7 and May 8; Ottawa, October 5, 2001.

Citizenship and Immigration — Exclusion and removal — Inadmissible persons — Respondent Egyptian citizen, said to be member of Egyptian Islamic terrorist organization — Worked for large company in Sudan owned by Osama bin Laden, but denied membership in terrorist groups — Minister, Solicitor General issuing certificate under Immigration Act, s. 40.1 stating respondent presumably engaged in terrorism, member of organization engaged in terrorism — Whether certificate reasonable — In determining whether reasonable grounds to believe person inadmissible under Act, s. 19(1), Court must apply standard of balance of probabilities — Parliament's intention that national security prevail over rights of suspected terrorists — Case law on meaning of "terrorism" reviewed — Word "terrorism" must receive broad, unrestricted interpretation — Terrorist organizations mentioned by CSIS engaged, continue to engage in terrorism in pursuit of political goals — Respondent member of these organizations — Lied on number of occasions during testimony — Certificate reasonable.

This was an application for a determination as to whether the certificate issued by the Minister of Citizenship and Immigration and the Solicitor General of Canada under subsection 40.1(1) of the *Immigration Act*, stating that the respondent is a person who may have engaged in terrorism, should be quashed. The respondent is an Egyptian citizen who studied agriculture at a university in Cairo. After graduating in 1985, he went to Saudi Arabia and then to Sudan, seeking employment as an agricultural engineer. He found work with a large company owned by Osama bin Laden. Although the respondent had no work experience, he was put in charge of 4,000 people employed at a major deforestation project. He remained in that position from February 1992 to May 1993, when he quit over salary and travel expense issues. He denied having seen or spoken with bin Laden since then, and had been unaware of his employer's involvement with terrorism during the period that he worked for his company. The respondent also stated that, because of the deteriorating relationship between Egypt and Sudan, he could no longer remain in Sudan and came to Canada in December 1995. According to the Canadian Security Intelligence Service (CSIS), the respondent was a high-ranking member of an Egyptian Islamic terrorist organization, the Vanguard of Conquest (VOC), a radical wing of the Egyptian Islamic Jihad or Al Jihad (AJ) which advocates the use of violence as a means of establishing an Islamic state in Egypt. In April 1999, the respondent was indicted and sentenced, *in absentia*, by the Egyptian higher military court to 15 years of imprisonment for his involvement in actions carried out by the AJ. However, he denied his membership in the aforesaid organizations and testified that he had never engaged in terrorism or subversion. The only issue was whether the certificate filed by the Minister and the Solicitor General was reasonable on the basis of the evidence and information available to the Court.

Held, the certificate was reasonable.

In determining whether the Minister and the Solicitor General have proved that there are reasonable grounds to believe that someone is a person inadmissible under subsection 19(1) of the *Immigration Act*, the Court must apply the standard of the balance of probabilities and have regard to the purpose of section 40.1 of the Act. Parliament intended that national security should prevail in the determination of whether certain persons should be removed from Canada and was prepared to curtail the rights of those persons suspected of being a threat to the security or interests of Canada, or whose presence endangers the lives or safety of persons in Canada. Although Parliament did not define the term "terrorism" in the *Immigration Act* and this Court has yet to arrive at a consensus as to its meaning, the matter has been discussed in a number of Federal Court decisions and the Court must determine whether, in the circumstances of this case, there are reasonable grounds to believe that the respondent has or will engage in terrorism or is or was a member of a terrorist organization. The word "terrorist" must receive a broad and unrestrictive interpretation and will unavoidably include the political connotations which it entails. The killing of innocent civilians in the pursuit of political goals can only be categorized as terrorism. A terrorist is one who murders indiscriminately, distinguishing neither between innocent and guilty, nor between soldier and civilian. The respondent did not provide much information to the Refugee Board regarding his employment in Sudan and did not reveal to the Board the information which appeared in his affidavit and which he confirmed during his testimony at this hearing. There are reasonable grounds to believe that the groups AJ and the VOC have engaged and continue to engage in terrorism in the pursuit of their political goals. For example, they were responsible for the bombing of the American embassy at Dar es Salaam, Tanzania and the killing of 58 tourists at Luxor, Egypt, and the VOC had issued a warning that Americans and Zionists would be attacked throughout the world. There can be no doubt that these organizations and their members are prepared to kill as many innocent civilians as it takes to make their point.

There are also reasonable grounds to believe that the respondent is or was a member of these organizations. He was not credible and, on at least one count, he perjured himself. In fact, he admitted that he had perjured himself in testifying that he did not know a person named Marzouq. The respondent also lied about his use of the alias "Mahmoud Shaker". The Court rejected the explanation he gave as to why he did not disclose his use of that name. The respondent disclosed his alias in his affidavit simply because he was aware, at that time, that CSIS had found out that he had been known under that name. His testimony was that he knew there were approximately 50 al-Qaeda members working on the project in Sudan, but had no idea what al-Qaeda was. The respondent's evidence that, while in Sudan, he did not discuss politics, was not believable. The respondent has lied on a number of counts in order to conceal the names of persons who could link him to those organizations which the Minister has reasonable grounds to believe have engaged in and will engage in terrorism. There are reasonable grounds to believe that the respondent was and is a member of the AJ and the VOC. The certificate filed by the Minister and the Solicitor General was reasonable.

STATUTES AND REGULATIONS JUDICIALLY CONSIDERED

An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown, 1688, 1 Will. & Mary, Sess. 2, c. 2 (U.K.).

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44].

Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5].

Immigration Act, R.S.C., 1985, c. I-2, ss. 3 (as am. by R.S.C., 1985 (4th Supp.), c. 28, s. 2), 19(1)(*c*.1)(ii) (as enacted by S.C. 1992, c. 49, s. 11), (*c*.2) (as enacted *idem*; S.C. 1996, c. 19, s.

83), (*d*) (as am. by S.C. 1992, c. 47, s. 77), (*e*) (as am. by S.C. 1992, c. 49, s. 11), (*f*) (as am. *idem*), (*g*), (*j*) (as am. by S.C. 2000, c. 24, s. 55), (*k*) (as am. by S.C. 1992, c. 49, s. 11), (*l*) (as am. by S.C. 2000, c. 24, s. 55), (2)(*a*.1)(ii) (as enacted by S.C. 1992, c. 49, s. 11), 38.1 (as enacted *idem*, s. 28), 40.1(1) (as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4; S.C. 1992, c. 49, s. 31), (2) (as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4; S.C. 1992, c. 49, s. 31), (3) (as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4), (4) (as enacted *idem*), (5) (as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4; S.C. 1992, c. 49, s. 31), (5.1) (as enacted *idem*), (6) (as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4), (7) (as enacted *idem*; S.C. 1992, c. 49, s. 31), 53(1)(*b*) (as am. *idem*, s. 43).

CASES JUDICIALLY CONSIDERED

APPLIED:

Canada (Minister of Citizenship and Immigration) v. Singh (1998), 151 F.T.R. 101; 44 Imm. L.R. (2d) 309 (F.C.T.D.); *Baroud (Re)* (1995), 98 F.T.R. 99 (F.C.T.D.); *Ahani (Re)* (1998), 146 F.T.R. 223; 42 Imm. L.R. (2d) 219 (F.C.T.D.).

CONSIDERED:

Canada (Minister of Citizenship and Immigration) v. Mahjoub (2001), 13 Imm. L.R. (3d) 33 (F.C.T.D.); *Ahani v. Canada*, [1995] 3 F.C. 669 (1995), 32 C.R.R. (2d) 95; 100 F.T.R. 261 (T.D.); affd (1996), 37 C.R.R. (2d) 181; 201 N.R. 233 (F.C.A.); leave to appeal to S.C.C. refused, [1997] 2 S.C.R. v; *Attorney General of Canada v. Jolly*, [1975] F.C. 216; (1975), 54 D.L.R. (3d) 277; 7 N.R. 271 (C.A.); *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2000] 2 F.C. 592 (2000), 18 Admin. L.R. (3d) 159; 5 Imm. L.R. (3d) 1; 252 N.R. 1 (C.A.).

AUTHORS CITED

O'Sullivan, John. "Call Them What They Are— Terrorists" *National Post* (27 September 2001).

APPLICATION for a determination as to whether a certificate signed by the Minister of Citizenship and Immigration and the Solicitor General under subsection 40.1(1) of the *Immigration Act*, stating that the respondent was a person who may have engaged in terrorism, should be quashed. The certificate was reasonable.

APPEARANCES:

Robert F. Batt and *J. Daniel Roussy* for applicants.

Rocco Galati and *Roger Rodrigues* for respondent.

SOLICITORS OF RECORD:

Deputy Attorney General of Canada for applicants.

Galati, Rodrigues & Associates, Toronto, for respondent.

The following are the reasons for order rendered in English by

[1] NADON J.: The Minister of Citizenship and Immigration (the Minister) and the Solicitor General of Canada (the Solicitor General) are of the opinion that the

respondent is a person who there are reasonable grounds to believe will, while in Canada, engage in or instigate the subversion by force of any government and is a member of an organization that there are reasonable grounds to believe will engage in or instigate the subversion by force of any government, or engage in terrorism. The Minister and the Solicitor General are also of the opinion that the respondent is a person who there are reasonable grounds to believe has engaged in terrorism or is or was a member of an organization that there are reasonable grounds to believe was engaged in terrorism.

[2] Consequently, on June 27, 2000, pursuant to paragraph 40.1(3)(*a*) of the *Immigration Act* [R.S.C., 1985, c. I-2 (as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4)] (the Act), the Minister caused a copy of a certificate, signed by the Solicitor General on May 17, 2000 and by herself on June 12, 2000, stating their aforesaid opinion, pursuant to subsection 40.1(1) [as enacted *idem*; S.C. 1992, c. 49, s. 31] of the Act, to be referred to this Court for a determination as to whether the certificate should be quashed.

[3] Specifically, the Minister and the Solicitor General stated their opinion, based on a security intelligence report received and considered by them, that the respondent is a person described in subparagraph 19(1)(*e*)(ii) [as am. by S.C. 1992, c. 49, s. 11], clauses 19(1)(*e*)(iv)(B) [as am. *idem*] and (C) [as am. *idem*], subparagraph 19(1)(*f*)(ii) [as am. *idem*] and clause 19(1)(*f*)(iii)(B) [as am. *idem*] of the Act.

[4] On June 30, 2000, pursuant to paragraph 40.1(4)(*a*) [as enacted by R.S.C., 1985, (4th Supp.), c. 29, s. 4] of the Act, I examined, *in camera*, the security intelligence report considered by the Minister and the Solicitor General, and heard counsel acting on their behalf with respect to the matters raised in the security intelligence report. Neither the respondent, nor his counsel, were present during the aforesaid hearing, on the ground that disclosure would be injurious to national security or to the safety of persons.

[5] At the end of the hearing, I ordered, pursuant to paragraphs 40.1(4)(*b*) [as enacted *idem*] and (*c*) [as enacted *idem*] of the Act, that a statement summarizing such information available to me as would enable the respondent to be reasonably informed of the circumstances giving rise to the issuance of the certificate, should be provided to the respondent, and that he should be given a reasonable opportunity to be heard in Toronto, commencing on Monday, September 11, 2000, at 10:00 a.m. until Friday, September 15, 2000.

[6] At the end of August 2000, the respondent sought an adjournment of the hearing scheduled for the week of September 11, 2000, and requested that September 11, 2000, be set aside for applications which he intended to make.

[7] On September 11, 2000, the respondent filed a notice of motion dated September 7, 2000, seeking, *inter alia*, an order for the fixing of a date to hear the following pre-hearing motions:

1. for an order compelling the Minister to provide further disclosure and witnesses for examination;

2. for an order compelling the release of any tapes and/or notes of the interviews of the respondent by CSIS officers and RCMP officers upon his detention;

3. for an order releasing the security intelligence report;

4. for an order granting the respondent interim release;

5. for an order to hear certain constitutional issues, namely:

> (i) a declaration that section 40.1 in general, as well as subsections 40.1(1), (2) [as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4; S.C. 1992, c. 49, s. 31], (3), (4) and (5.1) [as enacted *idem*] are of no force and effect in that they offend or contravene various provisions of the *Constitution Act, 1867* [30 & 31 Vict., c. 3 (U.K.) (as am by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5]], the English Bill of Rights [*An Act declaring the Rights and Liberties of the Subject and settling the Succession of the Crown, 1688*, 1 Will. & Mary, Sess. 2, c. 2 (U.K.)] and the *Canadian Charter of Rights and Freedoms* [being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]] (the Charter);
>
> (ii) an order quashing the certificate, and
>
> (iii) costs.

[8] On September 11, 2000, I ordered that the hearing of the respondent's notice of motion, dated September 7, 2000, be adjourned to October 26 and 27, 2000. Subsequently, the hearing was adjourned to November 9 and 10, 2000, and finally to January 16 and 17, 2001.

[9] On January 16 and 17, 2001, I heard the respondent's applications, including the *viva voce* evidence of a Service employee on issues pertaining to subsection 40.1(5.1) of the Act. On January 23, 2001, I made an order holding that a designated judge could not entertain and decide submissions concerning the constitutionality of legislation. As a result, the respondent's application relating to the constitutional issue was dismissed [*Canada (Minister of Citizenship and Immigration) v. Mahjoub* (2001), 13 Imm. L.R. (3d) 33 (F.C.T.D.)].

[10] On February 16, 2001, I also dismissed the respondent's motion for further disclosure and attendance of other witnesses for examination.

[11] On February 26, 2001, at Toronto, the hearing, initially fixed for the week of September 11, 2000, commenced and continued to March 7, 2001. A number of witnesses testified, including the respondent and his wife, Mona Elfouli, and six Service

employees, namely Michel, David, Mary, George, Scott and Greg. I also heard the testimony of Mr. Abdulwahad Abdulhamib, a CIC contracted translator.

[12] After the evidence adduced by both sides was completed, the parties agreed to make their respective submissions at a later date. May 8, 9, 10 and 11, 2001, were set aside for this purpose. In the event, I heard the parties' submissions on May 8, 2001.

[13] Subsections 40.1 (1) through (7) of the Act are relevant for the present determination, and I hereby reproduce them [subsections 40.1(5) (as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4; S.C. 1992, c. 49, s. 31), (6) (as enacted by R.S.C., 1985 (4th Supp.), c. 29, s. 4), (7) (as enacted *idem*; S.C. 1992, c. 49, s. 31)]:

> **40.1** (1) Notwithstanding anything in this Act, where the Minister and the Solicitor General of Canada are of the opinion, based on security or criminal intelligence reports received and considered by them, that a person, other than a Canadian citizen or permanent resident, is a person described in subparagraph 19(1)(*c.*1)(ii), paragraph 19(1)(*c.*2), (*d*), (*e*), (*f*), (*g*), (*j*), (*k*) or (*l*) or subparagraph 19(2)(*a.*1)(ii), they may sign and file a certificate to that effect with an immigration officer, a senior immigration officer or an adjudicator.
>
> (2) Where a certificate is signed and filed in accordance with subsection (1),
>
> (*a*) an inquiry under this Act concerning the person in respect of whom the certificate is filed shall not be commenced, or if commenced shall be adjourned, until the determination referred to in paragraph (4)(*d*) has been made; and
>
> (*b*) a senior immigration officer or an adjudicator shall, notwithstanding section 23 or 103 but subject to subsection (7.1), detain or make an order to detain the person named in the certificate until the making of the determination.
>
> (3) Where a certificate referred to in subsection (1) is filed in accordance with that subsection, the Minister shall
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> (*a*) forthwith cause a copy of the certificate to be referred to the Federal Court for a determination as to whether the certificate should be quashed; and
>
> (*b*) within three days after the certificate has been filed, cause a notice to be sent to the person named in the certificate informing the person that a certificate under this section has been filed and that following a reference to the Federal Court a deportation order may be made against the person.
>
> (4) Where a certificate is referred to the Federal Court pursuant to subsection (3), the Chief Justice of that Court or a judge of that Court designated by the Chief Justice for the purposes of this section shall
>
> (*a*) examine within seven days, *in camera*, the security or criminal intelligence reports considered by the Minister and the Solicitor General and hear any other evidence or information that may be presented by or on behalf of those Ministers and may, on the request of the Minister or the Solicitor General, hear all or part of such evidence or information in the absence of the person named in the certificate and any counsel representing the person where, in the opinion of the Chief Justice or the designated judge, as the case may be, the evidence or information should not be disclosed on the

grounds that the disclosure would be injurious to national security or to the safety of persons;

(*b*) provide the person named in the certificate with a statement summarizing such information available to the Chief Justice or the designated judge, as the case may be, as will enable the person to be reasonably informed of the circumstances giving rise to the issue of the certificate, having regard to whether, in the opinion of the Chief Justice or the designated judge, as the case may be, the information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(*c*) provide the person named in the certificate with a reasonable opportunity to be heard;

(*d*) determine whether the certificate filed by the Minister and the Solicitor General is reasonable on the basis of the evidence and information available to the Chief Justice or the designated judge, as the case may be, and, if found not to be reasonable, quash the certificate; and

(*e*) notify the Minister, the Solicitor General and the person named in the certificate of the determination made pursuant to paragraph (*d*).

(5) For the purposes of subsection (4), the Chief Justice or the designated judge may, subject to subsection (5.1), receive, accept and base the determination referred to in paragraph (4)(*d*) on such evidence or information as the Chief Justice or the designated judge sees fit, whether or not the evidence or information is or would be admissible in a court of law.

(5.1) For the purposes of subsection (4),

(*a*) the Minister or the Solicitor General of Canada may make an application, *in camera* and in the absence of the person named in the certificate and any counsel representing the person, to the Chief Justice or the designated judge for the admission of information obtained in confidence from the government or an institution of a foreign state or from an international organization of states or an institution thereof;

(*b*) the Chief Justice or the designated judge shall, *in camera* and in the absence of the person named in the certificate and any counsel representing the person,

(i) examine that information, and

(ii) provide counsel representing the Minister or the Solicitor General of Canada with a reasonable opportunity to be heard as to whether the information is relevant but should not be disclosed to the person named in the certificate on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(*c*) that information shall be returned to counsel representing the Minister or the Solicitor General of Canada and shall not be considered by the Chief Justice or the designated judge in making the determination referred to in paragraph (4)(*d*), if

(i) the Chief Justice or the designated judge determines

(A) that the information is not relevant, or

(B) that the information is relevant and should be summarized in the statement to be provided pursuant to paragraph (4)(*b*) to the person named in the certificate, or

(ii) the Minister or the Solicitor General of Canada withdraws the application; and

(*d*) if the Chief Justice or the designated judge determines that the information is relevant but should not be disclosed to the person named in the certificate on the grounds that the disclosure would be injurious to national security or to the safety of persons, the information shall not be summarized in the statement provided pursuant to paragraph (4)(*b*) to the person named in the certificate but may be considered by the Chief Justice or the designated judge in making the determination referred to in paragraph (4)(*d*).

(6) A determination under paragraph (4)(*d*) is not subject to appeal or review by any court.

(7) Where a certificate has been reviewed by the Federal Court pursuant to subsection (4) and has not been quashed pursuant to paragraph (4)(*d*),

(*a*) the certificate is conclusive proof that the person named in the certificate is a person described in subparagraph 19(1)(*c.*1)(ii), paragraph 19(1)(*c.*2), (*d*), (*e*), (*f*), (*g*), (*j*), (*k*) or (*l*) or subparagraph 19(2)(*a.*1)(ii); and

(*b*) the person named in the certificate shall, notwithstanding section 23 or 103 but subject to subsection (7.1), continue to be detained until the person is removed from Canada.

[14] The sole issue in these proceedings, pursuant to paragraph 40.1(4)(*d*) of the Act, is whether the certificate filed by the Minister and the Solicitor General is reasonable on the basis of the evidence and information available to me as the judge designated by the Chief Justice of the Federal Court. In *Ahani v. Canada*, [1995] 3 F.C. 669 (T.D.), at page 685, Madam Justice McGillis[1] puts the matter as follows:

> The proceedings under section 40.1 of the *Immigration Act* are directed solely and exclusively to determining the reasonableness of the ministerial certificate identifying the named person as a member of certain inadmissible classes of persons. This section of the legislation does not deal with the question of deportation.

[15] Subsection 40.1(1) provides that where in the opinion of the Minister and the Solicitor General, based on security or criminal intelligence reports received and considered by them, a person, other than a Canadian citizen or permanent resident, is a person described in subparagraph 19(1)(*c.*1)(ii) [as enacted by S.C. 1992, c. 49, s. 11], paragraph 19(1)(*c.*2) [as enacted *idem*; S.C. 1996, c. 19, s. 83], (*d*) [as am. by S.C. 1992, c. 47, s. 77], (*e*) [as am. by S.C. 1992, c. 49, s. 11], (*f*) [as am. *idem*], (*g*), (*j*) [as am. by S.C. 2000, c. 24, s. 55], (*k*) [as am. by S.C. 1992, c. 49, s. 11] or (*l*) [as am. by S.C. 2000, c. 24, s. 55] or subparagraph 19(2)(*a.*1)(ii) [as enacted by S.C. 1992, c. 49, s. 11], they may sign and file a certificate to that effect with an immigration officer, a senior immigration officer or an adjudicator.

[16] In the present case, as I have already indicated, the Minister and the Solicitor General have signed and filed a certificate stating that in their opinion, the respondent is a person described in subparagraph 19(1)(*e*)(ii), clauses 19(1)(*e*)(iv)(B) and (C), subparagraph 19(1)(*f*)(ii) and clause 19(1)(*f*)(iii)(B) of the Act. Theses provisions read as follows:

> **19.** (1) No person shall be granted admission who is a member of any of the following classes:
>
> (*e*) persons who there are reasonable grounds to believe
>
> …
>
> (ii) will, while in Canada, engage in or instigate the subversion by force of any government,
>
> …
>
> (iv) are members of an organization that there are reasonable grounds to believe will
>
> …
>
> (B) engage in or instigate the subversion by force of any government, or
>
> (C) engage in terrorism;
>
> (*f*) person who there are reasonable grounds to believe
>
> …
>
> (ii) have engaged in terrorism, or
>
> (iii) are or were members of an organization that there are reasonable grounds to believe is or was engaged in
>
> …
>
> (B) terrorism,

[17] It is clear from the wording of the above provisions that the Act requires the Minister and the Solicitor General to prove, to the satisfaction of this Court, that “there are reasonable grounds to believe” the following:

1. that the person, while in Canada, will engage in or instigate the subversion by force of any government;

2. that the person has engaged in terrorism;

3. that the person is a member of an organization that there are reasonable grounds to believe will engage in or instigate the subversion by force of any government or will engage in terrorism;

4. that the person is or was a member of an organization that there are reasonable grounds to believe was engaged in terrorism.

It goes without saying that the grounds alleged in the certificate must be read disjunctively. As long as the ministers succeed in proving one of their grounds, the certificate will be declared reasonable.

[18] In *Attorney General of Canada v. Jolly*, [1975] F.C. 216 (C.A.), Thurlow J.A. (as he then was), explains the burden resting upon the Minister with regard to the expression “reasonable grounds to believe”, in the following terms, at pages 225 and 226:

> But where the fact to be ascertained on the evidence is whether there are reasonable grounds for such a belief, rather than the existence of the fact itself, it seems to me that to require proof of the fact itself and proceed to determine whether it has been established is to demand the proof of a different fact from that required to be ascertained. It seems to me that the use by the statute of the expression “reasonable grounds for believing” implies that the fact itself need not be established and that evidence which falls short of proving the subversive character of the organization will be sufficient if it is enough to show reasonable grounds for believing that the organization is one that advocates subversion by force, etc. In a close case the failure to observe this distinction and to resolve the precise question dictated by the statutory wording can account for a difference in the result of an inquiry or an appeal.

Then, at pages 228 and 229, he adds the following:

> Subsection 5*(l)* does not prescribe a standard of proof but a test to be applied for determining admissibility of an alien to Canada, and the question to be decided was whether there were reasonable grounds for believing, etc., and not the fact itself of advocating subversion by force, etc. No doubt one way of showing that there are no reasonable grounds for believing a fact is to show that the fact itself does not exist. But even when *prima facie* evidence negativing the fact itself had been given by the respondent there did not arise an onus on the Minister to do more than show that there were reasonable grounds for believing in the existence of the fact. In short as applied to this case it seems to me that even after *prima facie* evidence negativing the fact had been given it was only necessary for the Minister to lead evidence to show the existence of reasonable grounds for believing the fact and it was not necessary for him to go further and establish the fact itself of the subversive character of the organization. This, in the circumstances of this case, in my opinion, invalidates the Board’s decision.

[19] I am of the view that in determining whether the Minister and the Solicitor General have proved that there are reasonable grounds to believe that a person is a person described in subparagraph 19(1)(*c.*1)(ii), paragraph 19(1)(*c.*2), (*d*), (*e*), (*f*), (*g*), (*j*), (*k*) or (*l*) or subparagraph 19(2)(*a.*1)(ii), the applicable standard is that of the balance of probability. In *Canada (Minister of Citizenship and Immigration) v. Singh* (1998), 151

F.T.R. 101 (F.C.T.D.), Rothstein J. (as he then was) makes the following remarks at paragraphs 2-3, with which I agree entirely:

> In section 40.1 proceedings, determinations involving paragraphs 19(1)(*e*) and (*f*) require proof of the existence of "reasonable grounds to believe certain facts" as opposed to the existence of the facts themselves. Where there are reasonable grounds to believe that a person is a member of an organization, there must also be reasonable grounds to believe that the organization is engaged in subversion or terrorism. See *Farahi-Mahdavieh* (1993), 63 F.T.R. 120 (T.D.), at paras. 11 and 12. Proof of reasonable grounds to believe requires that the evidence demonstrates an objective basis for the reasonable grounds. See *R. v. Zeolkowski*, [1989] 1 S.C.R. 1378, at p. 1385.
>
> The standard of proof is proof on a balance of probabilities. See. *Farahi-Mahdavieh*, supra, and *Al Yamani v. Canada* (1995), 103 F.T.R. 105 (T.D.), at paras. 64 and 65.

[20] In addressing the issue before me, which arises by reason of the opinion reached by the Minister and the Solicitor General, pursuant to subsection 40.1(1) of the Act, regard must be had to the purpose of the section 40.1 provisions. Section 38.1 [as enacted by S.C. 1992, c. 49, s. 28] of the Act, under the heading "Safety and Security of Canada", states the purpose of these proceedings in the following terms:

> **38.1** Recognizing that persons who are not Canadian citizens or permanent residents have no right to come into or remain in Canada and that permanent residents have only a qualified right to do so, and recognizing the necessity of cooperation with foreign governments and agencies in maintaining national security, the purposes of sections 39 to 40.2 are
>
> (*a*) to enable the Government of Canada to fulfil its duty to remove persons who constitute a threat to the security or interests of Canada or whose presence endangers the lives or safety of persons in Canada;
>
> (*b*) to ensure the protection of sensitive security and criminal intelligence information; and
>
> (*c*) to provide a process for the expeditious removal of persons found to be members of an inadmissible class referred to in section 39 or 40.1.

[21] It cannot be doubted that Parliament intended that national security should prevail in the determination of whether certain persons should be removed from Canada on the grounds that these persons constitute a threat to the security or interests of Canada, or whose presence endangers the lives or safety of persons in Canada.

[22] This concern on the part of Parliament fully explains why, in my view, section 40.1 is drafted in the way it is. Parliament was prepared to curtail the rights of those persons suspected to be a threat to the security or interests of Canada, or whose presence endangers the lives or safety of persons in Canada. In regard thereto, Robertson J.A., in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2000] 2 F.C. 592 for the Court of Appeal, makes the following remarks at paragraphs 61-62:

> Applying a contextual analysis, it is clear that what presents a danger to the security of Canada is informed by the provisions of the *Immigration Act* and the *Canadian Intelligence*

Service Act, R.S.C., c. C-23. Generally stated, the purpose of this legislation is to exclude from Canada persons who are or were members of a terrorist organization and who may engage in nefarious activities either in Canada or abroad using Canada as a base. That terrorist acts have been committed in Canada is a matter of public record; e.g. Air India disaster. That terrorist organizations might use Canada as a base from which to operate is not simply a theoretical possibility as will be explained below; see discussion *infra*, paragraph 109. Moreover, the "security of Canada" cannot be limited to instances where the personal safety of Canadians is concerned. It should logically extend to instances where the integrity of Canada's international relations and obligations are affected. It must be acknowledged that only through the collective efforts of nations will the threat of terrorism be diminished. The efficacy of those collective efforts is undermined each time a nation provides terrorist organizations with a window of opportunity to operate off-shore and achieve indirectly what cannot be done as efficiently and effectively in the country targeted for terrorist attacks.

In determining whether a person represents a threat to the security of Canada, the first step is to assess whether he or she falls within one of the inadmissible classes set out in section 19 of the *Immigration Act*. That is a threshold test. In the present case the appellant falls within the class of "suspected terrorist". I pause here to emphasize the fact that, simply because a person falls within an inadmissible class, it does not follow that he or she represents a danger to Canadian security. If the law were otherwise, there would be no need for the Minister to issue an opinion letter under paragraph 53(1)(*b*). Assuming a person falls within an inadmissible class outlined in section 19, the next step is to determine whether such a person can be said to be a danger to the security of Canada.

Robertson J.A. further states, at paragraph 109:

In *Kindler*, *supra*, the majority of the Supreme Court maintained that to permit fugitives to remain in Canada because they may face the death penalty in a foreign jurisdiction would be to create a haven for such persons. The minority took the position that there was no evidence to support such a belief. In the present case there is evidence to support the belief that Canada has in fact become a haven for terrorist organizations. According to the evidence adduced by the Attorney General, most of the major international terrorist organizations have already established a presence in Canada. Presumably, this is due to the low threshold test for gaining admission to this country as a Convention refugee. According to the evidence submitted by CSIS to the Special Committee of the Senate on Security and Intelligence there are, with the exception of the United States, "more international terrorist groups active here than any other country in the world". (*Submission to the Special Committee of the Senate on Security and Intelligence* by Director Ward Elcock, June 24, 1998, Appeal Book at page 544). At page 2 of its Report the Special Committee stated (Appeal Book at page 634):

> Overall, Canada and Canadians are not a major target for terrorist attacks. Canada remains, however, a "venue of opportunity" for terrorist groups: a place where they may raise funds, purchase arms and conduct other activities to support their organizations and their terrorist activities elsewhere. Most of the major international terrorist organizations have a presence in Canada. Our geographic location also makes Canada a favourite conduit for terrorists wishing to enter the United States, which remains the principal target for terrorist attacks world-wide. In 1997, over one-third of all terrorist attacks were against United States targets.

[23] In *Suresh*, *supra*, the issue was whether it was contrary to the Charter to deport Mr. Suresh to a country in circumstances where there were substantial grounds for believing that *refoulement* would expose him to the risk of torture. Specifically, the issue

was whether the Government could deport Mr. Suresh, a Convention refugee, to the very country from which he had sought refuge, i.e. Sri Lanka. The Minister, pursuant to paragraph 53(1)(*b*) [as am. by S.C. 1992, c. 49, s. 43] of the Act,[2] had reached the opinion that Mr. Suresh constituted a danger to the security of Canada.

[24] In the present matter, the Minister and the Solicitor General are of the opinion, *inter alia*, that the respondent is a person in respect of whom there are reasonable grounds to believe has engaged in terrorism or in respect of whom there are reasonable grounds to believe is or was a member of an organization that there are reasonable grounds to believe has engaged in terrorism or will engage in terrorism. Although the Act does not attempt to define the term "terrorism", nor has this Court arrived at a consensus regarding the meaning of the term, a number of judges of this Court have discussed its meaning. In *Baroud (Re)* (1995), 98 F.T.R. 99 (F.C.T.D.), Denault J., at paragraphs 28-30, makes the following comments:

> Turning now to the question of whether there are reasonable grounds for believing that Fatah and Force 17 are or were engaged in terrorism, I am mindful of the fact the terms "terrorism" and "terrorist" are not defined in the Act. Counsel for the Ministers affirm in her written memorandum that "Like beauty, the image of a terrorist is, to some extent, in the eye of the beholder". While I accept this statement in general terms, it cannot prevent this court from examining whether, in the circumstances of this case, there are reasonable grounds to believe that a person or organizations have engaged in terrorism. Furthermore, I do not accept counsel for the Ministers' contention that the definition of "threats to the security of Canada" found in section 2 of the *Canadian Security Intelligence Act*, R.S.C., 1985, c. C-23, should apply to describe a terrorist organization in this case. While it may be appropriate, in some instances, to refer to a definition contained in a different act in order to properly discern Parliament's meaning and intention with respect to a specific term or word, I do not see fit to do so in the present case.
>
> As Parliament did not define the term "terrorism" with respect to the *Immigration Act*, it is not incumbent upon this court to define it. However, for the purpose of this case, I must determine whether there are reasonable grounds to believe that the two organizations in question have engaged in terrorism. According to Dr. Graff, one method of defining "terrorism" would be to examine every act alleged to be terrorist and determine whether the objective, the use of violence, the modes of violence and the targets are legitimate or not. Although Dr. Graff's concerns regarding the labelling of an organization as terrorist are legitimate, it is not within the purview of these proceedings to define the word "terrorism" in those terms.
>
> I am of the view that the purpose of ss. 19(1)(*f*)(ii) and 19(1)(*f*)(iii) of the Act, in very general terms, is to prevent the arrival of persons considered to be a danger to this society. The term "terrorism" must therefore receive an unrestrictive interpretation and will unavoidably include the political connotations which it entails. In this regard, I do not accept counsel for the respondent's argument that the disclosed information relied upon by the Service are unreliable and biased. I am satisfied that, in light of the evidence and information presented to me, there exist reasonable grounds to believe that Fatah and Force 17 were engaged in terrorism.

[25] Also, in *Suresh*, *supra*, Robertson J.A., in addressing the issue as to whether the term "terrorism" used in section 19 of the Act was so vague as to be unconstitutional, makes the following comments at paragraphs 65-69:

The appellant also contends that the term “terrorism” used throughout section 19 of the *Immigration Act* is so vague as to be unconstitutional. If that were so then paragraph 53(1)(*b*) would have to fall in so far as the latter is dependent on the former. In my respectful view this argument amounts to yet another collateral attack on Judge Teitelbaum’s finding that the LTTE is a terrorist organization. I pause here to note that the United States Court of Appeals for the District of Columbia upheld the Secretary of State’s designation of the LTTE as a terrorist organization on an application for judicial review: *Liberation Tigers of Tamil Eelam v. United States, Department of State*, No. 97-1670 (D.C. Cir. June 25, 1999) [[1999] CADC—QL 156]. But in the eyes of the appellant if you cannot define terrorism, it necessarily follows that you cannot label an organization as terrorist in nature. Once again for the sake of completeness I shall deal with this argument.

The appellant maintains that there is no international consensus as to the meaning of the term “terrorism”. He also maintains that the United Nations has abandoned efforts to define terrorism in favour of creating conventions which proscribe specific and defined misconduct of a type which the international community believes requires an international response. Thus, in the appellant’s opinion, this is evidence that the notion of terrorism is incapable of legal definition. I disagree.

I accept that nations may be unable to reach a consensus as to an exact definition of terrorism. But this cannot be taken to mean that there is no common ground with respect to certain types of conduct. At the very least, I cannot conceive of anyone seriously challenging that belief that the killing of innocent civilians, that is crimes against humanity, does not constitute terrorism. As stated earlier, it is one matter for an organization to pursue political goals such as self-determination and quite another to pursue those goals through the use of violence directed at the civilian population. International human rights codes might not condemn deaths resulting from a civil war, that is to say as between two armed factions. But I know of no authority, international or otherwise, which condones the indiscriminate maiming and killing of innocent civilians. The materials presented to this Court are rife with examples of such terrorist acts committed by the LTTE, a matter addressed earlier in these reasons.

Further, the Supreme Court states that one of the objectives of the vagueness doctrine is to ensure that individuals have adequate notice or an understanding that certain conduct is the subject of legal restrictions. Clearly, in the present case, the appellant—and ideally Canadians at large—should be taken to have fair notice that the direct or indirect support of violence aimed at innocent civilians, regardless of the ultimate objective, is simply unacceptable.

In summary. I do not accept the submission that the term terrorism is inherently ambiguous such that its meaning cannot be arrived at through legal analysis. This is true even if the full meaning of the term, in all of its details, must be determined on an incremental basis. For a broad definition of “terrorism” see the *Antiterrorism and Effective Death Penalty Act of 1996*, 8 U.S.C. § 1189 (Supp. II 1996).

[26] In *Ahani (Re)* (1998), 146 F.T.R. 223 (F.C.T.D.), Denault J. again had the occasion to address the meaning of the word “terrorism”. At paragraph 21, he states:

While I recognize that the terms “member”, “organi-zation” or “terrorism” are not defined in the *Immigration Act*, this Court must examine whether, in the circumstances of the case, there are reasonable grounds to believe that the respondent has or will engage in terrorism or is or was a member of such an organization. In my view, since Parliament has decided not to define these terms, it is not incumbent upon this Court to define them.

> Counsel for the respondent has submitted that the word "member" must be given a disjunctive interpretation instead of a cross-over interpretation so that a nexus may be made between an associational responsibility of membership and the conduct proscribed. While I agree that the disjunctive interpretation must be adopted so that the person's responsibility flowing from membership may be linked in time to the activities of the organization, I do not share the view that the word must be narrowly interpreted. I am rather of the view that it must receive a broad and unrestricted interpretation. As to the word "terrorism", while I agree with counsel for the respondent that the word is not capable of a legal definition that would be neutral and non-discriminatory in its application, I am still of the opinion that the word must receive an unrestricted interpretation.

[27] I agree entirely with Denault J. that the word "terrorism" must receive a broad and unrestricted interpretation. In my view, that is the only sensible approach, bearing in mind the purpose of the section 40.1 proceedings, as stated in section 38.1 of the Act, and the overall objectives of Canadian immigration policy as stated in section 3 [as am. by R.S.C., 1985 (4th Supp.), c. 28, s. 2]. I, like Robertson J.A. in *Suresh*, *supra*, am of the view that the killing of innocent civilians in the pursuit of political goals can only be categorized as constituting terrorism. I also agree, without hesitation, with Rothstein J.'s remarks at paragraph 22 of his reasons in *Singh*, *supra*, where he states:

> In his testimony, Lawrence Brooks, Supervisor with the Counter Terrorist Branch at CSIS expressed the opinion that terrorism includes "politically motivated violence, often with an indiscriminate target, … a bomb in a marketplace or assassination attempts". For the purposes of this case, it is not necessary to further define terrorism. A politically motivated organization which sets off bombs, killing innocent people and which engages in assassinations is surely an organization engaged in terrorism.

[28] I also wish to adopt as mine the opinion given by John O'Sullivan [in an article entitled "Call Them What They Are—Terrorists"] in the Thursday, September 27, 2001 edition of the *National Post*, where Mr. O'Sullivan writes:

> A terrorist is a man who murders indiscriminately, distinguishing neither between innocent and guilty, nor between soldier and civilian. He may employ terrorism—planting bombs in restaurants or hijacking planes and aiming them at office towers—in a bad cause or a good one.
>
> He may be a Nazi terrorist, or an anti-Nazi terrorist, a communist or an anti-communist, pro-Palestinian or pro-Israel. We may want to defeat his political cause or see it triumph. For his methods, however, the terrorist is always to be condemned. Indeed, to describe him objectively is to condemn him—even if his cause is genuinely a fight for freedom with which we sympathize.

[29] With respect to a person's membership in an organization that "there are reasonable grounds to believe" will engage in terrorism or was engaged in terrorism, Mr. Justice Rothstein, in *Singh*, *supra*, states at paragraph 52:

> The provisions deal with subversion and terrorism. The context in immigration legislation is public safety and national security, the most serious concerns of government. It is trite to say that terrorist organizations do not issue membership cards. There is no formal test for membership and members are not therefore easily identifiable. The Minister of Citizenship and Immigration may, if not detrimental to the national interest, exclude an

> individual from the operation of subparagraph 19(1)(*f*)(iii)(B). I think it is obvious that Parliament intended the term “member” to be given an unrestricted and broad interpretation. I find no support for the view that a person is not a member as contemplated by the provision if he or she became a member after the organization stopped engaging in terrorism. If such membership is benign, the Minister has discretion to exclude the individual from the operation of the provision.

[30] With these definitions and principles in mind, I now turn to the facts and the issues for determination. On July 4, 2000, my order of June 30, 2000 and the statement summarizing the information available to me at the time of my order, were served on the respondent. That statement summarizes the information provided to the Minister and the Solicitor General by the Canadian Security Intelligence Service (CSIS), pursuant to which they formed the opinion that the respondent was a person described in subparagraph 19(1)(*e*)(ii), clauses 19(1)(*e*)(iv)(B) and (C), sub-paragraph 19(1)(*f*)(ii) and clause 19(1)(*f*)(iii)(B) of the Act.

[31] The position of CSIS, as stated in paragraph 1 of the summary, is that it believes that the respondent is a high-ranking member of an Egyptian Islamic terrorist organization, the Vanguard of Conquest (the VOC), a radical wing of the Egyptian Islamic Jihad or Al Jihad (the AJ). According to CSIS, the AJ is one of the groups which split from Egypt’s Muslim Brotherhood (the MB) in the 1970s to form a more extremist and militant organization. The AJ, according to CSIS, advocates the use of violence as a means of establishing an Islamic state in Egypt. Accordingly, CSIS believes that the respondent is a member of the inadmissible classes described in subparagraph 19(1)(*e*)(ii), clauses 19(1)(*e*)(iv)(B) and (C), sub-paragraph 19(1)(*f*)(ii) and clause 19(1)(*f*)(iii)(B) of the Act.

[32] The purpose of the summary is to set out CSIS’ grounds for believing that the respondent: (a) will, while in Canada, engage in or instigate the subversion by force of the Government of Egypt; (b) is a member of the VOC, a faction of the AJ, an organization that there are reasonable grounds to believe will engage in or instigate the subversion by force of the Government of Egypt, and will engage in terrorism; (c) is and was a member of the VOC, a faction of the AJ, an organization that there are reasonable grounds to believe is or was engaged in terrorism; (d) has engaged in terrorism.

[33] In an affidavit comprising 118 paragraphs (29 pages), dated September 6, 2000, the respondent sets out his response to the summary. Specifically, the respondent states that he entered Canada on December 31, 1995, and immediately made a claim for Convention refugee status. He further states that the hearing of his refugee claim took place on October 24, 1996, and that on that day, the Convention Refugee Determination Division of the Immigration and Refugee Board (the Board) declared him to be a Convention refugee.

[34] The respondent states that he has never been a member of the AJ and that he has never knowingly associated with, met, spoken to, or corresponded with members of the AJ. The respondent also states that he has never been a member of the MB or knowingly associated with, spoken to, met or corresponded with members of that

organization. The respondent also states that he has never been a member, associate or supporter of the VOC, or any individuals associated with that organization. Furthermore, he states that he has never been a member, associate or supporter of the group known as the Liberation Army for Holy Sites, or knowingly associated with, spoken to, met or corresponded with any individuals associated with that group. He adds that he has never been a member, associate or supporter of the group known as World Islamic Front for Jihad Against Jews and Americans, or knowingly associated with, spoken to, met or corresponded with any individuals associated with that group. During his *viva voce* evidence in Toronto, the respondent reiterated his denial of membership in the aforesaid organizations and testified that he had never engaged in terrorism or subversion.

[35] The respondent then deals with a number of specific paragraphs contained in the CSIS summary. He responds, *inter alia*, to the various summaries of his interviews with CSIS and, more particularly, the interviews which took place on August 8 and October 24, 1997, January 13 and January 20, 1998, October 5, 1998 and March 31, 1999.

[36] The respondent, an Egyptian citizen, was born in Al-Sharkiya, Egypt, on April 3, 1960. He majored in agriculture at Al-Azhar University in Cairo and graduated in 1985. That year, he commenced his one-year compulsory service in the Egyptian military. In April 1999, the respondent was indicted and sentenced, *in absentia*, by the Egyptian higher military court to 15 years of imprisonment for his involvement in acts and activities conducted by the AJ.

[37] In answer to question 37 of the Personal Information Form (the PIF) filed in support of his claim to refugee status in this country, the respondent related the following story. He states that he was tortured by the Egyptian military intelligence for a period of approximately five months, from April to August of 1986, on account of his friendship with a university colleague by the name of Ahmed Ismael Abonar. According to the respondent, his friend, who left Egypt for the United States in 1985 to pursue graduate studies in that country, asked him, prior to his departure, for his address so as to keep in touch.

[38] The respondent stated that he only found out at the end of August 1986 why he was being “persecuted” by military intelligence. It was only when the interrogators started to question him about his friend that he realized why they were after him. He was informed by his tormentors that his former university colleague had been arrested and was accused of being a member of the MB.

[39] At the end of August 1986, the respondent was released from detention and completed his compulsory military service in December 1986, at which time he was released from service. From that time until he left Egypt in 1991, the respondent states that he was continuously harassed by the state security organization.

[40] As a result, in June 1991, taking advantage of an exemption which allowed him to leave Egypt on a pilgrimage, he left for Saudi Arabia. He then went to Sudan in August 1991, as there were no visa requirements for Egyptians to enter that country.

The respondent states that as he had a degree in agriculture, he was hopeful of finding a job in Sudan and living there in peace. He then states the following:

> When I arrived in Sudan, I found that life was very difficult, living conditions were very difficult, especially for someone not used to the hot climate. Despite the problems, I preferred to stay there rather than going back to Egypt. I said to myself that I could stand the heat but not the torture. It was very difficult to find a job in Sudan, even for Sudanese. Because wages are very low, after working on a farm from February 1992 until May 1993, I preferred to buy and sell goods in the market.
>
> I didn't know much about Sudanese society, and I found a huge Egyptian community working in many areas since before Sudan became independent. For instance there is Cairo University, Khartoum branch and also the Egyptian Irrigation in Sudan. I was shocked when I found that a large portion of the employees at these institutions worked with the Egyptian intelligence service.
>
> The Egyptian government under the leadership of Mohammed Hosni Mubarak was not happy with the Sudanese government. At first when I was in Sudan, I felt and I saw that I was under severe surveillance by the Egyptian people, especially when I was in the market. I preferred not to speak to the Egyptians. Because of what happened to me in Egypt I was suspicious of everyone around me, especially the Egyptians. [Emphasis mine.]

[41] The respondent then goes on to state that because of the deteriorating political climate between Egypt and Sudan, he decided that he could not stay any longer in Sudan, and hence, came to Canada on December 31, 1995. He concludes his answer to question 37 of the PIF by the following:

> In addition to the reasons which pushed me to leave Egypt in the first place, I cannot go back to Egypt because I came from Sudan. I cannot go back for all the reasons described above. I am afraid of being killed, subjected to a military trial, and also because I was in Sudan the Egyptian authorities might believe that because of the time I spent in Sudan I may be working as a Sudanese agent. I went through all of this in Egypt because my name was found with one of my former schoolmates. Now that they know I lived all those years in Sudan it would be very difficult to convince them that I am not a Sudanese agent, that I just went to Sudan to live. One of the reasons that led me to come to Canada and ask for asylum was that I was afraid there would be an improvement of the relations between the Sudanese government and the Egyptian government and that Sudan would surrender me to Egypt. My situation in Sudan was precarious, especially after I lost my documents in Sudan and became illegal and because I should have gone to the Egyptian embassy every year to tell them I was still living in Sudan. I should also have gone to the Sudanese security offices at least once or twice a year to show myself. Recently, the Sudanese security forces were interrogating Egyptians living there because of the Egyptian threats to overthrow the Sudanese regime.
>
> After asking for asylum here in Canada, I am also afraid for the safety of my mother and my whole family, especially my brothers. I am afraid that they might be persecuted, detained and tortured because this is the way the Egyptian authorities have operated for many years. I assure you that the state security organization would detain and interrogate my mother and my brothers because in Egypt no laws protect the citizens from the state and its security forces. Its very easy in Egypt to accuse anyone, or to create an accusation from nothing and force someone to confess to the false accusation to prevent more torture for the person and his family. I am therefore also afraid for the safety of my family.

[42] As appears from his answer to question 37 of the PIF, the respondent did not say much regarding his work in Sudan. In fact, the extent of the information he provided to the Refugee Board is contained in less than one paragraph.

[43] However, in his affidavit of September 6, 2000, he had much more to say on that count. Specifically, at paragraphs 39 to 59, the respondent relates the following story, which he reiterated before me during the hearing in Toronto:

> 39. With respect to Osama Bin Laden, I wish to state the following. Prior to leaving Egypt, I had no relationship with Osama Bin Laden whatsoever. From Egypt, I went to Saudi Arabia and, from there I went to Sudan. For the first five months in Sudan I had no employment and I was trying to find a job as an Agricultural Engineer. For the first 5 months I supported myself with approximately 3000 US dollars which represented my saving which I took with myself out of Egypt. In Sudan, I lived in Khartoum. For the first 3 to four days I lived in a hotel and then moved to a small house where I paid rent of approximately 50 dollars US per month.
>
> 40. I decided to go to Sudan from Saudi Arabia because, during my University years, I made friends with students from Sudan and heard that Sudan needed Agricultural Engineers. The agricultural needs of Sudan are similar to those of Egypt, however, Sudan is a much larger country therefore, I believed that there was a good chance of getting a job in Sudan. Further, I had no intention of returning to Egypt, therefore, I needed to go somewhere and work to support myself.
>
> 41. While looking for work in Sudan, I approached several prospective employers, however, the salaries being offered were very low. Also as a non-Sudanese, I was expected to have a certain number of years experience which I did not have.
>
> 42. Osama Bin Laden owns a company in Sudan, Al-Thimar Al-Mubaraka Agricultural company. This company is one of many branches of a larger company involved in irrigation, agriculture, commerce, roads and bridges, etc. The company employs ten thousand people approximately. In the branch that I ended up work in, there were approximately 4000 employees and approximately 85% were Sudanese.
>
> 43. When I was looking for work in Sudan, there was intensive media coverage of Osama Bin Laden's presence in Sudan. As well, the media ran daily reports about his business activities and various business projects. One Friday, I went to the mosque for the regular Friday prayer and met an individual whom I got to know and told him that I was looking for a job as an agricultural Engineer. I also told him that my academic training was in land reclamation. I later came to learn that the man I met in the mosque was an employee of one of Osama Bin Laden's companies.
>
> 44. One of Osama Bin Laden's large projects in Sudan at that time, involved deforestation and the making of the soil ready for the cultivation of corn, sunflowers, wheat and some vegetables. The man whom I met in the mosque told me that he would try to speak with Osama Bin Laden about getting me a job with one of his companies. Approximately 2 to 3 weeks after our initial meeting at the mosque, the man told me than an appointment with Osama Bin Laden would be arranged for myself.
>
> 45. The appointment was arranged for me to meet Osama Bin Laden at his office in Khartoum.

46. Osama Bin Laden met me personally and told me that he had interviewed several people with my academic qualifications but not in the same field of specialization. He specifically told me that he had interviewed 2 Egyptians and that he prefers to interview personally those people who will be incharge [*sic*] of projects and in positions such as projects managers or assistant project managers. He further told me that he needs to assess the persons personally and that it is not enough to assess the persons academic qualifications.

47. My first interview with Osama Bin Laden lasted one and half to two hours. He asked me many questions about my field of specialization and about my previous work experience. I was honest and told Bin Laden that I had no experience but that I would be willing to study the project and tell him if I was able to do the job or not. Bin Laden told me to take one week to study the project and report back about whether I could do the job.

48. Further, Bin Laden told me that he would arrange for me to be accompanied by someone to look at the project.

49. I toured the project with the person who was assigned to accompany me, in that person's car. My impression was that the project was very large for someone with no work experience but, at the same time, it was an opportunity and a challenge for me and a way for me to prove myself and to open doors for my self [*sic*] in my field.

50. After one week, I met with the general manager of Bin Laden's company and provided my decision to him in writing and also discussed technical aspects of the project. It was this way that I began to work as the deputy general manager of the al-Damazin Farms project in Sudan.

51. My duties included being in charge of all day-to-day operations of the project. It was an agricultural project and I was in-charge of irrigation (rain), personnel, employment and reports to the general director of the company who also worked on location. I had approximately 4000 people under my supervision the majority of whom were temporary or seasonal workers. The area of the project that I was in-charge [*sic*] of was approximately 1 million acres. I held this position until May 1993.

52. During this period of my employment, I met Osama Bin Laden three additional times. I met him once in Khartoum and two additional times on location at the project that I was working on. The meeting in Khartoum was solely for the purpose of reporting to him about the day-to-day operations of the project. The meeting took place in his office in Khartoum and lasted 11/2 to 2 hours. The two meetings on location at the project took place when Osama Bin Laden visited the project.

53. I made a personal judgment to leave my employment with Osama Bin Laden's company. While I had agreed on a salary with Osama Bin Laden after I began working for his company, I learned that others working on other projects, with a lower job title and level of responsibility were getting paid more money than I was. During the course of my employment, I worked a 10-hour shift but regularly worked 8 hours of overtime as well.

54. Another issue involved transportation and travel expenses. At first, Bin Laden agreed to pay my transportation expenses. However, as I did not travel any where [*sic*], toward the end of my employment, I asked for payment in lieu of the transportation expenses, yet, Bin Laden refused saying that there were no funds for this. However, for me this

was a matter of principle.

55. In the end, I decided that, if Bin Laden agreed to pay equity I may stay, otherwise, I would resign. The issue lasted for approximately one month. I resigned as the answer to my request came back in the negative through the Director General of the company. I submitted my resignation in writing because I could not accept a job where I was paid less than others with lower job title and responsibilities.

56. After I resigned I never saw or talked with Osama Bin Laden again.

57. After my resignation, I left the job and some of my colleagues tried to talk to Osama Bin Laden to bring me back because the project I had been responsible for was falling apart. Later, Osama Bin Laden realized he needed me and sent messages through my colleagues and asked me to come back offering a higher salary and benefits. However, I did not return because I had told Bin Laden, during our previous discussion, that if I resigned I would not come back. This was the last contact I had with Osama Bin Laden.

58. During the time that I worked on the project in Sudan I heard the following about Osama Bin Laden's reputation from other office employees. I heard that Bin Laden had been in Afghanistan and that he had a large number of employees in Afghanistan and Sudan. I heard that he was supporting the Mujahedin in Afghanistan and that his relationship with Saudi Arabia was not good. I also heard that he was very rich given the type of projects he was involved in and also that he came from a very rich family. During the approximately one year that I worked for his company, I never heard that he was involved in any terrorist activities. It was only after the media reported about the explosions in Africa that this information came out.

59. As a result of my work for Bin Laden's company, I came to know about the business environment in the Sudanese marketplace. I later began to work to [*sic*] myself. I bought and sold wood, honey, ghee and produce. However, before starting my own business, and from May to September 1993, I had to do research and establish business contacts. I ran my own business from September 1993 to August 1995.

[44] In his long recital, the respondent explains that he found employment in Sudan with a company owned by Osama bin Laden. Specifically, the respondent states that he was hired to work as the deputy general manager of the Al-Damazin Farms project in Sudan. Although the respondent had absolutely no work experience, he was placed in charge of 4,000 people, the majority of whom, as he states, were temporary or seasonal workers. The area of the project of which he was in charge was approximately one million acres. The respondent remained in that position from February 1992 to May 1993, when he quit.

[45] The respondent states that he left his employment with bin Laden because he learned that his employer was paying better wages to other employees whose job title and level of responsibility were inferior to his. The respondent also indicates that another area of contention with his employer was that of his transportation expenses. As a result, as bin Laden refused to increase his wages and his benefits, he quit. After a while, according to the respondent, bin Laden had a change of heart and indicated that he was prepared to pay the respondent higher wages and was ready to increase his benefits. The respondent's answer to this offer was no. During his testimony before me,

the respondent made it clear that the reason for not returning to his employment with bin Laden was one of principle.

[46] The respondent testified that bin Laden was paying him a sum of US$1,500 per month. He also testified that the employees who were earning higher wages with less responsibility were earning US$2,500 per month. After leaving bin Laden's employment, it took the respondent five months to start up his own business which, as he explained in his PIF, consisted of buying and selling goods in the market, mostly lumber and coal. From this business, the respondent testified that he earned somewhere between US$350 and US$400 per month. It should be noted that the annual per capita income in Sudan is less than US$150.

[47] My purpose, *inter alia*, in quoting paragraphs 39 to 59 of the respondent's affidavit is to show that the respondent did not provide much information to the Refugee Board regarding his employment in Sudan. Although the transcript of the respondent's hearing before the Refugee Board is not available, I am quite certain that he did not reveal to the Refugee Board the information which now appears in his affidavit and which he confirmed during his testimony in Toronto. Before me, the respondent did not testify that he had provided this information to the Refugee Board at the time of his refugee claim hearing.

[48] For the reasons that follow, I am of the view that on the basis of the evidence and information available to me, the certificate filed by the Minister and the Solicitor General is reasonable. I am satisfied that there are reasonable grounds to believe that the AJ and the VOC have engaged in terrorism, and that there are reasonable grounds to believe that the respondent was and is a member of one or more of these organizations.

[49] Firstly, I wish to point out that at no time during his testimony did the respondent take the position that the AJ or the VOC were not organizations that engaged in or had engaged in terrorism. On the contrary, Mr. Galati, counsel for the respondent, made it clear that his client did not approve of those acts of terrorism that had been carried out by radical Muslim organizations.

[50] In any event, the evidence is, in my view, overwhelming that the above organizations have engaged and continue to engage in terrorism in the pursuit of their political goals. That part of the CSIS summary which deals with the activities of the various Islamic groups, and in particular the VOC, is supported by a reference index, consisting of Volume A-1, Volume A-2 and Volume B. The documentary evidence contained in these volumes demonstrates the extent to which the various Islamic groups have engaged in terrorist activities throughout the world, and in particular, in the Middle East. Appendix B to the CSIS summary is a chronology of terrorist activities and other incidents involving the AJ, the VOC and the MB. The chronology lists a number of events which have taken place between October 6, 1981 and May 1999. The chronology does not, it goes without saying, include the events of September 11, 2001.

[51] Earlier in these reasons, I referred to a number of judgments which have attempted to define the term "terrorism". In the light of these authorities, I have no

hesitation in concluding that the AJ and the VOC have engaged in terrorism and continue to do so.

[52] For the present purposes, I need only give a few examples of acts of terrorism which these groups have perpetrated. In August of 1998, the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania, were bombed, resulting in the death of over 200 people and 5,000 wounded. In November of 1997, 58 tourists were killed in Luxor, Egypt, and the VOC issued a warning that orders had been given to attack Americans and Zionists throughout the world. In August of 1993, members of the VOC attempted to assassinate the Egyptian Interior Minister by firing on his motorcade and detonating a homemade bomb. In February 1993, five members of the AJ were arrested in Cairo following the explosion of a bomb in a café which killed four people and injured 20 others. Lastly, but not least, it will be remembered that on October 6, 1991, President Anwar Sadat of Egypt was assassinated by members of the AJ.

[53] In addition, these organizations have issued communiques whereby they have threatened Zionists and Americans. Upon review of the documentary evidence, there can be no doubt whatsoever that these organizations and their members are prepared to kill as many innocent civilians as it takes to get their point across. The rationale thereof, if there is one, appears to be that because their cause is a “just” one, the means which they employ are justified.

[54] Consequently, I have no difficulty accepting that there are reasonable grounds to believe that the AJ and the VOC are organizations that there are reasonable grounds to believe have engaged and will engage in terrorism.

[55] I now turn to whether there are reasonable grounds to believe that the respondent is or was a member of these organizations. In my view, the answer to that question is yes.

[56] Notwithstanding the fact that the respondent signed his affidavit dated September 6, 2000 under oath, and that he testified before me in Toronto under oath, I have come to the conclusion that he is not credible. Furthermore, on at least one count, the respondent perjured himself. My overall impression of the respondent is that telling the truth was not his primary concern in these proceedings.

[57] To begin with, the respondent admitted that he had perjured himself when he testified that he did not know a person named Marzouq. He denied knowing Mr. Marzouq when interviewed by CSIS representatives and also in his affidavit of September 6, 2000. In his examination-in-chief and during his cross-examination in Toronto, he again denied knowing Mr. Marzouq. However, on Monday, March 5, 2001, he was recalled to the stand by his counsel and admitted that he had lied in Court the previous Friday with respect to his knowing Mr. Marzouq. I should perhaps say that even without the respondent’s admission of perjury, it was plain and obvious to me that he was lying when he testified that he did not know Mr. Marzouq.

[58] The purpose of the respondent's admission of perjury was to explain to me why he had lied the previous week. His explanation was no more convincing that his denial of knowing Mr. Marzouq. The respondent explained that he had spoken to Mr. Marzouq in connection with his claim against Air Canada for the loss of his luggage following his flight to Canada at the end of December 1995. The respondent testified that he had heard of Mr. Marzouq approximately one week after his arrival in Canada, since Mr. Marzouq was a friend or an acquaintance of the people with whom he lived upon his arrival in Toronto. Although Mr. Marzouq lived in British Columbia, the respondent testified that he felt that Mr. Marzouq could be helpful in regard to his claim with Air Canada, whose claims office was situated in Montréal. To put it bluntly, I simply do not believe the respondent's explanation for lying. In my view, he simply made up this explanation following the cross-examination which clearly showed that he had been lying when he denied knowing Mr. Marzouq.

[59] The respondent's evidence was also not convincing in regard to a person known as Mubarak Al-Duri, an Iraqi, who was the person to whom the respondent reported while working for bin Laden in Sudan. Mr. Al-Duri is the person who, according to the respondent, signed his letter of reference which was entered as Exhibit 15. It is a letter on the letterhead of the Al-Thimar Al-Mubaraka Agricultural Company. The respondent testified that he had had no contact whatsoever with Mr. Al-Duri since leaving Sudan in December 1995. Surprisingly, however, when the respondent was arrested, he had in his possession a piece of paper with the home and cellular telephone numbers of Mr. Al-Duri. The respondent claimed not to remember in what countries these telephone numbers were located. In my view, he was rather unwilling to remember in which country Mr. Al-Duri lived. I have no doubt that the respondent did not tell me the truth in so far as who Mr. Al-Duri is and what his true connection to bin Laden and to himself is.

[60] I now turn to the respondent's testimony regarding his alias "Mahmoud Shaker". The respondent, both in his affidavit and before me, conceded that he had used the name "Mahmoud Shaker" when he lived in Sudan. He explained that he started using that name after his first interview with bin Laden, because he had been living and working in Sudan illegally. He testified that his employer knew of his illegal status and did not object to his using an alias. The respondent pointed out, however, that in the company records, his real name was used. He also explained that since many of the workers in Sudan were Egyptian, and that he suspected some of working for Egyptian intelligence, he felt safer using an alias. The respondent testified that he had never told his wife that he had been known under the name of "Mahmoud Shaker". In the final paragraph of his affidavit, paragraph 118, the respondent makes the following assertion:

> 118. I did not inform CSIS of my alias in Sudan because I used this name while working for a company owned by Osama Bin Laden and I felt that if I divulged this to CSIS, my liberty would be in grave danger. However I am now under oath and I want to tell the complete truth.

[61] The respondent, in his affidavit, concedes that during the August 8, 1997 interview with CSIS, he denied having used the name "Mahmoud Shaker". I do not believe the explanation given by the respondent as to why he did not disclose the use of

the name “Mahmoud Shaker”. In my view, disclosure of his alias in his affidavit was made by the respondent simply because he was aware, at that time, that CSIS had found out that he had been known under the name of “Mahmoud Shaker”. The respondent’s disclosure did not result, in my view, from his desire to tell the truth.

[62] In addition, the respondent has had a connection to Osama bin Laden. First of all, he admitted in his affidavit, and confirmed it during his testimony, that he had worked for bin Laden and that he had met him on a number of occasions in Sudan. He testified that although he knew that there were approximately 50 persons from al-Qaeda who worked on the farm, he had no idea what al-Qaeda was. As I have already indicated, with no work experience whatsoever, the respondent was apparently placed in charge of 4,000 people on a project involving one million acres and 40% of the bin Laden workforce.

[63] He also testified that while in the Sudan, he did not discuss politics. In my view, the respondent’s evidence is simply not believable. The respondent, a graduate of Al-Azhar University, one of the oldest and most respected universities in the Islamic world, and a major centre of Islamic learning, would like me to believe that while in Sudan, he never, and I repeat never, discussed politics with anyone. In my view, once again, the respondent has not told me the truth. I again wish to point out that in answer to question 37 of the PIF which he filed before the Refugee Board, the respondent kept the information to the minimum. He wrote mostly about the incidents of torture which he claims to have suffered in Egypt, but with regard to the rest of the story now before me, he did not say much. I should also point out that when the respondent came to Canada in 1995, he did not have his passport. He testified before me that he had, in fact, two Egyptian passports, but that he had lost both. His PIF is ample proof that he could not have spent four years without discussing politics.

[64] The respondent has not been truthful in regard to Mr. Marzouq, Mr. Al-Duri, his alias “Mahmoud Shaker” and regarding his true activities while in Sudan. Did the respondent in fact remain at all times in Sudan, between August 1991 and December 1995? We have not seen his passports, and thus that tool cannot help verify his assertion that he remained in that country and did not visit countries such as Pakistan and Kenya.

[65] I have to ask myself why the respondent has failed to tell me the truth. In asking this question, one should bear in mind the existence of terrorist training camps in Sudan, financed by Osama bin Laden. In the indictment signed by the U.S. Attorney for the Southern District of New York against Osama bin Laden and 20 other persons (entered as Exhibit 19), reference is made, at page 13, to the agricultural company for which the respondent worked in Sudan. According to the indictment, bin Laden’s companies, and in particular, the Al-Thimar Al-Mubaraka Agricultural Company, were set up to provide income to support al-Qaeda and to provide cover for the procurement of explosives, weapons and chemicals, and for the travel of al-Qaeda members.

[66] I should also note that the respondent lived in Toronto, initially, with the in-laws of Ahmad Saeed Kahdr, who was arrested by Pakistan on suspicion of having been

involved in the 1995 car bombing of the Egyptian embassy in Pakistan. Mr. Kahdr, as everyone who has read the papers in the past few weeks will know, worked as the regional director of Human Concern International, a Canadian relief agency in Peshawar, and in respect of whom it was alleged that he had moved money to the aid agency from Afghanistan to Pakistan to finance the bombing operation.

[67] Initially, when the respondent was interviewed by CSIS, he denied knowing Mr. Kahdr. However, in due course, he conceded that he did know him. Once again, that part of the respondent's testimony is not credible.

[68] I have made it clear that the respondent, in my view, has lied on a number of counts. My opinion is that he has lied in order to conceal the names of persons who could link him to those organizations in respect of which the Minister has reasonable grounds to believe have engaged in and will engage in terrorism. The information which I have had occasion to consider *in camera* and which I am not permitted to disclose, strongly supports the view that there are reasonable grounds to believe that the respondent was and is a member of the AJ and the VOC. The confidential information shows, in a conclusive way, why the respondent has consistently refused to tell the truth with respect to a number of matters. Coupled with the respondent's attempt to deceive this Court, the evidence becomes overwhelming. Had he been truthful, his link to the AJ and the VOC would have been apparent.

[69] The respondent is, no doubt, highly educated and of very strong character. He amply demonstrated that to me during the time he testified. During his evidence, both in his affidavit and in his *viva voce* evidence before me, the respondent attempted to portray himself as a "victim" of circumstances in Egypt, in Sudan and, to a certain extent, in this country. I have not been convinced by that evidence and, thus, I am not prepared to accept it.

[70] For all of the above reasons, I therefore come to the conclusion, on the basis of the evidence and information available to me, that the certificate filed by the Minister and the Solicitor General is reasonable.

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[1] Madam Justice McGillis' decision was upheld by the Federal Court of Appeal, and that decision is reported at (1996), 37 C.R.R. (2d) 181. The Supreme Court of Canada refused to grant leave [[1997] 2 S.C.R. v].

[2] S. 53(1)(*b*) of the Act reads as follows:

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

19(1)(*e*), (*f*), (*g*), (*j*), (*k*) or (*l*) and the Minister is of the opinion that the person constitutes a danger to the security of Canada.