

Immigration and
Refugee Board of Canada
Immigration Division



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

ID File No. / N° de dossier de la SI: B7-00414
Client ID No. / N° ID client: [REDACTED]

PRIVATE PROCEEDING - AUDIENCE À HUIS CLO

Reasons and Decision – Motifs et décision

Between	The Minister of Public Safety and Emergency Preparedness Le ministre de la Sécurité publique e de la Protection civile	Entre
and		et
Person(s) Concerned	[REDACTED]	Intéressé(e)(s)
Date(s) of Hearing	24 November 2017	Date(s) de l'audience
Place of Hearing	Vancouver, B.C.	Lieu de l'audience
Date of Decision	13 February 2018	Date de la décision
Panel	M. Tessler	Tribunal
Counsel for the Person(s) Concerned	Charles Groos, Barrister & Solicitor	Conseil(s) pour l'intéressé(e) / les intéressé(e)(s)
Counsel for the Minister	Jeffery Wicharuk	Conseil du ministre

Canada

REASONS FOR DECISION

INTRODUCTION

[1] Immigration authorities (Minister or CBSA) have alleged that Mr. [REDACTED] (the person concerned) is a foreign national who is inadmissible to Canada under section 37(1)(b) of the *Immigration and Refugee Protection Act* (the IRPA) on grounds of organized criminality:

for engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

[2] In the section 44(1) Report CBSA particularizes that the allegation is that the person concerned, between 18 November 2014 and 26 June 2015, was a participant in the transfer of funds having the characteristic of money laundering.¹

NAMING/SPELLING CONVENTION

[3] Below there are named a number of individuals from the same family. However the transliteration of their names from Arabic to English is inconsistent: [REDACTED] and [REDACTED], [REDACTED] and [REDACTED], [REDACTED] and [REDACTED]. I have tried to stay true to the spelling found in the particular disclosure documents being referenced.

DECISION

[4] The Minister has failed to establish that the person concerned engaged in money laundering.

¹ Exhibit C1, p.1

BACKGROUND

[5] The person concerned is a citizen of Libya and a refugee claimant in Canada. He is not a Canadian citizen.

FACTS and ANALYSIS

[6] The Minister's case is based on a FINTRAC report.² FINTRAC is a federal government agency responsible for the prevention, detection and deterrence of money laundering and terrorist financing activities.³ The report is almost entirely redacted such that its use as evidence is very limited. It does however list the subjects of the report: [REDACTED], [REDACTED] and [REDACTED].

[7] Of the two individuals named in the FINTRAC report, one is the Canadian permanent resident brother of the person concerned, [REDACTED]. The second is [REDACTED]. [REDACTED] is identified in the report as an Egyptian-based individual holding a bank account at the [REDACTED] who was the recipient of some of the electronically transferred funds that concerned FINTRAC. The only biographical information on [REDACTED] in the report is gender and home address. The name of the bank, its address and the bank account number are also in the fact sheet on [REDACTED].⁴

[8] The Minister's case is predicated on an assumption that the [REDACTED] named in the FINTRAC report is the person concerned.

[9] The person concerned testified that he is known as [REDACTED] and he has never used the name [REDACTED]. He also testified that he has never held a bank account in Egypt. The person concerned is the youngest of seven siblings. According to his Basis of Claim form, in support of his refugee claim, his eldest sibling, some 17 years his elder, is [REDACTED] [REDACTED] who lives in Cairo, Egypt.⁵

² Exhibit C2, pp.36-53

³ FINTRAC = Financial Transactions and Reports Analysis Centre of Canada

⁴ Exhibit C2, p.44

⁵ Exhibit C2, p.28

[10] The Minister produced a witness, [REDACTED] as an expert in forensic accounting including money laundering. CBSA had asked Mr. [REDACTED] to prepare a forensic accounting report based primarily on the FINTRAC report.⁶ Mr. [REDACTED] had the benefit of seeing the un-redacted FINTRAC report. The following exchange occurred between Counsel and Mr. [REDACTED]:

Q: Do you concede that it's reasonably possible that you conducted an investigation and described an investigation about [REDACTED] assuming him to be [REDACTED] the man to my left, but you're wrong? There are two different individuals? An individual you've described in your report, as [REDACTED], is a brother of the gentleman to my left?

A: Well, all I can say is I did my analysis based on the two individuals – the two brothers that were disclosed in the FINTRAC package. As to whether one of those brothers is the man sitting to your left or not, I don't know. By my conclusions were related – are in relation to the two brothers that are in the FINTRAC disclosures.

Mr. [REDACTED] assumed, guided by CBSA, that the [REDACTED] referred to in the FINTRAC report was [REDACTED], as reflected on the title page of his report.

[11] To further deflate the Minister's case Mr. [REDACTED] admitted under cross-examination that he was under the impression that the subject of this hearing was [REDACTED] who is the permanent resident brother of the person concerned:

Q: What do you understand the name of the man to my left to be? His full name? Can you tell me without looking at your notes?

A: It's [REDACTED]

Q: You think this is [REDACTED]? To my left?

A: Yes⁷

[12] I have no doubt that Mr. [REDACTED] is a highly capable forensic accountant with an expertise in money laundering but he was severely handicapped by CBSA who had not even clarified with him the identity of the subject of the hearing at which he was being asked to testify. He was also

⁶ [REDACTED] Report, Exhibit C2, pp.54-90

⁷ Transcript p.14

handicapped by CBSA's assumption that [REDACTED] the recipient of money transfers in Egypt, was the person concerned.

[13] It appears that from the beginning of the investigation until well into the hearing itself the Minister assumed that the person concerned was the [REDACTED] named in the FINTRAC report. According to the Minister's representative when CBSA requested a search of FINTRAC using the person concerned's name, it produced the FINTRAC report. This is understandable given the presence of the keywords [REDACTED] and [REDACTED]

But after receiving the report from FINTRAC CBSA apparently failed to further confirm whether the person concerned was the [REDACTED] named in the report.

[14] It is true that one of the person concerned's many middle names is [REDACTED] it is true that he is a member of the [REDACTED] family and it is true that he was living in Cairo at the time of the financial transfers. While those are linkages that give rise to a suspicion they are almost immediately countered by the information that there was an older sibling in Cairo at the time who is known by the singular moniker, [REDACTED]. This was not information unavailable to the Minister. The FINTRAC report provided at least the basic building blocks for an investigation into the identity of the account holder in Egypt. As far as can tell no such investigation occurred.

[15] It is therefore mere conjecture that the person concerned is one of the identified subjects of the FINTRAC report. There is a possibility that it is him but there are not reasonable grounds to believe it is him. It is more likely that the individual receiving the transfers at his bank in Cairo was the person concerned's very senior brother, the eldest sibling in the family, who goes by the name of [REDACTED]. In respect of linking the person concerned to the transactions referred to in the FINTRAC report or [REDACTED] forensic review of that report, the Minister has failed. The entire allegation that the person concerned engaged, in the context of transnational organized crime, in money laundering is without a credible basis.

[16] Instead of accepting that the case he was presenting was fundamentally flawed and that his expert witness was of no assistance the Minister's representative insisted on arguing to the bitter end, pulling out one last argument: the person concerned is being supported here in Canada

by his brother; his brother is named in the FINTRAC report and [REDACTED] analysis of that report; therefore the person concerned is a beneficiary of the money laundering scheme and is wilfully blind to the origin of the money from his brother .

[17] Frankly I am not even prepared to consider how this argument leads to a conclusion that the person engaged in money laundering. It was not particularized in the Report and it was clearly not the case that the Minister intended to argue bolstered by an expert witness who thought he was testifying at a hearing concerning a different person. Counsel would not have had any notice of this mid-stream change of position therefore it was fundamentally unfair to argue it, even if it had any merit. The person concerned's brother was not the subject of this hearing. There is no information whatsoever to suggest that the person concerned was aware of the origin of his brother's money. The Minister has not linked the person concerned to the transactions in the FINTRAC report.

CONCLUSION

[18] For the reasons above I find that that Mr. [REDACTED] is not described in the allegation under section 37(1)(b). A favourable decision form is attached to these reasons.

APPEAL RIGHTS

[19] Under section 63(5) of the IRPA the Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing.

(signed)

“Marc Tessler”

Marc Tessler

13 February 2018
