

Federal Court



Cour fédérale

**Date: 20190418**

**Docket: IMM-2077-18**

**Citation: 2019 FC 489**

**Ottawa, Ontario, April 18, 2019**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**VINCENZO DEMARIA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision made by the Immigration Division of the Immigration and Refugee Board of Canada [ID or Member] dated April 17, 2018 wherein the ID determined that the Applicant is inadmissible on grounds of organized criminality and for having

engaged in activities such as the laundering of money or other proceeds of crime, and issued a deportation order against him.

## II. BACKGROUND

[2] The Applicant, Vincenzo DeMaria, was born in Siderno, Italy in 1954. He moved to Canada as a young child and has been a permanent resident ever since.

[3] The Applicant was convicted of second degree murder in 1982. A deportation order issued against him in relation to this conviction was stayed and later quashed by the Immigration Appeal Division of the Immigration and Refugee Board in 1996.

[4] The Applicant was granted day parole in 1989 and full parole with conditions in 1992. One of the conditions prohibited the Applicant from associating with anyone known, or reasonably believed, to have a criminal record. In June 2014, the National Parole Board revoked the Applicant's full parole on the basis that the Applicant had associated with individuals known to be involved in criminal activities.

[5] On December 12, 2014, a s 44(1) report was prepared which alleged that the Applicant is inadmissible on grounds of organized criminality under s 37(1)(a) of the Act. On February 16, 2015, a second s 44(1) report was prepared which alleged that the Applicant is also inadmissible under s 37(1)(b) of the Act for engaging in transnational money laundering. The Minister's delegate then signed two referrals for an admissibility hearing pursuant to s 44(2) of the Act.

[6] The Minister of Public Safety and Emergency Preparedness [Minister] made arguments at the ID hearings. In this application for judicial review, however, it is the Minister of Citizenship and Immigration who made submissions. I have referred to the Minister of Citizenship and Immigration as “the Respondent.” The Respondent argues that there are reasonable grounds to believe that the Applicant is, or was, a member of a criminal organization called *‘Ndrangheta*. Additionally, the Respondent argues that there are reasonable grounds to believe that the Applicant has engaged in transnational money laundering.

[7] *‘Ndrangheta* is an organized crime group which originated in the Calabria region of South-Western Italy. Since its formation, *‘Ndrangheta* has expanded internationally and now has a presence across Europe, throughout the Americas, and in Australia. *‘Ndrangheta* has a complex, hierarchical organizational structure. It engages in a litany of criminal activities which include, but are not limited to: drug trafficking; fraud; extortion; weapons trafficking; prostitution; and money laundering.

[8] With his family’s assistance, the Applicant has owned and operated several businesses in Canada. The Cash House, now controlled by the Applicant’s son, is relevant to this application for judicial review. The Cash House provides financial services such as the transfer of funds, cashing of cheques, and currency exchange. The Minister alleged that the Applicant has used The Cash House to engage in transnational money laundering.

III. DECISION UNDER REVIEW

[9] The ID held hearings on December 1, 2016, July 10-14, 2017 and November 23, 2017 in order to determine whether the Applicant is inadmissible on grounds of organized criminality and money laundering. The CBSA and the Applicant submitted documentary evidence, and a number of witnesses were called to testify. The CBSA called the Applicant and police officers Todd Moore (Peel Regional Police) and Sylvain Tessier (RCMP). The Applicant called his son, Carlo DeMaria, and a Detective Sergeant A. Almeida (York Regional Police).

[10] With the agreement of the parties, three witnesses were also qualified to appear as experts to provide testimony at the hearings. Professor Kent Roach was called by the Applicant to testify on matters of intelligence, evidence, and law and justice. A professional accountant was called by the Applicant and a professional accountant was also called by the CBSA.

[11] The Applicant did not dispute the existence or the nature of *'Ndrangheta* as an international criminal organization.

[12] The ID pointed out that the onus is on the Minister to demonstrate that there are reasonable grounds to believe that the Applicant is, or was, a member of *'Ndrangheta*, or that there are reasonable grounds to believe that he engages in, or has engaged in, a pattern of planned and organized criminal activities:

[2] The expression “reasonable grounds to believe” indicates more than a mere suspicion, but less than a balance of probabilities. It refers to a serious possibility based on credible and trustworthy evidence.

[13] The ID then set out the respective positions of the Minister and the Applicant.

A. *Minister's Position*

[14] Based upon the evidence of experienced police officers and confidential and documentary sources, the Minister asserted that there are reasonable grounds to believe that the Applicant is, or was, a member of *'Ndrangheta*. Additionally, the Minister argued that there are reasonable grounds to believe that the Applicant has engaged in transnational money laundering. Specifically, the Minister alleges that The Cash House serves to conceal the criminal origin of funds by creating a legitimate explanation for the source of funds.

B. *Applicant's Position*

[15] The Applicant asserted that there was insufficient evidence to establish reasonable grounds to believe that he is, or was, a member of *'Ndrangheta*, or that he has engaged in money laundering. The Applicant says that the Minister's evidence does not meet the compelling and credible standard established by the Supreme Court of Canada in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40. The mere fact that the Applicant knows individuals who are suspected of having criminal backgrounds is insufficient to deem him a member of a criminal organization.

[16] The Applicant challenged the evidence relied upon by the Minister. The opinion evidence provided by three police officers is not based on objective evidence. Instead, this evidence is based on the opinions of other police officers and circumstantial evidence about the Applicant's

contact with individuals alleged to be members of *'Ndrangheta*. There is no direct evidence which proves that the Applicant is, or was, a member of *'Ndrangheta*. The circumstantial evidence is not compelling or credible. The evidence submitted from confidential sources is difficult to assess in terms of its reliability, credibility, and the intentions of the sources, and, the other documentary evidence is of little probative value.

[17] The Applicant noted that it was actually his son, Carlo DeMaria, who was in control of The Cash House during the relevant period. Furthermore, the assessment provided by the Financial Transactions and Reports Analysis Centre of Canada [FINTRAC] is of little probative value for several reasons. First, the persons involved in the majority of the transactions reported by FINTRAC are not linked to the Applicant. Second, The Cash House actually reported most of the operations listed in the FINTRAC disclosure. Third, media coverage about the Applicant may have resulted in transactions being deemed suspicious merely due to their association with the Applicant rather than any indications of money laundering. Finally, false positives may have resulted from incomplete information.

[18] The Applicant challenged the usefulness of the report created by the Minister's expert, Mr. Grenon. Knowledge and belief that the funds in question are the result of criminal activity is an essential element of the crime of money laundering. Mr. Grenon's report does not discuss the alleged criminal origins of the funds. Accordingly, his report is of no use to determining whether the Applicant engaged in money laundering.

[19] The Applicant challenged each indicator of money laundering identified in Mr. Grenon's report. The Cash House needed to use non-traditional banking institutions while becoming established as a business. The large number of small transactions is explained by the policies of banks that The Cash House does business with. The high volume of currency exchanges at The Cash House were primarily conducted by other money services businesses.

C. *ID's Analysis*

[20] The ID began its analysis by explaining that the terms "member" and "organization" contained in s 37 of the Act are to be interpreted in a broad and liberal manner. The ID noted that *'Ndrangheta* clearly qualifies as a criminal organization and has a presence in Toronto. It is also clear that the criminal activities conducted by *'Ndrangheta* are often disguised as legitimate businesses. This allows *'Ndrangheta* to conceal and reinvest the proceeds of crime.

[21] The ID went on to assess whether there are reasonable grounds to believe that the Applicant is, or was, a member of *'Ndrangheta* and held that "there is no doubt in the panel's mind that Mr. DeMaria is a member of the *'Ndrangheta*." Electronic surveillance of *'Ndrangheta* revealed that senior members of the organization in Italy had referred to the Applicant by name. An Italian newspaper stated that the Applicant occupies a leadership role in *'Ndrangheta* in Toronto. Canadian media sources have also reported that the Applicant is one of the leaders of *'Ndrangheta* in Canada. A multitude of police forces in Canada believe that the Applicant is a member of *'Ndrangheta*. These forces include the Peel Regional Police, the RCMP, the York Regional Police, the Ontario Provincial Police, the Criminal Intelligence Service of Canada and others.

[22] The ID noted that the police reports produced for the hearing contain inaccuracies related to the identification of police informants. These inaccuracies were explained by the reluctance on the part of the police to jeopardize their confidential informants and by the internal secrecy of *'Ndrangheta*.

[23] The ID took into consideration the concepts of “tunnel vision” and “noble cause corruption” identified by Professor Roach. These concepts can result in individuals interpreting information in a manner that supports their hypothesis. This is especially the case when the individual in question feels that their cause is noble. The danger is that ambiguous or unsubstantiated evidence may be interpreted in a way that confirms a preconceived opinion.

[24] The ID specifically considered the report and testimony of Detective Moore and noted that it contained “clerical errors, inaccuracies and vagueness.” Detective Moore’s testimony, however, explained the inaccuracies and vagueness. The ID found that Detective Moore’s testimony was “relevant, credible and trustworthy” and was supported by his knowledge gained through years of investigation. Detective Moore had explained in a clear manner what convinced him of the Applicant’s membership in *'Ndrangheta*.

[25] The ID also considered the report and testimony of Sergeant Tessier. The ID assigned greater weight to Sergeant Tessier’s testimony than to his report. The ID found that “not all of the information compiled by Sergeant Tessier arose from his personal knowledge, with much of it having been reported to him by police officers under his supervision.” Additionally, the ID was unable to analyze the confidential sources involved. Nevertheless, Sergeant Tessier’s testimony



was found to be credible and was supported by years of investigative expertise. Sergeant Tessier testified that he had viewed photographs of the Applicant with known members of *'Ndrangheta*.

[26] The ID then assessed the report and testimony of Detective Sergeant Almeida. This report describes direct observations of the Applicant with members of *'Ndrangheta* and the Hells Angels biker gang. Furthermore, the ID found Detective Sergeant Almeida's testimony to be credible and trustworthy.

[27] The ID found that the testimonies given by the police officers constituted evidence from experienced sources rather than mere opinion. Furthermore, the ID stated that all available evidence must be considered together. When this is done, the ID concluded that the police information, together with the judicial and journalistic evidence from Italy, Europe, and Canada, were sufficient to guard against tunnel vision and noble cause corruption.

[28] The ID also examined the Applicant's life history and found that it is consistent with membership in *'Ndrangheta*. The Applicant was born in the heartland of *'Ndrangheta*, moved to Canada while *'Ndrangheta* was expanding internationally, and developed affiliations that correspond with the internal structure of *'Ndrangheta*. The Applicant was convicted of an execution-style murder which accords with the practices of *'Ndrangheta*. Furthermore, there have been a large number of investigations, charges, and convictions against individuals affiliated with the Applicant. Finally, the ID noted a brief telephone conversation between the Applicant and a convicted murderer, as well as a number of telephone conversations between the Applicant and the co-accused in the same case.

[29] The ID then went on to examine the allegation that there are reasonable grounds to believe that the Applicant has engaged in transnational money laundering. The ID noted that FINTRAC had conducted a thorough investigation of The Cash House and determined that there are reasonable grounds to believe that many of the transactions are relevant to money laundering.

[30] The ID then considered the testimonies of two experts as well as the Applicant and his son, Carlo DeMaria. Mr. Grenon, a witness called by the CBSA, was unable to conclusively find that money laundering had taken place, but noted several indicators of money laundering. The witness for the Applicant, Mr. Froese, was found to have experience in relation to money laundering conducted by biker gangs, but not by Italian criminal organizations. The ID found that Mr. Froese was unable to explain the indicators of money laundering identified by Mr. Grenon. Additionally, Mr. Froese was unable to explain the links between the Applicant and The Cash House. Finally, Mr. Froese testified that an accounting audit is insufficient to determine an absence of money laundering or that money laundering likely did occur at The Cash House. The ID assessed the testimonies of the Applicant and Carlo DeMaria and found that they had not sufficiently explained irregular and suspicious transactions at The Cash House.

[31] The ID considered the Applicant's high rank in *'Ndrangheta* to be relevant to the issue of money laundering. Furthermore, the money laundering techniques of *'Ndrangheta* were taken into consideration. The ID noted the presence of irregular transfers to a company established by Carlo DeMaria's cousin.

[32] The ID concluded that there are reasonable grounds to believe that the Applicant is a member of *'Ndrangheta*. Consequently, the ID found that there are reasonable grounds to believe that the Applicant and The Cash House are involved in money laundering. The ID rendered its Decision on April 17, 2018 wherein it determined that the Applicant is inadmissible on grounds of organized criminality and for having engaged in international money laundering, and issued a deportation order against him.

#### IV. ISSUES

[33] The issues to be determined in the present matter are the following:

1. What is the standard of review?
2. Was the Decision reasonable?

#### V. STANDARD OF REVIEW

[34] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[35] A standard of reasonableness applies to an inadmissibility decision of the ID on grounds of organized criminality (*Uthman v Canada (Citizenship and Immigration)*, 2018 FC 583 at para 36 [*Uthman*]; *Toor v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 68 at paras 10-11).

[36] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

## VI. STATUTORY PROVISIONS

[37] The following provisions of the Act are relevant to this application for judicial review:

<b>Rules of interpretation</b>	<b>Interprétation</b>
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu’ils sont survenus, surviennent ou peuvent survenir.

...

**Organized Criminality**

37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or

(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.

...

...

**Activités de criminalité organisée**

37 (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :

a) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;

b) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.

...

**Preparation of report**

44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

**Rapport d'interdiction de territoire**

44 (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

**Referral or removal order**

(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.

**Suivi**

(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

**Decision**

45 The Immigration Division, at the conclusion of an admissibility hearing, shall make one of the

**Décision**

45 Après avoir procédé à une enquête, la Section de l'immigration rend telle des décisions suivantes :

following decisions:

- |  |  |
|--|--|
| (a) recognize the right to enter Canada of a Canadian citizen within the meaning of the Citizenship Act, a person registered as an Indian under the Indian Act or a permanent resident;  | a) reconnaître le droit d'entrer au Canada au citoyen canadien au sens de la Loi sur la citoyenneté, à la personne inscrite comme Indien au sens de la Loi sur les Indiens et au résident permanent;   |
| (b) grant permanent resident status or temporary resident status to a foreign national if it is satisfied that the foreign national meets the requirements of this Act;  | b) octroyer à l'étranger le statut de résident permanent ou temporaire sur preuve qu'il se conforme à la présente loi;   |
| (c) authorize a permanent resident or a foreign national, with or without conditions, to enter Canada for further examination; or  | c) autoriser le résident permanent ou l'étranger à entrer, avec ou sans conditions, au Canada pour contrôle complémentaire;  |
| (d) make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible. | d) prendre la mesure de renvoi applicable contre l'étranger non autorisé à entrer au Canada et dont il n'est pas prouvé qu'il n'est pas interdit de territoire, ou contre l'étranger autorisé à y entrer ou le résident permanent sur preuve qu'il est interdit de territoire. |

## VII. ARGUMENT

### A. *Applicant*

[38] The Applicant submits that the Decision was unreasonable. The ID arrived at the conclusion that the Applicant is inadmissible for organized criminality on the basis of “nothing more than unsubstantiated police opinions and newspaper reports” (Applicant’s Memorandum at para 2). The ID failed to assess the reliability and credibility of the documentary evidence.

[39] The Applicant argues that it was incumbent upon the ID to reasonably assess the underlying evidence provided by the police officers who testified at the hearing. The ID failed to do this and strongly relied upon an alleged relationship between the Applicant and an individual named Carmelo Bruzzese who is believed to be a member of *‘Ndrangheta*. The ID cited two police reports in support of its finding that the Applicant has a relationship with Mr. Bruzzese. These reports, however, do not actually demonstrate that such a relationship exists. The Applicant was not challenged or cross-examined in relation to his assertion that he does not know Mr. Bruzzese. Quite apart from this serious error, the ID failed to reasonably assess the evidence underlying the police testimony.

[40] The Applicant also says that it was unreasonable for the ID to rely heavily on a transcript of a phone conversation between two alleged members of *‘Ndrangheta* in Italy. The ID found that the Applicant was mentioned by name in this conversation between high-ranking members of *‘Ndrangheta*. However, none of the witnesses testified to having read the transcript of the conversation. Accordingly, the ID must have arrived at its view of the evidence based on its own



analysis. The individuals whose phone conversation was recorded were simply referring to media reports about the revocation of the Applicant's parole. There was no discussion about a relationship with the Applicant, or the Applicant's being a member of *'Ndrangheta*. The ID arrived at an unreasonable conclusion by failing to properly assess this evidence.

[41] The Applicant also argues that the ID misconstrued observations of the York Regional Police. The ID stated that this evidence is "related to direct observations of Mr. DeMaria in the company of known members of the *'Ndrangheta* and of the Hells Angels criminalized biker gang." In fact, this evidence only shows that the Applicant was observed at a party with an individual named Rocco Remo Commisso in 2004. Although Rocco Remo Commisso is alleged to be a member of *'Ndrangheta* in the Minister's disclosure materials, there is no evidence to support this allegation. The evidence also indicates that the Applicant attended his nephew's wedding, which was also attended by Rocco Remo Commisso and Cosimo Commisso. The Applicant was not, however, observed associating with either individual at the wedding. The Applicant testified that he had met Rocco Remo Commisso and Cosimo Commisso while in custody, but that he had no current relationship with either individual. Moreover, *Toronto Coalition to Stop the War v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 957 confirms (at para 118) that mere contact with a member of a criminal organization is insufficient to demonstrate membership in a criminal organization. The ID unreasonably assessed the evidence in relation to the Applicant's contact with Rocco Remo Commisso and Cosimo Commisso.

[42] The Applicant further argues that the ID unreasonably considered the Applicant's second degree murder conviction as evidence of membership in *'Ndrangheta*. The ID noted that the killing was characterized by the judge who heard the case as an "execution" and that execution-style killings are a trademark of *'Ndrangheta*. This is unreasonable because the ID failed to consider the lack of any evidence demonstrating that the Applicant was a member of *'Ndrangheta* when the murder took place. The ID failed to consider whether the style of the murder has nothing to do with membership in *'Ndrangheta*. Finally, it was unreasonable for the ID to examine the conviction because it is irrelevant to the allegation of organized criminality.

[43] The Applicant says that the ID also unreasonably assessed a phone conversation between the Applicant and a convicted murderer named Charles Gagne. The ID further misconstrued phone conversations between the Applicant and Mike DaSilva, the co-accused of Mr. Gagne. The ID found these conversations "troubling." A closer examination of the evidence, however, demonstrates that this conclusion is unreasonable. The Applicant received a call from Mr. Gagne who explained that he was facing charges for murder. The Applicant told Mr. Gagne that he was unable to assist him and hung up the phone. Mr. DaSilva, who was acquitted, spoke with the Applicant about financial dealings. The ID's conclusions based upon this evidence were unreasonable.

[44] The Applicant submits that the ID erred significantly by relying on the "opinions" of police officers. It was an error for the ID to conflate these opinions with proven facts. The ID failed to assess the credibility and reliability of any underlying evidence supporting this opinion evidence. The Federal Court decision in *Veerasingam v Canada (Minister of Citizenship and*

*Immigration*), 2004 FC 1661 [*Veerasingam*] distinguishes between reliance on a charge and reliance on the evidence underlying a charge. Furthermore, *Veerasingam* requires the reliability and credibility of the underlying evidence to be assessed. The evidence underlying the police opinions in this case was not sufficient to ground a charge against the Applicant. The ID failed to assess the reliability and credibility of that evidence.

[45] The Applicant also challenges the ID's statement that "the panel does not view the testimony of police officers Moore, Tessier and Almeida as opinions on Mr. DeMaria's membership in the *'Ndrangheta*, but rather as evidence reported by experienced police officers who testified to the best of their knowledge." The ID, in fact, abdicated its responsibility by placing heavy reliance on opinion evidence and failing to examine its reliability and credibility.

[46] The Applicant argues that the ID unreasonably considered the report and testimony of Detective Moore. The ID acknowledged that "the poorly drafted report includes clerical errors, inaccuracies and vagueness that diminish its probative value," but held that Detective Moore's testimony explained these issues. The ID failed, however, to reasonably assess the evidence underlying Detective Moore's opinion evidence and failed to assess Detective Moore's credibility. While it is possible that clerical errors and vagueness could be clarified through testimony, the inaccuracies in the report cannot be explained away in this manner. For example, Detective Moore testified that he did not include exculpatory evidence in the report. Additionally, Detective Moore testified that he lacked evidence to support key aspects of his report. Accordingly, it was unreasonable for the ID to simply rely on Detective Moore's opinion.

[47] It was also unreasonable for the ID to find that the decision of the Peel Regional Police not to comply with the subpoena of evidence bolstered the credibility of Detective Moore.

[48] The Applicant also challenges the ID's treatment of the evidence provided by Sergeant Tessier. Sergeant Tessier did not actually view pictures or videos showing the Applicant with Mr. Bruzzese. The ID misconstrued the evidence in this regard. Furthermore, Sergeant Tessier's opinion was primarily based on the investigations of other officers. Sergeant Tessier also directly contradicted information provided by Detective Moore about the ownership of a website called Xtremepics.com. Finally, information is included in Sergeant Tessier's report that is uncorroborated and that does not make logical sense. All of this demonstrates that the ID did not adequately assess the underlying evidence in relation to Sergeant Tessier's report and testimony.

[49] The Applicant argues that the ID overstated the meagre evidence underlying the report and testimony of Detective Sergeant Almeida. The only evidence of contact between the Applicant and members of criminal organizations are photos at a stag party in 2004 and a wedding in 2012. There is no indication that Detective Sergeant Almeida actually investigated the Applicant. The ID failed to adequately assess the underlying evidence in relation to Detective Sergeant Almeida's report and testimony.

[50] The Applicant also challenges the ID's reliance on newspaper articles as evidence. One of the articles relied upon by the ID has an unknown author and unknown sources for the information it contains. Furthermore, the known authors were not called as witnesses and no

witnesses testified as to the accuracy of the articles. It was unreasonable for the ID to rely on these newspaper articles. Moreover, the ID should have considered the evidence, if any, underlying these articles.

[51] The Applicant argues further that the ID unreasonably placed significant emphasis on the Applicant's ancestry and family connections. Detective Moore admitted that there is no evidentiary basis to his opinion that the Applicant's son-in-law is a link between the Applicant and '*Ndrangheta*. Furthermore, it was unreasonable of the ID to rely on unproven allegations against the Applicant's family members.

[52] The Applicant also submits that the conclusion that he participated in money laundering is based on unreasonable findings. The Minister's witness noted suspicious transactions, but did not identify any individual transactions as money laundering. Furthermore, neither the Applicant nor his son, Carlo DeMaria, has ever been charged with money laundering. Finally, the ID misconstrued the testimony of the Applicant's witness. Mr. Froese stated that clients of most money services businesses launder money without the owner of the business knowing. The ID applied this testimony specifically to The Cash House in support of its finding that money laundering had taken place there. The Decision was unreasonable because the ID failed to assess the extent to which the Applicant was actually in control of The Cash House.

B. *Respondent*

[53] The Respondent says it was reasonable for the ID to find that there are reasonable grounds to believe the Applicant is a member of '*Ndrangheta*. The standard of proof in an

admissibility hearing is “reasonable grounds to believe.” It is not the role of this Court to re-weigh the evidence already considered by the ID.

[54] The Respondent emphasizes that the ID is not bound by technical rules of evidence. Instead, the ID is able to consider and rely upon whatever evidence it considers credible or trustworthy. The police reports and testimonies were found by the ID to be credible and trustworthy. The reasonableness of this finding is supported by the Federal Court of Appeal’s decision in *Sittampalam v Canada (Minister of Citizenship and Immigration)*, [2007] 3 FCR 198 at para 53(FCA) where the Court held that it was within the board’s discretion to find the police sources credible and trustworthy. The Respondent submits that the Applicant’s reliance on *Veerasingam* is misplaced. In that case, Justice Snider held that it was open to the Immigration Appeal Division to rely on the evidence underlying a criminal charge.

[55] The Respondent also argues that the ID did not fail to assess the evidence underlying the police reports and testimonies. In fact, it is readily apparent that the ID did assess the underlying evidence. This is demonstrated by the ID diminishing the weight given to two of the police reports.

[56] The Respondent submits that it was reasonable for the ID to consider the Applicant’s family connections in arriving at its conclusion. The structure of *Ndrangheta* is based on close blood and familial connections. Accordingly, the ID did not commit an error by examining family ties.

[57] The Respondent says that there is ample evidence demonstrating that the Applicant is a member of *'Ndrangheta*. The various media reports relied upon by the ID help establish reasonable grounds to believe that the Applicant is a member of *'Ndrangheta*. There is no requirement for the authors of the media reports to appear as witnesses. The relaxed evidentiary requirements mean that it is possible for the ID to consider media reports in its analysis.

[58] The Respondent also points out that the police officers who gave evidence are experienced and have considerable knowledge about organized crime. Each of them submitted evidence demonstrating reasons to believe that the Applicant is a member of *'Ndrangheta*. The Applicant's testimony that he was unaware of the existence of *'Ndrangheta* until 2009 is inconsistent with the evidence on the record. The weight of that evidence supports the ID's conclusion.

[59] The Respondent submits that the ID also arrived at a reasonable conclusion in relation to the allegation of money laundering. The evidence supports the finding that there are reasonable grounds to believe that the Applicant has engaged in money laundering.

## VIII. ANALYSIS

### A. *Introduction*

[60] The parties do not disagree about the governing law and the legal principles applicable in this case. The dispute is over whether the evidence (or lack thereof) relied upon by the Member

can reasonably be said to satisfy the governing jurisprudence. The parties also agree that the standard of review for this application is reasonableness.

B. *The Law*

[61] The Member found that the Applicant was inadmissible under ss 37(1)(a) and 37(1)(b) of the Act:

<p>37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for</p> <p>(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or</p> <p>(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.</p>	<p>37 (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :</p> <p>a) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;</p> <p>b) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.</p>
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[62] Section 33 of the Act establishes the Rules of Interpretation that govern, *inter alia*, ss 37(1)(a) and (b) and states as follows:

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

[63] The important words here are “facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.” The Applicant takes the view that there are no such facts to support the Decision in this case.

[64] As the Member points out in his Decision (para 2), the jurisprudence makes it clear that the expression “reasonable grounds to believe” means “more than a mere suspicion, but less than a balance of probabilities.” It means a serious possibility based on credible and trustworthy evidence. Justice Mandamin recently re-affirmed these basic principles in *Uthman*, above:

[66] I agree with the Respondent that the standard of proof for the facts necessary to make out inadmissibility under paragraph 37(1)(a) is reasonable grounds to believe, not proof beyond a reasonable doubt. All that is needed is sufficient evidence to show that there are reasonable grounds to believe a person is a member of a criminal organization: *IRPA*, s 33; *Chen v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 13 at para 63.

[67] Reasonable grounds to believe is not just lower than proof beyond a reasonable doubt, the criminal standard, but also lower than proof on a balance of probabilities, the civil standard. This is clearly outlined by the Supreme Court of Canada in the case below:

114 The first issue raised by s. 19(1)(j) of the *Immigration Act* is the meaning of the evidentiary standard that there be “reasonable grounds to believe” that a person has committed a crime against humanity. The FCA has found, and we agree, that the “reasonable grounds to believe” standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities [citations omitted]

*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114.

[65] It is also important to bear in mind that the onus is upon the Minister to establish “reasonable grounds to believe” but that the ID, in making its Decision, is not bound by any legal or technical rules of evidence and can base its conclusions upon what it considers credible or trustworthy. Sections 173(c) and (d) of the Act read as follows:

173 The Immigration Division, in any proceeding before it,	173 Dans toute affaire dont elle est saisie, la Section de l’immigration :
...	...
(c) is not bound by any legal or technical rules of evidence; and	c) n’est pas liée par les règles légales ou techniques de présentation de la preuve;
(d) may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.	d) peut recevoir les éléments qu’elle juge crédibles ou dignes de foi en l’occurrence et fonder sur eux sa décision.

[66] This latitude in evidentiary matters, however, does not mean that the ID has complete discretion over what will support inadmissibility. There must be “facts” and these facts must give

rise to more than a “mere suspicion.” This was emphasized by Justice Roy in the recent case of *Ariyaratnam v Canada (Citizenship and Immigration)*, 2018 FC 162 [*Ariyaratnam*], where he pointed out that an opinion “is not, *per se*, a fact” and “the facts leading to reasonable grounds must be available if the reasonable grounds are to be those of the decision-maker...”:

[70] It is certainly true that section 33 of IRPA requires the existence of reasonable grounds to believe the facts that constitute inadmissibility, which is less than the standard of proof in civil matters (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 ; [2005] 2 SCR 100, at para 114). As long as there are reliable facts, membership can be established on the basis of reasonable grounds, not on a balance of probabilities. Similarly, section 37 also speaks of reasonable grounds to believe that the organization has been engaged in activity that is part of a pattern of criminal activity planned and organized. But the threshold of reasonable grounds to believe does not justify an absence of facts to ground the reasonable belief.

[Emphasis added.]

[67] Other members of the Court have emphasized the same point. As long ago as *Chiau v Canada (Minister of Citizenship & Immigration)*, [2001] 2 FC 297 at para 60, Justice Evans said that “reasonable grounds to believe” falls short of a balance of probabilities, but nonetheless requires “a *bona fide* belief in a serious possibility based on credible evidence.” And the more recent case of *Canada (Citizenship and Immigration) v Tran*, 2016 FC 760 at para 22, Justice LeBlanc confirmed the need for an objective basis for the belief founded upon compelling and credible information.

[68] In the present case, the Applicant has invoked these basic principles and takes the position that there was no objective or credible evidence before the Member to establish that the Applicant was a member of a criminal organization or that the Applicant was involved in money

laundering within the meaning of s 37 of the Act, and the Member failed to properly establish a reliable factual basis upon which to draw his conclusions.

C. *The Decision*

[69] In the Decision, the Member provides a summary of what he believes the evidence reveals about the Applicant and the basis for his own conclusions regarding s 37(1)(a):

[50] With regard to the foregoing, the panel is of the opinion that the evidence clearly shows that Mr. DeMaria is a member of the *'Ndrangheta* in Toronto and that he holds a high-ranking position within it. The fact that there is evidence, not only police information, and the plurality of judicial, police and journalistic sources and their Italian, European and Canadian origins, are adequate protection against tunnel vision or noble cause corruption in the decision to be rendered in this case by the 1D.

[51] The Panel is of the opinion that the evidence must not be considered in a fragmented manner, whereby each element is analyzed separately. When those same elements are taken as a whole, the portrait painted of this case is very clear.

[52] Mr. DeMaria was born in Siderno, the cradle of the *'Ndrangheta*. He immigrated to Canada as a baby with his family in the 1950s, when the *'Ndrangheta* was expanding by ensuring its presence throughout the world. The blood ties and affiliation by marriage in Mr. DeMaria's immediate circle correspond precisely to the description of the organization's internal structure that is set out in the documentary evidence (*impenetrable secrecy, rigidly self defined independent families, very close to external influences, strong family-based composition*). The boss of the organization in Italy refers to him by his given name.

[53] In the early 1980s, Mr. DeMaria was also convicted of a brutal murder described as an execution by the judge who heard the case; according to the evidence on the record, executions are one of the trademarks of the *'Ndrangheta*.

[54] In addition, the high number of police investigations, charges, and criminal convictions related to people close to him (family and associates) in relation to murders, violence, drug trafficking and production, banking fraud and money laundering,

among others, is alarming and once again consistent with the description of the group's criminal activities set out in the documentary and testimonial evidence. It therefore seems that the threshold for reasonable grounds to believe, even the threshold for the balance of probabilities, has more than been met.

[55] There is evidence of a telephone conversation, however brief, between Mr. DeMaria and Charles Gagné, who was convicted of the murder of Eddie Melo, an enforcer (muscle) in a rival Italian mafia organisation and of numerous telephone conversations between Mr. DeMaria and Mike DaSilva, a co-accused in the same case. In the opinion of the panel, that evidence is troubling, even if Mr. DaSilva was not convicted.

[Emphasis in original, footnotes omitted.]

[70] The Member's conclusions regarding s 37(1)(b) of the Act are based, in significant part, upon the Member's findings under s 37(1)(a) that the Applicant is a member of '*Ndrangheta*:

[66] The panel is of the opinion that it is important to keep in mind the evidence on the methods of the '*Ndrangheta*. The organization's activities are carried out in impenetrable secrecy by independent families that are governed by extremely strict internal rules, that are closed to external influences, showing excellent entrepreneurial capabilities in both economic and financial crimes, of which all of the profits are skillfully reinvested using sophisticated money laundering techniques. The organization also uses legitimate companies as a facade to facilitate its criminal activities, including money laundering. It is worth noting here that numerous unusual transfers abroad by The Cash House were made through Swiftex, a company established by Carlo DeMaria's cousin. In addition, the above-mentioned company 116 is owned by Mr. DeMaria, the father. According to the panel, given the way the '*Ndrangheta* operates and the strictly governed family ties that are its basis and strength and given the panel's finding that Mr. DeMaria is a member of the organization, it is reasonable to believe that Mr. DeMaria was aware of what was going on at The Cash House, his own son's business. It is also reasonable to believe that he engaged in the laundering of money or other proceeds of crime through the business.

[71] It is important to note here that the Member's "opinion" is not based upon separate or "fragmented" aspects of the evidence, but, as he tells us, upon the elements "taken as a whole."

[72] The Applicant says that while a superficial review of the Decision might suggest that evidence exists to establish his membership in *'Ndrangheta*, a closer examination of the record reveals that the evidence, whether viewed individually or cumulatively, does not establish the reliable factual basis required by the jurisprudence to support reasonable grounds to believe he is a member of a criminal organization.

D. *Police Evidence*

[73] The Member relies heavily for his conclusions upon the evidence and testimony of three police officers. The Member concedes that there are problems with this evidence:

[43] Several Canadian police forces (Peel Regional Police, RCMP, York Regional Police, Ontario Provincial Police, Criminal Intelligence Service of Canada, etc.) also consider that Mr. DeMaria is a member of the *'Ndrangheta*. The panel understands the responsibilities of police officers when it comes to protecting confidential sources (Confidential Human Sources – CHSs); the informants' very safety is at stake. The panel also understands police officers' reticence in providing details on police information that could compromise ongoing criminal investigations. However, it is important to remember that the ID *is not bound by any legal or technical rules of evidence, and may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.*

[44] An in-depth analysis of the police information reports filed by the CBSA and of the testimony of the three police officers Moore, Tessier and Almeida certainly highlighted certain inaccuracies regarding the identification of the police informants (CHSs). However, the panel is of the opinion that those grey areas, when it comes to identifying the human sources of police officers, are as much a product of the duty of police officers to protect the

safety of their sources as they are a product of the high internal complexity of the structure of the *'Ndrangheta*: ... *the historical and impenetrable secrecy of the 'Ndrangheta has posed a formidable challenge to law enforcement agencies. Calabrese criminal organisations have historically developed around a rigidly self defined independent families, very close to external influences.*

[Emphasis in original, footnotes omitted.]

[74] The Member is also aware that “opinion” evidence will not suffice:

[49] The panel does not view the testimony of police officers Moore, Tessier and Almeida as opinions on Mr. DeMaria’s membership in the *'Ndrangheta*, but rather as evidence reported by experienced police officers who testified to the best of their knowledge.

(1) Detective Moore

[75] The Member’s assessment of Detective Moore’s evidence is as follows:

[46] The panel gives greater weight to the testimony of Detective Moore than to his report, which describes the Peel Regional Police’s investigations targeting Mr. DeMaria and concludes that Mr. DeMaria is a leader of the *'Ndrangheta* in Toronto. In fact, the poorly drafted report includes clerical errors, inaccuracies and vagueness that diminish its probative value. However, during his testimony under oath, which lasted several hours, Detective Moore, had the opportunity to acknowledge, in an honest and credible manner, the inaccuracies and vagueness and to explain the reasons for them (he was given an unclear mandate by the CBSA, he was not the sole author of the report, his hierarchical superiors limited the evidence he had wanted to disclose). He accurately listed the investigations conducted on other subjects of interest and suspects of crime, which brought to light the criminal activities allegedly committed by Mr. DeMaria and his immediate Circle, notably Carmelo Bruzzese. It should be noted that, according to the Italian authorities, Mr. Bruzzese is a member of the *'Ndrangheta*, and an Italian judge recognized this without a doubt. As a police officer who has been assigned, for several years, to investigations on traditional Italian organized crime, in general,

and on Mr. DeMaria and the *'Ndrangheta*, specifically, Detective Moore also explained in a clear, credible and persuasive manner what personally convinced him of Mr. DeMaria's membership in the organization. His testimony revealed his considerable knowledge and understanding of traditional Italian organized crime in Toronto and in Canada, acquired over the years through investigations surveillance, wiretaps, confidential human sources, readings and collaborations with other police forces. He clearly explained the genesis and expansion of the organization in Italy and in Canada and also clearly described the blood ties that bind the various *'Ndrangheta* clans. He also described the historical conflicts within the *'Ndrangheta* and that the organization has had with other Italian criminalized groups (murders of Nick Rizzuto Sr., the three Violi brothers and Eddie Melo, the disappearance of Paolo Renda, a contract was also allegedly out on Mr. DeMaria's life by the rival Sicilian Rizzuto clan, etc.). His testimony is relevant, credible and trustworthy. He also stated that the Peel Regional Police consider Mr. DeMaria to be a member of the *'Ndrangheta*.

[Footnotes omitted.]

[76] The Applicant complains that this assessment contains no accurate material facts applicable to him, and is nothing more than an unsupported opinion. In my view, Detective Moore's "considerable knowledge and understanding of traditional Italian organized crime in Toronto and Canada" suggests he is qualified to speak to evidentiary matters, but his general experience is not evidence that is relevant to whether the Applicant is a member of *'Ndrangheta*. Nor does this general experience and understanding provide the "facts" needed to support reasonable grounds to believe. Something more is required that is specific to the Applicant.

[77] When it comes to specifics, as the Applicant points out, the record shows that, in fact, Detective Moore does not refer to Mr. Bruzzese in either his testimony or his report. In fact,



Detective Moore never alleges that there is a relationship between the Applicant and Mr. Bruzzese.

[78] And when the Applicant himself was asked if he had a relationship with Mr. Bruzzese, his answer was “I do not know him.” See Applicant’s Record at 5364. The Applicant was not cross-examined or challenged on this evidence.

[79] The record also shows that there are key points of Detective Moore’s testimony where he freely admits he has no evidence to support some of his opinions.

[80] For example, with regard to what the Member cites as “the electronic surveillance conducted at the office for the head of the *Ndrangheta* in Siderno, Italy” that “revealed that, in a conversation at the most senior levels of the organization, Mr. DeMaria is referred to by his given name,” Detective Moore, in his testimony, said that this intercepted conversation was one of the most important factors informing his opinion about the Applicant’s membership in a criminal organization:

Q. Brief indulgence Mr. Member. Alright, now you referred to the 2010 Italian investigation correct, yesterday?

A. That is correct.

Q. Alright and you suggested that that was one of the core foundations of your belief that Mr. De Maria was a member of (Inaudible).

A. I think it is one of... yeah, to me it is significant, in conjunction with source information and calls and surveillance.

[Applicant’s Record at 4932.]

[81] On cross-examination, however, Detective Moore conceded that he had not read the intercept or the Italian-authored report based on the intercept:

Q. And on top of that, you've never read (inaudible) Italian reports?

A. No. I've seen the ... I've seen something on CPIC, but I never read the Italian reports.

Q. Okay. And ... and that's what you're referring to when you talk about they were currently wanted in Italy? And it's ... those are the investigations that it comes out of? So you're not able to speak to the quality of those investigations whatsoever?

A. I am not.

[Applicant's Record at 4860.]

[82] As the Applicant points out, no other witness testified to having reviewed the intercepted conversation that the Member relies upon or the Italian report based on the conversation.

[83] However, from the perspective of Detective Moore's evidence, and the basis for Detective Moore's opinion that the Applicant is a member of *'Ndrangheta* (an opinion that the Member relies upon for his own conclusion to that effect), it would seem that the "opinion" is based upon an intercepted conversation and an Italian report that Detective Moore has never read.

[84] And if the Member is relying upon his own analysis of the same evidence, this does not cure the problems with Detective Moore's opinion evidence.

[85] Notwithstanding these criticisms by the Applicant, it is clear from the Decision that the Member does not rely solely upon the evidence of Detective Moore for his assessment of the intercept and the news article. In paragraph 42 of the Decision, the Member states the following facts:

- (a) The electronic surveillance was conducted at the office of the head of *'Ndrangheta* in Siderno, Italy;
- (b) The conversation that took place was at the most Senior levels of the organization;
- (c) The Applicant was referred to by his given name;
- (d) An Italian newspaper, which covers mafia-related issues puts the Applicant in the Control Room (*Camera di Controllo – Siderno Group*) of the organization in Toronto;
- (e) Canadian journalists also report that Italian anti-mafia prosecutors and courts believe, following large-scale investigations including electronic surveillance of the organization, that the Applicant is one of the leaders of the organization in Canada.

[86] The intercepted conversation involves Giuseppe Commisso (who the Applicant does not deny is an influential figure of *'Ndrangheta* in Siderno), and appears to involve discussions of activities in Toronto and reports of problems encountered by the Applicant and gleaned from the media.

[87] As the Member makes clear, this evidence is not considered in isolation and, notwithstanding the Applicant's criticisms, it would be naïve to think that it does not go some way to connecting the Applicant to *'Ndrangheta*.

[88] The Applicant is correct to point out that Detective Moore does not mention Carmelo Bruzzese, but he does refer to other individuals who are in the Applicant's circle. However, these associations do not amount to very much. Significantly, Detective Moore

testified that “based on Mr. DeMaria’s parole conditions, he’s very limited in his contact with individuals. He has a non-association clause as part of his parole and a very significant person would be his son-in-law Domenico Figliomeni, who is the kind of go-between and messenger on behalf of Mr. DeMaria” (Applicant’s Record at 4758). The Applicant’s son, Carlo DeMaria, as well as the Applicant’s wife are mentioned as well especially in relation to the operation of The Cash House (Applicant’s Record at 4768). Detective Moore says that Salvatore Calautti was a “very close associate” of the Applicant, but does not really explain the connection (Applicant’s Record at 4770).

[89] There is nothing that Detective Moore says to connect the Applicant to any particular crime or any other matter that requires proof beyond a reasonable doubt or even a balance of probabilities, but, in my view, there are facts such as the Siderno intercept, that go some way to suggesting his membership in *‘Ndrangheta*.

[90] The Applicant’s most trenchant criticism of the Member’s reliance upon Detective Moore’s evidence is that the Member simply accepts that opinion evidence at face value and fails to reasonably examine the underlying evidence behind that opinion.

[91] The Applicant points to several instances in Detective Moore’s testimony where he specifically says that he acted upon “suspicion” and could not provide a factual basis for his “belief” or “opinion.” As I pointed out above, the Member makes it clear at paragraph 46 of his Decision, that he gives weight to Detective Moore’s testimony because of his “considerable knowledge and understanding of traditional Italian organized crime in Toronto and in Canada.”

[92] So the general basis of Detective Moore's opinion (as relied upon by the Member) is years of investigations, surveillance, wiretaps, confidential human sources, readings and collaborations with police. But there are few of the specifics needed to connect the Applicant to organized crime.

[93] As regards the reference to the murder of Eddie Melo, Detective Moore testified as follows:

An extensive investigation by the Peel Police Homicide Unit. And at the time, they were up on wiretaps. Charles Gagne called his girlfriend at the time and did a three-way call to Cash House and Charles Gagne, who was the accused killer, spoke to Mr. DeMaria and explained that he was on a charge for attempted murder and might get charged for two counts of murder, and Mr. DeMaria said "I can't help you" and hung up.

[Applicant's Record at 4772.]

[94] This evidence is mentioned by the Member in the context of Detective Moore's knowledge of "historical conflict within the *'Ndrangheta* and that the organization has had with other Italian criminalized groups (murders of Nick Rizzuto Sr., the three Violi brothers and Eddie Melo, the disappearance of Paolo Renda, a contract was also allegedly on [the Applicant's] life by the rival Sicilian Rizzuto clan, etc)."

[95] The Applicant complains that "no officer testified or provided any evidence that either Mr. Gagne or Mr. DaSilva were members of a criminal organization, or *'Ndrangheta* in particular," and "the Applicant refused to assist Mr. Gagne with his case." But what is of some relevance is that Mr. Gagne, who was a hitman hired to assassinate Mr. Melo, a "muscle for organized crime," phoned and asked the Applicant for assistance when he realized he was about

to be charged with two counts of murder. The Applicant said that he couldn't help him and hung up. This means that a hired hitman and his girlfriend involved in organized crime turned to the Applicant for help. This does raise suspicion. The evidence does support an inference that Mr. Gagne and his girlfriend would not have phoned the Applicant in this context if they did not know who he was and if they did not believe that he was a man of some influence with the power to help them in the context of organized crime within the Greater Toronto Area [GTA]. This evidence is not conclusive, but it has some relevance and supports the Member's assessment of Detective Moore as someone with knowledge and experience of organized crime within the GTA who had reason to regard the Applicant as a member of *'Ndrangheta*.

[96] In this regard, the Member is also relying upon evidence of “numerous telephone conversations between Mr. DeMaria and Mike DaSilva, the co-accused in the same case” which the Member finds “troubling, even if Mr. DaSilva was not convicted.” In support of this allegation, the Member relies on Detective Moore's testimony. It seems that the Member made a factual error here. Detective Moore testified about the call between Charles Gagne and the Applicant, but did not say there were numerous phone calls between the Applicant and Mr. DaSilva. Detective Moore did say that there was a direct connection, obviously, between this hired killer and Mike DaSilva, and Mike DaSilva is associated with the Applicant, and that was determined through the homicide investigation.

[97] In my view, the evidence of Detective Moore does provide some grounds of a possible connection between the Applicant and *'Ndrangheta*, but the Member significantly overstates its

value as “facts” that provide reasonable grounds to believe that the Applicant is a member of that organization.

(2) Sergeant Tessier

[98] The Member’s assessment of Sergeant Tessier’s evidence is as follows:

[47] The panel gives greater weight to the testimony of Sergeant Tessier than to his report, which presents certain elements of RCMP investigations on Mr. DeMaria and his circle and concludes that Mr. DeMaria is a high-ranking member of organized crime in Toronto. Not all of the information compiled by Mr. Tessier arose from his personal knowledge, with much of it having been reported to him by police officers under his supervision. The panel was unable to assess, however minimally, the confidential sources (Confidential Human Sources -CHSs) of the RCMP officers. However, as a police officer who has been assigned, for several years, to the Combined Forces Special Enforcement Unit and to investigations on traditional Italian organized crime, as well as on Mr. DeMaria and the *’Ndrangheta*, Sergeant Tessier testified under oath in a credible manner as to what personally convinced him of Mr. DeMaria’s membership in the *’Ndrangheta*. Here, this includes viewing photographs and videos of Mr. DeMaria in the presence of other known members of the *’Ndrangheta*, such as Carmelo Bruzzese. The testimony of Mr. Tessier is relevant, credible and trustworthy, despite his falling into Mr. DeMaria’s lawyer’s skillfully laid traps a few times. He also mentioned that the RCMP considers Mr. DeMaria to be a member of the [ ]*’Ndrangheta*.

[Emphasis added, footnote omitted.]

[99] There is little in this analysis to explain or justify the Member’s reliance upon Sergeant Tessier’s opinion. The Member indicates that his confidence is based upon what “personally convinced [Sergeant Tessier] of Mr. DeMaria’s membership in the *’Ndrangheta*.”

[100] The basis for this conviction is that it “includes viewing photographs and videos of Mr. DeMaria in the presence of other known members of *'Ndrangheta*, such as Carmelo Bruzzese.” However, when the record is examined on this issue, Sergeant Tessier’s evidence is hazy, to say the least:

Q: Has Mr. DeMaria ever been observed in the company of traditional organized crime members?

A: I have viewed videos or photos of Mr. DeMaria attending social events and being seen in the presence of other individuals that we believe to be members of traditional organized crime groups.

Q: And could you talk to us about some of Mr. DeMaria’s associates?

A: I cannot recall from memory who it was on these videos or photos that he was associating with. The only, I guess indirect association would have been Mr. Carmelo Bruzzese, but I do not know how direct or indirect the relationship was there.

Q: Can you just be a bit more precise on that, like the question was associate or so what would be the link or did you see Mr. ... why is that name popping out now?

A: Well from what I understand if I remember my report correctly, there was an Antonio Collucio who was married to Carmelo Brusseze’s daughter. Mr. Collucio was reportedly involved in planning some importation of cocaine from South America, and the information we received was that Mr. Collucio was working with Mr. DeMaria for this alleged importation scheme so that is where the indirect link to Mr. Brusseze comes in.

[101] So, as the Applicant points out, the sole reference with respect to the Member’s assessment of Sergeant Tessier’s opinion is the allegation regarding Carmelo Bruzzese and, as the record shows, the Member is just wrong to say that Sergeant Tessier viewed either videos or photographs of the Applicant in the presence of Carmelo Bruzzese or, indeed, that Sergeant Tessier even alleged any direct relationship between the Applicant and Mr. Bruzzese.



[102] In my view, then, the Member provides no real basis or facts with regard to Sergeant Tessier's evidence that could support "reasonable grounds to believe" that the Applicant is, or has been, involved with *'Ndrangheta* in the GTA.

(3) Detective Sergeant Almeida

[103] The Member's assessment of the evidence of Detective Sergeant Almeida is as follows:

[48] Now, with respect to the evidence submitted by Detective Sergeant Almeida of the York Regional Police, the information presented by Mr. Almeida under points 1, 2 and 5 of his report are related to direct observations of Mr. DeMaria in the company of known members of the *'Ndrangheta* and of the *Hells Angels* criminalized biker gang. Detective Sergeant Almeida also testified under oath in a credible manner as to what personally convinced him of Mr. DeMaria's membership in the *'Ndrangheta*, following investigations on traditional Italian organized crime, as well as on Mr. DeMaria and the *'Ndrangheta*, in which he took part as a police officer for many years. His testimony is relevant, credible and trustworthy. He also mentioned that the York Regional Police considers Mr. DeMaria to be a member of the *'Ndrangheta*.

[Footnote omitted.]

[104] As with Sergeant Tessier, the underlying evidence is not as substantial as the Member suggests in his reasons, and the Member significantly omits to mention any specific basis for Detective Sergeant Almeida's personal conviction.

[105] The record shows that Detective Sergeant Almeida confirmed in his testimony that, as regards the Applicant's association with *'Ndrangheta*, the Applicant was observed arriving at a stag party in 2004 with Mr. Rocco Remo Commisso. But it is unclear what the Member is relying upon to prove that Mr. Commisso is a member of *'Ndrangheta*.

[106] Detective Sergeant Almeida also testified that the Applicant had been observed arriving with his wife at his nephew's wedding in 2012, and that Cosimo Commisso and Rocco Remo Commisso arrived separately at the same wedding. However, there were no reported observations of the Applicant speaking with the individuals mentioned.

Detective Sergeant Almeida also testified that no observations were made by the police at either the stag party or the wedding and that the attendees could have numbered in the hundreds or "a thousand." See Applicant's Record at 5327.

[107] The Applicant testified that he had met Mr. Cosimo Commisso and Mr. Rocco Remo Commisso while he was in custody in the 80's, but he said that he had no current relationship with them.

[108] So, at the very least, the Member is overstating the underlying evidence related to direct observations of the Applicant in the company of known members of *'Ndrangheta* and the Hells Angels.

[109] Apart from this, it is unclear what the Member is relying upon in Detective Sergeant Almeida's testimony that could provide reasonable grounds for believing that the Applicant is a member of *'Ndrangheta*.

E. *Journalistic Evidence - Canadian*

[110] The Member also indicates in his reasons that he places some reliance upon Canadian journalistic sources for his conclusion that there are reasonable grounds to believe that the Applicant is a member of *'Ndrangheta*:

[42] ... Canadian journalists also report that Italian anti-mafia prosecutors and courts believe, following large-scale investigations including electronic surveillance of the organization in Italy, that Mr. DeMaria is one of the leaders of the organization in Canada.

[111] As I mentioned earlier, the Applicant challenges these findings on the grounds that none of the Canadian authors of the articles referred to was ever called, and nor did any witness testify as to the accuracy and reliability of the Canadian articles. In addition, the Applicant says that none of the articles claims any knowledge of the Applicant's membership in *'Ndrangheta* other than information from police sources: "In effect, the Immigration Division Board member is citing newspaper reports of allegations as evidence that those same allegations are true."

[112] Justice de Montigny dealt with similar objections to newspaper articles in *Bruzzese v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 230 [*Bruzzese*]:

[20] The evidence before Member Funston – Italian judicial decision and newspaper articles citing judicial and law enforcement authorities, documentation of the investigations conducted by the Italian police of the *'Ndrangheta*, and the warrant for Mr Bruzzese's arrest for mafia association in Italy – was sufficient to establish the Applicant's association with the *'Ndrangheta*. This evidence was challenged, but the panel was not presented with any evidence to challenge the fairness or the integrity of the Italian justice system. It was satisfied that Mr Bruzzese would not be subject to the current warrant pursuant to article 416-bis if there were no sufficient persuasive evidence of association with a criminal organization.

...

[57] It is no doubt true that news articles could not be considered as evidence of specific facts about specific incidents in a court of law, that the author of an article is not available for cross-examination, and that news reports are sometimes inaccurate, unreliable and based on hearsay. That being said, the article of the Toronto Star is well documented and quotes from Italian authorities and Italian decisions. The Applicant has not seen fit to refute the information reported and has not pointed to any factual error save on a tangential point. He was contacted by the journalist for an interview but declined to respond. In those circumstances, the ID members could reliably use this media article to make a finding of association.

[113] In the present case, the Applicant simply denies any connection with *'Ndrangheta* and says that there is no basis for the reports of the police and court activities that lie behind them. More than this, however, the Applicant denies having any knowledge of *'Ndrangheta* other than what he has learned from media reports since 2009:

Q. Are you aware of the Italian organized crime group called the *'Ndrangheta*?

A. The only awareness I have about it is through the media, what I have been able to read, especially since I have been alleged to be a member here since 2009, but that is really the only thing that I ... that I know about it.

Q. Are you aware of what types of activities this group conducts?

A. No, I am not, no.

Q. Are you a member of *'Ndrangheta*?

A. Absolutely not.

[Applicant's Record at 5360.]

[114] So, in the present case, the Applicant does refute the Canadian articles and the Member does not provide any real justification for their reliability and authority as a separate source of evidence.

F. *Background and Present Context*

[115] The Member also relies upon the Applicant's cultural background and his present ties to support his conclusion that the Applicant is a member of *'Ndrangheta*.

[52] Mr. DeMaria was born in Siderno, the cradle of the *'Ndrangheta*. He immigrated to Canada as a baby with his family in the 1950s, when the *'Ndrangheta* was expanding by ensuring its presence throughout the world. The blood ties and affiliation by marriage in Mr. DeMaria's immediate circle correspond precisely to the description of the organization's internal structure that is set out in the documentary evidence (*impenetrable secrecy, rigidly self defined independent families, very close to external influences, strong family-based composition*). The boss of the organization in Italy refers to him by his given name.

[53] In the early 1980s, Mr. DeMaria was also convicted of a brutal murder described as an execution by the judge who heard the case; according to the evidence on the record, executions are one of the trademarks of the *'Ndrangheta*.

[54] In addition, the high number of police investigations, charges, and criminal convictions related to people close to him (family and associates) in relation to murders, violence, drug trafficking and production, banking fraud and money laundering, among others, is alarming and once again consistent with the description of the group's criminal activities set out in the documentary and testimonial evidence. It therefore seems that the threshold for reasonable grounds to believe, even the threshold for the balance of probabilities, has more than been met.

[Emphasis in original, footnotes omitted.]

[116] I think it only fair to quote what the Applicant has to say on the family issue in full because the Respondent has provided no real answer to the issues raised:

113. It is respectfully submitted that it is unreasonable in the circumstances of the evidence in this case for the Immigration Division Board Member to rely on the Applicant's blood ties and affiliation by marriage as underlying evidence of the Applicant's membership in Ndrangheta.

114. While the Immigration Division Board Member fails to identify the persons to whom he refers, it is respectfully submitted that Detective Moore was the only officer who testified with respect to this issue, and that Detective Moore placed great emphasis on these relations in forming his opinion.

115. In particular, Detective Moore identified the Applicant's son-in-law, Domenico Figliomeni, as the alleged primary conduit between the Applicant and Ndrangheta.

116. Detective Moore himself admitted that this theory is key to his opinion, and has no evidentiary basis:

Q: Well, I ... I'm not asking you about the history. I'm asking you about the evidence that you used to support your conclusion in this report, to determine what's at issue here. And what I'm asking for is, what is the value you place on the familial relationship alone in terms of supporting your conclusion?

A: I understand what your question is and I'm assuming you're talking about Domenico Figliomeni, right? The fact that somebody has family relationships that police investigators ... I would say four or five different families that police investigators in Ontario deem members of organized crime, and I think that's very significant.

Q: Well, you've certainly explained how it's significant in your determination that Domenico Figliomeni is a member of organized crime. But what I'm not getting is why his familial relationships are evidence that Mr. Jimmy DeMaria is a member of organized crime?

A: Because I think what I said earlier is, Mr. DeMaria, if you're looking for that smoking gun, you're not going to find it because Domenico Figliomeni is the go-between and he is the one that allows Mr. DeMaria to operate and do what he needs to do. And to me, that's very evident through the surveillance and through phone calls. And ...

Q: Well, I ... the word evidence there. What's the evidence?

A: What's the evidence?

Q: Yeah. You just said it's very evident. What's the evidence?

A: That you have ... you have a guy who went to the ... I'll use the Musitanos. He went to the ... Domenico went to the stag of Angelo Musitano. And when you have 400 or 500 people, many who are deemed to be Traditional Organized Crime members, Outlaw Motorcycle gang members all present ...

Q: Was Vincenzo Demaria present?

A: No.

Q: And yet you're using Domenico Figliomeni's presence as evidence that Vincenzo DeMaria is a member of organized crime?

A: I would say he's the voice of Jimmy, if you were asking my opinion.

Q: Well, I was asking for your evidence.

A: That's my belief.

***Exhibit "F" of the Affidavit of Alannah Glintz sworn on June 14, 2018, at Tab 3 of the Application Record, at p. 4832.***

Q: Does Domenico Figliomeni have a criminal record? You've already said no.

A: No, he does not.

Q: Has he ever been charged with anything?

A: Not that I'm aware of.

***Exhibit "F" of the Affidavit of Alannah Glintz sworn on June 14, 2018, at Tab 3 of the Application Record, at p. 4851.***

117. Despite his reliance on the familial history of the Applicant, and the allegation that Domenico Figliomeni is a member of Ndrangheta, Detective Moore failed to disclose any of this information in his report:

Q: But what you don't tell me in this report is that Carlo DeMaria, you believe, is a member of Ndrangheta, although you say it about two other people in this list. You don't tell me that you believe Domenico Figliomeni is a member of Ndrangheta on this list. And you rely on their familial information, and I don't have any of it. I can't go and check who is somebodies uncle. I can't go and check who is somebodies grandfather. Because I don't have it and you've given none of it right?

And you go out of your way [in your report] to say Angelino Figliomeni is a known member of Ndrangheta. Cosimo Figliomeni is a known member of Ndrangheta. But you've come this morning and testified that about both Domenic Figliomeni and Carlo DeMaria and it's not in [your report]. Can you justify that?

A: I can't justify it, sir. And I'll be honest with you, part of that is because I didn't physically type the report. I reviewed the report.

***Exhibit "F" of the Affidavit of Alannah Glintz sworn on June 14, 2018, at Tab 3 of the Application Record, at p. 4850.***

118. It is relevant to note that neither Carlo DeMaria nor Domenico Figliomeni have a criminal record, and neither was alleged to be a member of Ndrangheta in the disclosure provided to the Applicant.

It is respectfully submitted that it is unreasonable to rely on unproven allegations or investigations of members of the Applicant's immediate family, completely unsupported by underlying evidence of criminality.

119. It is therefore submitted that the Immigration Division Board Member unreasonably relied on the familial connections of



the Applicant in assessing whether the Applicant is a member of Ndrangheta.

[Errors in original.]

[117] The Respondent points out that the evidence supports that a degree of kinship between *Ndrangheta* members is a “characteristic of affiliation with the organization” and that *Ndrangheta* is “based on families and blood ties, so a cousin or a husband/wife of an affiliate is very often a reliable indication of a possible affiliation.” In my view, it might suggest that the Applicant’s background and family connections provide an opportunity for membership, or are not inconsistent with membership, but they are not *per se* evidence of membership. And the difficulty is that the Member does not say to whom he is referring when he says “people close to him (family and associates) in relation to murders, violence...,” etc.

[118] Also, the use of the word “execution” by the judge in the Applicant’s murder trial is, without more, not a compelling factor.

G. *Supportive Evidence Under Subsection 37(1)(a)*

[119] As a matter of general principle, the Respondent in oral argument suggested that it was appropriate for the Member to rely upon the opinions of the police officers in this case, who said they were relying upon “sources,” without examining the sources themselves. No authority was provided for this position.

[120] In written submissions, the Respondent put it slightly differently:

23. In the case at bar, senior police officers from the Peel Regional Police the York Regional Police and the RCMP testified and provided reports based on their knowledge garnered from years of participation and supervision investigations in Traditional Organized Crime organisations, including the *Ndrangheta*. Their evidence was found to be credible and trustworthy. This situation is akin to that in *Sittampalam*, where the Federal Court of Appeal noted, in a section 37 context, that police reports are admissible before the immigration Division if found credible and trustworthy. The same can be said of testimony given by the police at a hearing:

[52] The appellant also submits that the police source evidence in this case is not credible and reliable evidence. Many of the police reports were made before a proper investigation, and were not supported by the testimony of the police officers and witnesses that were involved. Further, the appellant argues that the evidence hinted that the police lacked objectivity; that their view of the appellant was biased.

[53] **In this regard, I find that the Board considered the police source evidence credible and trustworthy in the circumstances of the case, and such a decision is entirely within its discretion.** The Board is uniquely situated to assess credibility of evidence in an inadmissibility hearing; credibility determinations are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence: Federal Courts Act, R.S.C., 1985, c. F-7 [section 1 (as am. by SC. 2002, c. 8, s. 14)], paragraph 18.1(4)(d) [as enacted by SC. 1990, c. 8, s. 5; 2002, c. 8, s. 27].

...

27. At paragraph 69 of his Memorandum, the Applicant sets forth that the Board member abdicated his role as a decision maker through his reliance on the documents and testimony of officers Moore, Tessier and Almeida. The Minister submits that the Board member did examine and engage in the evidence as best exemplified at paragraphs 46 and 47 of his reasons where he diminishes the weight to be given to the written reports filed by officers Moore and Tessier. It was open to the Board member to find that the testimony given by the police officers was credible.

[Emphasis in original, references omitted.]

[121] The Respondent appears to suggest that whatever the ID considers to be credible and trustworthy is sufficient to establish reasonable grounds to believe because the ID has a complete discretion to decide what evidence it can, and should, rely upon. In my view, there can be no such unbridled discretion because it would obviate any need for judicial review. There has to be “facts” that provide reasonable grounds to believe.

[122] There is some ambiguity in the Respondent’s position but, as a matter of principle, I do not believe that the Member could simply rely upon bald, or unsubstantiated opinions, even when they come from experienced police officers. And, the problem is that the Member does not assess the police source evidence behind those opinions.

[123] To begin with, s 33 itself requires “facts” to support “reasonable grounds to believe,” and not opinions.

[124] In addition, Justice Roy recently made it clear in *Ariyaratnam*, above, that an opinion is not, *per se*, a fact and the “facts leading to reasonable grounds are to be those of the decision-maker....”

[125] In the case of both Detective Moore and Sergeant Tessier, the Member says that he gives greater weight to their testimonies than the reports, but it isn’t clear what weight he gives to the reports.

[126] In the case of Detective Sergeant Almeida, the Member relies upon the officer's "direct observation of Mr. DeMaria in the company of known members of the *'Ndrangheta* and of the Hells Angels criminalized biker gang." These so-called "direct observations" are, however, tenuous evidence, to say the least.

[127] With Sergeant Tessier, the Member makes it clear that the "panel was unable to assess, however, minimally, the confidential sources ... of the RCMP officers from which Sergeant Tessier acquired his information." The Member relies instead upon what "personally convinces Sergeant Tessier of [the Applicant's] membership in *'Ndrangheta*," but only mentions the "photographs and videos of [the Applicant] in the presence of other known members of the *'Ndrangheta*, such as Carmelo Bruzzese."

[128] All in all, the Member appears to base his conclusion that the three police officers have provided testimony that is "relevant, credible and trustworthy" upon their extensive experience in investigating and considering organized crime in the GTA and their personal convictions, rather than requiring and assessing specific "facts" that support the Applicant's membership in *'Ndrangheta*.

[129] When it comes to facts, the Respondent identifies the following as providing sufficient grounds to believe:

(1) The Italian Evidence

[130] In paragraph 42 of the Decision, the Member refers to the following evidence:

There is no doubt in the panel's mind that Mr. DeMaria is a member of the '*Ndrangheta*. The evidence on the record clearly shows that he is linked to traditional, mafia-type, Italian organized crime, in this case, the '*Ndrangheta*. This certainty comes from the top, if one can call it that. In fact, the electronic surveillance conducted at the office of the head of the '*Ndrangheta* in Siderno, Italy, revealed that, in a conversation at the most senior levels of the organization, Mr. DeMaria is referred to by his given name. In addition, an Italian newspaper, which covers mafia-related issues, puts him in the Control Room (*Camera di Controllo — Siderno Group*) of the organization in Toronto. Canadian journalists also report that Italian anti-mafia prosecutors and courts believe, following large-scale investigations including electronic surveillance of the organization in Italy, that Mr. DeMaria is one of the leaders of the organization in Canada.

[131] In paragraph 52 of the Decision, the Member again relies upon this evidence and says that the "boss of the organization in Italy refers to him by his given name."

[132] The electronic surveillance referred to here is found in the proceedings of the Tribunale of Reggio Calabria, which is an Italian court in the city of Reggio Calabria, and it involves a conversation between two men, one of whom is Giuseppe Commisso, an influential figure in '*Ndrangheta* in Siderno, Italy. The discussion is about activities in Toronto and mentions the problems that the Applicant has encountered in Toronto. The English translation reads, in relevant part, as follows:

**MAN 2:** ... Anyway [...] , what can I tell you... I find myself here... I don't know what to tell you, you know that I find myself...

**COMMISSO:** If there is something, we are not doing anything at the level of... if we make some move, because now we are ...

**MAN 2:** No, no...

**COMMISSO:** ...It's not like we stopped, however...

**MAN 2:** We need to be careful...

**COMMISSO:** ...we are ...we are careful...

**MAN 2:** The foresight is that one there, that we have to be careful, so as to not...

**COMMISSO:** There are too many hidden listening devices here where we are...

**MAN 2:** I know, I know...

**COMMISSO:** The town is full, they made a system... there is a technology now... they made a system here in the town ...they dug like they were digging for sewers ...and they put all these hidden listening devices ... they have a screen at the Police Headquarters, as big as the wall and they see the whole town, you understand?

**MAN 2:** They see all things...

**MAN 1:** You can't do anything anymore...

**COMMISSO:** No, by now ... they, by now, this is how it works.

**MAN 2:** It's just that they work on their things, but we have to work in secret...

On their part, the two men also relate similar issues endured in Canada; in particular, they mention the fact that even that Country's police are aware of their wrongdoings by now and, therefore, are allegedly adopting tougher systems against them.

In this regard, when COMMISSO says: "We can't go on any longer like we used to go on...", because "...for a pin-prick they grab you after a minute", alluding precisely to the fact that times have changes and that, therefore, more cautious systems must be adopted in order to continue committing crimes; one of the two friends replies to him. "Because going around, going around, they know... all the movements... (inc.) ... they're even in Toronto, in Toronto they showed us on the TV... they showed everything...".

**COMMISSO:** We can't go on any longer like we used to go on...

**MAN 2:** Like once, no! ... we knew this...

**COMMISSO:** ...for a pin-prick they grab you after a minute ...

**MAN 2:** Because going around, going around, they know...all the movements... (inc)... they're even in Toronto, in Toronto they showed us on the TV... they showed everything...

COMMISSO Giuseppe does not only agree, and in fact says: “You know who Toronto is? They have to be careful in Toronto”, but in this regard he recounts the misadventures endured by a friend of his, a certain “VICI DEMARIA”. The brother of the latter, in fact, allegedly came by his [home] saying: “I’m leaving Compare....”, precisely to say that he would have liked to leave Canada to escape the judicial oppression that affected “Vici”.

The individual is identified as DE MARIA Vincenzo, aka “Jimmy”, born on April 16, 1954. In 1982, the man was found guilty of murder by the Canadian authorities. After ten years of imprisonment he was granted parole.

He continues by stressing to the two speakers what had happened to his friend: “eh, he got out, only that he got out with obligations so to speak... now they locked him up another time, do you know why they locked him up? Because he’s monitored! This guy sees him, that guy goes to see him”. In essence he explains that, when he was released from prison, the man allegedly did not comply with the obligations imposed on him by continuing to associate with previous offenders, which he further clarifies: “... you breached the obligations that we gave you... you cannot be seen with previous offenders... instead he was seen and they arrested him”.

One of the two speakers then notes: “No! Because he breached the thing... but even there in Toronto... I told CICCARELLO that he came by there and we spoke for a bit”, as if to say that he allegedly spoke to “Cicciarello” in Toronto about the matter, in essence, to COMMISSO Francesco.

Referring to “Cicciarello”, COMMISSO expresses what seems to be a gloomy foreboding: “CICCIO di GRAZIA, if he’s not careful they’ll arrest him because he plays the part a lot, I sent him the ambasciata [tn.: official message]...”. In other words, he clarifies his thoughts on the matter, in essence that, if COMMISSO Francesco continues trafficking that way it won’t be too long before the Canadian police arrests him.

Despite his aspirations, however, he is not able to return to Italy since he was served with a detention order for the remainder of a sentence, as COMMISSO recalls in fact: “Because poor guy, he can’t come here because he has two years definitively ...”.

One of the two speakers asks if: “he has another brother here”. Indulging him, COMMISSO says that: “Micarello is not active”, in essence he explains to him that his brother COMMISSO

Domenico, son of Giuseppe and FERRERI Grazia, born in Siderno (RC) on May 11, 1952, is not affiliated to the 'ndrangheta. The latter, who is married to NUDO Anna Maria, born in York (Toronto), lost his Italian citizenship, acquiring the Canadian one.

...

[133] It seems to me that what we have here are facts upon which the Member can reasonably rely: that a senior member of *'Ndrangheta*, who is concerned about difficulties faced by the organization shows his concerns for activities in Toronto, during the course of which the Applicant's name is mentioned. Given that the context of the conversation is about general surveillance difficulties faced by the organization, there is a reasonable inference that the mention of the Applicant and his troubles in Toronto has some relevance to this issue.

[134] The Applicant argues that at no time do the two men discuss any business they have with him or refer to him as a member of their organization or "make any other statement of the Applicant's significance apart from the fact that the news reports of his arrest are a sign of a crackdown by police in Canada." The Applicant argues further:

35. In his testimony, Detective Moore stated that this intercepted conversation was one of the most important sources in forming his opinion regarding the Applicant's membership in a criminal organization. However, on cross-examination, Detective Moore conceded that he had not read the intercept, which was produced at C-22, or even the Italian authored report based on the conversation.

36. No other witness testified to having reviewed this intercepted conversation or the Italian authored report based on the conversation. As such, it is clear that the Immigration Division Board Member has relied on his own analysis of the intercepted communication's reliability as an indicator of the Applicant's membership in a criminal organization.



37. In fact, the intercepted communication is a conversation between two alleged members of Ndrangheta **\*discussing news reports\*** relating to the Applicant's revocation of parole, wherein they explicitly state they had seen such reports on television. At no time do these individuals discuss any business they have with the Applicant, refer to him as a member of their organization, or make any other statement of the Applicant's significance apart from the fact that the news reports of his arrest are a sign of a crackdown by police in Canada.

38. It is respectfully submitted that the only apparent analysis of the probative value of this evidence in confirming that the Applicant is a member of Ndrangheta is the reference by the Immigration Division Board Member to the fact that the two individuals refer to the Applicant by his "given name". There is no evidence on the record to support such an analysis, and there is no evidence in his reasons or on the record that the Immigration Division Board Member considered any reasonable alternative explanation for this conversation other than the guilt of the Applicant.

39. However, the two individuals intercepted speaking had clearly viewed media reports which **\*cited the Applicant by name\***, and were in fact commenting on those media reports. It is unclear why the Immigration Division Board Member Views this evidence as conclusive and reliable in establishing the Applicant's association with organized crime. Furthermore, there was no testimony or other evidence before the Immigration Division Board Member analyzing the intercepted communication.

[135] In my view, these criticisms have some validity. However, this evidence it is not entirely without value. The whole context of the discussion is about the problems that *'Ndrangheta* is facing as a result of new surveillance techniques "even in Toronto," and the Applicant's situation is cited as an example. It is also a fact that Giuseppe Commisso refers to the Applicant as his friend. So the Applicant, who says he has no knowledge of *'Ndrangheta* other than from media reports, also happens to be the friend of the boss of the organization in Siderno.

[136] The Applicant also seeks to discredit this evidence as being part of a larger Italian report which relies upon assumptions about the Applicant that is based upon information provided by the Combined Forces Special Enforcement (CFSEV) in Canada. However, I do not see this as detracting from the weight of what appears to be valid surveillance in Italy.

[137] In my view, this evidence may not be conclusive of membership – and the Member does not say it is – but it certainly gives rise to a possible inference of membership because of the status of Mr. Giuseppe Commisso, the context and subject matter of the conversation, and the mention of the Applicant’s name and his troubles as having at least some relevance to that context.

(2) The Newspaper Reports

[138] The Member also refers in paragraph 42 of the Decision to an Italian newspaper which covers mafia-related issues and which “puts [the Applicant] in the Control Room (*Camera di Controllo – Siderno Group*) of the organization in Toronto.” This article from the *Stampo Antimafioso* of November 6, 2013 refers to the “Siderno group” whose activities “are particularly diffused internationally in Canada, in the United States and in Australia.” It also contains a chart which identifies and pictures the Applicant as a member of the board of control of the Siderno group in Ontario.

[139] The Applicant says it was unreasonable for the Member to rely upon this evidence:

16. Furthermore, as the Respondent notes, the Member relied on a diagram which depicted the Applicant as being within the ‘Control Room’ of the *‘Ndrangheta* in Toronto. However, it is

respectfully submitted that the Member erred by failing to consider the reliability or validity of this evidence. In *Almrei (Re)*, the Honorable Justice Mosley highlighted five criteria that may be useful in determining the reliability of evidence: authority, accuracy, objectivity, currency and coverage. The Honorable Justice Mosley goes on to explain as follows:

These criteria are simply a framework which anyone can use to assess the credibility and reliability of a document. They invite questions such as who has written the document, what are their credentials, what is their stance on the issues, do they have a bias or a particular agenda? What is the authority of those who are cited or quoted in the document itself? Can the factual content of the information be verified? Is the information current? Has new information come to light that may call into question an earlier report. Is the information complete or has an excerpt been pulled out of the context of the rest of the document?

17. Based on the criteria adopted in *Almrei*, it is respectfully submitted that the Member's reliance on documents such as the organizational chart of the 'Ndrangheta's Toronto 'Control Room' (*Camera di Controllo — Siderno Group*) was unreasonable, as such documents are not sufficiently reliable to draw reasonable conclusions about the Applicant's inadmissibility. The organizational chart that puts the Applicant in the 'Control Room', as it is contained in the Minister's disclosure, does not indicate upon what authority the chart was created, who created the document, or what their credentials are. Although the Respondent claims that the diagram is from an Italian newspaper, the document as it appears in the disclosure provides *no indication* that this is the case. Indeed, the exhibit does not contain *any* citations or source information that would allow the Member, or the Applicant for that matter, to verify the factual content depicted in the chart. By simply accepting what was depicted in the document, without turning his mind to the validity and accuracy of the document itself, the Member abdicated his responsibility to assess the evidence, and for this reason he committed a reviewable error.

[Emphasis in original, references omitted.]

[140] There is some dispute between the parties as to what was actually in the record before the Member regarding this report but it appears to me that the newspaper article does appear in the disclosure. Newspaper articles may or may not contain reliable evidence of relevant facts, but the Applicant is right to say that the Member does not address the reliability factors identified in the jurisprudence. This could well be reliable fact evidence, but the Member does not sufficiently identify what criteria of reliability are present that render the report factually sufficient to support reasonable grounds to believe, and, once again, the report cannot be looked at in a “fragmented manner” but must be placed against all of the other evidence “taken as a whole.”

(3) Canadian Reports

[141] The Member also relies upon the reports of Canadian journalists who say that anti-mafia prosecutors and courts believe that the Applicant is one of the leaders of *'Ndrangheta* in Canada.

[142] The Respondent seeks to justify the use of newspaper reports in the present case by reference to *Bruzzese*, above, where Justice de Montigny provided the guidance quoted above and which I repeat here for convenience:

[57] It is no doubt true that news articles could not be considered as evidence of specific facts about specific incidents in a court of law, that the author of an article is not available for cross-examination, and that news reports are sometimes inaccurate, unreliable and based on hearsay. That being said, the article of the Toronto Star is well documented and quotes from Italian authorities and Italian decisions. The Applicant has not seen fit to refute the information reported and has not pointed to any factual error save on a tangential point. He was contacted by the journalist for an interview but declined to respond. In those circumstances, the ID members could reliably use this media article to make a finding of association.

[143] The weight that can be given to newspaper articles depends very much upon context and general indicia of reliability. As Justice MacTavish cautioned in *Thuraisingam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 607:

[39] The evidence in question consisted of newspaper articles, the statements of P.A., an affidavit sworn by Officer Anthony Malcolm of the Toronto Police, and summaries of intercepted telephone communications. I agree with counsel for Mr. Thuraisingam that, in this context, newspaper articles have very little evidentiary weight. That said, the remaining evidence establishes that Mr. Thuraisingam was deeply involved in the activities of the Sellapu and VVT gangs.

[144] In the present case, the Member does not address what indicia of reliability he is relying upon for the newspaper articles. What they appear to indicate is as follows:

- a) C-29: This article discusses allegations by Italian prosecutors which have not been proven in court. The Italian prosecutors identify the Applicant as a leader of a *'Ndrangheta* crime family in Toronto;
- b) C-30: This article discusses surveillance of *'Ndrangheta* members in Thunder Bay and provides a brief overview of *'Ndrangheta* operations. The Applicant is mentioned by name as one of the Toronto *'Ndrangheta* leaders identified in an Italian prosecutor's report;
- c) C-33: This article discusses the Applicant's lawsuit against Canada for his imprisonment for violation of parole. The article mentions the Applicant's earlier conviction for murder and the wiretap which recorded *'Ndrangheta* members in Italy discussing the Applicant's arrest;
- d) C-36: This is a contrast between the Italian and Canadian criminal organization laws. I do not find the Applicant mentioned at all;
- e) C-41: This article focuses on the killing of a *'Ndrangheta* member named Mr. Verducci. The article mentions the Italian report which names the Applicant as one of the Toronto leaders of *'Ndrangheta*;
- f) C-43: This article discusses tensions following Mr. Verducci's death. I do not see the Applicant mentioned.

[145] The factual basis behind these articles appears to be allegations in an Italian prosecutor's reports that have not been proven in court. The articles themselves, it seems to me, do not in themselves provide any additional factual basis to support reasonable grounds to believe.

(4) Conclusion on Evidence to Support s 37(1)(a)

[146] I think there is at least some evidence here that raises strong suspicions of the Applicant's involvement under s 37(1)(a) in organized crime within the GTA. The electronic surveillance intercept of the conversation involving Giuseppe Commisso, and the article and chart from *Stampo Antimofioso* are the principal examples. However, given the Member's clear mistakes over other evidence and his reliance upon unsubstantiated police opinion, whether this evidence provides sufficient facts to rise above mere suspicion and establish reasonable grounds to believe that the Applicant has engaged in organized crime is a different issue. The Member appears to think they would not.

[147] This is because, in the Decision, the Member makes it clear that it is the evidence "taken as a whole" and not "considered in a fragmented manner" (para 51) that underlies his final conclusion that the Applicant "is a member of *'Ndrangheta* in Toronto and that he holds a high-ranking position within it."

[148] The decision on whether the evidence does provide reasonable grounds to believe that the Applicant is involved in organized crime in the GTA in accordance with s 37(1)(a) of the Act is for the Member, and not the Court, to make. And it is not possible for me to ascertain whether, had the Member not fallen into errors with some of this evidence (the police evidence, in

particular) he would have reached the same conclusion. This means that, notwithstanding the strong suspicions that I see arising from some of the evidence, I must send this matter back for reconsideration (see *Mkrtchyan v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 921 at paras 21-23) unless the Member's decision on s 37(1)(b) provides sufficient grounds for inadmissibility.

[149] Reading this Decision as a whole, it seems to me that the Member's conclusion that there is "no doubt in the panel's mind that Mr. DeMaria is a member of '*Ndrangheta*'" is very much tied to the personal convictions of the three police officers who provided reports and evidence, but the Member fails to provide any real analysis of the reliability of the evidence provided to support police convictions. The Member appears to assume that because experienced officers and police forces believe the Applicant is a member of '*Ndrangheta*' then this, in itself, is reasonable grounds that he is. Yet, as the Applicant has shown, there are significant problems with that evidence that the Member should have addressed before accepting the conclusions of the police.

#### H. *Subsection 37(1)(b)*

[150] The Member's analysis and conclusions concerning s 37(1)(b) is very much tied to the Member's conclusions regarding the Applicant's membership in '*Ndrangheta*' under s 37(1)(a):

[67] In summary, the panel is satisfied as to existence of the '*Ndrangheta*' and as to Mr. DeMaria's high-ranking position within this organization, which engages in criminal activities, including weapons smuggling, drug trafficking and counterfeit products. The '*Ndrangheta*' is present throughout Europe, Canada, the United States, Australia, etc.

[68] In addition, after analyzing all of the documentary, and testimonial evidence, the panel concludes that, as an influential member of the *'Ndrangheta* and as a director of a money services business that, through several branches, transacts millions of dollars in an unclear and unusual manner with foreign banks and unidentified clients and intermediaries globally, there are reasons to believe that The Cash House and Mr. DeMaria, personally, are involved in the laundering of money and other proceeds of crime, as defined in subsection 462.3 1(1) of the *Criminal Code*.

[Footnotes omitted.]

[151] Much of the Member's analysis on this ground is based upon "suspicious transactions" and "hypotheses" that require membership in *'Ndrangheta* to give them any kind of traction as reasonable grounds to believe. Hence, the Decision must be set aside on this ground as well and returned for reconsideration.

#### IX. COSTS

[152] The Applicant has asked for the costs of this application but has provided no special reasons to satisfy Rule 22 of the *Federal Court Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. Consequently, no costs are awarded.

#### X. CERTIFICATION

[153] Given my conclusions, both sides agree there is no question for certification and the Court concurs.



**JUDGMENT IN IMM-2077-18**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted.
2. The Decision is quashed and the matter is returned for reconsideration by a different member.
3. There is no question for certification.
4. No costs are awarded.

“James Russell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2077-18

**STYLE OF CAUSE:** VINCENZO DEMARIA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 4, 2019

**JUDGMENT AND REASONS:** RUSSELL J.

**DATED:** APRIL 18, 2019

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