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Dockets: IMM-9733-21
IMM-9280-21

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Toronto, Ontario, February 23, 2023

PRESENT: Madam Justice Go

Docket: IMM-9733-21

BETWEEN:

DOMENICO CUGLIARI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

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Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Domenico Cugliari, is a citizen of Italy who entered Canada as a visitor in July 2019.

[2] The Applicant has outstanding criminal charges in Italy for "Organization, Armed Robbery and Receiving Stolen Goods." The Organization charge is based on his alleged participation in a mafia-type organization, namely the 'Ndrangheta [Ndrangheta].

[3] On August 16, 2020, the Canada Border Services Agency [CBSA] prepared a report on the Applicant pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The CBSA alleged that the Applicant is inadmissible on grounds of organized criminality under paragraph 37(1)(a) of *IRPA* for being a member of the Ndrangheta. The Applicant was referred to the Immigration Division [ID] for an admissibility hearing on August 25, 2020, which took place over six days between March and May 2021 [Admissibility Hearing].

[4] The Applicant also made a claim for refugee protection against Italy on October 2, 2020, which was suspended pending the resolution of the Admissibility Hearing.

[5] On November 23, 2021, the ID determined that the Applicant is inadmissible under paragraph 37(1)(a) of *IRPA* for being a member of the Ndrangheta, which there are serious grounds to believe engages or has engaged in organized criminality ["ID Decision" or "Decision"].

[6] Based on the ID Decision, the Applicant's claim for refugee protection was terminated by the CBSA on December 1, 2021 as the Applicant was ineligible for a decision by the Refugee Protection Division, pursuant to subsection 100(1) of *IRPA* [CBSA Decision].

[7] The Applicant challenges both the ID Decision and CBSA Decision. For the reasons set out below, I find the ID Decision to be reasonable. It follows that the Applicant's challenge of the CBSA Decision must also fail. As such, I dismiss both applications.

II. Issues and Standard of Review

[8] The main issue on judicial review is whether the ID Decision was reasonable.

[9] The Applicant does not take issue with the ID's determination that Ndrangheta qualifies as an organized crime group under section 37 of *IRPA*. What the Applicant challenges is the ID's finding that the Applicant is a member of Ndrangheta. Specifically, the Applicant submits that:

a. The ID's reliance on police opinion evidence was unreasonable;
b. The ID relied on newspaper articles and organizational charts as "evidence" without assessing the credibility and reliability of these documents;
c. The ID failed to render a decision on the credibility of the Applicant's testimony, which is presumed to be true; and

d. The ID failed to undertake an equivalency analysis with respect to the criminal offences the Applicant is alleged to have committed.

[10] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[11] Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12–13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88–90, 94 and 133–35.

[12] For a decision to be unreasonable, the Applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”: *Vavilov* at para 100.

III. Analysis

[13] The statutory provision guiding inadmissibility on the grounds of membership in a criminal organization is set out in paragraph 37(1)(a) of *IRPA*. The standard of review that the ID must assess inadmissibility on is stipulated in section 33 of *IRPA*. Both provisions can be found in Appendix A.

[14] Section 33 of *IRPA* establishes that the facts that constitute inadmissibility under section 37 include "facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur." Jurisprudence confirms that the expression "reasonable grounds to believe" means "more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities… In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information": *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114.

[15] In an admissibility hearing, the Minister of Public Safety and Emergency Preparedness [Minister] bears the onus to establish that an applicant is caught by paragraph 37(1)(a).

[16] Finally, pursuant to paragraphs 173(c) and (d) of *IPRA*, 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.

[17] The parties are in disagreement as to whether the ID erred in applying the above-cited principles in its determination of the case.

A. *Did the ID unreasonably rely on police opinion evidence?*

[18] By way of background, the undisputed evidence before the ID confirms that Ndrangheta is among the richest and most powerful organized crime groups at a global level. Ndrangheta has its roots in the Calabrian region of Italy. Currently, it has locally-based operational structures called “locales” that span across the globe, but these locales still fall under the authority of the “Calabrian Crimine.”

[19] At the Admissibility Hearing, the Minister sought to admit into evidence a report prepared by the Carabinieri Legion of Calabria, Provincial Command of Vibo Valentia, Operations Department – Investigative Unit, dated January 14, 2020 [Carabinieri Report].

[20] The Minister alleged that the Applicant is a member of the Sant’Onofrio Locale, which is headed by the Bonavota family; three members of the Bonavota family have been found guilty of murder by Italian courts.

[21] The Minister called as a witness Captain Alessandro Bui, an officer of the Carabinieri in Vibo Valentia, who was in charge of the investigation into the Applicant. Captain Bui testified over the course of four sittings at the Admissibility Hearing. The Minister also submitted a statutory declaration of Captain Bui.

[22] In finding the Applicant inadmissible, the ID placed significant weight on the Carabinieri Report, and on the testimony and statutory declaration of Captain Bui.

[23] The Applicant takes issue with the ID's weighing of this evidence, relying on the principle under the section 33 standard that decision-makers cannot "simply rely upon bald, or unsubstantiated opinions, even when they come from experienced police officers": *Demaria v Canada (Citizenship and Immigration)*, 2019 FC 489 [*Demaria*] at paras 122-123, as applied in *Canada v Dean*, [2022] IADD No 244 at para 62.

[24] The Applicant also relies on *Ariyarathnam v Canada (Citizenship and Immigration)*, 2018 FC 162 for the proposition that the reasonable grounds to believe threshold requires "reliable facts" and "does not justify an absence of facts to ground the reasonable belief": at para 70.

[25] The Applicant submits that while the Carabinieri Report does refer to alleged events underlying the charges, it fails to identify how the police acquired knowledge of these events. The Applicant asserts that the Carabinieri Report constitutes opinion of the police, rather than fact. The Applicant relies on *Demaria*, where the Court found that an analysis of membership in Ndrangheta relying on police opinion evidence was unreasonable: at para 149.

[26] The Applicant further submits that the Carabinieri Report lacks reference to evidence upon which the reliability of the factual foundation can be based, such as witnesses, phone taps, photos, and confessions. The Applicant argues that "a distinction must be drawn between

reliance on the *fact* that someone has been charged with a criminal offense, and reliance on the *evidence* that underlies the charges in question": *Thuraisingam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 607 at para 35 [emphasis in original].

[27] I reject the Applicant's arguments. Contrary to the Applicant's assertion, the Carabinieri Report does refer to underlying evidence and facts that gave rise to its conclusion with regard to the Applicant's membership in Ndrangheta. These include:

- The over 100 "territory checks" recorded in the police database between April 2012 and June 2017, in which the Applicant's name appears. These territory checks recorded instances where the Applicant was found to be in the company of other individuals that the police believe are either members or close associates of the Bonavota clan;
- A bar registered under the name of the mother-in-law of a member of the Bonavota clan, Nicola Bonavota, had its permit revoked by the local municipality on October 27, 2015. Two days later, on October 29, 2015, the business reopened under the Applicant's name. This bar is believed to be a 'front' to launder money associated with criminal activity;
- A police informant gave information concerning the Applicant and his membership in the Bonavota clan. An extract of the informant's declaration was included in the Carabinieri Report and states that the Applicant would accompany relatives of the Bonavota family during prison visits;
- The above-noted prison visits were also discovered through monitoring of a vehicle registered under the Applicant's name; and
- The Applicant's prior criminal conviction of illegally cultivating around 800 cannabis plants on July 15, 2016.

[28] While the Applicant disputed before the ID the significance of these facts in the context of his admissibility proceedings, they were facts nonetheless. The only fact noted above that the Applicant explicitly denied is the police informant's declaration concerning the Applicant's membership in the Bonavota clan. Here, the Carabinieri Report included not only the name of

the informant but also the relevant excerpt of their declaration, which provided an evidentiary foundation upon which the ID could rely.

[29] The Applicant distinguishes the case at bar from *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 [*Pascal*], where a police report was upheld as being proper factual evidence for the purposes of section 33. In *Pascal*, the ID specifically concluded that the police reports in question were "credible and trustworthy", stated that it was not relying on the charges themselves, and made reference to specific information in the reports: at para 30.

[30] I note, first of all, that the ID in this case made similar comments about the police reports and police testimony in question.

[31] I am also not persuaded that the ID in this case relied solely on the charges against the Applicant. Rather, the ID referred to specific facts presented in the Carabinieri Report, including the territory checks, the transfer of ownership of the bar from a member of the Bonavota family to the Applicant in 2015, and the police informant's information about the prison visits. Thus, the circumstances of this case are similar to those of *Pascal*.

[32] I also note Justice McHaffie's comment at para 15 of *Pascal*:

> The need for "credible" information raises the third relevant question: what evidence may establish the elements of organized criminality. Section 173 of the *IRPA* states that the ID is "not bound by any legal or technical rules of evidence," but rather "may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances." This evidentiary flexibility allows the ID to consider evidence from sources that may not be acceptable in a court. It also expressly leaves

> to the ID the discretion to make determinations of credibility and trustworthiness: it is what "it considers" credible in the circumstances that matters. Nonetheless, this discretion is not "unbridled." As with any statutory discretion, it must be exercised reasonably: *Demaria* at para 121.

[33] In my view, the ID appropriately applied this evidentiary flexibility to admit and assess the Carabinieri Report.

[34] The Applicant also distinguishes this case from *Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326 [*Sittampalam* (FCA)], where the Federal Court of Appeal [FCA] found that Immigration Appeal Division considered "police source evidence", including the underlying circumstances of the charges at issue, and went beyond merely considering the police opinion itself: at paras 51-53. Similarly, as noted above, I am not convinced that the ID in this case merely considered the police opinion without regard to the underlying facts set out in the Carabinieri Report.

[35] The Applicant also argues that the ID's conclusion that the Carabinieri Report is reliable, and its preference of the Carabinieri Report over the Applicant's testimony, was based merely on the fact that it was prepared by the police, citing *Demaria* at para 149.

[36] I find that the Applicant's argument mischaracterizes the ID's conclusion.

[37] The ID did not accept the Carabinieri Report as reliable simply because it was prepared by the police. Rather, the ID pointed out that it was prepared by the "same police force that has been investigating the 'Ndrangheta, and [the Applicant] in particular, for several years now."

[38] The ID also noted that the Carabinieri Report contains detailed information about the charges and specific allegations the Applicant is facing in Italy and summarizes the evidence that the police have gathered to support their criminal case against the Applicant. Most significantly, the ID noted that "some of this evidence includes facts or events that [the Applicant] does not actually contest occurred, although he does dispute that these are indicators of involvement in organized criminality."

[39] Further, as the Respondent submits, the ID specifically asked for and received answers from Captain Bui on the "actual evidence" behind the allegations in the Carabinieri Report, contrary to the Applicant's assertion that the ID accepted unsubstantiated police opinion as fact.

[40] For example, the Decision noted Captain Bui's explanation of the investigative methods used when building the case against the Applicant, which portions of Captain Bui's testimony demonstrates:

> **[Captain Bui]** During the investigations because the... possible to find that Mr. Cugliari is part of this criminal activities. Thanks to environmental phone interceptions and also video registrations, also owing to declarations of collaborators with justice, namely persons who were involved in delinquent activities that they decided to collaborate with the authorities, who were part of the association, and also through the elements that emerged after the investigation of the bank robbery.

[41] The Respondent argues further that the ID was nonetheless entitled to consider the Carabinieri Report on its own if it considered the information therein credible and trustworthy. The Respondent submits that jurisprudence supports that the ID can take into account contents of a warrant, criminal occurrence report or charge, hearsay evidence, or police informant evidence.

[42] While not all the cases cited by the Respondent in my view are on point, I take note of *Xie v Canada (Minister of Citizenship and Immigration),* 2004 FCA 250 [*Xie*], where the FCA upheld that a Chinese warrant alleging embezzlement and the existence of unexplained wealth was sufficient evidence to conclude that there were serious reasons to consider that the applicant committed a serious crime. As the FCA noted at para 23:

> Counsel also argued that just as the warrant was not evidence of criminality, neither was the appellant's unexplained wealth. Wealth for which there is no explanation is not criminal; it is merely unexplained. It is not a crime to have unexplained wealth, and not all those who have unexplained wealth have acquired it by criminal means. I agree that unexplained wealth is not, in and of itself, evidence of criminality. However, in the context of an allegation of embezzlement of millions of dollars, unexplained wealth acquires a certain probative value. It may not be sufficient proof of criminality but it cannot be said that it is no proof at all. In the end, it is the combination of the warrant alleging embezzlement of a significant sum of money and the appellant's possession of a sum of money of a comparable order of magnitude for which she has no satisfactory explanation which is probative, even though each element taken by itself would not necessarily be so. For those reasons, the Board did not err in concluding that there were serious reasons to consider that the appellant had committed a serious crime. The fact that this evidence falls far short of the standard of proof in criminal cases is of no moment since the issue is not whether the appellant committed the crime of which she is accused. The issue is whether there are serious reasons for considering that she did. The evidence before the Board is capable of supporting that conclusion.
>
> [Emphasis added]

[43] The FCA's conclusion in *Xie* is driven by the facts of that case, but its analysis is nonetheless instructive. In light of the evidence contained in the present case, it was open to the ID to rely on the Carabinieri Report to find serious reasons for considering that the Applicant is a member of Ndrangheta.

[44] I also note that in *Demaria*, a case the Applicant heavily relies on, the Court noted that there was some relevant evidence that gave rise to "strong suspicions" of the applicant's involvement in Ndrangheta: at para 146. The Court highlighted an electronic surveillance intercept of a conversation involving another member of Ndrangheta and a newspaper article with a chart listing the applicant as a member: *Demaria* at para 146. Here, the Carabinieri Report contains more extensive evidence – compared to the police report in *Demaria* – upon which the Italian police reached their conclusion regarding the Applicant's membership in Ndrangheta.

[45] The Respondent argues that the Applicant's reliance on *Demaria* is misplaced. The Respondent notes that in *Pascal*, the Court rejected similar arguments seeking to analogize *Demaria* because it is of "little assistance" to rely on other cases where the nature of evidence and the ID's assessment of that evidence differs: at para 44. As the Court explained at para 44:

> […] Neither [case] can nor should predetermine the outcome of the ID's assessment of Officer Petersen's evidence in this case, nor does the rejection of evidence in other cases make the acceptance of it in this case unreasonable. This is so even if that evidence shares some of the qualities or limitations cited by other decision makers.

[46] I agree with the Respondent, although I would point out that the Respondent appears to be adopting the same strategy with some of the cases they rely on.

[47] Finally, I note the Applicant's suggestion that there has been some "development" in the case law with respect to the reliability of police source evidence. In particular, the Applicant suggests that the Court is becoming more critical of decision-makers who rely on police "opinions" as "facts" in their assessment pursuant to section 33, as he argues the ID did in this

case. I am not convinced that there is such an emergence in the case law. Rather, each case needs to be assessed on its own merits.

[48] In any event, for reasons set out above, I reject the Applicant's argument that the ID unreasonably relied on police opinion when it accepted the Carabinieri Report as reliable simply because it was prepared by the police.

B. *Did the ID rely on newspaper articles and organizational charts as "evidence" without assessing the credibility and reliability of these documents?*

[49] During the admissibility proceedings, the Minister submitted a number of newspaper articles, some of which were rejected by the ID as not particularly reliable. With respect to the remaining articles from outlets such as the National Post, the New York Times, and The Guardian, the ID stated that it has "no reason" to doubt their reliability.

[50] The ID also accepted as evidence an organizational chart from excerpts of a PowerPoint presentation on the Sant'Onofrio Locale [Organizational Chart]. These excerpts, provided to the CBSA by a police officer with Interpol Italy, set out the structure of the Locale and identified the Applicant as a member of the "componente militare." The Organizational Chart was accompanied by the statutory declaration of CBSA Liaison Officer Sylvain Laroche attesting to the source of the document.

[51] The Applicant argues that the ID failed to assess the Organizational Chart and newspaper articles for reliability before accepting their contents as "facts" under section 33 of *IRPA*. The

Applicant submits that the ID should have determined the reliability of the evidence using the five criteria set out in *Almrei (Re)*, 2009 FC 1263 [*Almrei*] at para 30: authority, accuracy, objectivity, currency, and coverage.

[52] While the Organizational Chart was accompanied by Officer Laroche's unsworn statutory declaration stating that she received it from an Interpol Italy police officer, the Applicant points out that there is no indication as to who prepared the chart or what evidence it was based on. The Applicant therefore submits that the ID erred by failing to assess the reliability factors from *Almrei* when accepting the Organizational Chart as a fact for the purposes of section 33.

[53] I acknowledge that this Court has, in some cases, adopted the *Almrei* framework for assessing reliability: see *Kablawi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 888 at para 43; *Canada (Minister of Public Safety and Emergency Preparedness) v Edom*, 2021 FC 1220 at para 18; and *Demaria* at paras 139-140. However, I agree with the Respondent that Justice Mosley in *Almrei* suggested that this framework is helpful, but not that it must be used by decision-makers to assess every piece of evidence.

[54] Dealing first with the newspaper articles, I find the Applicant's submission unpersuasive. I note that the ID, *albeit* briefly, did confirm that it found the newspaper articles reliable before accepting them as evidence.

[55] Further, I note that the ID's reference to the newspaper articles formed part of its factual findings regarding Ndrangheta as an international crime organization, which the Applicant does

not dispute, and not the Applicant's membership in Ndrangheta. Nor has the Applicant pointed to any factual errors in these newspaper articles that might have negatively influenced the ID's finding concerning his admissibility. I therefore see no basis to interfere with the ID's treatment of these newspaper articles as evidence.

[56] As to the Organizational Chart, I agree with the Respondent that it was part of a statutory declaration that identified its source, and that Captain Bui testified on its contents and stated that his office produced it. This information addresses the question of "who" prepared it.

[57] Interestingly, in *Demaria*, a similar organizational chart prepared by a news outlet was considered as part of the evidence that the Court found raised a strong suspicion about the applicant's membership in organized crime: at para 146.

[58] However, I agree with the Applicant that the ID did not appear to have assessed the reliability of the Organizational Chart before admitting it into evidence. Even though the ID was not obliged to apply the *Almrei* framework specifically, it was nevertheless obliged to determine if the evidence in question was credible or trustworthy pursuant to section 173 of *IRPA*.

[59] Having said that, the Organizational Chart was listed as among the evidence considered when the ID noted Captain Bui's testimony identifying Domenico Bonavota as the "clan chief" of the "componente militare" of the Locale, of which the Applicant "is believed to be a member." Beyond this consideration, the Decision did not refer to the Organizational Chart. Thus, to what extent the ID relied on this document in its overall assessment remains unclear.

[60] To the extent that the ID relied on the Organizational Chart without first assessing its reliability, I agree with the Applicant that the ID erred. However, for the reasons elaborated below, I do not find that this error alone rendered the Decision as a whole unreasonable.

C. *Did the ID fail to render a decision on the credibility of the Applicant's testimony, which is presumed to be true?*

[61] The Applicant also argues that the ID failed to make any credibility findings in "clear and unmistakable terms" to justify its preference of the police opinion evidence over the Applicant's testimony. The Applicant asserts that his testimony is presumed true.

[62] The Applicant submits that the only clear credibility finding the ID made was with respect to the 800 cannabis plants conviction, when the ID found the Applicant's explanation that he cultivated the plants for personal use "implausible." This credibility finding led the ID to conclude that the cultivation was more likely than not related to his involvement in the Ndrangheta. The Applicant argues that both the implausibility finding and the connection of the conviction to the Ndrangheta was based on speculation.

[63] The Applicant points to his testimony maintaining that he and his friend received more cannabis plants than they ordered, which they then planted for personal use. The Applicant also highlights that the cannabis charge entered was not related to membership in a criminal organization, and that the punishment was minor, consisting of just two days under house arrest.

[64] The Applicant submits that this Court's critical view of plausibility findings means that they can be only be made in the clearest of cases. For example, the Court in *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908 stated that "[a]dverse credibility determinations based on implausibility should not be made simply on the basis that it is unlikely that things happened as the claimant contends" and that "[s]omething more is required": at para 9. The Applicant submits that considerations such as inconsistent testimony, contradictions or evasion should be taken into account when making implausibility findings, and that the ID's failure to do so renders the findings speculative and unreasonable: see *Aguilar Valdes v Canada (Citizenship and Immigration)*, 2011 FC 959 at para 46.

[65] I do not find the Applicant's argument persuasive. The ID did consider the Applicant's testimony as to how he and his co-accused got involved in growing so many marijuana plants. The ID went on to state:

> It is very difficult to accept this testimony, as it is highly implausible that two people would take the trouble of growing and cultivating over 800 cannabis plants, knowing that their actions were illegal and highly risky, simply for the fun of it. Captain Bui testified that while this conviction was not registered as one with a Mafia association, that in Italy, organized criminal groups are always involved in the production of drugs. Drug trafficking is one of the major sources of profits for the 'Ndrangheta. Accordingly it is more likely than not that Mr. Cugliari's cultivation of these 800 cannabis plants was related to his involvement with the 'Ndrangheta, and not for his personal use as he claimed.

[66] The reasons offered by the ID took into account the Applicant's own testimony that he was growing 800 plants "for passing time for fun." The ID also considered Captain Bui's testimony about Ndrangheta's prominent drug trafficking business before making its finding.

Thus, contrary to the Applicant's assertion, the ID did not make an implausibility finding simply on the basis that it is unlikely that things happened as the Applicant contended.

[67] The Applicant further argues that the ID conflated weight and credibility when it found that the Applicant's refuting of the Minister's allegations in his testimony was merely an attempt at asserting innocence and defending against the charges in question.

[68] The Applicant highlights specific portions of his testimony which countered several aspects of the Carabinieri Report allegations, including: the Applicant's denial that he is a member of the Sant'Onofrio Locale of the Ndrangheta; his denial of ever being involved in a bank robbery; that he only knew gang members by virtue of living in the same village, rather than because of criminal gang activity; and his denial that he acted as a "front man" for the bar owned by a Bonavota member.

[69] The Applicant submits that in *Demaria,* the Court took issue with the ID dismissing the applicant's denial of similar allegations without justifying the reliability and authenticity of the source of evidence underlying the allegations: at paras 113-114.

[70] The Applicant notes that the criminal presumption of truthfulness of testimony has been imported into immigration law jurisprudence: *MalDonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA) at para 5. The Applicant submits that immigration law jurisprudence has taken this presumption a step further by requiring decision-makers to explain

in clear terms why they reject an applicant's testimony: *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (CA) at para 6.

[71] I acknowledge the well-established presumption with respect to truthfulness of testimony. However, as the Respondent points out, it is within the ID's jurisdiction to prefer the Minister's evidence over the Applicant's testimony.

[72] I also agree with the Respondent that the ID was entitled to prefer the detailed evidence from the Italian police force over the Applicant's assertions of innocence without specifically determining whether each of the Applicant's denials was credible or not.

[73] Although *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 was a case dealing with subsection 34(1), I find the FCA's comments at paras 36-38 particularly apt:

> [36] However, it is settled law that an adjudicator is not required to refer to every piece of evidence. More importantly, the evidence before the Immigration Division was conflicting. The reasons of the Immigration Division demonstrate that the member sifted through the record and was alive to the appellant's challenge to the credibility of certain documents. The Immigration Division's findings were amply supported on the record before the Immigration Division.
>
> [37] Section 33 of the Act requires only "reasonable grounds to believe" that facts giving rise to inadmissibility are present. In my view, the Immigration Division's conclusion that there were "reasonable grounds to believe" in this case was within the range of outcomes acceptable and defensible on the facts and the law. The decision was therefore reasonable.

[74] The ID in this case did acknowledge the Applicant's assertions that "he is innocent of the charges levelled against him" and his denial of his membership in Ndrangheta. However, as the ID rightly points out at para 76 of the Decision:

> [The Applicant] is entitled to defend himself against the charges, but it is for the Italian courts to decide Mr. Cugliari's guilt or innocence at his criminal trial. It is the role of this Panel to determine only if there is sufficient evidence to establish reasonable grounds to believe the allegations. The Panel finds it must place more weight on the detailed evidence coming from the Italian police than on Mr. Cugliari's assertions of innocence.

[75] I also observe that in *Ferguson v Canada (Minister of Citizenship and Immigration)* 2008 FC 1067 [*Ferguson*], a case cited by both the Applicant and the Respondent, the Court states:

> [23] As the Court of Appeal pointed out in *Carrillo* not all evidence is of the same quality. Accordingly, while an applicant may have met the evidentiary burden because evidence of each essential fact has been presented, he may not have met the legal burden because the evidence presented does not prove the facts required on the balance of probabilities […]
>
> [24] The determination of whether the evidence presented meets the legal burden will depend very much on the weight given to the evidence that has been presented.

[76] The Court in *Ferguson* continues at para 27:

> Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of

> probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[77] In my view, the same conclusion can be made with respect to the ID's assessment of the Applicant's categorical denials of the Minister's allegations, which do not have sufficient probative value to establish, on a balance of probabilities, facts that counter the allegations.

[78] The Applicant also argued that the ID failed to make explicit credibility findings when accepting Captain Bui's evidence over his sworn testimony rebutting every allegation raised by Captain Bui's evidence.

[79] The Applicant submits that the credibility of the person concerned is front and foremost when making membership findings under paragraph 37(1)(a) of *IRPA*. The Applicant relies on this Court's finding in *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1211 that the decision-maker appropriately assessed the evidence because they made an explicit adverse credibility finding on the person concerned: at para 30, upheld in *Sittampalam* (FCA). The Applicant highlights that Captain Bui testified that he has never had personal contact with the Applicant.

[80] The Applicant reviews instances in his testimony where he denies allegations arising from Captain Bui's evidence, such as the allegation of the Applicant being a high profile member of the Bonavota clan as a bookkeeper or the Applicant's relationship with Ms. Capparotta, the daughter of a prominent member of the Ndrangheta, being related to his membership in Ndrangheta. The Applicant denied ever being a bookkeeper at all or having education of such,

and testified that his relationship with Ms. Capparotta was a function of the small size of the village he resided in. The Applicant acknowledges that it was up to the ID to reject his sworn evidence on these issues as not credible, but argues that its failure to do so creates gaps in its reasoning that *Vavilov* instructs are unreasonable: at para 96.

[81] At the hearing, the Applicant argued that Captain Bui was not involved in the "Rinascita Scott" operation, which resulted in the arrest of over 300 individuals including the Applicant, and that the warrant which led to the Applicant's arrest was not included in the record. Captain Bui's testimony amounted to allegations of facts, the Applicant argued, without supporting source evidence such as wiretaps and witness statements.

[82] I find the Applicant's submission in this respect lacks merits, in part for the various reasons I already set out above: that there was undisputed evidence to support the ID's findings, that the ID is entitled to weigh evidence, and that the Applicant's assertions were insufficient to establish the facts for which they were advanced.

[83] In addition, the Respondent argues that the ID was entitled to consider Captain Bui's evidence regardless of whether he has met the Applicant, noting that the ID specifically found (and explained its reasons for finding) Captain Bui's evidence credible and consistent with the documentary evidence. The Respondent asserts that the Applicant's arguments seek to have the Court reweigh the evidence. I agree.

[84] I also find that the Applicant mischaracterized the evidence. For instance, I note that Captain Bui clarified that a “bookkeeper” essentially refers to a person who takes instructions from the mafia boss.

[85] I find the ID clearly laid out its reasons for finding Captain Bui a credible witness, noting that he testified in a spontaneous, forthright and credible manner about his personal knowledge of his unit’s investigation into the Applicant. The ID notes that Captain Bui’s statutory declaration and his testimony referred to the police wiretap reports that were attached as appendices to his statutory declaration, but were not reproduced due to cost concerns. The ID also acknowledged Captain Bui’s testimony with regard to investigations that were not undertaken by his department.

[86] In my view, the ID reasonably assessed Captain Bui’s evidence, and acknowledged any limitations therein. As such, I find no basis to interfere with the ID’s findings.

D. *Did the ID err by failing to undertake an equivalency analysis with respect to the criminal offences the Applicant is alleged to have committed?*

[87] The Applicant argues that the ID’s failure to perform an equivalency analysis when applying paragraph 37(1)(a) to offences committed outside Canada was a fatal flaw rendering the ID Decision unreasonable. The Applicant takes issue with the ID simply assuming that the elements of the Italian offences matched those of the *Criminal Code*, RSC, 1985, c C-46, based on similar nomenclature.

[88] Instead, the Applicant submits that the test for determining equivalency set out in *Hill v Canada (Minister of Employment & Immigration)*, [1987] FCJ No 47 (CA) should have been considered.

[89] I reject the Applicant's argument. I find that the ID did not err by failing to conduct an equivalency analysis. As the Respondent points out, the ID explicitly stated in the Decision that the outstanding charges against the Applicant would constitute indictable offences in Canada.

[90] Further, case law confirms that the ID does not always have to perform an equivalency analysis.

[91] In *Lai v Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21 [*Lai*], the FCA upheld this Court's finding that an equivalency analysis for the purposes of inadmissibility on organized criminality grounds is not always required. The Court explained that "where the alleged offences are such that, regardless of the jurisdiction, most civilized countries would have laws condemning such an offence, it would be ludicrous to expect that expert evidence would have to be led in such a case": *Lai* at para 8. The FCA noted at para 9:

> With respect to the case before him, the Judge concluded that the record before the Immigration Division "shows abundant evidence that Triads in Macau were engaged in a number of activities that any civilized country would find to be illegal and indictable; including cold-blooded murder in public, extortion, assault, and more. A discrete analysis was unnecessary" (reasons, at paragraph 25). We agree, and find the Judge's conclusion to be consistent with the prior jurisprudence of this Court.

[92] In the case at hand, the evidence before the ID confirms that Ndrangheta engages in a vast array of criminal activity including kidnapping, drug trafficking, money laundering, corruption, theft of public goods, robbery, extortion, loan sharking, weapons trafficking, prostitution, environmental crimes, electoral crimes, and crimes of violence, including murder. Many, if not most, of these crimes would be considered "illegal and indictable" in a civilized country like Canada, as was found by the FCA in *Lai*. I find it was not necessary for the ID to conduct an equivalency analysis in a case like this.

E. *Should the Decision be set aside if the ID committed an error with respect to one piece of evidence?*

[93] The Applicant points to para 56 of the Decision, where the ID stated: "No single piece of evidence has been treated as determinative that [the Applicant] is a member of the criminal organization; rather the evidence has been considered as a whole." It follows, the Applicant argues, that if the ID erred in its assessment of any piece of evidence, then the Decision as a whole must fall, relying on *Demaria* at para 147.

[94] In my view, the Applicant took Justice Russell's observation in *Demaria* out of context. After setting out the conclusions made by the ID member regarding the applicant in that case, Justice Russell stated at para 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."

[95] Justice Russell went on to dissect the member's decision, finding that they relied on police opinion instead of evidence, noting at para 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.

[96] I pause here to mention that no such admission was made by Captain Bui in the case at bar.

[97] Justice Russell then addressed the applicant's concerns about the evidence with regard to an intercepted conversation that the member relied upon and an Italian report that Detective Moore had never read. Justice Russell however did not accept all of the applicant's concerns, noting at paras 85 and 87:

> [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 […]
>
> […]
>
> [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*.

[98] Justice Russell continued by providing a detailed analysis of the evidence, before finally concluding that the member could not 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": at para 122.

[99] Justice Russell noted certain evidence that would raise strong suspicions of the applicant's involvement in organized crime, but stated at paras 146 to 147:

> [146] […] 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."

[100] Thus, contrary to the Applicant's assertion, I do not find *Demaria* supports the proposition that if there is one error in the ID's treatment of evidence, the Decision as a whole must fall if it purported to rely on the evidence "as a whole." Instead, the Court in *Demaria* found the ID committed several errors, most notably by relying upon unsubstantiated police opinion, which led to the decision being set aside as a whole. The ID, in my view, did not make such an error in the case at bar, and did not commit other errors in assessing evidence, with the exception of the Organizational Chart.

[101] Further, while I agree with the Applicant that the ID did not assess the reliability of the Organizational Chart before admitting it as evidence, I already noted that it was unclear to what extent this evidence factored into the ID's overall assessment of the Applicant's membership in Ndrangheta. As the Court explained in *Rinchen v Canada (Citizenship and Immigration)*, 2022 FC 437 at para 21:

> I accept that administrative decisions need not be perfect and that an imperfect decision with immaterial errors can still be reasonable, if other parts of a decision maker's analysis are sound and the errors are not determinative of the final outcome. It is also true that a reviewing court has the discretion to refuse to grant the relief sought by an applicant on the ground that an error allegedly made by the

> administrative decision maker is immaterial (*MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2 [*MiningWatch*] at para 52; *Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55 at paras 3–6; *Sutherland v Canada (Citizenship and Immigration)*, 2016 FC 1212 at para 31). However, in analyzing the materiality of an error, a reviewing court is concerned with the result of the administrative decision and must assess whether an applicant could expect a different outcome in the absence of the error […]

[102] Having considered the Decision as a whole, including all the evidence before the ID and the ID's assessment of the evidence, I find that the ID's failure to assess the reliability of the Organizational Chart before admitting it as evidence was immaterial. I do not find that the Applicant could expect a different outcome in the absence of this one error.

[103] As such, I find that the error does not render the ID Decision as a whole unreasonable and exercise my discretion not to grant the relief the Applicant seeks.

[104] Therefore, the ID Decision, and flowing from it the CBSA Decision, must stand as reasonable.

IV. Conclusion

[105] The applications for judicial review are dismissed.

[106] There is no question for certification.

JUDGMENT in IMM-9733-21 & IMM-9280-21

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

APPENDIX A

***Immigration and Refugee Protection Act* (SC 2001, c 27)**
***Loi sur l'immigration et la protection des réfugiés* (LC 2001, ch 27)**

Inadmissibility **Rules of interpretation** **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.	**Interdictions de territoire** **Interprétation** **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…	**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…

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9733-21
STYLE OF CAUSE:	DOMENICO CUGLIARI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION, THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
AND DOCKET:	IMM-9280-21
STYLE OF CAUSE:	DOMENICO CUGLIARI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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