

Federal Court



Cour fédérale

**Date: 20250107**

**Docket: IMM-220-24**

**Citation: 2025 FC 37**

**Ottawa, Ontario, January 7, 2025**

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

**BETWEEN:**

**JENO LAKATOS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] A member of the Immigration Division [Member] found the Applicant inadmissible to Canada under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], on grounds of organized criminality. The Member also found that the Applicant was not inadmissible to Canada under paragraph 36(1)(c) on grounds of serious criminality. Both determinations turned primarily on the Member's interpretation of a Hungarian arrest warrant detailing nine alleged theft incidents.

[2] The Applicant submits, and I agree, that the Member's decision was unreasonable as the Member relied on the same evidence to reach different conclusions under paragraphs 36(1)(c) and 37(1)(a) of the *Act*. This contradictory treatment of the same evidence, particularly given the Member's explicit language about the reliability of the warrant, undermines the decision's internal coherence.

## II. Facts

[3] The Applicant, a citizen of Hungary of Roma ethnicity, arrived in Canada on October 24, 2019. Shortly thereafter, he filed a refugee claim. However, the claim was suspended due to inadmissibility proceedings initiated on the basis of an international arrest warrant issued by Hungarian authorities on October 31, 2019. The warrant alleged the Applicant's involvement in nine theft incidents occurring between January and September 2019.

[4] On September 27, 2023, the Immigration Division held an admissibility hearing under subsection 44(2) of the *Act*. Following this hearing, the Member issued a deportation order on December 21, 2023, finding the Applicant inadmissible under section 37(1)(a) for organized criminality.

## III. Decision Below

[5] The Member investigated the Applicant's potential inadmissibility under both paragraphs 36(1)(c) and 37(1)(a) of the *Act*. While the Member found insufficient evidence to establish serious criminality under paragraph 36(1)(c), she determined that there were reasonable grounds to conclude the Applicant was inadmissible under paragraph 37(1)(a) for organized criminality.

[6] For paragraph 36(1)(c) inadmissibility of serious criminality, the Member applied a two-part test requiring: (1) commission of an act outside Canada that constitutes an offence where committed, and (2) if committed in Canada, would constitute an offence punishable by a maximum term of imprisonment of at least 10 years. The first element was satisfied through evidence of Hungarian penal code violations. However, the second element was not because the Member determined she could only clearly attribute one theft involving 289,000 Hungarian forints, approximately \$1,100 CAD, to the Applicant. This fell below the \$5,000 CAD statutory threshold for serious criminality.

[7] For paragraph 37(1)(a) inadmissibility of organized criminality, the Member identified a group of four individuals engaged in coordinated thefts targeting elderly victims, citing evidence of organized methods, financial gain, and multiple participants acting in concert. The Member rejected the Applicant's claim of single-incident involvement as only a driver for the group, relying instead on documentary evidence, the timing of his Canadian arrival, inconsistent statements about Hungarian court proceedings, and implausible explanations for entering Canada. Drawing on *Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326, the Member determined that the group met the definition of a criminal organization.

#### IV. Issue

[8] The only issue before this Court is whether the Member's decision was reasonable. As noted above, the central question is whether the Member's analysis demonstrates internal coherence in its treatment of the Hungarian arrest warrant as both evidence for finding the Applicant participated in organized criminal activity under paragraph 37(1)(a) and for rejecting

his involvement in high-value thefts under paragraph 36(1)(c) of the *Act*. The reasonableness of the Member's credibility finding is also challenged.

V. Standard of Review

[9] For substantive review, I agree with the parties that the Officer's decision is reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

VI. Legal Framework

[10] Paragraph 36(1)(c) of the *Act* governs inadmissibility based on serious criminality arising from a conviction outside of Canada:

**Serious criminality**

**36 (1)** A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

...

**(c)** committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

**Grande criminalité**

**36 (1)** Emportent interdiction de territoire pour grande criminalité les faits suivants :

[...]

**c)** commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction sous le régime d'une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

[11] Paragraph 37(1)(a) of the *Act* governs inadmissibility based on organized criminality arising from a conviction outside of Canada:

**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 prévue sous le régime d'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;

[12] The applicable standard of proof for both assessments is “reasonable grounds to believe,” as stated in section 33 of the *Act*:

**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

**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

reasonable grounds to believe that they have occurred, are occurring or may occur.      sont survenus, surviennent ou peuvent survenir.

[emphasis added]

This standard lies between mere suspicion and a balance of probabilities, requiring assessment based on an objective basis supported by compelling and credible information: *Athie v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 425 at para 46, citing *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114.

## VII. Analysis

[13] I find the Member’s decision unreasonable. It exhibits a fundamental logical inconsistency in the treatment of the Hungarian arrest warrant, which undermines the internal coherence required for reasonable administrative decision-making. As this defect is determinative, I need not address the issue of credibility.

[14] The inconsistency is baked into the Member’s analysis. The arrest warrant was the sole documentary evidence detailing the nine alleged criminal incidents and formed the evidentiary basis for the Member’s conclusions. In addressing paragraph 36(1)(c) inadmissibility, the Member characterized the warrant as too ambiguous to establish the Applicant’s involvement in high-value thefts, specifically pointing to this language on the warrant: “disclosure of the well-founded suspicion regarding [the Applicant] was only possible in respect to the crime described in point 7.” Yet, the Member relied on the same warrant to support a finding of organized criminality under section 37(1)(a), citing a “pattern of criminal activity” and rejecting the Applicant’s testimony of single-incident involvement. [emphasis added]

[15] This inconsistency is particularly stark when examining the content of the warrant. The document provides detailed narratives of the nine incidents occurring between January and September 2019, outlining specific roles, locations, and monetary values. For example, incident #6 describes the Applicant entering a house and engaging in deceptive conduct while an associate stole 2,000,000 forints—approximately \$7,500 CAD. This amount clearly meets the monetary threshold for section 36(1)(c). The Member’s failure to reconcile this evidence with her conclusion of ambiguity regarding high-value thefts creates a logical gap.

[16] The Respondent submits that single-incident participation suffices for the application of paragraph 37(1)(a), citing jurisprudence that supports minimal thresholds for organizational membership. While correct in law, this argument still does not clarify the core inconsistency in the Member’s reasoning. The Member explicitly rejected the Applicant’s claim of single-incident involvement and relied on the warrant to establish participation in multiple incidents. This reliance on a broader pattern of criminality contradicts the Member’s simultaneous conclusion that the warrant was too ambiguous to prove a single high-value theft under section 36(1)(c).

[17] The Respondent further asserts that the Member “found that the Applicant was not caught by [paragraph 36(1)(c)]...because the warrant included full disclosure of evidence of only one of the thefts.” This mischaracterizes the content of the warrant. The document provides extensive evidence of the Applicant’s involvement in multiple incidents, including specific acts, conversations, and roles. The Member’s selective reading of the “well-founded suspicion” language disregards portions of the warrant that directly contradict this limited interpretation.

[18] While theoretically, a warrant could fail to prove specific high-value thefts but still establish organized criminality through evidence of patterns, coordination, or methodology, this scenario does not apply here. The ambiguity cited by the Member stems solely from a single line about incident #7. The remainder of the warrant documents the Applicant's direct participation in multiple incidents. The Member relied primarily on this evidence to reject the Applicant's claim of single-incident involvement, explaining that "the documentary evidence before me certainly suggests otherwise." This finding necessarily accepted the warrant's content to establish multiple incidents of participation—contradicting the conclusion that the same evidence was too ambiguous to prove involvement in a single high-value theft. The Member offered no reasoned explanation for this conflicting treatment of the same evidentiary record.

[19] I am of the view that this inconsistency transcends mere differences in legal tests between paragraphs 36(1)(c) and 37(1)(a). It is rooted in a contradictory assessment of the warrant's reliability for establishing the Applicant's criminal involvement. The Member cannot logically find the warrant simultaneously too ambiguous to prove specific high-value thefts yet sufficiently clear to demonstrate a pattern of criminal activity and organizational membership. This represents precisely the kind of internal incoherence that renders a decision unreasonable under *Vavilov*.

#### VIII. Conclusion

[20] The Member's contradictory treatment of the Hungarian arrest warrant renders the decision unreasonable. The warrant was deemed too ambiguous to establish high-value thefts under paragraph 36(1)(c) but sufficiently reliable to demonstrate a pattern of criminal activity under paragraph 37(1)(a). This inconsistency cannot be resolved by the Respondent's single-

incident sufficiency argument, as the Member rejected the Applicant's claim of one-time involvement by relying on the warrant that she dismissed as very unclear.

[21] For these reasons, the decision must be set aside as unreasonable and the matter referred back to be decided by a different Member.

[22] No question was proposed for certification.

**JUDGMENT in IMM-220-24**

**THIS COURT'S JUDGMENT is that** this application is allowed and the matter is referred back to be decided by a different Member, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-220-24

**STYLE OF CAUSE:** JENO LAKATOS v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 19, 2024

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JANUARY 7, 2025

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