Federal Court Cour fédérale

Date: 20250123

Docket: IMM-14579-23

Citation: 2025 FC 136

Toronto, Ontario, January 23, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ANTHONY BANCROFT BYFIELD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In a decision dated November 3, 2023, the Immigration Division [ID] found the Applicant, a permanent resident, inadmissible to Canada for being a member of an organization believed on reasonable grounds to be engaged in a pattern of criminal activity pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant now seeks judicial review of the ID's decision. The Applicant argues the ID unfairly failed to require that the Respondent Minister produce wiretap records obtained in the course of the underlying criminal investigation. The Applicant further argues the decision is unreasonable because the ID unreasonably misconstrued, accepted or rejected evidence; and it failed to provide adequate reasons to justify the conclusion that there are reasonable grounds to believe the Applicant is inadmissible on grounds of organized criminality. The Respondent argues the ID's decision is reasonable and there are no grounds to intervene.

[3] I am not persuaded that there was any breach of procedural fairness or that the decision is unreasonable. The Application is dismissed for the reasons that follow.

II. Background

[4] The Applicant became a permanent resident on August 8, 1975. In March 2017, by way of a guilty plea, the Applicant was convicted of seven counts of fraud over $5,000 under paragraph 380(1)(a) of the *Criminal Code*, RSC 1965, c C-46. The convictions followed a police investigation, identified as "Project Windows," into a fraudulent motor vehicle purchase-and-export scheme involving a number of individuals. Following his conviction, the Applicant was reported as inadmissible on grounds of organized criminality pursuant to paragraph 37(1)(a) of the IRPA. Upon finding the Applicant inadmissible, the ID also issued a deportation order.

III. Standard of Review

[5] Questions of fairness are to be assessed with a focus on the nature of the substantive rights involved and by asking whether the procedure was fair having regard to all of the circumstances. While no standard of review applies *per se*, correctness best reflects the Court's approach (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, citing *Eagle's Nest Youth Ranch Inc v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at para 20).

[6] The ID's assessment of the evidence and inadmissibility finding are reviewable on the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]). To succeed on a reasonableness review, the party challenging the decision must satisfy the Court that the decision's shortcomings cause it to lack the requisite degree of justification, intelligibility and transparency in relation to the relevant factual and legal constraints. A decision maker need not address every possible issue that might arise on the record, but a failure to address central issues and concerns raised may undermine the reasonableness of a decision. Any alleged flaws or shortcomings must be more than merely superficial or peripheral missteps; instead, a reviewing court must be satisfied the flaws relied on by the challenging party are sufficient to render the decision unreasonable (*Vavilov* at paras 99-100 and 127-128).

IV. Legal framework and applicable principles

[7] Section 37 of the IRPA states:

Organized criminality	**Activités de criminalité organisée**
37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	**37. (1)** Emportent interdiction de territoire pour criminalité organisée les faits suivants :
(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	***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;
[…]	[…]
Application	**Application**
(2) Paragraph (1)(a) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is	**(2)** Les faits visés à l'alinéa (1)a) n'emportent pas interdiction de territoire pour la seule raison que le résident permanent ou l'étranger est entré au Canada en ayant recours à une personne qui se

involved in organized criminal activity.	livre aux activités qui y sont visées.

[8] To establish that a foreign national or permanent resident is inadmissible under paragraph 37(1)(a) of the IRPA, the Minister must establish:

1. That the individual reported as inadmissible is a permanent resident or a foreign national;
2. That a criminal organization does, or did, exist; and
3. That the individual reported as inadmissible is, or was, a member of that criminal organization.

Akanbi v Canada (Citizenship and Immigration), 2023 FC 309 at para 49 [*Akanbi*].

[9] Facts are to be established on the reasonable grounds to believe standard (IRPA, s 33). This standard requires more than a mere suspicion but is less stringent than the civil standard of proof on a balance of probabilities (*Akanbi* at para 52, citing *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114). The ID "may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances" (*Akanbi* at para 53, citing IRPA, ss 173(c) and (d)).

V. Decision under review

[10] In its decision, the ID first summarized the background circumstances and the respective positions of both Parties. The ID then set out the three elements to be established on the

reasonable grounds to believe standard where the Minister alleges inadmissibility on grounds of organized criminality. The ID then proceeded to address each of the three elements.

[11] The ID noted that the first element – that the Applicant is a foreign national or permanent resident – was not in issue.

[12] In considering the second requirement – whether a criminal organization existed, – the ID found reasonable grounds to believe that a criminal organization, as contemplated in s. 37(1)(a) of the IRPA and the applicable jurisprudence, existed. In coming to this conclusion, the ID gave considerable weight to the police reports and court documents. In particular, the ID noted that an agreed statement of facts [ASOF] had been generated in the course of the criminal proceedings, which the Applicant agreed was substantially correct, and was accepted by the Court. The ID further found that the ASOF demonstrated the Applicant had been involved in criminal activities in Canada and working in concert with, among others, a core group of identified individuals.

[13] Before the ID, the Applicant argued that there never was a criminal organization, and instead asserted that his guilty plea was driven by a desire to minimize his sentence and avoid deportation. As such, the Applicant submitted that it was not open to the ID to adopt the findings of the criminal court. The ID considered and rejected the Applicant's position, distinguishing the jurisprudence the Applicant had brought to its attention, and citing other evidence – e.g., news reports and the testimony of a police officer involved in Project Windows – that supported the finding that there were reasonable grounds to believe a criminal organization existed.

[14] On the third requirement – membership, – the ID considered the police officer's testimony, the documentary evidence, including the criminal court's reasons, and the position advanced by the Applicant. The ID found the Applicant's evidence contradicted the preponderance of other evidence and noted it had previously rejected the Applicant's explanation for the guilty plea, finding the Applicant's arguments to be an attempt to re-litigate the criminal proceeding.

[15] Satisfied that all three elements had been established on the reasonable grounds to believe threshold, the ID concluded the Applicant was inadmissible on grounds of organized criminality.

VI. Analysis

A. *No breach of fairness*

[16] The Applicant argues that the ID unfairly relied on wiretap summaries that do not provide verbatim reporting and therefore may not be accurate or complete. The Applicant further argues that the ID's treatment of the arguments advanced on the issue of the wiretap summaries are confused, contradictory and therefore unreasonable.

[17] In its decision, the ID states that the wiretap summaries are not "particularly helpful independent of the remainder of the evidence" but that "they form part of the complete and consistent picture of the activities of the various members of the criminal organization including [the Applicant]." This statement is neither contradictory nor confusing. The ID has, in my

opinion, clearly stated that it did not find the wiretap summaries helpful on their own but was satisfied that they were corroborative of the remainder of the evidence on the record.

[18] The Applicant cites the inherent frailties of summaries to argue that fairness required the ID order the production of the transcripts or, alternatively, to draw a negative inference and reject allegations not supported by other reasonably available evidence on the basis of the Minister's failure to produce the transcripts. However, the Applicant does not point to any ID findings that rely exclusively on the wiretap evidence or that are unsupported by other evidence the ID concluded was reliable and credible. Nor does a careful review of the ID's decision disclose that any of the findings or conclusions reached rely exclusively on the wiretap summaries. Instead, the ID has found the summaries to be of little assistance beyond confirming the picture painted by other evidence detailing the activities of the individuals allegedly forming the criminal organization. Having regard to all the circumstances, no unfairness arises.

[19] Nor did the ID act unfairly or unreasonably in considering the wiretap summaries simply because transcripts might have been produced. The ID may receive any evidence that it considers credible or trustworthy in determining whether relevant facts have been established on the reasonable grounds to believe standard (IRPA, ss 33 and para 173(d)). Despite the Applicant's objections, the ID was entitled to receive and consider the wiretap summaries. In doing so, the ID acknowledged and addressed the Applicant's objections and explained the limited role the summaries played in the analysis. The ID's treatment of the issue was not unfair or unreasonable.

B. *The ID's decision is reasonable*

[20] The Applicant argues that the ID unreasonably accepted police evidence as credible. I disagree. The ID did not simply recite and accept the evidence of the police, nor did it reject the testimony of the Applicant solely on the basis that it was inconsistent with the contents of the police investigation. Instead, the ID relied upon a constellation of evidence to support its conclusion – this evidence included news articles, that charges had resulted from the police investigation, that members of the group including the Applicant had been convicted, that the Applicant had agreed to a series of facts in the criminal proceeding, that the ASOF was accepted by the criminal court, and the reasons for sentence as articulated by the judge presiding in the criminal proceeding.

[21] Nor did the ID ignore the Applicant's position that his conviction could not be relied on before the ID because he had pled guilty in the criminal proceeding for reasons unrelated to his guilt. Instead, the ID grappled with this position and relied upon *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 [*CUPE*] to hold that it was not open to the applicant to re-litigate his criminal conviction before the ID, even if the intent was not to challenge the criminal conviction – "[w]hat is improper is to attempt to impeach a judicial finding by the impermissible route of relitigation in a different forum. Therefore, motive is of little or no import." (*CUPE* at para 46).

[22] Similarly, in *Gracia v Canada (Citizenship and Immigration)*, 2021 FC 158, in the context of a motion seeking a stay of removal, Justice John Norris notes:

> [28] The applicant does not state whether or not he was represented by counsel in the criminal proceeding. He has not filed

> a transcript of the guilty plea and sentencing proceeding. Section 606(1.1) of the *Criminal Code* provides, *inter alia*, that a court may accept a plea of guilty only if it is satisfied that the accused is making the plea voluntarily, that the accused understands that the plea is an admission of the essential elements of the offence, and that the facts support the charge. In the absence of any evidence to the contrary, I must presume that the judge before whom the applicant entered his guilty plea conducted the necessary inquiry in order to be satisfied of these things as well as all the other aspects of section 606(1.1). Further, I am prepared to presume that the applicant provided answers to this inquiry that so satisfied the judge. Otherwise, the guilty plea would not have been accepted. With his affidavit evidence in this proceeding, the applicant has placed himself on the horns of a dilemma: either he misled the criminal court or he is attempting to mislead this Court. There is no evidence that the applicant has sought to set aside his guilty plea on appeal on the basis that it was involuntary or uninformed and, as such, was therefore invalid. A guilty plea is a formal in-court admission of guilt (*R v Faulkner*, 2018 ONCA 174 at para 85). The applicant's affidavit evidence on this motion is directly contradicted by the admission he made with his guilty plea on March 20, 2020.

[23] The ID reasonably concluded that *CUPE* was on point, and therefore gave considerable weight to the facts as laid out in the criminal court documents, the police reports and the evidence of the police officer, and attributed little weight to the Applicant's "attempt to distance himself from his plea of guilt" and his assertion that he lacked knowledge of any criminal activities. Again, the ID did not restrict itself to a simple recitation of the evidence followed by a conclusion, as the Applicant submits.

[24] With respect to the ID's treatment of the testimony provided by the Applicant's witness, the ID found the testimony to be internally consistent and straight forward but explained the transactions testified to were not linked to the Applicant's criminal activity. In the absence of a link to the transactions underpinning the criminal charges, the ID concluded that the Applicant

may have also engaged in legitimate business activities alongside his criminal ones. The ID's treatment of the witness's testimony is both logical and rational.

[25] The Applicant also takes issue with the ID's failure to address certain matters raised in submissions, specifically the alleged discrepancies between the police investigation and the facts as set out in the court documents and certain acknowledged gaps. The ID's reasons need not be perfect, nor was the ID required to engage with every issue raised by the Applicant (*Vavilov* at paras 91 and 127-128, see also *Canada (Citizenship and Immigration) v Mason*, 2023 SCC 21 at para 74). The ID engaged with and addressed the core or central concerns arising in this matter and there was ample evidence within the record – evidence the ID reasonably concluded was credible and reliable – to support the ID's conclusions that on a reasonable grounds to believe standard, a criminal organization did, in fact, exist and that the Applicant was a member of that criminal organization. That the Applicant disagrees with the ID does not impugn the reasonableness of the ID's decision.

VII. Conclusion

[26] The Application for judicial review is dismissed. The Parties have not proposed a question for certification, and none arises.

JUDGMENT IN IMM-14579-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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