

Federal Court



Cour fédérale

Date: 20250131

Docket: IMM-6916-22

Citation: 2025 FC 199

Ottawa, Ontario, January 31, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

A.S.

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, an Indian national, seeks judicial review of a July 12, 2022 decision [Decision] by a visa officer [Officer] refusing his permanent residence [PR] application. The Applicant's spouse sponsored him in 2014. The Officer denied the Applicant's PR application on security grounds under section 34(1)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], due to the Applicant being a member of an inadmissible class described in

IRPA section 34(1)(f). In arriving at this decision, the Officer considered the Applicant's participation in two groups: Aglaya and the Srivastava Group.

[2] This application for judicial review is allowed. The Officer's inadmissibility finding pursuant to *IRPA* sections 34(1)(d) and 34(1)(f) with respect to Aglaya is unreasonable. It is not necessary to address the submissions related to the Srivastava Group under *IRPA* section 34(1)(d).

II. Background

[3] This is the third application for Leave and for Judicial Review of the Applicant's permanent residence application. The first decision was remitted for redetermination by way of settlement. The second decision was found to be unreasonable by this Court and remitted for redetermination in *AB v Canada (Citizenship and Immigration)*, 2020 FC 461. This matter concerns that redetermination.

[4] After the Court's decision, the Applicant received a request for further documentation on April 30, 2020, which he subsequently provided. Since no further correspondence was received, the Applicant filed an application seeking a mandamus remedy. That application was discontinued once the Decision was rendered.

A. *Procedural Fairness Letter*

[5] On March 4, 2022, the Officer sent the Applicant a procedural fairness letter [PFL] stating there are reasonable grounds to believe the Applicant is a member of the Srivastava

Group, playing a major supervisory and decision-making role across its various businesses. Since the initial refusal of the 2018 PR application, there have been several open-source articles and investigations regarding the activities of the Srivastava Group and its subsidiary companies.

[6] The Officer identified concerns about the Applicant's admissibility under *IRPA* section 34(1)(f) arising from the Srivastava Group's relationship with the company known as Aglaya, whose CEO is the Applicant's brother. Aglaya is involved in the sale and production of surveillance and hacking tools for information warfare and signal intelligence. The Officer noted Aglaya appears to be a subsidiary or affiliate of the Srivastava Group, sharing the same physical address.

[7] The Officer identified two concerns on the Applicant's admissibility under *IRPA* section 34(1)(d). First, since the Applicant is a member of the Srivastava Group, and an immediate family member of Aglaya's CEO, the Officer had reasonable grounds to believe the Applicant posed a serious and credible threat to Canada's infrastructure and national security. Second, the Officer had reasonable grounds to believe that the Applicant and Srivastava Group have posed, and continue to pose, a threat to the security of Canada based on significant linkages between the Applicant and disinformation campaigns.

[8] The Officer identified a December 2020 report by a non-governmental organization [NGO] named EU DisinfoLab, linking the Srivastava Group to disinformation campaigns aiming to: discredit nations in conflict with India; misuse NGOs and think tanks accredited by the United Nations; misappropriate the names of European Union politicians; and to create fake media outlets that publish and amplify content used to attack those deemed contrary to India's

interests. The Officer also noted the Canadian Broadcasting Corporation [CBC] identified the Srivastava Group as connected to fake news operations targeting South Asian populations in Canada, including 16 websites designed to look like local Canadian news websites.

[9] The Officer expressed concerns that the Applicant did not fulfill the requirements for disclosure under *IRPA* subsections 16(1) and 40(1) since he failed to declare his participation in founding these two organizations.

B. *Response to the Procedural Fairness Letter*

[10] On June 15, 2022, the Applicant provided a 57-page response to the PFL denying any connection to Aglaya. The Applicant denied any connection between his brother and the Srivastava Group, denied that Aglaya is a subsidiary or affiliate, and denied the Srivastava Group had engaged in any disinformation campaigns.

[11] The Applicant challenged the Officer's reliance on the EU DisinfoLab report. The report has been subject to legal sanctions, and neither the report nor its sources can be verified. The Officer failed to identify specific examples of the activities identified by EU DisinfoLab or any disinformation dissemination. The Applicant states the information about Pakistan is not disinformation. Alternatively, even if it were, the Officer did not identify how disseminating disinformation about Pakistan poses a danger to the security of Canada.

[12] Concerning *IRPA* subsections 16(1) and 40(1), the Applicant explained he did not disclose the two organizations because he believed the question did not capture religious organizations, particularly since they are inactive.

[13] The Applicant provided a statutory declaration including: a statement that Aglaya is neither a subsidiary nor affiliate of the Srivastava Group; a statement that the Srivastava Group has not engaged in disseminating disinformation; and a list of organizations with which the Applicant is or is not involved. The Applicant explained his involvement in two undeclared religious organizations, citing both as inactive.

III. Decision

[14] The Officer found that there are reasonable grounds to believe the Applicant is a member of the inadmissible class of persons described in *IRPA* section 34(1)(f) and is therefore inadmissible under *IRPA* section 34(1)(d).

[15] The Officer's Global Case Management System [GCMS] notes are extensive. With respect to *IRPA* sections 34(1)(f) and 34(1)(d), the Officer concluded the Applicant failed to produce evidence, aside from the sworn declaration, responding to the multiple factual connections between the Srivastava Group and Aglaya. The Officer remained concerned that Aglaya is, in effect, a subsidiary of the Srivastava Group. Considering the portable and covert nature of Aglaya's malware and cyberwarfare products, the Officer continued to have concerns that granting the Applicant, and the wider Srivastava Group, physical access to Canada's networks, servers, computers, and devices would be detrimental to Canada's national security.

[16] With respect to *IRPA* section 34(1)(d), the Officer found:

“...the combined influencing of both politicians and public opinion through lobbyists and disinformation is a serious act that could interfere with the normal functioning of democratic processes...”

and,

“As the result of elections and legislative decisions depend on public opinion and news information, I consider them particularly vulnerable to disinformation campaign.”

[17] The Officer concluded there are reasonable grounds to believe the Applicant and the Srivastava Group have posed, and continue to pose, a threat to the security of Canada based on significant linkages between the Applicant and disinformation campaigns. Granting the PR application would further the Srivastava Group’s ability to pursue disinformation campaigns in Canada and could contribute to compromising the integrity of the Canadian electoral process. As the Srivastava Group has attacked Pakistan and China in the past, the Officer felt the Applicant’s presence in Canada may adversely influence the lives of Canadian Pakistani and/or Chinese permanent residents and citizens through inflammatory and misleading news coverage, potentially resulting in civil unrest and violence.

[18] The Officer noted the EU DisinfoLab allegations about the Srivastava Group’s activities, including: shared IP addresses and physical addresses between the Srivastava Group and organizations of interests; use of the Applicant’s name to register some of the organizations; think tanks created by Srivastava Group to protest outside United Nations events; and fake media outlets linked to the Srivastava Group which amplify fake and/or misleading articles regarding India’s rivals, promoting pro-India messaging. The Officer examined the corroboration of some of these allegations by the CBC, who identified fake news operations linked to the Srivastava Group that target South Asian populations in Canada, including 16 websites designed to look like local Canadian news websites.

[19] The Officer found the Applicant's response to the PFL provided limited evidence, besides the declaration, to support his claim that no relationship exists between the entities. The broad declarations did not provide sufficient information to overcome these concerns. The Officer considered the Applicant's arguments about the reliability of the EU DisinfoLab Report, engaged with the credibility of the sources used and the corroboration from CBC journalists. The Officer concluded that the Applicant's submissions missed the more nuanced and larger picture, that there is a collection of evidence pointing to a pattern of concern regarding the Srivastava Group. The central issue is the evidence showing the Srivastava Group created or resurrected NGOs, think tanks, and media outlets, which were then used to discredit India's rivals, leveraging news aggregation and in-person events. This was done with the goal to change the overall balance of news coverage and publish messages with a veneer of credibility at a higher profile than would otherwise be possible through legitimate means.

[20] With respect to *IRPA* sections 16(1) and 40(1), while the Applicant had not been fully truthful under section 16(1), the Officer was not satisfied there are sufficient grounds to refer the application to a delegated decision-maker for a section 40(1) assessment.

IV. Issues and Standard of Review

[21] This matter raises the following issues:

1. Is the Decision reasonable?
2. Is the Decision procedurally fair?

[22] As I have found the Decision unreasonable, there is no need to consider the submissions related to procedural fairness.

[23] The parties agree that the merits of the Decision are reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]). I agree. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Vavilov*. Therefore, the presumption of reasonableness is not rebutted (*Vavilov* at paras 16-17).

[24] This reasonableness assessment involves reviewing the two inadmissibility findings related to Aglaya under *IRPA* sections 34(1)(f) and 34(1)(d). Admissibility findings under section 34(1)(d) related to the Srivastava Group are unnecessary.

V. Relevant Provisions

[25] The Officer determined that the Applicant is inadmissible under two security grounds in *IRPA*:

Security

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

...

(d) being a danger to the security of Canada;

...

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

[26] *IRPA* section 33 further governs the interpretation of section 34:

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.

VI. Analysis on Reasonableness of the Decision

A. *Applicant's Position*

(1) Aglaya - Section 34(1)(f)

[27] Being a “member” means belonging to a group (*Chiau v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16793 (FCA) at para 57; *Denton-James v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1548 at para 13; *Ismeal v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 198 at paras 19-20). To establish “membership” in an organization, there must at least be evidence of an “institutional link” with, or “knowing participation” in, the group's activities (*Sinnaiah v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1576 at para 6 [*Sinnaiah*]).

[28] In finding Aglaya a subsidiary or affiliate of the Srivastava Group, and thus that the Applicant is a member of Aglaya, the Officer only references: (1) the Srivastava Group's executive members are immediate family members of the CEO of Aglaya; and (2) the Srivastava Group, Aglaya, and the Applicant's residence share a building and unit address in New Delhi. The PFL also identifies a blog post referencing a report naming Aglaya as Srivastava Group's “less known company”. However, no citation is provided for this claim in the report. In response, the Applicant's statutory declaration denies any connection to Aglaya.

[29] The Officer erred in finding limited evidence to show a lack of connection between the two companies, leading to an adverse credibility finding against the Applicant.

[30] First, the evidence is insufficient to establish an “institutional link” with or “knowing participation” in the group’s activities based on executive members’ family ties and a shared office address (*Sinnaiah* at para 6). The legal test requires reasonable grounds to believe rather than reasonable suspicions (*Araia v Canada (Citizenship and Immigration)*, 2015 FC 832 at paras 38-39).

[31] Second, the Officer erred by discounting the Applicant’s sworn statement, focussing exclusively on evidence that was not submitted (*Kim v Canada (Citizenship and Immigration)*, 2020 FC 581 at para 63). The Applicant is in the difficult position of having to prove a negative, that he is not a member of Aglaya. It is difficult to contemplate what evidence would have satisfied the Officer that no connection exists between the Applicant and the Srivastava Group. The Officer also had no concrete evidence, such as business records, to establish the link between the Applicant and Aglaya. Therefore, the Officer’s finding is based on speculation and an absence of credible evidence.

(2) Aglaya - Section 34(1)(d)

[32] In *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*], the Supreme Court of Canada commented on the meaning of “danger to the security of Canada” in the context of interpreting provisions dealing with the return of a Convention refugee. “Danger to the security of Canada” must be given a fair, large, and liberal interpretation, but also demands proof of a potentially serious threat (*Suresh* at para 89). The threat must be grounded in

objectively reasonable suspicion based on evidence, and the threatened harm must be substantial rather than negligible (*Suresh* at para 90). The reasonable grounds to believe standard requires compelling and credible information (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114 [*Mugesera*]).

[33] Accordingly, there must be credible evidence that the Applicant had done, or would do, something to support a “danger to the security of Canada” conclusion. The Officer’s reasoning is flawed. There is no reasonable basis to conclude that Aglaya is a subsidiary or affiliate of Srivastava Group, nor that the Applicant’s presence in Canada presents a threat to Canadian infrastructure, as submitted.

[34] Alternatively, if the Officer reasonably determined Aglaya is a subsidiary or affiliate of Srivastava Group, the finding remains unreasonable. There is no evidence to suggest that the Applicant had done anything posing a threat to the security of Canada. Mere guilt by association is insufficient. There must be evidence that the Applicant knowingly did, or might do, something to support the conclusion on dangerousness (*Azizian v Canada (Minister of Citizenship and Immigration)* 2017 FC 379 [*Azizian*] at para 38; *Hosseini v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 171 at paras 30-48; *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*]; *Moghaddam v Canada (Citizenship and Immigration)*, 2018 FC 1063 [*Moghaddam*]).

[35] There is no evidence the Applicant had any knowledge, participation, support, or engagement with the alleged activities of Aglaya. The Officer’s finding is based on: family ties; Aglaya having the same registered address as the Srivastava Group and the Applicant’s listed

residence; and a blog that refers to Aglaya as Srivastava Group's "less known company". The Officer's conclusion that the Applicant's presence in Canada could significantly facilitate Aglaya's access to Canada's IT networks is based on speculation and conjecture (*Moghaddam* at para 55).

B. *Respondent's Position*

(1) Aglaya – Section 34(1)(f)

[36] The Officer reasonably considered Aglaya is affiliated with the Srivastava Group. *IRPA* section 33 only requires reasonable grounds to believe. The Officer had sufficient concerns regarding the familial relationship and physical location of Aglaya and the Srivastava Group. The Applicant provided insufficient evidence and non-credible responses to concerns raised in the PFL regarding shared IP addresses with fake, resuscitated NGOs used to disseminate disinformation. The Applicant did not address the Officer's concerns with responses sufficient to allay these clearly articulated concerns.

(2) Aglaya - Section 34(1)(d)

[37] The Officer reasonably identified the threat posed from spyware and malware should the Applicant have access to Canadian infrastructure. The Applicant did not provide sufficient information regarding Aglaya's connection with the Srivastava Group. Thus, the Officer continued to have reasonable grounds to believe that Aglaya is, in effect, a subsidiary or affiliate of the larger Srivastava Group. The Applicant has not shown that, were he present in Canada, the disinformation and threat from Aglaya does not constitute a danger to the security of Canada.

[38] The Applicant attempts to import the *Ezokola* complicity analysis into the legal test for *IRPA* sections 34(1)(d) and 34(1)(f). However, Courts have rejected this argument (*Azizian* at para 37; *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 28). The Court has cautioned against guilt by association, but this matter is distinguishable from cases such as *Moghaddam*. The Officer had reasonable concerns regarding the direct linkages between the Srivastava Group and its apparent affiliates, including the spyware company owned by the Applicant's brother being housed in the same building. Unlike *Azizian*, the Officer directly put these concerns to the Applicant, finding the Applicant's responses insufficient to rebut this credible evidence.

C. Conclusion

[39] For the following reasons, the Decision is unreasonable in its analysis of concerns related to Aglaya under *IRPA* sections 34(1)(f) and 34(1)(d).

(1) Aglaya - Section 34(1)(f)

[40] The Applicant does not challenge whether Aglaya's activities amount to security concerns under *IRPA* section 34(1)(d). The sole issue is whether the Applicant is a member of Aglaya for the purposes of *IRPA* section 34(1)(f).

[41] The Supreme Court of Canada has stated "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" (*Mugesera* at para 114). Reasonable grounds

exist where there is an objective basis for the belief which is founded on compelling and credible information (*Mugesera* at para 114).

[42] *IRPA* section 33 also governs the interpretation of section 34, which states:

“[t]he 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.”

[43] This matter is distinguishable from much of the case law since it does not concern the usual direct consideration of whether an officer reasonably found an applicant is a member of an organization under *IRPA* section 34(1)(f). Instead, this matter concerns whether the Applicant, as Vice Chairman of the Srivastava Group, is a member of Aglaya.

[44] The determinative issue is the sufficiency of the evidentiary basis for the Officer finding reasonable grounds to believe Aglaya is a subsidiary or affiliate of the Srivastava Group. The meaning of membership for the purposes of *IRPA* section 34(1)(f) must be given an unrestricted and broad interpretation (*Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paras 27 and 29). Aside from the statutory declaration denying such a connection, the evidence in the record is: 1) Aglaya, Srivastava Group, and the Applicant share a physical address; 2) the Applicant and his parents operate the Srivastava Group; and 3) the CEO of Aglaya is the Applicant's brother.

[45] Although the “reasonable grounds to believe” standard is a low threshold, there must be an evidentiary basis to meet the threshold beyond mere suspicion. The Officer did not demonstrate an objective foundation for the belief that Aglaya is a subsidiary or affiliate of the

Srivastava Group based on compelling and credible information (*Mugesera* at para 114). While the Applicant may be aware of Aglaya's activities, concerns about familial ties between the companies and shared addresses rise only to the level of suspicion. This does not constitute reasonable grounds for finding Aglaya is a subsidiary or affiliate, rendering the Applicant a member of Aglaya. In my view, the evidence of a shared address is further weakened given it is also shared with the Applicant's residence. The Officer's membership finding is unjustified, even in light of the liberal interpretation of membership for the purposes of *IRPA* section 34(1)(f).

(2) Aglaya - Section 34(1)(d)

[46] Given my finding on the Applicant's membership in Aglaya for the purposes of *IRPA* section 34(1)(f), it is unnecessary to address whether the Applicant poses a danger to the security of Canada due to his connection with Aglaya. I agree with the Applicant. If the Officer finding the Applicant an Aglaya member is unreasonable, then the foundational basis for finding the link between the Applicant and the security concerns associated with Aglaya is unreasonable as well.

VII. Conclusion

[47] This application for judicial review is allowed given the unreasonable findings related to the Applicant being a member of Aglaya.

[48] The parties do not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-6916-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed. The Officer's inadmissibility finding pursuant to *IRPA* sections 34(1)(f) and 34(1)(d) with respect to Aglaya is unreasonable. The matter is remitted for redetermination by a different officer.
2. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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