Federal Court Cour fédérale

Date: 20250403

Docket: IMM-8888-23

Citation: 2025 FC 613

Ottawa, Ontario, April 3, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

GIORGIO CAMPAGNA

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a 62-year-old citizen of Italy. He has been a permanent resident of Canada since the age of five. Despite having lived in Canada for almost his entire life, the applicant never obtained Canadian citizenship.

[2] On March 12, 2021, the applicant pled guilty to the criminal offence of keeping a common gaming house, contrary to paragraph 201(2)(b) of the *Criminal Code*. This is an offence punishable on summary conviction. The applicant was granted a conditional discharge, including a period of probation of one year that he completed without incident.

[3] In January 2023, the applicant was notified by the Canada Border Services Agency (CBSA) that a report had been prepared under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) stating that there were reasonable grounds to believe that he is inadmissible under paragraph 37(1)(a) of that Act on the basis of organized criminality – specifically, for engaging in an illegal gaming enterprise. The applicant was invited to provide written submissions as to why an order for his removal from Canada should not be sought. In response, counsel for the applicant provided comprehensive submissions and supporting evidence urging that the matter not be referred for an admissibility hearing.

[4] On June 16, 2023, the subsection 44(1) report was referred to an Inland Enforcement Supervisor (acting as a delegate of the Minister of Public Safety) with the recommendation that, pursuant to subsection 44(2) of the *IRPA*, the applicant's case should be referred to the Immigration Division of the Immigration and Refugee Board of Canada for an admissibility hearing.

[5] On June 28, 2023, the Minister's delegate agreed that the matter should be referred for an admissibility hearing. The delegate found that the severity of the applicant's actions and their

impact on public safety outweighed the concerns the applicant had raised about the adverse consequences of his removal from Canada.

[6] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA* on the basis that it is unreasonable.

[7] As I will explain, I agree with the applicant that the delegate's assessment of several relevant factors is unreasonable. Accordingly, this application for judicial review will be allowed, the June 28, 2023, decision will be set aside, and the matter will be remitted for redetermination by a different decision maker.

II. BACKGROUND

A. *Criminal Proceedings Against the Applicant*

[8] According to media reports relied on by the CBSA decision makers, the applicant was one of over two dozen individuals charged in December 2019 as a result of an Ontario Provincial Police (OPP) led investigation named Project Hobart. The media reports describe the target of the investigation as an illegal online sports gambling enterprise with links to organized crime.

[9] The applicant was originally charged with three counts of bookmaking contrary to section 202 of the *Criminal Code* and with one count of the commission of an offence for a criminal organization contrary to section 467.12 of the *Criminal Code*. Subsequently, the police laid a new information charging the applicant with a single count of knowingly permitting a

place (680 Silver Creek Blvd., Unit 9, Mississauga) to be used for the purposes of a common gaming house, contrary to paragraph 201(2)(b) of the *Criminal Code*. The applicant entered a plea of guilty to this charge on March 12, 2021. On the basis of his guilty plea and an agreed statement of facts, the applicant was found guilty of the offence. The original charges against the applicant were withdrawn by the Crown.

[10] According to the agreed statement of facts, the Project Hobart investigation had led police to an illegal gaming house operating in a café in Mississauga located at 680 Silver Creek Blvd, Unit 9. While not addressed in the agreed statement of facts, media reports of the arrests stated that, based on surveillance and intercepted private communications, police alleged that the gaming house was operated by four individuals: Raffaele Simonelli, Serafino Barone, Ralph Elammar and Dimitris Kellesis. The police investigative brief stated that, based on intercepted communications, investigators had concluded that Simonelli and Barone each owned 30% of the operation while Elammar and Kellesis each owned 20%.

[11] When the café was searched by police in December 2019, seven video gaming machines were seized. The agreed statement of facts stipulated that the applicant's involvement spanned the period from March to October 2019 and related only to the illegal video gaming machines at the Silver Creek location. During this time, the applicant went there regularly to collect cash from the machines. On some occasions, the applicant helped count the proceeds and discussed those proceeds with others; on other occasions, the applicant simply collected the funds. The agreed statement of facts also stated that, in intercepted private communications, the applicant discussed issues relating to maintenance of the video gaming machines. (The applicant himself

was never a named target of the authorizations to intercept private communications obtained in connection with Project Hobart.)

[12] A conversation intercepted on August 7, 2019, involving the applicant and others suggested that the proceeds collected that week amounted to $7440. There was no suggestion that this was an unusual amount. According to the agreed statement of facts, investigators believed that the applicant typically retained 20% of the proceeds for himself. The agreed statement of facts does not address where the balance of the proceeds went.

[13] On December 12, 2019 (the date of the applicant's arrest), search warrants were executed on his home and his car. Police seized currency totalling $79,020.00. In resolving the criminal proceedings against him, the applicant agreed that, of this amount, all but $3235 was property obtained by crime and he consented to its forfeiture as such pursuant to section 491.1 of the *Criminal Code*.

[14] As stated above, following the finding of guilt, the applicant received a conditional discharge. He was placed on probation for one year. The terms of the probation order included that he keep the peace and be of good behaviour and that he not have contact with the four individuals named above (see paragraph 10) as well as three others who had also been charged as a result of the Project Hobart investigation. The applicant completed the period of probation without incident in March 2022.

B. *The Subsection 44(1) Report*

[15] On January 12, 2023, a CBSA Inland Enforcement Officer prepared a report under subsection 44(1) of the *IRPA* stating that there are reasonable grounds to believe that the applicant is inadmissible under paragraph 37(1)(a) of that Act on grounds of organized criminality for engaging in an illegal gaming enterprise.

[16] Subsection 44(1) of the *IRPA* states:

Preparation of report	**Rapport d'interdiction de territoire**
44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	**44 (1)** S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

[17] Paragraph 37(1)(a) of the *IRPA* provides as follows:

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	**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

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 [. . .].	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 [. . .].

[18] For the applicant to be determined to be inadmissible under paragraph 37(1)(a) of the *IRPA*, three things would have to be established: first, that the applicant is a permanent resident or a foreign national (this has never been in issue); second, that he is or was a member of an organization; and third, that the organization "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." (Paragraph 37(1)(a) also mentions the commission of criminal offences outside Canada but it is not alleged that the applicant's inadmissibility is based on the furtherance of such offences.)

[19] The applicant's alleged inadmissibility is based solely on his conduct in Canada. In contrast to inadmissibility in such circumstances on the basis of serious criminality (*IRPA*, subsection 36(1)(a)) or criminality (*IRPA*, subsection 36(2)(a)), inadmissibility on the basis of organized criminality under paragraph 37(1)(a) does not require that the applicant have been convicted of an offence in Canada.

[20] Pursuant to section 33 of the *IRPA*, the factual issue of membership in the organization in question is determined on a reasonable grounds to believe standard. Pursuant to paragraph 37(1)(a), whether the organization has the requisite character is also determined on this standard.

[21] Since the applicant is a permanent resident of Canada, whether he is inadmissible under paragraph 37(1)(a) of the *IRPA* would be determined by the Immigration Division of the Immigration and Refugee Board of Canada. The Immigration Division would become seized with this question only if, pursuant to subsection 44(2) of the *IRPA*, the Minister of Public Safety (who, as in the present case, typically acts through a delegate in this regard) referred the matter to it. Under subsection 44(2), the Minister's delegate may refer the subsection 44(1) report to the Immigration Division for an admissibility hearing if the delegate "is of the opinion that the report is well-founded." I will return to this aspect of the section 44 determination below.

[22] Tracking the language of subsection 44(1) and paragraph 37(1)(a), the Inland Enforcement Officer's subsection 44(1) report states that the applicant is a permanent resident who, in the officer's opinion, is inadmissible pursuant to:

> Paragraph 37(1)(a) in that there are reasonable grounds to believe that [the applicant] is inadmissible to Canada for being a member of and participating in the activity 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 [*sic*] by way of indictment, or in the 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.

[23] The report further states that it is based on the following information: (1) the applicant is not a Canadian citizen; (2) the applicant is a permanent resident; (3) the applicant is a citizen of Italy; and (4) there are reasonable grounds to believe the applicant is inadmissible under paragraph 37(1)(a) of the *IRPA.* In the latter regard, the report repeats the statement quoted in the preceding paragraph and then adds: “Specifically, for engaging in an illegal gaming enterprise.” The report does not provide any supporting analysis for this conclusion, nor does it cite the information or evidence on which the conclusion is based.

C. *The January 12, 2023, Letter to the Applicant*

[24] The officer provided the applicant with a copy of the subsection 44(1) report under a covering letter dated January 12, 2023. In material part, the letter also states:

> A decision to allow you to remain in Canada or to seek to have a removal order issued against you will be made in the near future. The next step in the process is to conduct a complete review of the circumstances surrounding your case. Therefore, it is in your best interest to fully complete the enclosed information form and return it to this office.
>
> You may make additional written submissions providing reasons why a removal order should not be sought. The submissions may include details relevant to your case, including but not limited to:
>
> - your age at the time you acquired permanent residence in Canada;
> - what courses or programs you have taken or are enrolled in, and the steps you have taken towards rehabilitation;
> - the length of time spent, and the degree to which you are established in Canada;
> - your family in Canada and the impact on the family that your removal would cause;
> - the family and community support available to you; and

- the degree of hardship that would be caused to you if you were to be removed to your country of nationality.

[25] These instructions and the sorts of considerations the officer has identified reflect the guidance provided at the time by ENF 5, the Enforcement Manual for writing reports under subsection 44(1) of the *IRPA*.

D. *The Applicant's Submissions*

[26] In response to the January 12, 2023, letter, counsel for the applicant provided comprehensive submissions and supporting evidence requesting that the subsection 44(1) report not be forwarded to the Immigration Division for an admissibility hearing. Among other things, these submissions addressed the guidance in ENF 5 directly.

[27] At the outset, counsel for the applicant noted that, if found inadmissible on grounds of organized criminality by the Immigration Division, the applicant would not have the right to appeal the determination to the Immigration Appeal Division and, as a result, he could not seek special relief on the basis of humanitarian and compassionate (H&C) considerations (see *IRPA*, subsection 64(1)). As well, counsel noted the applicant would also be precluded from asking the Minister of Citizenship and Immigration to exempt him from inadmissibility on H&C grounds (see *IRPA*, subsection 25(1)).

[28] In summary, the applicant submitted that the matter should not be referred to the Immigration Division for an admissibility hearing because:

- He is well established in Canada. He has lived here almost his entire life.

- His entire immediate family lives in Canada: his elderly mother, who has been diagnosed with dementia and for whom the applicant provides care and support; his common law partner, with whom he has been in a relationship for over 40 years; his brother and sister; his two sons; and his three grandchildren.

- He was gainfully employed in the construction business until he suffered a debilitating back injury at work and, subsequently, he was seriously injured in two motor vehicle accidents (the first in 2016, the second in 2022).

- He is being treated for serious medical conditions including the consequences of the accidents noted above. He has suffered two heart attacks and has had a stroke. He has been diagnosed with Type II diabetes and his treating physicians are concerned he may have leukemia. He is also being treated for severe depression and anxiety. He has a history of substance abuse, which he has overcome.

- He was involved in the community. Before he was injured, he volunteered as a coach at a local boxing club and as a hockey coach.

- He has no friends in Italy, nor any family with whom he is in contact. He last visited Italy over 40 years ago, when he was about 18 years of age.

- He has lost most of his Italian language skills. He is unable to carry on a conversation in Italian or read the language.

- His only involvement with the activities targeted by the police investigation was maintaining the video gaming machines at the Silver Creek location, including collecting cash from the machines.
- He was found guilty of a relatively minor offence and received only a modest penalty.
- He is deeply remorseful for his involvement in the activities that led to the criminal charges and to the finding of guilt.

[29] Before making these submissions, counsel for the applicant had requested disclosure of the information and documents the CBSA relied on to conclude that there were reasonable grounds to believe that the applicant is inadmissible on grounds of organized criminality under paragraph 37(1)(a) of the *IRPA*.

[30] The officer refused to provide the disclosure requested, stating in an email to counsel that the current process "is not for responding to the allegations" in the subsection 44(1) report. The officer also stated that the applicant "will be given the opportunity to respond to the allegations at any potential admissibility hearing" and disclosure would be provided in accordance with the rules of the Immigration Division. The purpose of the present process, the officer explained, was to give the applicant the opportunity "to provide Humanitarian and Compassionate submissions to be considered by the case officer before a final determination is made if [*sic*] to refer the case to the Minister's Delegate for review."

E. *The Inland Enforcement Officer's Narrative Report*

[31] After receiving the applicant's submissions, the Inland Enforcement Officer referred the matter to an Inland Enforcement Supervisor (a delegate of the Minister of Public Safety) for a decision under subsection 44(2) of the *IRPA.* The referral was made by way of a narrative report dated June 16, 2023. In that report, the officer explained why she was of the opinion that the applicant is inadmissible on grounds of organized criminality under paragraph 37(1)(a) of the *IRPA* for engaging in an illegal gaming enterprise. She also explained why she had concluded that there were insufficient grounds to warrant a suspension of a referral of the applicant's case to the Immigration Division and, as a result, was recommending that such a referral be made under subsection 44(2) of the *IRPA.*

[32] As set out in the narrative report, the officer drew the grounds for her opinion that the applicant is inadmissible under paragraph 37(1)(a) for engaging in an illegal gaming enterprise from a variety of sources: (1) documents pertaining to the criminal proceedings against the applicant that the applicant had provided in response to the letter or January 12, 2023 (specifically, a copy of the information charging the applicant with knowingly permitting a place to be used for the purposes of a common gaming house; a copy of the agreed statement of facts; the transcript of the sentencing proceeding on March 12, 2021; and a copy of the probation order); (2) a document identified as the Hobart Crown Brief; (3) documents identified as OPP Hobart – Person of Interest Profile for various individuals charged in connection with Project Hobart, including the applicant; (4) a document identified as OPP Hobart – Analysis of Evidence; (5) a document identified as OPP Project Hobart Substantive Event Summary; (6) a

document identified as FINTRAC Disclosure DC0025709 (48179); and (7) numerous media reports and press releases relating to Project Hobart and other investigations targeting illegal gambling and organized crime.

[33] With the exception of the documents the applicant provided to the officer and a single article from the *Toronto Star* (which is not mentioned in the narrative report), none of these items are before the Court on this application.

[34] As will be discussed below, the applicant challenges the reasonableness of the Minister's delegate's agreement with the Inland Enforcement Officer's recommendation that the matter should be referred for an admissibility hearing. In making this recommendation, the officer recognized that several "humanitarian and compassionate" considerations were in the applicant's favour: his lengthy establishment in Canada; his strong family bonds here; his lack of connection to his country of nationality; and the physical and mental health challenges he is experiencing, which could be exacerbated by his removal from Canada. However, the officer found that the applicant was a member of an illegal gaming enterprise with ties to both the Hells Angels Motorcycle Club and the Figliomeni crime group. The officer found that the applicant was a "mid-tier" and trusted member of the criminal organization who had had direct contact with senior members of the illegal gaming operation. The officer also found that the applicant had minimized his role in the illegal gaming operation. Noting the scale of violence attributed to illegal gaming and the criminal organizations involved in these operations, the officer found that the applicant's participation in the illegal gaming organization "jeopardized the safety and security of Canadian society, which is contrary to Section 3(1)(h) of the IRPA."

[35] The officer therefore concluded as follows:

> Having taken into careful consideration all of the factors of Mr. CAMPAGNA's case, it appears that there are insufficient grounds to warrant a suspension of a referral in his case to the Immigration Division. The seriousness of the allegations against him and the interests of the Canadian public far outweigh the potential difficulties which may arise should Mr. CAMPAGNA be removed from Canada. Furthermore, the writer believes a stern warning letter is not appropriate in this case and is recommending Mr. CAMPAGNA's case be referred to an Admissibility Hearing.

III. DECISION UNDER REVIEW

[36] As already noted, under subsection 44(2) of the *IRPA*, if a delegate of the Minister is of the opinion that a report prepared under subsection 44(1) is well founded, the delegate may in turn refer the report to the Immigration Division for an admissibility hearing.

[37] The Minister's delegate agreed with the officer's assessment and recommendation to refer the case to an admissibility hearing.

[38] In summary, the Minister's delegate based this decision on the following considerations:

- While the applicant had spent most of his life in Canada and had not returned to Italy since he was 18, this does not "outweigh the significance of his criminal activities in Canada."

- There is no evidence that the applicant would be unable to support himself in Italy or would be otherwise unable to receive support from Italian social services.

- There is nothing to indicate that the applicant would be unable to communicate in Italy.

- The applicant suffers from numerous physical and mental health issues but Italy has a universal public healthcare system and "there is no evidence [. . .] to show that [he] would be unable to receive treatment, care and support for these conditions if he were to be removed to Italy."

- The applicant's role in supporting his mother did not weigh "strongly" in favour of suspending the referral because she could be cared for by social services or by other family members in Canada.

- The applicant submits that he is remorseful for his actions but his involvement with the criminal enterprise was a "conscious decision;" it was neither impulsive nor a crime of opportunity.

- The criminal organization with which the applicant was involved had ties to organized crime groups in both Canada and Italy.

- Although the applicant's activities were non-violent in nature, illegal gaming operations "inherently increase the propensity for violence given the inevitable power struggle for control of such a lucrative operation, which is evidenced by the large amount of firearms and other weapons seized during Project Sindicato. They also provide funding and power to these groups which allows for the perpetuation of violence in other areas of their operation."

[39] For these reasons, the Minister's delegate concluded that a warning letter would be insufficient in this case. The matter should be referred to the Immigration Division because "the

severity of [the applicant's] actions and their impacts to the safety of Canada" outweigh the concerns the applicant put forward.

IV. STANDARD OF REVIEW

[40] The parties agree, as do I, that the Minister's delegate's decision should be reviewed on a reasonableness standard.

[41] When conducting reasonableness review, a reviewing court must take a "reasons first" approach that examines and evaluates the justification the administrative decision maker has given for its decision, always bearing in mind the history of the proceeding and the administrative context in which the decision was made (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 58-60). While it "finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers," reasonableness review is nevertheless "a robust form of review" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 12; *Mason*, at para 63).

[42] 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). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov*, at para 125).

[43] As *Mason* confirms, “A failure of justification in light of the legal and factual constraints bearing on the decision arises if the decision is not ‘justified in relation to the constellation of law and facts that are relevant to the decision’” (at para 66, quoting *Vavilov*, at para 105). The legal and factual contexts “operate as constraints on the decision maker in the exercise of its delegated powers” (*Vavilov*, at para 105). The burden of justification on the decision maker “varies with the circumstances, including the wording of the relevant statutory provisions, the applicable precedents, the evidence, the submissions of the parties, and the impact of the decision on the affected persons” (*Mason*, at para 66).

[44] To have the decision under review set aside as unreasonable, the applicant must establish that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov*, at para 100).

V. ANALYSIS

[45] As I will explain, I have concluded that the delegate’s decision is unreasonable in light of the legal and factual constraints on the decision maker.

[46] The primary legal constraint on the Minister’s delegate is subsection 44(2) of the *IRPA*. As set out above, the decision maker “may” refer a report prepared under subsection 44(1) to the Immigration Division for an admissibility hearing if the delegate “is of the opinion that the report is well-founded.” Likewise, earlier in the decision-making process, an officer “may” prepare a report under subsection 44(1) if the officer “is of the opinion that a permanent resident or a

foreign national who is in Canada is inadmissible." If a report is prepared under subsection 44(1), it must be transmitted to the Minister (or the Minister's delegate) for a decision under subsection 44(2).

[47] By using the term "may", subsections 44(1) and (2) both expressly grant discretion to the respective decision makers. Neither decision maker is required to do anything, even if the statutory preconditions for preparing a report (subsection 44(1)) or referring the report to the Immigration Division (subsection 44(2)) are satisfied. In other words, in the case of the Minister's delegate, even if he or she is of the opinion that the report on inadmissibility is well-founded, the delegate still retains some discretion not to refer the report to the Immigration Division (*Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 6).

[48] Nevertheless, it is well established that the Minister's delegate (and the Inland Enforcement Officer) exercise a limited discretion (*Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 [*Obazughanmwen FCA*] at para 30). This discretion is limited because of the narrow question before the decision makers: Is referral for an admissibility hearing necessary to achieve the objectives of the *IRPA*, which include protecting public health and safety and maintaining the security of Canadian society (*IRPA*, para 3(h))? On the one hand, removing individuals on the basis of criminality (whether organized or otherwise) protects public safety and security by demonstrating that meaningful consequences can result if the social contract under which foreign nationals and permanent residents are welcomed to Canada (which includes the obligation that they behave lawfully) is breached and, furthermore, by protecting the public from those who, given their past conduct, may engage in criminal

conduct in the future: see *Medovarski v Canada (Minister of Citizenship and Immigration)*; 2005 SCC 51 at para 10, and *Tran*, at paras 40-45. On the other hand, it is not always the case that this step is necessary to meet the objectives of the *IRPA* given the particular circumstances of the case at hand.

[49] ENF 5, the enforcement manual mentioned above, explains to decision makers that, under section 44, officers and Minister's delegates "have some flexibility in managing cases where the person is inadmissible" and, in some circumstances, "the objectives of the IRPA may or will be achieved without the need to seek a removal order or write a formal inadmissibility report" by taking some other step short of writing a report or seeking a removal order (such as sending a warning letter) (ENF 5, section 8.1). The manual instructs decision makers that this is a "limited discretion" but, at the same time, it is one that is "variable and flexible" and can respond to the specific circumstances of the case (*ibid*.).

[50] The manual also explains that, in the case of permanent residents, the relative weight of the factors involved in determining whether to recommend a referral of the subsection 44(1) report "will vary depending on the circumstances of the case" (ENF 5, section 10.1). Permanent residents are "free to make submissions on any aspect of their personal circumstances which they feel would warrant retention of their permanent resident status" (*ibid.*). Among the factors the manual suggests could be relevant in a given case are age at the time of landing, length of residence in Canada, location of family support and responsibilities, degree of establishment, criminality, and history of non-compliance and current attitude ("Has the permanent resident been cooperative and forthcoming with information? Has a warning letter been previously

issued? Does the permanent resident accept responsibility for their actions? Are they remorseful?") (*ibid.*). (ENF 5 has been updated since the decision under review was made but these factors continue to be identified as potentially relevant in a given case.)

[51] While the factors identified in ENF 5 overlap to some extent with what are considered H&C factors (e.g. establishment in Canada, family relationships and responsibilities, and hardship on removal), they are also broader than this (e.g. criminal history, rehabilitation, any history of non-compliance, and "current attitude"). All of the factors are potentially relevant to the question before the CBSA decision maker – namely, whether the objectives of the *IRPA* (including protecting public health and safety and maintaining the security of Canadian society) warrant referring the matter for an admissibility hearing as opposed to choosing a lesser measure that would allow the person in question to maintain their status in Canada. As ENF 5 states, personal circumstances "must be weighed within the scope of the officer's limited discretion under the A44(1) and the objectives of the IRPA." At the same time, "it is not the function of the officer to engage in a humanitarian and compassionate analysis under A25(1) or a pre-removal risk assessment under A112" (ENF 5, section 8.3).

[52] As already noted, the procedural fairness letter sent to the applicant identified exactly these sorts of factors as ones that may be relevant to the pending decision and gave the applicant an opportunity to comment on them and on anything else he wished to raise. The Inland Enforcement Officer addressed these factors in the Narrative Report. The Minister's delegate then considered and agreed with the Narrative Report in determining that, in the exercise of his discretion, the matter should be referred for an admissibility hearing.

[53] I agree with the applicant that the delegate's decision is unreasonable in two key respects: the assessment of the applicant's criminality and the assessment of the applicant's personal circumstances.

[54] Looking first at the applicant's criminality, in my view, the delegate's assessment of the "severity" of the applicant's actions and their impact on the safety of Canadians is not reasonably supported by the delegate's reasons or the information before the CBSA decision makers. Put another way, the delegate unreasonably elevated the applicant's role in the organization of which he is alleged to be a member in determining that, in all the circumstances, a referral for an admissibility hearing was warranted.

[55] As has already been mentioned, to be found inadmissible under paragraph 37(1)(a) of the *IRPA*, it is not necessary that the applicant have been convicted of a criminal offence. Nevertheless, this is still a form of inadmissibility based on criminality. In the present case, while the applicant has not been convicted of any offence in relation to the conduct that gave rise to his potential inadmissibility under paragraph 37(1)(a), he was found guilty of an offence (knowingly permitting a place to be used for the purposes of a common gaming house) arising from the very circumstances on which the allegation of inadmissibility is based and for which he received a very lenient disposition (a conditional discharge). This finding of guilt was based on the applicant's guilty plea, which is generally considered to be strong evidence of remorse and an acceptance of responsibility. It was also based on a statement of facts to which both the applicant and the prosecuting Crown had agreed.

[56] The CBSA decision makers were not bound by the agreed statement of facts, nor were they limited to considering only the offence for which the applicant was found guilty. They must each make their own determination on the information before them as to whether the requirements of subsection 44(1) and 44(2), respectively, are satisfied. The criminal proceedings against the applicant do, however, form a critical part of the factual matrix within which the subsection 44(2) decision was made. The CBSA decision makers relied to a significant degree on information from the prosecution brief. As well, the applicant highlighted the resolution of the criminal proceedings against him to demonstrate his peripheral role in the offences under investigation in Project Hobart and the minimal risk he posed to public safety.

[57] In finding that there are reasonable grounds to believe that the applicant is inadmissible under paragraph 37(1)(a) of the *IRPA*, the CBSA decision makers went well beyond anything set out expressly or impliedly in the applicant's guilty plea or the agreed statement of facts. While the CBSA decision makers are not precluded from doing so, to be reasonable, any such findings must be supported by transparent, intelligible, and justified reasons grounded in the information before the decision maker. Instead, the reasoning process appears to be nothing but guilt by association, where the seriousness of the applicant's conduct is determined with reference to any and all of the harms caused by illegal gaming and organized crime, and without any meaningful consideration of the applicant's actual involvement. To give but one example, even though the applicant was never even charged in connection with Project Sindicato (an investigation by another police force into organized crime and illegal gaming that pre-dated Project Hobart), and even though there has never been any suggestion that the applicant himself had had any connection to firearms or other weapons, the Minister's delegate relied on information

concerning firearms and weapons seized during Project Sindicato to conclude that the severity of the applicant's actions and their impact on public safety warranted a referral for an admissibility hearing.

[58] In effect, the Minister's delegate's assessment of the applicant's role in the alleged criminal organization and the seriousness of his conduct (which essentially adopted the Inland Enforcement Officer's earlier assessment) simply ignored the resolution of the criminal charges against the applicant. To repeat, the delegate was not bound by that resolution. However, given the obvious connection between that resolution and the basis of the allegation of inadmissibility, given the emphasis placed on that resolution in the applicant's submissions to the CBSA decision makers, and given the vast disparity between the CBSA findings and the characterization of the applicant's involvement in the agreed statement of facts (as reflected in the lenient disposition imposed), it was incumbent on the delegate to explain how his findings could be reconciled with the way the criminal charges against the applicant were resolved. As *Vavilov* holds, "a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it" (at para 128). I find this to be the case here.

[59] Turning to the applicant's personal circumstances, in my view, the delegate's decision is flawed in two respects. First, the delegate states that there is nothing before him to indicate that the applicant would be unable to communicate in Italy. However, the applicant said exactly this in his submissions and in his supporting evidence. The issue of the applicant's language abilities

has a direct bearing on the hardship he would face if removed to Italy. The decision maker misapprehended the information before him in a material respect.

[60] Second, the applicant submitted detailed evidence to the CBSA decision makers to demonstrate his medical needs and the extensive care he is receiving in Canada. The Minister's delegate concluded that the applicant had not established that he would be unable to receive treatment, care and support for his medical conditions if he were to be removed to Italy. In so concluding, the delegate failed to engage with a critical point advanced by the applicant: that disrupting the continuity of his care in Canada would materially affect the quality of care he would receive for several serious medical conditions. As above, this failure to meaningfully grapple with a key issue raised by the applicant calls the reasonableness of the decision into question.

[61] The respondent defends the decision under review in these latter respects by noting that *Obazughanmwen FCA* held (at para 55) that, when deciding whether to refer a subsection 44(1) report to the Immigration Division, the Minister's delegate is "not obliged" to consider H&C factors (or the best interests of a child who would be affected by the decision). According to the respondent, since the Minister's delegate was not required to consider the applicant's personal circumstances such as the hardship he could face if removed to Italy, it cannot be a reviewable error if he has done so unreasonably. Put another way, even if the delegate's assessment of these factors is unreasonable (which the respondent does not concede), these flaws can be overlooked as being peripheral to the decision the delegate was required to make.

[62] I am unable to agree.

[63] While it is true that the Federal Court of Appeal held that a Minister's delegate is not obliged to consider H&C factors, the Court did not hold that it would be an error for the delegate to consider such factors, along with any others that may be relevant in a given case, as ENF 5 instructs. Nor did the Court of Appeal suggest that, if such factors were considered, it was not necessary for the decision maker to do so reasonably. Rather, the Court of Appeal's decision suggests the opposite.

[64] As in the present case, Mr. Obazughanmwen had been given the opportunity (by way of a procedural fairness letter) to provide reasons why a removal order should not be sought. The letter stated: "The submission may include details relevant to your case, including, but not limited to, the length of your stay in Canada, the location of family support and responsibilities, the conditions in your home country, your degree of establishment, your criminal history, any history of non-compliance and your current attitude, and any other relevant factors" (see *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 683 at para 13). As discussed above, these are the very factors identified in ENF 5. The Minister's delegate addressed these factors in the decision referring the matter for an admissibility hearing. The merits of that determination were not "forcefully challenged" before the Federal Court of Appeal (see *Obazughanmwen FCA*, at para 55). In any event, Justice de Montigny (as he then was) stated that he had not been convinced that the decision of the Minister's delegate in this regard was unreasonable (*ibid.*). In my view, had the Court of Appeal been of the opinion that it was an error for the Minister's delegate even to consider such factors, it would have said so.

[65] As the most recent version of ENF 5 (dated February 20, 2025) aptly notes, while decision makers acting under section 44 of the *IRPA* are not required to consider personal circumstances, “By inviting a permanent resident to provide information or make submissions regarding their personal circumstances at A44(1), this creates an expectation that the officer will engage with this information in the A44(1) assessment and address it in the decision” (ENF 5, section 10.3).

[66] It follows from the foregoing that when, as in the present case, a decision maker invites submissions on the sorts of factors identified in ENF 5 and then considers those factors in deciding to refer the matter to an admissibility hearing, those factors must be considered reasonably: see *Dass v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 624 at paras 51-53; *Ramsuchit v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1019 at para 38; and *Compère v Canada (Public Safety)*, 2025 FC 299 at para 24. As I have already explained, the Minister’s delegate failed to do so in the decision under review.

VI. CONCLUSION

[67] For these reasons, the application for judicial review will be allowed. The decision of the Minister’s delegate dated June 28, 2023, will be set aside and the matter will be remitted for redetermination by a different decision maker.

[68] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-8888-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Minister's delegate dated June 28, 2023, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	TORONTO, ONTARIO
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