Federal Court Cour fédérale

Date: 20250708

Docket: IMM-13116-23

Citation: 2025 FC 1206

Ottawa, Ontario, July 8, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

AAB

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Immigration Appeal Division [IAD] dated October 3, 2023 [Decision]. The IAD upheld the Immigration Division's [ID] finding that the Respondent was not a person described under section 35(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] For the reasons that follow, this application is dismissed.

II. Background Facts

[3] The Respondent is a citizen of Nigeria. He is neither a Canadian citizen nor permanent resident and is therefore a foreign national under the *IRPA*. He entered Canada from the United States of America in February 2018 and made a claim for refugee protection. In his Basis of Claim and other documents, he indicated that he held various positions in the Nigerian Police Force [NPF] between 2001 and 2017, a total of 16 years. In April 2019, he further confirmed these details during an interview with a Canada Border Services Agency Enforcing Law Agent. His membership in the NPF is not in dispute.

[4] Based on the Respondent's membership in the NPF, a report was prepared pursuant to section 44(1) of *IRPA* alleging that he was inadmissible to Canada on security grounds, more precisely under section 35(1)(a) of *IRPA*, which concerns the violation of human or international rights for committing crimes against humanity and war crimes outside of Canada. The Respondent's refugee claim was suspended pending the outcome of his admissibility hearing.

[5] The admissibility hearing before the ID was heard across three sittings between June and July 2021 and the decision rendered on February 1, 2022. The ID found that while the Respondent is a foreign national and a member of the NPF, the Applicant had not established that there are reasonable grounds to believe that the Respondent is a person who is inadmissible to Canada under paragraph 35(1)(a) of *IRPA*.

[6] The Applicant challenged the legal validity of the ID decision before the IAD and alleged that the Respondent is a person who is caught by paragraph 35(1)(a) of the *IRPA*. The Applicant submitted before the IAD that the NPF has engaged in crimes against humanity, namely torture and extrajudicial killings. The Applicant did not allege the Respondent committed these crimes directly, but that his membership in the NPF made him complicit in these acts, namely crimes against humanity by way of torture and extrajudicial killings. The IAD found that the decision of the ID is valid in law and the appeal was dismissed.

III. Decision Under Review

[7] The IAD upheld the ID's decision. The IAD found that the Applicant did not meet the burden of proof of establishing reasonable grounds to believe that the Respondent is inadmissible on grounds of violating human or international rights for committing crimes against humanity and war crimes outside of Canada under paragraph 35(1)(a) of the *IRPA*. The IAD found that the Applicant had not demonstrated reasonable grounds to believe the actions of the NPF amount to crimes against humanity.

[8] More specifically, the IAD concluded that while the Applicant has established reasonable grounds to believe that Nigerian police officers have committed torture and extrajudicial killings, these acts do not amount to a crime against humanity because they were not carried out pursuant to a State or organizational policy as set out in *Canada (Minister of Public Safety and Emergency Preparedness) v Verbanov*, 2021 FC 507 [*Verbanov*]. The IAD agreed this was determinative of the appeal and therefore did not consider the issue of complicity.

[9] The key issues in the IAD Decision were: 1) the application of the policy requirement set out in *Verbanov* and 2) whether such a policy exists in the NPF.

A. *Policy Requirement from Verbanov*

[10] As the Decision notes, *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 [*Mugesera*] was previously the leading case on the interpretation of "crimes against humanity," setting out the legal test for acts committed before the *Rome Statute of the International Criminal Court*, UN Doc A/CONF.183/9, July 17, 1998 [Rome Statute] was adopted.

[11] The IAD further notes that in *Verbanov*, the Federal Court clarified the test for crimes against humanity for acts committed after the Rome Statute came into effect to require that a widespread or systemic attack must further a government policy or plan. The IAD Decision summarizes:

> [40] Justice Grammond noted [in *Verbanov*] that while there had been debate around the policy requirement, that is, "that the underlying offences must have been committed pursuant to a policy or ideology or to achieve a collective goal," this was ultimately settled as, "the Rome Statute laid these issues to rest with respect to acts committed after its coming into force in countries that ratified it." He further noted that,
>
> > [19] In particular, the Rome statute settled the debate regarding the policy element and adopted it as a necessary ingredient of crimes against humanity.
>
> [41] As the present case involves conduct taking place after 1998, the Rome Statute applies and the legal test for crimes against humanity requires that a widespread or systematic attack be pursuant to a government policy or plan.

[12] The Decision specifies having considered the Applicant's submissions urging the IAD to disregard the guidance of the Federal Court in *Verbanov*. However, the Decision concluded that while Federal Court of Appeal's decision in *Canada (Attorney General) v Bri-Chem Supply Ltd,* 2016 FCA 257 [*Bri-Chem Supply*] would allow departure from a previous IAD decision, it does not allow the IAD to disregard a Federal Court decision.

[13] The IAD agreed with the ID that *Verbanov* was binding law, finding "no reasonable basis" to depart from this jurisprudence.

[14] As a result, the IAD outlined the test for crimes against humanity as follows:

> 1. one of the enumerated proscribed acts is committed;
>
> 2. the act occurs as part of a widespread or systematic attack;
>
> 3. the attack is directed against any civilian population or any identifiable group; and
>
> 4. the attack is pursuant to or in furtherance of a State or organizational policy to commit such attack.
>
> [Emphasis added]

B. *The NPF Did Not Commit Crimes in Furtherance of a State or Organizational Policy*

[15] The IAD found the first three parts of the test for crimes against humanity were clearly established by the documentary evidence:

> [43] It is not disputed that torture and extrajudicial killings have been committed by members of the NPF or that such actions fall under the enumerated acts of Section 6 of the CAHWCA and of those set out in Article 7 of the Rome Statute.
>
> …

> [44] It is clear from the country documentation provided that these occur with frequency and with impunity such that these can be seen as being part of a widespread attack. The evidence makes clear that the victims of these attacks are civilians such that this element is also met.

[16] However, the IAD found the Applicant had not met his burden to prove there was a State or organizational policy behind these acts.

[17] The IAD held that "[e]stablishing that there is impunity for these acts or that there was an awareness on the part of senior officials of these acts occurring does not amount to a policy driving these acts." Rather, the State or the NPF must "actively promote or encourage the torture or extrajudicial killing of civilians", per *Verbanov* at paragraph 20.

[18] The IAD found there was insufficient evidence of a State or organizational policy actively promoting or encouraging such acts against a civilian population. As such, it concluded the Minister had not established reasonable grounds to believe the NPF had committed crimes against humanity.

IV. Issues and Standard of Review

[19] The issue in this application is whether the Decision is reasonable.

[20] The parties agree and I concur that the merits of the IAD's decision, including its interpretation of the legal test for crimes against humanity, are to be reviewed on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 16-17, 23-25, 85, 99, 101-104, 115-26 [*Vavilov*].

V. Legislative Provisions

[21] Subsection 35(1)(a) of *IRPA* states:

Human or international rights violations	**Atteinte aux droits humains ou internationaux**
35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for	**35 (1)** Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :
(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;	**a)** commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;

[22] Sections 4–7 of the *Crimes Against Humanity and War Crimes Act,* SC 2000, c 24 [*CAHWCA*] define offences constituting genocide, crimes against humanity, and war crimes.

Subsection 6(3) defines crimes against humanity as:

… murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law	… Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel ou en raison de son caractère criminel d'après

recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (*crime contre l'humanité*)	les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (*crime against humanity*)

[23] Subsections 6(4)–(5) confirm the applicability of customary international law and the Rome Statute in interpreting the offence of "crimes against humanity". In particular, section 6(4) states:

Interpretation — customary international law	**Interprétation : droit international coutumier**
(4) For greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law, and may be crimes according to customary international law before that date. This does not limit or prejudice in any way the application of existing or developing rules of international law.	**(4)** Il est entendu que, pour l'application du présent article, les crimes visés aux articles 6 et 7 et au paragraphe 2 de l'article 8 du Statut de Rome sont, au 17 juillet 1998, des crimes selon le droit international coutumier, et qu'ils peuvent l'être avant cette date, sans que soit limitée ou entravée de quelque manière que ce soit l'application des règles de droit international existantes ou en formation.

[24] Article 7 of the Rome Statute defines crimes against humanity as:

> 1. … any of the following acts when committed <u>as part of a widespread or systematic attack directed against any civilian population</u>, with knowledge of the attack:
>
> (a) Murder;
>
> …

> (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
>
> (f) Torture;
>
> (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
>
> …
>
> (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
>
> 2. For the purpose of paragraph 1:
>
> (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
>
> …
>
> [Emphasis added]

VI. Submissions

[25] The Applicant submits the IAD unreasonably concluded that the definition of "crimes against humanity" requires a State or organizational policy. In the alternative, the Applicant submits it unreasonably found the NPF did not commit the crimes of torture and extrajudicial killings pursuant to or in furtherance of an organizational policy.

[26] The Respondent submits the Decision is reasonable and the Applicant is asking this Court to reassess and reweigh the evidence.

A. *Definition of "Crime Against Humanity"*

[27] The Applicant takes the position that the IAD's interpretation of "crimes against humanity" under section 6 of the *CAHWCA* is unreasonable. According to the Applicant's submissions before the Court, the Decision should have disregarded the guidance of the Court in *Verbanov*.

[28] Per to the Applicant, "The Rome Statute is not a complete codification of customary international law, does not have force as conventional law for the purpose of defining a crime against humanity, and does not limit Canada's interpretation of international law, including customary international law." The Applicant alleges that customary international law does not require proof that the attack was pursuant to or in furtherance of a State or organizational policy. The Applicant submits these were central arguments put before the IAD and that the Decision does not meaningfully grapple with them. This makes the Decision unreasonable.

[29] The Respondent argues the IAD considered and rejected the Applicant's argument that there was a reasonable basis to depart from *Verbanov*. He submits the IAD followed the constraining precedent of *Verbanov*, as it was required to do (*Bri-Chem Supply* at para 41), and therefore reasonably found that widespread or systemic attacks must further a State or organizational policy.

B. *Conclusion that NPF Did Not Commit Crimes in Furtherance of a State or Organizational Policy*

[30] Should the Court find the IAD's interpretation requiring a policy to be reasonable, the Applicant alternatively argues that the IAD's assessment of whether the NPF committed attacks in furtherance of a policy would at any rate be unreasonable.

[31] First, the Applicant submits the IAD "unreasonably applied too stringent an evidentiary requirement to demonstrate the existence of a State or organizational policy, by requiring evidence of active promotion or encouragement of the crimes."

[32] Second, the Applicant submits IAD ignored a number of reports showing widespread acts of torture and extrajudicial killings by the NPF, which the Applicant argues is probative and determinative evidence showing the existence of an organizational policy.

[33] The Respondent submits the Applicant's first argument is not supported in law. Rather, *Verbanov* states at paragraph 20:

> [20] The meaning of policy was further defined through the following provision of the *Elements of Crimes* [International Criminal Court], a set of guidelines adopted by the Assembly of State Parties pursuant to article 9 of the Rome Statute.
>
> > 3. … It is understood that "policy to commit such attack" requires that the State or organization actively promote or encourage such an attack against a civilian population.[6]
> >
> > …
> >
> > _____
> >
> > [6] A policy which has a civilian population as the object of the attack would be implemented by State or

> organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.

[Emphasis added]

[34] The Respondent emphasizes *Verbanov* is the leading case in the Federal Court with respect to acts committed after the Rome Statute came into effect and it has not been overturned.

[35] The Respondent further submits that decision-makers are not required to refer to every piece of evidence or explain how they dealt with it (*Vavilov* at para 91).

VII. Analysis

A. *The IAD's conclusion that the definition of a crime against humanity requires that the widespread or systemic attack on civilian population must further a State or organizational policy is reasonable*

[36] Contrary to the Applicant submissions, I find that the IAD meaningfully grappled with the arguments it presented. The IAD explicitly stated that it considered the Applicant's submissions on the issue of whether it should follow the guidance of the Federal Court in *Verbanov* and found that there was no reasonable basis for it not to follow the binding precedent.

[37] The Supreme Court of Canada instructs in *Vavilov* that where there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision-maker to interpret or apply the provision without regard to that precedent (*Vavilov* at para 112). Furthermore, according to the Federal Court of Appeal's conclusions in *Bri-Chem*

Supply at paragraph 41, a tribunal is constrained by any rulings and guidance given by courts that govern the facts and issues in the case.

[38] In the case at bar, the Federal Court stated in *Verbanov* that the *CAHWCA* which explicitly refers to Article 7(2) of Rome Statute for the definition of crimes against humanity now establishes a policy requirement. Justice Grammond further concluded at paragraph 26 that with respect to conduct taking place after 1998, any discrepancies between prior customary law and the Rome Statute must be resolved in favour of the latter.

[39] As stated by Justice Roy recently in *Canada (Public Safety and Emergency Preparedness) v Eriator*, 2025 FC 446 at paragraph 32 [*Eriator*]:

> [32] The decision of this Court in *Verbanov* constitutes a formidable obstacle for the Applicant. It is so because Parliament has spoken in adopting the *CAHWCA*. Unless it is argued that the provisions are unconstitutional, it is neither for the administrative decision-maker nor for a reviewing court to disagree with policy choices made by those tasked with making those decisions, the elected members sitting in Parliament.

[40] Before the IAD, the Applicant cited several cases from the Federal Court that follow *Mugesera*, submitting that as the case continues to be followed, it is the leading case and remains good law that accurately reflects the current state of customary law on crimes against humanity. The IAD did consider these references but found in some of the cases the acts predated the adoption of the Rome Statute in 1998, and in other cases it does not appear that the policy requirement was raised or argued, meaning the reference to these decisions are of little assistance on this issue. I agree with the Respondent that in the circumstances and given the cases submitted to the IAD, it was thus reasonable for the IAD to follow the precedent set in *Verbanov*.

[41] Considering the above, in my view, the Applicant has not demonstrated that it was unreasonable for the IAD to conclude that this decision does not provide itself with a basis to depart from a higher court decision of the Federal Court in *Verbanov*. The IAD was required to follow the precedent set by the Federal Court in *Verbanov* and therefore reasonably found that widespread or systemic attacks must further a State or organizational policy.

B. *The IAD's conclusion that the NPF did Not Commit Crimes in Furtherance of a State or Organizational Policy is reasonable*

[42] The IAD acknowledged that members of the NPF have committed torture and extrajudicial killings, acts which fall under section 6 of the *CAHWCA*, and that they were part of a widespread attack on a civilian population, but found the Applicant had not established that they are part of a State or organizational policy. I find the IAD's finding to be reasonable since it is supported by the law and based on consideration of the Applicant submissions and a careful analysis of the documentary evidence.

[43] First, it was reasonable for the IAD to require evidence of active promotion or encouragement of the crimes to find that a policy existed. The Federal Court in *Verbanov* at paragraph 20 states that active promotion or encouragement of crimes is required for a policy to exist. I agree with the Respondent that *Verbanov* is the leading case and has not been overturned regarding the issue of whether a policy requires the active promotion or encouragement of the State or organization to meet the definition of crimes against humanity. Thus, I find that contrary to the Applicant's submissions, the IAD did not apply too stringent an evidentiary requirement to

demonstrate the existence of a State or organizational policy, by requiring evidence of active promotion or encouragement of the crimes.

[44] Second, the IAD did not ignore a number of reports showing widespread acts of torture and extrajudicial killings by the NPF, which the Applicant argues is probative and determinative evidence showing the existence of an organizational policy.

[45] Decision-makers are not required to refer to every piece of evidence or to explain how they dealt with it (*Hassan v Canada (Citizenship and Immigration)*, 2023 FC 1375 at para 43; *Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, 1 FC 53 at para 16. See also *Vavilov* at para 128).

[46] Here, the IAD made several references throughout the decision to the Applicant's memorandum and submissions. The IAD specifically addressed the Applicant's submissions that the government and high-ranking NPF officers were fully aware of the crimes against humanity committed by the numerous policemen under their commands and that the impunity reported in Nigeria is a clear indication they approve of the methods used on the ground. The IAD, however, found that establishing that there is impunity for these acts or that there was an awareness on the part of senior officials of these acts occurring does not amount to a policy driving these acts.

[47] In my view, these findings are reasonable considering that *Verbanov* held that the existence of a State or organizational policy cannot be inferred solely from the absence of governmental or organizational action (at para 20).

[48] The IAD also engaged with the documentary evidence indicating that the Nigerian government and police force voiced disapproval of the acts of torture and extrajudicial killings committed by certain members of the NPF and established policies and programs in place to eliminate them. Consequently, the IAD reasonably concluded that the impunity resulting from a deficient judicial system is not sufficient to establish that there is a policy underlining acts of torture or extrajudicial killings carried out by the NPF.

[49] In effect, the IAD was not satisfied that a crime against humanity was established within the meaning of the *CAHWCA* because the attacks were not shown to be carried out pursuant to a State or organizational policy as required by the Rome Statute and *Verbanov*.

[50] As pointed out by the Respondent, the law states that a decision-maker must determine whether an act is conducted pursuant to a State or organizational policy according to the evidence of each particular case. This is exactly what the IAD did in the case at bar. It considered the evidence and it was therefore reasonable to not be satisfied that a crime against humanity has been established because the crimes committed by members of the NPF do not have the presence of a policy requirement and therefore did not constitute “crimes against humanity” within the meaning of the *CAHWCA*. The Applicant is asking the Court re-weigh the evidence before the IAD and come to a different conclusion. This is not the role of the Court in the context of a judicial review.

VIII. Certified Question

[51] The Applicant submitted the following question to be certified pursuant to section 74 of the *IRPA*:

> For a person to be found inadmissible on grounds of violating human or international rights pursuant to paragraph 35(1)(a) of the *Immigration and Refugee Protection* Act, SC 2001, c 27, does a widespread or systematic attack directed against any civilian population or any identifiable group committed after July 17, 1998, need to be committed pursuant to or in furtherance of a State or organizational policy to satisfy the elements of the offence of crimes against humanity under subsection 6(3) of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24?

[52] The question is identical to that which was recently denied in *Eriator*, and very similar to the questions submitted and denied in *Verbanov* and *Akinpelu*.

[53] The Respondent opposes certification on the basis that it is not dispositive of the appeal, citing *Verbanov* at paragraphs 71-72 and *Akinpelu* at paragraph 62 and that as such, the proposed question does not meet the test for certification. Respectfully, I agree.

[54] As mentioned in *Eriator* at paragraph 82, about *Akinpelu:* "In the latter case, Mr. Justice Gascon summarized the requirements for certification in Akinpelu at para 61":

> [61] According to paragraph 74(d) of the IRPA, a question can be certified by the Court if "a serious question of general importance is involved." To be certified, a question must be a serious one that: (i) is dispositive of the appeal; (ii) transcends the interests of the immediate parties to the litigation; and (iii) contemplates issues of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15–16

> [*Mudrak*]; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 [*Zhang*]). Furthermore, the question must not have already been determined and settled in another appeal (*Rrotaj v Canada (Citizenship and Immigration)*, 2016 FCA 292 at para 6; *Mudrak* at para 36; *Krishan v Canada (Citizenship and Immigration)*, 2018 FC 1203 at para 98; *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at para 37). As a corollary, the question must have been dealt with by the Court and it must arise from the case (*Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at para 29)."

[55] In my view the question proposed for certification does not raise a serious question of general importance considering Parliament's referential incorporation in the *CAHWCA* of the Statute of Rome, which explicitly states that a crime against humanity can only be committed pursuant to a "State or organizational policy." I agree with the Respondent that it leaves little room for arguing that no such requirement exists.

[56] Furthermore, in the case at bar, the IAD decision according to which the Applicant had not been successful in establishing that the NPF did not commit crimes in furtherance of a State or organizational policy is reasonable. The proposed question would not be determinative of the issues in this case and dispositive of the appeal.

[57] The proposed question cannot be certified pursuant to section 74 of the *IRPA*.

IX. Costs

[58] The Applicant does not request costs. The Respondent requests costs in an amount of $10,000.

[59] Section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, states:

Costs	**Dépens**
22 No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.	**22** Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.
[Emphasis added]	[Je souligne]

[60] Justice Ahmed summarizes the law surrounding costs in the immigration and refugee context in *Zaeri v Canada (Citizenship and Immigration)*, 2024 FC 638 at paragraphs 20-22:

> [20] Costs are awarded in applications for judicial review under the *IRPA* for "special reasons," which is a high threshold (*Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at paras 55-56, citing Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 ("*Rules*"), *Taghiyeva v Canada (Citizenship and Immigration)*, 2019 FC 1262 ("*Taghiyeva*") at paras 17-23, and *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 7).
>
> [21] Conduct that forms "special reasons" for costs includes unnecessarily or unreasonably prolonging proceedings, acting unfairly, oppressively, or improperly, engaging in conduct that was "actuated by bad faith," as well as engaging in conduct that undermines our judicial system's integrity (Canada (Public Safety and Emergency Preparedness) v Oko-Oboh, 2022 FC 740 ("Oko-Oboh") at para 10, citing Taghiyeva at para 18 and Mayorga v Canada (Citizenship and Immigration), 2010 FC 1180 at paras 21, 47).
>
> [22] However, costs are awarded with regard to each case's "particular circumstances," and there is "no exhaustive list of grounds which may justify an award of costs in immigration proceedings" (Oko-Oboh at para 10, citing Khizar v Canada (Public Safety and Emergency Preparedness), 2021 FC 641 at para

> 37 and King v Canada (Citizenship and Immigration), 2011 FC 1193 at para 2).
>
> [Emphasis added]

[61] The Respondent submits "special reasons" arise in this case because the purpose of the appeal before the IAD and this application for leave and judicial review is to overturn the Federal Court's decision in *Verbanov* and therefore has unreasonably and unfairly prolonged the admissibility proceedings against the Respondent. Respectfully, I disagree.

[62] I understand that this application for judicial review of the IAD decision has forced the Respondent to pay legal fees. However, the evidence does not demonstrate that the Applicant acted unfairly, oppressively, or improperly, engaged in conduct that was "actuated by bad faith," or engaged in conduct that undermines our judicial system's integrity. The high threshold for costs has not been met in this case.

X. Conclusion

[63] For the above reasons, this application for judicial review is dismissed. The Applicant has not raised any reviewable errors warranting the intervention of this Court.

[64] There are no questions of general importance to be certified.

JUDGMENT in IMM-13116-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions to be certified.

3. There is no Order as to costs.

"L. Saint-Fleur"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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