Federal Court  Cour fédérale

Date: 20250711

Docket: IMM-10637-24

Citation: 2025 FC 1241

Ottawa, Ontario, July 11, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

FRANK IKECHUKWU UBAH

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Minister of Public Safety and Emergency Preparedness [Minister] claims that Mr. Frank Ikechukwu Ubah is inadmissible to Canada under paragraphs 34(1)(b) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Before this Court, they seek judicial review of an Immigration Appeal Division [IAD] decision finding that there were no reasonable grounds to believe that Mr. Ubah engaged in, instigated, or was a member of an

organization that would engage in the subversion by force of the Nigerian government [Decision].

[2] Mr. Ubah was a member of the Indigenous People of Biafra [IPOB] before he resigned from the organization in 2018. He maintains that the IAD reasonably found him not inadmissible to Canada, because there was no temporal nexus between his membership in the IPOB and its engagement in or instigation of the subversion by force of the Nigerian government. Contrary to the Minister's assertions, he submits that there were no reasonable grounds to believe at the time of his membership that the IPOB would engage in the prohibited acts designated under paragraph 34(1)(f) of the IRPA. Mr. Ubah therefore contends that his membership in the IPOB falls within the temporal exception established in *El Werfalli v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 612 [*El Werfalli*].

[3] For the reasons that follow, I dismiss the application for judicial review. The Minister is essentially asking this Court to reweigh the evidence filed before the IAD and arrive at a conclusion more favourable to their position. This is not something the Court will do on judicial review, absent exceptional circumstances that do not arise here (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 73 [*Mason*]).

II. Background Facts

[4] The IPOB is an Igbo nationalist organization seeking to establish a separate Biafran state from the five Igbo-majority states in southeastern Nigeria.

[5] Mr. Ubah was a member of the IPOB between January 2016 and August 2018. After joining the organization, he became the director of the Biafra Secret Service, a position that made him responsible for organizing peaceful protests against the Nigerian government. He testified that during his time with the IPOB, he did not carry arms and was not aware of other members doing so. He explained that the IPOB's goal was the creation of a Biafran state through peaceful means.

[6] On September 12, 2018, Mr. Ubah resigned as director of the Biafra Secret Service and left the IPOB. He explained leaving the organization as a principled stance against the use of force, opposing armed struggle as a means of creating a Biafran state. At this point, the IPOB had begun forming the Eastern Security Network, which he understood could carry arms.

[7] Mr. Ubah entered Canada on May 22, 2018, and claimed refugee protection because the Nigerian authorities had targeted him for being a member of the IPOB. This claim was suspended pending a determination of his inadmissibility under to paragraphs 34(1)(b) and 34(1)(f) of the IRPA.

[8] On September 21, 2023, the Immigration Division [ID] concluded that Mr. Ubah was not inadmissible under paragraphs 34(1)(b) and 34(1)(f) of the IRPA. The IAD concluded the same on appeal, dismissing the Minister's claim in a decision rendered May 21, 2024.

III. Decision Under Review

[9] Mr. Ubah voluntarily disclosed his membership in the IPOB, and his credibility was not in question. The central issue was instead whether there were reasonable grounds to believe that

the IPOB had engaged in or instigated subversion by force or would have done so at the time of his membership. The IAD concluded that this was not the case.

[10] The IAD acknowledged that the IPOB would later engage in the subversion by force of the Nigerian government, citing this Court's finding in *Chukwudi v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 423 [*Chukwudi*] to the effect of there being "reasonable grounds to believe that the IPOB engages in or instigates, has engaged in or has instigated, or will engage in or will instigate the subversion by force of any government, particularly since 2019." The documentary evidence filed before the IAD showed that the IPOB attacked Nigerian politicians in Germany and Spain in 2019. The IAD concluded that these attacks, combined with the IPOB leader's earlier violent rhetoric, constitute subversion by force.

[11] However, the point of reference for the IAD's analysis was the time of Mr. Ubah's membership. In this respect, the IAD found that the facts occurring before his departure from the IPOB do not meet the threshold of "instigation" or "engagement" within the meaning of paragraph 34(1)(b) of the IRPA.

[12] Prior to Mr. Ubah resigning from the IPOB, the organization had made several hostile statements directed at the Nigerian government and its army, including a call to arms in retaliation against Nigerian soldiers who had killed members of the IPOB. The IAD considered these statements, and other such pronouncements 2015 to 2018. However, it found that they do not amount to instigating or engaging in subversion by force. On this point, the IAD noted:

> [24] Wanting to arm oneself for protection or even for revenge is not equivalent to instigating the subversion by force of the Nigerian government. Knowing the brutality of the Nigerian state

> against IPOB separatists, it is plausible that people would want to defend themselves, because not only is the government failing them, it abuses them. A desire to defend oneself is not the same as wanting to subvert a government by force. To conclude that arming oneself or wanting to attack Nigerian soldiers amounts to subversion by force of the government, the stated goal of the armament or the attacks against the soldiers would have to be the subversion by force of the government.

[13] The IAD traced a distinction between the IPOB's actions prior to and following 2019, while nevertheless situating them on a factual continuum. Prior to 2019, the IPOB and its leadership employed an aggressive rhetorical strategy against the Nigerian government and its treatment of Biafran separatists, often evoking a sense of broader struggle against the state. The IAD characterized these statements as "vague hopes to gain traction … and public opinion," though they also provide context for the violent acts that would occur later on. In this sense, the concrete violence that would emerge in Germany and Spain was a "logical continuation" of the IPOB's pre-2019 rhetoric, even if meaningfully distinct. The IPOB's rhetorical strategy does not constitute subversion, but the violence later inflicted upon Nigerian politicians does.

[14] As such, the IAD found that the IPOB had only engaged in subversion in the period following Mr. Ubah's departure from the organization, and that there were no reasonable grounds to believe that they would later engage in the prohibited acts at the time of his membership. He was therefore not inadmissible to Canada under paragraphs 34(1)(b) and 34(1)(f) of the IRPA.

IV. Issue and Standard of Review

[15] The sole issue is whether the decision under review is reasonable. In this respect, the role of the reviewing court is to examine the decision maker's reasoning and determine whether the decision is based on an "internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 64). Although the party challenging the decision bears the onus of demonstrating that the decision is unreasonable, the reviewing court must ask "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99).

[16] In the context of this judicial review, the Court's task is not to determine whether there were reasonable grounds to believe that Mr. Ubah was inadmissible, but rather to determine whether the decision maker's conclusion that there were not such grounds was itself reasonable (*Rahaman v Canada (Citizenship and Immigration)*, 2019 FC 947 at para 9; *Lapaix v Canada (Citizenship and Immigration)*, 2025 FC 111 at para 43 [*Lapaix*]).

V. Analysis

A. *Legislative Framework and Standard of Appreciation*

[17] Paragraph 34(1)(b) of the IRPA addresses concrete participation in acts of subversion by force of a government, while paragraph 34(1)(f) is solely concerned with membership in an organization that engaged in such acts (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 24). In both cases, the facts constituting inadmissibility must

be assessed in light of section 33 of the IRPA. Sections 33 and 34(1)(b) of the IRPA set out the following:

Rules of interpretation	**Interprétation**
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.	33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
Security	**Sécurité**
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
[…]	[…]
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
[…]	[…]
(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).	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

[18] The standard of assessment for the facts that constitute inadmissibility is that of "reasonable grounds to believe," requiring more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114 [*Mugesera*]). In essence, the IAD will

conclude that reasonable grounds exist “where there is an objective basis for the belief which is based on compelling and credible information” (*Mugesera* at para 114).

[19] Although this standard is rather permissive, it is not without limits (*Lapaix* at para 44). The information on which the objective basis for the belief rests must be compelling and credible, and the decision under review cannot be based on reasoning or an assessment of the evidence that “causes the reviewing court to lose confidence in the outcome reached by the decision maker” (*Vavilov* at para 122). In other words, a lower standard of proof does not entitle the decision maker to rely on ambiguous, suspect, or unverifiable information (*Gonzalez Nunez v Canada (Citizenship and Immigration)*, 2024 CF 1948 at para 40; see also *Canada (Citizenship and Immigration) v USA*, 2014 FC 416 at paras 19–24 [*USA*]). Assessing the quality of information remains the decision maker’s task (*Vavilov* at para 125).

B. *The Decision Under Review Is Reasonable*

[20] The Minister challenges the Decision on two broad grounds. First, they submit that the IPOB engaged or instigated subversion by force against the Nigerian government during Mr. Ubah’s tenure with the organization. In the alternative, they argue that the subversive attacks following his departure result from an organizational context that existed when he was still a member of IPOB, and that it was thus unreasonable for the IAD to sever these acts of violence from the logical continuum from which they are sourced. Accordingly, it was unreasonable for the IAD to have concluded that, while Mr. Ubah was still a member of the organization, there were no reasonable grounds to believe that the IPOB would engage in subversion by force against the Nigerian government. The temporal exception set out in *El Werfalli* cannot apply.

[21] Mr. Ubah maintains that the Decision was reasonable. On the first ground, he responds that the IAD considered the IPOB's actions and rhetoric during the period of his membership and simply determined that they did not amount to subversion by force. Although the Minister may disagree with the decision maker's assessment of the evidence, they do not demonstrate why this Court must interfere with its findings on judicial review. The exceptional circumstances warranting intervention with the IAD's findings of fact do not arise here. On the second ground, he contends that there is no inconsistency in the reasons under review. In acknowledging that the violent acts of 2019 emerged within a given context, the IAD was noting a broad sense of continuity between aggressive rhetoric and aggressive action, without finding the causal relationship required to determine there were reasonable grounds to believe that the IPOB would in fact engage in subversion by force against the Nigerian government. The notion of violence emerging in context does not preclude the absence of reasonable grounds to believe that the group would engage in subversion.

[22] For the reasons expounded below, I agree with Mr. Ubah. I will address each of the Minister's points in turn.

(1) The IPOB Subversion During His Membership

[23] The Minister takes issue with the IAD's interpretation of the relevant provisions. They argue that it did not distinguish between the two prohibited actions ("engaging in" and "instigating") identified in paragraph 34(1)(b), and instead narrowed the application paragraph 34(1)(b) to the use of force. In doing so, the IAD failed to consider the text of the provision and unduly restricted its scope, adopting an approach that breaks with a line of jurisprudence

enjoining decision makers to favour a broad interpretation of paragraph 34(1)(b) of the IRPA (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at paras 78–80; *Oremade v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077 at paras 25–27; *Fituri v Canada (Minister of Citizenship and Immigration)*, 2024 FC 502 at para 15).

[24] On the notion of "instigation," the Minister suggests turning to the Supreme Court's definition of "incitement" in *Mugesera* as an interpretive guide: whether the speech actually prompts subversion is irrelevant, what matters is whether the speech is direct, public, and intent on prompting or provoking another to engage in subversion. The Minister adds that this understanding of "instigation" is consonant with the Court's understanding of subversion by force, which has been defined as "[any] act that is intended to contribute to the process of overthrowing a government, or most commonly as the use or encouragement of force, violence or criminal means with the goal of overthrowing a government, either in part of its territory or in the entire country" (*Chukwudi* at para 18; see also *USA* at para 36).

[25] Overall, the Minister argues the IAD would have considered the IPOB's rhetoric during Mr. Ubah's time with the organization to constitute subversion or instigation upon a reasonable interpretation of the relevant provisions.

[26] I disagree with the Minister. The IAD reasonably concluded that the IPOB was not instigating or engaging in subversion by force prior to 2019.

[27] Principles of statutory interpretation are a relevant legal constraint bearing upon administrative decision makers, and the IAD is indeed tasked with "[interpreting] the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue" (*Vavilov* at para 121). Failure to consider "a key element of a statutory provision's text, context or purpose" can be unreasonable (*Vavilov* at para 122).

[28] The IAD makes no such failure. Throughout its reasons, it specifically mentions "instigation" and "incitement" as prohibited acts under the inadmissibility provisions, ultimately concluding that "it is the order to attack Nigerian politicians in 2019 that constitutes incitement or an act" [emphasis added]. This conclusion clearly acknowledges that the act itself is not required to engage paragraph 34(1)(b) of the IRPA. As such, the Minister's claim that the IAD unduly narrowed the inadmissibility provision is without merit. The IAD interpreted its home statute and applied it to the facts of the case—I see no reason to intervene with this most basic administrative exercise.

[29] A small interpretive point is nevertheless worth raising in light of the Minister's submissions: paragraph 34(1)(b) of the IRPA speaks of "instigation" and not "incitement." The latter term belongs to the context of international criminal law and has implications for inadmissibility grounded in systematic or gross human rights violations, but bears no strict relation to inadmissibility on security grounds as understood in paragraphs 34(1)(b) and 34(1)(f) of the IRPA. Importing "incitement" as defined in *Mugesera* or otherwise into this analysis risks

displacing the specific language employed by Parliament in crafting its security provisions. I see no reason to do so.

[30] I also see no reason to intervene with the IAD's appreciation of the evidence on judicial review. The Minister insists that the IPOB's pre-2019 rhetoric was violent, pointing to Facebook posts from the IPOB's leader and noting that the IPOB's mission statement was to restore Biafra "by whatever means." Yet it is clear that the IAD saw and considered this evidence, and simply concluded that they were not enough to conclude that the IPOB had indeed engaged in subversion at that time. As will be expounded below, this is the essence of a weighing exercise: the IAD considered the evidence referenced by the Minister and found the objective evidence pointing to the nonviolent activities and approach of the organization to be more reliable.

[31] The IAD concluded that the IPOB statements did not constitute instigating or engaging in the subversion by force of the Nigerian government, because they were not made with the stated goal of subverting the government by force, but rather with the broad intent of gaining public support for the self-determination of the Biafran people. It arrived at this conclusion with due consideration for evidence appearing to contradict its ultimate finding, specifically quoting in its reasons a passage from Amnesty International in 2016 stating that some of the IPOB's radio messages "may constitute incitement to violent acts against the Nigerian state." However, the IAD then referenced that same report's findings that IPOB protests were "largely peaceful" and that the IPOB leadership at that time had instructed its members to make their demands without the use of force. In light of this evidence, the IAD concluded that "inciting the subversion by force of the Nigerian government was not on the table for the IPOB at the time."

[32] In this same vein, the IAD considered the statements made by the IPOB's leader and concluded that they were not compelling and credible evidence of instigation of subversion. For instance, in the interview where the IPOB leader stated that Biafra will come "by whatever means possible," he immediately clarified that, "We have chosen the track of peaceful agitation, non-violence, persuasion, logic, reason, argument. We are going to deploy all of that to make sure we get Biafra." He added, "Our ultimate goal is freedom, referendum is the path we have chosen to take to get Biafra… There is no alternative."

[33] The IAD's reasons consider the evidentiary record and the general factual matrix bearing on its decision, transparently assessing and weighing what was before it. It was entitled to deem an Amnesty International report to be more reliable than the Facebook posts of a political agitator and was indeed bound to make a decision based on "compelling and credible information" (*Mugesera* at para 114).

[34] Finally, on this point, the Minister submits that it was incoherent for the IAD to consider the IPOB's pre-2019 IPOB activity as "vague hopes to gain traction … and public opinion" while also the source of a "logical continuation" that came to fruition in 2019. I disagree. As will be further explained below, the IAD reasonably concluded that the statements were not intended to prompt others to overthrow a government, and the fact that later statements that built off of these initial statements *did* have this intent does not change the intent of the previous statements.

(2) Future Acts and the Temporal Exception

[35] Regardless of whether the IPOB was engaging in or instigating subversion when Mr. Ubah was a member of the organization, the Minister contends that he is nevertheless inadmissible to Canada. This is because there were reasonable grounds to believe at the time of his membership that the IPOB would engage in or instigate the subversion by force of the Nigerian government. Mr. Ubah would therefore not fall within the *El Werfalli* exception to inadmissibility.

[36] The Minister identifies two errors in the IAD's analysis to this effect. First, the IAD's reasons were unresponsive to the Minister's "extensive representations" on the reasonable grounds to believe that subversion would later occur. Second, the IAD unreasonably assessed Mr. Ubah's personal knowledge of whether the acts of subversion would later occur, thus converting the membership analysis into one of complicity.

[37] On this second point, the Minister again raises the inconsistency in the IAD having referred to these 2019 acts as having "emerged in a context" and as a "logical continuation of the calls for violence made by the IPOB in the years before 2019," without also forming the basis for reasonable grounds to believe that the acts would occur in the future. If the use of force was the logical suite of the acts and rhetoric deployed by the IPOB when Mr. Ubah was a member, the *El Werfalli* temporal exemption does not apply. The Minister submits that the evidence indicates that the IPOB appeared to be mobilizing for armed conflict and possibly another civil war as early as in 2015, not to simply protect the IPOB against the Nigerian government's brutality, but to subvert it by force. As such, instigation to subversion existed at the time of Mr. Ubah's

membership, which built up and led to formal attacks in 2019 and onwards. The Minister concludes that, if the use of force was a "logical continuation" of acts committed when the Respondent was a member of the IPOB, the IAD could therefore not apply the *El Werfalli* temporal exemption.

[38] I respectfully disagree with the Minister. The IAD's analysis of the temporal exception was reasonable.

[39] A decision that does not meaningfully account for the parties' central issues and concerns will not be justified and transparent. Those affected by a decision have the right to be heard and present their case fully, and reasons are the primary mechanism whereby a decision maker demonstrates that they actually listened to the case before them. Decision makers must therefore be responsive to the central issues presented to them in the parties' submissions (*Vavilov* at para 127).

[40] However, reviewing courts cannot expect administrative decision makers to respond to every argument submitted to them (*Vavilov* at para 128). A tribunal need not refer in its reasons to each and every piece of evidence before it and is presumed to have considered all the evidence (*Simpson v Canada (Attorney General)*, 2012 FCA 82 at para 10).

[41] The IAD's reasons, albeit short, are responsive to the Minister's submissions and the evidence before it. Again, the *El Werfalli* exception places the period of membership as the point of reference for the inadmissibility analysis: the question is not whether there are reasonable grounds to believe—in the abstract—that the organization will engage in subversion by force,

but whether there were—at the time of the person's membership—reasonable grounds to believe that the organization would engage in such acts down the line. This is precisely the point of reference argued by the Minister and considered by the IAD in its reasons. Throughout the Decision, the IAD considers reasonable grounds at the time of Mr. Ubah's membership. It is plainly alive to this aspect of the analysis.

[42] The Minister wrongly characterizes the IAD's analysis as one of complicity. While the IAD seemingly did consider Mr. Ubah's specific knowledge of the planned violence, it did not do so with a view of gauging his degree of responsibility for the prohibited acts. Rather, the IAD centred its analysis on the objective fact of him leaving the IPOB when he learned that it intended to use force, and before the order to undertake the 2019 attacks. This finding did not consider Mr. Ubah's subjective knowledge or contribution to the prohibited acts, but rather the question of whether there were reasonable grounds to believe that the IPOB would engage in subversion at the time of his membership. The IAD's analysis aligns with the test under paragraph 34(1)(f) as presently constituted, which is indeed not grounded in a complicity framework (*Lapaix* at paras 58–61).

[43] As a final point, I see no incoherence in treating the 2019 attacks as having emerged within a given context, while nevertheless concluding that there were no reasonable grounds to believe at the time of his membership that these acts would occur. The standard of appreciation applicable to the facts constituting inadmissibility rules out hindsight (*El Werfalli* at para 71). In other words, the tenor of the IPOB's words and acts pre-2019 is not necessarily altered by the 2019 attacks. While later acts of violence could, in hindsight, logically follow from aggressive

political speech, this does not mean that there were reasonable grounds to believe at that time that violence would later occur.

[44] In any event, it is hardly illogical to note that violence emerges in context. The IAD's statement about the logical progression of the IPOB's rhetoric merely acknowledges how political violence does not occur in a vacuum. It was entitled to make such a remark, and there is a meaningful distinction between situating events in a given context and establishing clear causal links between them. On its appreciation of the facts, there was no causal link.

[45] Regarding the argument that the evidence demonstrates an intent to subvert beginning in 2015, the Minister again asks this Court to substitute its appreciation of the IPOB's intent for that of the IAD. The same facts were before the IAD that are now before the Court, and the IAD reasonably determined that they did not evidence reasonable grounds to believe the IPOB would engage in or instigate the subversion by force of the Nigerian government.

[46] The IAD assessed the evidence and constructed an account of the facts from it, attaching greater weight to sources which it regarded as reliable and credible than to other evidence which it did not. It concluded that, at the time of the Respondent's membership, there was no compelling and credible information that would reasonably ground a belief that the nonviolent organization would eventually subvert the government by force. In doing so, the IAD considered that the actual armament only occurred around 2020 and considered the credible and compelling information to be that the organization was pursuing their goals through nonviolent means.

[47] On the basis of this account and the relevant law, the IAD found that Mr. Ubah was not inadmissible to Canada. The Minister has not demonstrated why this finding was unreasonable, and the Court will accordingly not intervene with the Decision.

VI. Conclusion

[48] The Minister's application invites this Court to reweigh the evidence and substitute its own assessment of the file for that of the IAD. The Court must decline this invitation on judicial review.

[49] For the reasons set out above, this application for judicial review is dismissed. Neither party proposed a question for certification, and I agree none arise.

JUDGMENT in IMM-10637-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions to be certified.

"L. Saint-Fleur"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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