

Federal Court



Cour fédérale

Date: 20250812

Docket: IMM-15861-23

Citation: 2025 FC 1367

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 12, 2025

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

ANDREI KUZNETCOV

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Andrei Kuznetcov, is a citizen of Russia. He seeks judicial review of the decision of the Immigration Division [ID] dated November 28, 2023 [Decision]. The ID found Mr. Kuznetcov inadmissible and ordered his removal under paragraphs 34(1)(a) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because there were

reasonable grounds to believe that he was a member of the Komitet Gosudarstvennoy Bezopasnosti [KGB] as a member of the border service. The ID found that the documentary evidence was sufficient to establish that the KGB had engaged in an act of espionage against Canada. The ID therefore made a deportation order against him in accordance with paragraph 229(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, on security grounds under subsection 34(1) of the IRPA.

[2] For the reasons that follow, the application for judicial review is dismissed. The Decision is clear, justified and intelligible in relation to the evidence submitted (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Mr. Kuznetcov has not discharged his burden of showing that the Decision is unreasonable.

II. Factual background

A. *Facts*

[3] From May 1988 to May 1991, Mr. Kuznetcov completed his mandatory military service in the Union of Soviet Socialist Republics [USSR], serving in the maritime unit of the Russian border service, which was a department of the KGB.

[4] After his mandatory military service ended in May 1991 and until 1993, Mr. Kuznetcov voluntarily continued to work in the border service. When the USSR collapsed in

December 1991, the KGB was gradually disbanded, but the border service remained in place and operated under the Ministry of Security and Internal Affairs until 1993.

[5] In March 1993, Mr. Kuznetcov left the service until April 1999.

[6] From 1999 to 2003, Mr. Kuznetcov again joined Russia's maritime border service, operating under the Federal'naya Pogranichnaya Sluzhba [FPS], and worked on Russia's borders with China, Japan and Norway.

[7] In 2003, for family reasons, Mr. Kuznetcov terminated his contract with the border service, which became part of the Federal'naya Sluzhba Bezopasnosti [FSB] that same year.

[8] Mr. Kuznetcov has been a Jehovah's Witness since 2003. This is the reason he left Russia and came to Canada.

[9] On June 16, 2017, Mr. Kuznetcov made a claim for refugee protection in Canada.

[10] On July 11, 2018, the Canada Border Services Agency [CBSA] conducted an interview. The claim for refugee protection was suspended following a report dated July 23, 2018, filed under subsection 44(1) of the IRPA by the Minister of Immigration, Refugees and Citizenship Canada [IRCC].

[11] On September 13, 2022, a hearing was held before the ID.

B. *Decision under review*

[12] On November 28, 2023, the ID rendered the Decision concluding that Mr. Kuznetcov was a member of an organization that engaged in espionage against Canada and finding him inadmissible, and consequently made a deportation order against him.

[13] The ID's findings were based on Mr. Kuznetcov's admissions during his interview with Officer Blackburn and his testimony of September 13, 2022, as well as on the documentary evidence submitted by the Minister, which the ID considered credible and trustworthy. Mr. Kuznetcov did not submit any evidence contradicting the Minister's documentary evidence.

[14] First, the ID found that there were reasonable grounds to believe that the KGB was an organization that engaged in an act of espionage against Canada within the meaning of paragraph 34(1)(f) of the IRPA. The ID was satisfied that the KGB had the necessary basic elements in terms of [TRANSLATION] "identity[,] leadership, hierarchy and organizational structure" to meet the statutory definition of an "organization". The ID based its interpretation of the term "organization" on *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 [*Sittampalam*] and *Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 349. Furthermore, the ID found that the documentary evidence demonstrated [TRANSLATION] "decades of ongoing espionage operations against Canada by the KGB and by its predecessor and successors".

[15] Second, the ID found that there were reasonable grounds to believe that Mr. Kuznetcov had been a member of the KGB voluntarily, since he had been a member of the border service,

an entity under the direction of the KGB. The ID applied a broad and unrestricted definition of the term “member”, as indicated in *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 [*Poshteh*] and *Motehaver v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 141. The ID considered that membership could be either formal or membership by association or informal participation, as in *TK v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 327. Mr. Kuznetcov admitted that he was a member of the border service. The Minister’s documentary evidence confirmed that the border service operated under the direction of the KGB at the time Mr. Kuznetcov was a member. Mr. Kuznetcov confirmed this during his interview with Officer Blackburn as well as in his testimony.

[16] The ID stated that it had considered the fact that Mr. Kuznetcov’s early military service was mandatory. Nevertheless, the ID still determined that Mr. Kuznetcov had voluntarily been a member of the KGB, since Mr. Kuznetcov admitted to voluntarily signing a two-year contract following the mandatory portion of his military service.

III. Legal context

A. *Relevant legislation*

[17] The relevant provisions of IRPA are as follows:

Inadmissibility

Rules of interpretation

33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there

Interdictions de territoire

Interprétation

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

are reasonable grounds to believe that they have occurred, are occurring or may occur.

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 :

(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;

a) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;

...

[...]

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

Exception

Exception

(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

[Emphasis added.]

B. *Legal framework*

[18] To find a person inadmissible on security grounds under paragraph 34(1)(f) of the IRPA, in connection with paragraph 34(1)(a), two things must be established:

- (1) that there are reasonable grounds to believe that the foreign national is a “member” of an organization; and
- (2) that there are reasonable grounds to believe that the organization engages, has engaged or will engage in acts of espionage.

[19] In *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, the Supreme Court of Canada established that the evidentiary standard of *reasonable grounds to believe* requires “more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities” (*Mugesera* at para 114). In addition, this standard of proof requires that there be a “bona fide belief in a serious possibility based on credible evidence”, and credible, objective and compelling evidence is required (*Geng v Canada (Citizenship and Immigration)*, 2023 FC 773 at para 34 [*Geng*]; *Moiseev v Canada (Citizenship and Immigration)*, 2008 FC 88 at para 16 [*Moiseev*]).

IV. Issues

[20] The issues raised by Mr. Kuznetcov are as follows:

- A. Did the ID err in finding that Mr. Kuznetcov was a member of the KGB?
- B. Did the ID err in finding that the KGB engaged in an act of espionage against Canada within the meaning of paragraph 34(1)(a)?

V. Standard of review

[21] The standard of review applicable to the issues before me respecting the merits of the administrative decision is reasonableness, as stated by the Supreme Court of Canada (*Vavilov* at para 23). While this presumption is rebuttable, none of the exceptions apply in this case.

[22] A reasonable decision is one that is based on an internally coherent and rational chain of analysis. It must be justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). For a decision to be considered unreasonable, the applicant must demonstrate that it contains a sufficiently central or significant shortcoming (*Vavilov* at para 100).

[23] The Court should not intervene where there is a “minor misstep” (*Vavilov* at para 100). The Court’s intervention is not warranted by any and all errors or concerns. The alleged shortcomings must go beyond superficial representations on the merits of an impugned decision.

[24] Accordingly, a court applying the reasonableness standard of review does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem (*Vavilov* at para 83).

[25] The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85).

VI. Analysis

A. *Did the ID err in finding that Mr. Kuznetsov was a member of the KGB?*

[26] This question raises the issue of Mr. Kuznetcov's membership, under paragraph 34(1)(f) of the IRPA, in an organization (KGB) that there are reasonable grounds to believe has engaged in espionage against Canada, in accordance with paragraph 34(1)(a) of IRPA.

[27] The parties agree that the IRPA does not define what an "organization" is, but that *Sittampalam* indicates that a broad interpretation is to be given and that certain factors such as identity, leadership, hierarchy, structure and occupied territory are helpful in defining an organization, but not essential. Everything turns on the facts and circumstances of each case (*Sittampalam* at paras 38–39; see also *Harkat v Canada (Citizenship and Immigration)*, 2012 FCA 122 at para 150). In addition, the parties agree that the terms "member" or "membership" in an organization are to be given a broad interpretation and assessed on an individual basis (*Poshteh* at paras 27, 30–31 and 35–36).

[28] Mr. Kuznetcov submits that it is unreasonable for the ID to have concluded that he was a "member" of the KGB within the meaning of the IRPA. This finding is allegedly unreasonable because he had no direct connection to the KGB, and because it requires that a connection be established between him and the organization of which he was deemed to be a member, yet no analysis of those factors was performed in this case (*Vukic v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 370 at para 38). Mr. Kuznetcov submits that the connection the ID based its finding on is the fact that the KGB was identified as responsible for the border service in the Soviet state's organizational charts. Mr. Kuznetcov maintains that this connection is too remote to hold him liable for the actions of the KGB, given that he was merely a member of the border service.

[29] Mr. Kuznetcov recounts the facts of the case as follows:

- (1) In May 1988, he was called up for mandatory military service and assigned to the maritime border guard for a period of three years, until 1991.
- (2) At the beginning of his service, he trained as a gunner for six months in the city of Anapa, but Mr. Kuznetcov indicated that he did not attend the Zarsinsky Academy.
- (3) Still during his mandatory service, he was assigned to a border protection boat and sailed on a river on the China–Russia border. In addition to guarding the maritime border, he cleaned and repaired boats.
- (4) In December 1990, he was transferred to the Kuril Islands until the end of his mandatory military service.
- (5) After his mandatory service, he voluntarily stayed in the navy until 1993, working in the border guard's boat repair unit and sometimes sailing along the border between Russia and Japan.
- (6) He left the service from March 1993 to April 1999.
- (7) In 1999, approximately six years after he left, he rejoined the border guard. He worked on boat maintenance, equipment checks and security in the Murmansk region, on the Norwegian border.
- (8) In 2003, he permanently left the service.

[30] I note that the Minister does not dispute the above facts, which are supported by the list of military experience and the service record provided by Mr. Kuznetcov.

[31] Mr. Kuznetcov maintains that through it all, he was never an officer and he never received KGB training. He says that he has no knowledge of any of his colleagues receiving training from the KGB, gathering foreign intelligence or spying on Canada. Mr. Kuznetcov admits that the only collaboration between the border guard and the KGB was the KGB's collection of information on the locations of border guard boats. He acknowledges that the border guard was part of the KGB in the days of the USSR but states that the organization's role

was to oversee the security of the country, which he says was done without involvement in acts of espionage.

[32] According to Mr. Kuznetcov, the ID concluded that he was a member of the KGB solely because he served in maritime border troops with a military hierarchy, relying on an organizational chart without considering that the connection was indirect and remote and that the concept of membership cannot be stretched infinitely (*Geng* at para 75). Mr. Kuznetcov goes so far as to argue that Federal Court decisions concerning paragraph 34(1)(a) always show a clear link between the applicant's activities, the organization in which the applicant worked and the impugned acts, to demonstrate that the situation is completely different in his case (see, for example, *Lennikov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 43; *Weldemariam v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 631).

[33] The Minister explains that the purpose of paragraph 34(1)(f) of the IRPA is not to determine Mr. Kuznetcov's [TRANSLATION] "liability" for acts committed by the KGB, and that it is not necessary for Mr. Kuznetcov to have committed the acts of espionage himself or to have had direct knowledge of the organization's activities or objectives (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 [*Kanagendren*]; *Canada (Minister of Citizenship and Immigration) v Xu*, 2024 FC 267 at para 25). In light of the case law, I can only agree with the clarifications provided by the Minister. The Minister notes that in *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85 [*Nassereddine*], the Federal Court confirmed, citing *Saleh v Canada (Citizenship and Immigration)*, 2010 FC 303, that based on a broad interpretation of paragraph 34(1)(f), an admission of membership in an organization justifies in

and of itself a finding that an applicant is a member within the meaning of section 34 of the IRPA (*Nassereddine* at para 59). Moreover, in *Poshteh*, the Federal Court of Appeal confirmed that “a test for membership based on significant integration would not be consistent with the broad interpretation to be given to the term ‘member’” (*Poshteh* at para 31).

[34] In the present case, although Mr. Kuznetcov maintains that he was not a member of the KGB, the ID found otherwise in the Decision. This finding is supported by two types of evidence: (1) Mr. Kuznetcov’s admissions at the hearing before the ID and in his interview with the CBSA, and (2) the relevant objective documentary evidence not disputed by Mr. Kuznetcov before the ID.

[35] During the CBSA interview on July 11, 2018, and at the hearing before the ID, Mr. Kuznetcov admitted that he had been a member of the maritime border service, that these border troops were called the [TRANSLATION] “KGB-led border troops of the Soviet Union”, that [TRANSLATION] “the border troops considered themselves the army of the KGB”, and that they operated under the KGB until the collapse of the USSR in 1991. Mr. Kuznetcov’s service record indicates that he was released from mandatory military service in May 1991 under KGB order No. 47 of March 30, 1991. Indeed, during the interview, Mr. Kuznetcov referred to his record to show that the KGB ran the organization of which he was a member from 1988 to 1991. Finally, Mr. Kuznetcov himself voluntarily chose to continue his military career in the border service for two years until 1993, and again from May 1999 to 2003.

[36] The ID also relied on the objective documentary evidence before it to conclude that the border service to which Mr. Kuznetsov belonged was indeed part of the KGB and that it worked closely with KGB structures to track the movements of Soviet people within the borders. Among the documents considered by the ID was a March 2002 essay by Gordon Bennett titled “The Federal Border Guard Service—A country begins with its border”, which states the following:

At the beginning of 1992 Border Troops were stationed in all the FSU republics. As a substructure of the KGB the Border Troops were, in several republics, its only “stay behind” branch, left with sensitive papers. In some instances the Russian Border Troops were guarding borders because Moscow, and sometimes local authorities, wanted them to; on occasion they ran the last KGB errands and transported KGB files back to Moscow.

...

The multitude of federal organisations performing their own tasks at the borders made the effective functioning of the new border control system very difficult. In 1995 twelve services had various responsibilities at Russia’s borders. Their number went up by the end of the century. The FPS has to co-operate not only with the power structures but also with the Ministry of Natural Resources, the State Fishing Committee, the Ministry of Agriculture and Food and others. It is entitled to conduct intelligence and counterintelligence work, in the interest of border protection only, in co-operation with the Foreign Intelligence Service (SVR) and the Federal Security Service (FSB).

[Citations omitted, emphasis added.]

[37] The Minister compared the present case to *Moiseev*, submitting that they are similar. I completely agree.

[38] In *Moiseev*, the applicant essentially challenged the visa officer’s finding that the applicant was a member of the KGB by virtue of his membership in the border service.

Justice de Montigny held in that case that the officer had reasonably concluded that the applicant

was a member of the KGB because of his membership in the border service, despite the fact that not everyone connected with an organization under the aegis of the KGB necessarily engaged in espionage:

[11] The applicant concedes that the KGB was an organization which engaged in acts of espionage against democratic governments. However, he submits that he was not a direct member of this organization, as he was part of the Border Guards, a subordinate unit. He therefore submits that the test for inadmissibility on security grounds has not been met.

...

[20] As previously mentioned, both parties agree that KGB members are inadmissible under section 34(1) of the *IRPA*. However, the applicant denies his membership in that organization, and argued that the Border Guards, despite being formally under the aegis of the KGB, were a distinct and discrete unit. He further argued that the KGB controlled many areas of [the] Soviet Union at the time, and that it would be illogical to consider every subordinate agency as part of the KGB's espionage and subversion activities.

...

[22] That being said, I have to note that the applicant did not provide any documentary evidence to the visa officer explaining the exact activity of the Border Guards. Quite to the contrary, there was ample evidence from which the visa officer could reasonably conclude that the applicant was a member of the KGB organization. First, there were the applicant's own statements that his military unit was part of the KGB. His diploma also states that he graduated from a KGB college. His workbook states that he did his military service with the KGB. And finally, he mentions that the head of the Border Guards reported to Yuri Andropov, when he was the head of the KGB.

[39] In the present case, although Mr. Kuznetcov received no KGB training and his position did not necessarily involve espionage, it was not unreasonable for the ID to conclude that Mr. Kuznetcov was a member of the KGB, given the evidence in the record and the unrestricted and broad interpretation that the term "member" was to be given (*Poshteh* at paras 27, 30–31 and

35–36). The evidence showed that the border service was one of the departments of the KGB, serving as a defender of Soviet ideology. Moreover, the evidence showed that members of the border service were carefully selected by the KGB before being admitted and that the border service was in possession of sensitive documents.

[40] Mr. Kuznetcov claims that the ID’s interpretation amounts to [TRANSLATION] “excluding [from the Canadian territory] all men who completed their mandatory military service” during the Soviet era, that is, before December 1991. I respectfully disagree. On the contrary, it bears reiterating that it is clear from the evidence before this Court that Mr. Kuznetcov admitted to being a member of the border service during the CBSA interview and in his testimony before the ID. Furthermore, Mr. Kuznetcov’s service record makes it clear that at the end of his mandatory military service in May 1991, he *voluntarily* re-enlisted in the border service while the KGB still maintained its role. With regard to the last point, which is discussed in more detail in the next section, the wide range of documentary evidence filed before the ID and considered by the panel in the Decision shows that the KGB still existed between the time when Mr. Kuznetcov voluntarily chose to enlist in May 1991 and when the USSR collapsed in December 1991.

[41] On reading the record, I am of the view that Mr. Kuznetcov has presented no evidence to contradict the finding regarding his membership in the organization. Mr. Kuznetcov’s challenge boils down to saying that the ID erred in holding Mr. Kuznetcov [TRANSLATION] “liable” for the actions of the KGB. I agree with the Minister that inadmissibility under paragraph 34(1)(f) of the IRPA is based on an individual’s affiliation with an organization and not on their involvement in or liability for the acts committed (*Poshteh* at paras 27, 30–31 and 35–36).

[42] Overall, I find the ID's reasoning in its assessment of Mr. Kuznetcov's membership to be intelligible. Mr. Kuznetcov cannot ask this Court to substitute its opinion for that of the administrative decision maker, as it is not the role of this Court on judicial review to re-weigh the evidence and come to a different conclusion (*Lennikov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 43 at para 56, as cited in *Moiseev* at para 24).

B. *Did the ID err in finding that the KGB engaged in an act of espionage against Canada within the meaning of paragraph 34(1)(a)?*

[43] Although Mr. Kuznetcov raises this issue, he instead argues in his memorandum that [TRANSLATION] "there is no evidence in the record filed by the Minister or cited by [the ID] indicating acts of espionage committed against Canada by the maritime border navy" [emphasis added]. The Minister is correct that Mr. Kuznetcov did not challenge the conclusion that the KGB committed espionage against Canada in his memorandum. However, at the hearing, Mr. Kuznetcov argued that the evidence before the ID was not sufficient to reasonably conclude that the KGB had engaged in espionage against Canada. Mr. Kuznetcov's argument boils down to an invitation to this Court to reassess the evidence that was before the ID. When sitting in judicial review, this Court cannot conduct a *de novo* analysis of the evidence that was before the administrative decision maker (*Vavilov* at paras 83, 125).

[44] The ID's conclusion that there are reasonable grounds to believe that the KGB engaged in an act of espionage against Canada is reasonable. Mr. Kuznetcov has failed to discharge his burden to show that the Decision was unreasonable (*Vavilov* at paras 99–100). The ID's finding was based on reasoning that was intelligible, transparent and justified by the evidence before the

ID, particularly since Mr. Kuznetcov did not contradict the Minister's evidence in this regard and did not address the issue before the ID:

[TRANSLATION]

MR. KUZNETCOV testified that he was not aware that the KGB engaged in espionage against Canada. An overview of the documentary evidence filed by the Minister's counsel shows ongoing acts of espionage on behalf of Russian authorities against Canada from the end of the Second World War through the Cold War era to the present day by the KGB's forerunner, the NKVD, throughout the life of the KGB from 1954 to 1991, and by its successors, the FKS, the Federal Counterintelligence Service, which was renamed the FSB, the Federal Security Service.

...

An overview of this documentary evidence originating from credible and trustworthy sources and undisputed by MR. KUZNETCOV demonstrates decades of ongoing espionage operations against Canada by the KGB and by its predecessor and successors. This evidence clearly shows that, as indicated on page 127 of Exhibit C-8 cited above, the mission and purpose of the KGB were, through counter-espionage in particular, to ferret out potential threats to the state and to prevent the development of unorthodox political and social attitudes among the population, and therefore that the organization acted covertly, as shown in the case law cited. The panel notes that counsel for MR. KUZNETCOV did not address this aspect in her submissions.

(Decision at lines 477–483, 560–568)

[45] Although the analysis could end here, for the sake of comprehension and intelligibility I will continue with the two points raised by Mr. Kuznetcov in his memorandum under this heading.

[46] According to Mr. Kuznetcov, the ID (1) equated his membership in the [TRANSLATION] “maritime border navy group” with membership in the KGB group and (2) equated the KGB

with other groups that preceded and succeeded it, namely the NKVD and the FKS and FSB, thus broadening the concept of the KGB group. Mr. Kuznetcov claims that the KGB disappeared when the USSR fell in 1991, and states in his memorandum that, according to the same essay titled “The Federal Border Guard Service” filed in the record, [TRANSLATION] “the border guards were subsequently placed under the responsibility of the border troops, which were in turn subordinate to the Ministry of Security and Internal Affairs” (“The Federal Border Guard Service” at 164 of the Certified Tribunal Record [CTR] PDF). Mr. Kuznetcov argues that the ID should have analyzed the equivalencies between the groups’ respective functions before equating one group with the other. Because Mr. Kuznetcov worked as a seaman on boats at the border more than twenty years ago, he is being made liable for actions committed by the FSB to this day, which is unreasonable.

[47] At the outset, I note that the document titled “The Federal Border Guard Service” actually states that:

The resubordination of the border troops to the Security and Internal Affairs Ministry on 21 December 1991, after the collapse of the KGB and several days before the final collapse of the USSR was of little importance.

[48] First, with respect to the ID’s finding that the border service was part of the KGB group, the documentation before the panel indicates that it was part of the KGB until December 1991, was then placed under the responsibility of the Ministry of Security and Internal Affairs until 1993, and was subsequently renamed the FPS (“The Federal Border Guard Service” at 166, 167 and 167 of the CTR PDF). That organization included an intelligence and counterintelligence branch and it collaborated with the FSB, which succeeded the KGB in 1993 (“The Federal

Border Guard Service” at 169 of the CTR PDF). Moreover, in its Decision, the ID also addressed the KGB’s position as an operational authority:

[TRANSLATION]

Regarding the argument presented by counsel for MR. KUZNETCOV to the effect that the border service operated under the Ministry of Defence rather than under the KGB, the panel disagrees. C-8 states at 131, “Although under the operational authority of the KGB, the Border Troops were conscripted as part of the biannual call-up of the Ministry of Defence, and their induction and discharge were regulated by the 1967 Law on Universal Military Service, which covered all armed forces of the Soviet Union.” Therefore, it is clear that operational authority fell to the KGB, not to the Ministry of Defence, which assumed an administrative role in relation to military service.

(Decision at lines 571–579)

[49] Also, Mr. Kuznetcov’s admissions do not go unnoticed. During the CBSA interview, when asked about his military career between 1988 and 2003, Mr. Kuznetcov clearly stated the following: [TRANSLATION] “Above us, there was also the Minister of Defence, and the border guard considers itself to be the KGB’s army, because it ensures the security of the borders, and we were being told, ‘You are protecting peace’”. Moreover, with regard to the period between the end of the applicant’s mandatory military service in May 1991 and the collapse of the USSR and dissolution of the KGB in late 1991, I reiterate that Mr. Kuznetcov has admitted that he voluntarily signed a two-year contract with those troops, which he himself acknowledged were subordinate to the KGB, and this is also supported by an entry in his service record, as discussed above. In light of these facts, it was reasonable for the ID to conclude that the border service of which Mr. Kuznetcov was a member operated under the aegis of the KGB, an organization that has committed espionage against Canada.

[50] Second, I disagree with Mr. Kuznetsov's assertion that the ID equated the KGB with other groups that allegedly preceded and succeeded it, namely the NKVD and the FKS and FSB. The ID did not merely equate certain groups with others. The undisputed documentary evidence before the ID demonstrates decades of ongoing espionage operations against Canada by the KGB and by its predecessor and successors. This is well illustrated in several paragraphs of the ID's Decision:

[TRANSLATION]

The panel notes that Exhibit C-18, a press clipping from Radio-Canada, reports on the case of Igor Gouzenko G-O-U-Z-E-N-K-O, an employee of the Soviet embassy, who quit his job in 1945 out of fear of the Russian secret police. And thanks to his cooperation, the Ottawa Police surprised agents of the NKVD in his apartment. The author states at 291 that, "The documents seized in the Gouzenko affair revealed the presence of numerous spies on Canadian territory. Coded messages in the documents showed that the Soviets were seeking information on Canada's radar and defence systems."

...

C-23, a clipping from the newspaper *La Presse*, describes a known KGB scheme of stealing the identities of dead Canadian children. Page 374 goes on to say, "In a typical Cold War scenario, a Russian secret service officer stationed in Montreal resurrected him to give his identity to a super agent who had infiltrated the United States with his wife, who was also a spy."

...

Regarding the FSB era and Vladimir Putin's rise to power, C-14 presents a news story from GlobalSecurity.org that reads, at 249, "The FSB's power is rooted in the influence of President Vladimir Putin, a former director, and a vast network of former officers that has permeated all sectors of Russian government and society. It is estimated that, among Russia's 1,000 leading political figures, 78% have worked with the FSB or its predecessors. With this sort of influence at its disposal, FSB carries out intelligence, counterintelligence, counterterrorism, economic crime investigation, electronic intelligence, border control and 'social monitoring'."

...

In the Canadian context, C-21, a study published in 2018 by the Parliamentary Research Branch, recounts a case of cyberespionage involving a Canadian citizen in 2014.

(Decision at lines 485–490, 506–509, 515–520 and 550–551)

[51] Moreover, as recognized by the Federal Court of Appeal, there is no need for a temporal connection between Mr. Kuznetsov's membership and the acts of espionage (*Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1213, aff'd 2010 FCA 274, as cited in *SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494 at para 15).

[52] Taking into account the Decision and all of the facts set out above, I conclude that the ID had documentary evidence supporting the conclusion that the KGB engaged in espionage against Canada; that the KGB consisted of several departments, including the one responsible for the border troops; and that there is and has been close collaboration between the departments of the KGB on the one hand and the KGB's predecessor and successors on the other, particularly with respect to border control.

[53] Finally, the Minister notes that a person who is inadmissible, as in this case, may apply for a ministerial exception under section 42.1 of the IRPA. As there is no such application at issue in this dispute, I will analyze this point no further, but I find it nonetheless relevant to mention that such an option exists in Canadian law.

VII. Conclusion

[54] For all these reasons, the application for judicial review is dismissed.

VIII. Application for certification of a question by Mr. Kuznetcov

[55] Mr. Kuznetcov has presented the following question for certification:

Is a person inadmissible to Canada under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act* if there is no direct link between the person's organization and the organization responsible for acts of espionage contrary to Canada's interests within the meaning of paragraph 34(1)(a) of the Act?

[56] The Minister opposes the certification of this question as it is not a serious question of broad significance or general importance, as set out in paragraph 74(d) of the IRPA.

[57] I agree with the Minister that the issue of an applicant's connection to the organization that engaged in espionage against Canada turns on the specific facts of each case and is not a question that transcends the interests of the parties. I also agree with the Minister that the question of whether there is a direct link between an applicant's organization and the organization that commits espionage against Canada is not determinative of this case, as there is such a connection between the border service and the KGB, based on Mr. Kuznetcov's own admissions, the documentary evidence in the record and the case law of this Court in *Moiseev*, which stated that it was reasonable to conclude that the border service was part of the KGB.

[58] In *Moiseev*, the applicant suggested the following question for certification, and I note that sub-question 4 is similar to that proposed by Mr. Kuznetcov:

Whether, in the specific context of paragraph 34(1)(f), the definition of “membership” should be applied taking into account such relevant considerations as

(1) whether the said organization exists currently and poses a current threat;

(2) whether there exist reasonable ground [*sic*] to believe that the applicant was a participant in the act of espionage or an act of subversion against a democratic government;

(3) whether the applicant was a “direct” member of the said organization as stipulated by the Honourable Madam Justice Dawson in the case of Gavriev [*sic*]; and

(4) if the applicant is not a “direct” member of the said organization, then whether the organization of which he is a “direct” member should be the center of assessment instead;

in order to avoid an over-reaching effect or an overly broad application of the provision.

[Emphasis added.]

[59] In *Moiseev*, Justice de Montigny declined to certify the proposed question, agreeing with counsel for the Minister that the question submitted for certification had already been studied by the Federal Court and the Federal Court of Appeal. I agree that abundant case law has been cited by the parties and in these reasons on the issue of the nexus between the applicant and the organization that engaged in acts of espionage against Canada. Specifically, the Federal Court of Appeal has previously held that the term “organization” within the meaning of paragraph 34(1)(f) of the IRPA is to be given a broad interpretation, that the organization’s structure or hierarchy is not essential, and that the identification of an organization turns on the facts (*Sittampalam* at paras 38–39). The same is true of membership in an organization, which is to be given an unrestricted and broad interpretation and assessed on an individual basis (*Poshteh*

at paras 27, 30–31 and 35–36; *Kanagendren* at para 27; *Canada (Public Safety and Emergency Preparedness) v Gaytan*, 2021 FCA 163 at paras 51, 76).

[60] I may also add, as did Justice de Montigny in *Moiseev*, that my decision is confined to the specific facts of this case and does not purport to determine whether the test of membership may be narrowed down to take into account, in appropriate circumstances, the link between the allegedly innocuous organization of which Mr. Kuznetcov was a member and the umbrella organization responsible for the espionage.

[61] For these reasons, I decline to certify Mr. Kuznetcov's question.

JUDGMENT in IMM-15861-23

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No serious question of general importance is certified.

“Ekaterina Tsimberis”

Judge

Certified true translation
Vera Roy, Senior Jurilinguist

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-15861-23

STYLE OF CAUSE: ANDREI KUZNETCOV v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 6, 2025

**JUDGMENT AND REASONS
BY:** TSIMBERIS J

DATED: AUGUST 12, 2025

APPEARANCES:

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