Federal Court  Cour fédérale

Date: 20250815

Docket: IMM-16076-23

Citation: 2025 FC 1383

Ottawa, Ontario, August 15, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

FAIZUN NESA WADUD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Faizun Nesa Wadud and her husband, Mr. Wadud, applied for permanent residence in Canada through the Parents and Grandparents Sponsorship Program. An officer at Immigration, Refugees and Citizenship Canada ("the Officer") refused their application. The sole basis for the refusal was the Officer's finding that Mr. Wadud was inadmissible for his complicity in crimes against humanity when working for the Bangladesh Police as set out in

paragraph 35(1)(a) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] which in turn also rendered his wife, Ms. Wadud, inadmissible as an accompanying family member of an inadmissible person, per paragraph 42(1)(a) of IRPA.

[2] Ms. Wadud challenges this refusal on judicial review. She argues that the Officer's finding that her husband was complicit in crimes against humanity was unreasonable. In particular, she argues that the Officer misconstrued and ignored critical parts of her husband's evidence that affected key components of the Officer's complicity analysis, namely whether Mr. Wadud significantly and knowingly contributed to furthering the crimes of the Bangladesh Police.

[3] I agree with Ms. Wadud that the Officer misconstrued and/or failed to take into account her husband's evidence on a key issue in the Officer's analysis. This was not a minor misstep but a significant shortcoming in the Officer's reasoning, particularly given the stakes at issue (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 100). Accordingly, I allow the application for judicial review.

II. Procedural History and Background Facts

[4] Ms. Wadud applied for permanent residence in July 2017. Ms. Wadud and her husband were sponsored by their son through the "Parents and Grandparents Sponsorship Program".

[5] In June 2019, the National Security Screening Distribution ("NSSD") conducted an inadmissibility assessment and recommended that there are reasonable grounds to believe Mr.

Wadud was inadmissible pursuant to paragraph 35(1)(a) of IRPA for his work in the Bangladesh Police.

[6] On October 30, 2019, an Officer sent a procedural fairness letter that set out concerns with Ms. Wadud's admissibility to Canada due to her career (instead of her husband's) with the Bangladesh Police. In response, former counsel for the Applicant provided a correction and requested disclosure of the allegations against Ms. Wadud's spouse.

[7] Over three years later, on May 14, 2023, an Officer conducted an interview, with the assistance of an interpreter, with Ms. Wadud and her husband in Dhaka, Bangladesh. The interview was primarily with Mr. Wadud and focused on his work with the Bangladesh Police. The details of the interview are recorded in the Officer's notes; there is no transcript or recording of the interview.

[8] Mr. Wadud worked for the Bangladesh Police over a span of 32 years, from 1978 to his retirement in 2010. He held various roles in different offices and different regions of the country. Mr. Wadud provided a "Details of Police Service" chart, which sets out a timeline of his role and duties, in addition to the number of people he supervised during his service. The Officer accepted that his final title, Assistant Superintendent of Police, was a symbolic one given to Mr. Wadud upon his retirement. Of primary interest to the Officer was Mr. Wadud's role as an "officer-in-charge", a role he seems to have held from 1995 to 2010. Mr. Wadud indicated in his interview that at some point as an officer-in-charge, he supervised and had authority over approximately 200 officers whose duties included arrests, investigations and interrogations.

[9] Approximately two weeks after the interview, on May 30, 2023, the Officer sent the Applicant a letter stating that there were reasonable grounds to believe that Mr. Wadud was inadmissible to Canada pursuant to paragraph 35(1)(a) of IRPA. Ms. Wadud and her husband responded to the letter on September 8, 2023.

[10] In December 2023, the Officer refused the Applicant's application for permanent residence, finding that both Mr. Wadud, under paragraph 35(1)(a) of IRPA and, in turn, Ms. Wadud as an accompanying spouse of an inadmissible person under section 42(1)(a) of IRPA, were inadmissible to Canada. The details of the Officer's reasoning are found in the Global Case Management System ("GCMS"), in the detailed notes the Officer made both prior to sending the procedural fairness letter (May 29, 2023) and after receiving the response to the procedural fairness letter (November 30, 2023).

[11] The Officer found that the Bangladesh Police committed crimes against humanity while Mr. Wadud was an officer-in-charge at particular stations in the Bangladesh Police Force. The Officer found based on the widespread and systematic use of murder, torture, rape and enforced disappearances by the police, that on a balance of probabilities these crimes took place where Mr. Wadud was stationed as an officer-in-charge from 1995 until 2010. The Officer also noted some reports of police committing particular crimes against humanity that correspond to areas where Mr. Wadud worked, but not necessarily the stations and the time periods when Mr. Wadud was in charge there.

[12] Ultimately the crux of the Officer's decision is that while Mr. Wadud was in a supervisory position where he could have influenced the conduct of his subordinates, he failed to take tangible actions to stop crimes against humanity that were occurring in a widespread and systematic basis and therefore was complicit in their commission.

[13] On judicial review, Ms. Wadud is not challenging the Officer's complicity analysis, including its consistency with the framework set out by the Supreme Court of Canada in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*]. Instead, she has focused her argument solely on the Officer's treatment of Mr. Wadud's interview responses.

III. Issues and Standard of Review

[14] The determinative issue is the Officer's treatment of Mr. Wadud's evidence. The parties agree, as do I, that I ought to review the Officer's determination on this issue on a reasonableness standard (*Vavilov* at paras 12-13, 84).

[15] The Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the decision maker's reasons are the starting point of the analysis (*Vavilov* at paras 13, 296). Administrative decision makers must ensure that the exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

[16] The Supreme Court explained that a decision maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were

given" (*Vavilov* at para 103). A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

IV. Legislative Framework and Governing Principles

[17] Paragraph 35(1)(a) of the IRPA provides:

> 35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for 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*.

[18] The *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24 [CAHWCA], section 4(3) currently defines "crime against humanity" as follows:

> Crimes against humanity means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhuman act or omission 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 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.

[19] There is no allegation that Mr. Wadud directly committed a crime against humanity. This case is about evaluating Mr. Wadud's complicity in furthering the crimes against humanity committed by the Bangladesh Police Force.

[20] The Supreme Court of Canada's decision in *Ezokola* set out a framework for evaluating an individual's complicity in the commission of a crime against humanity. It is a decision that was made in the context of Article 1F exclusion in a refugee protection proceeding but the framework applies equally to the section 35 inadmissibility context.

[21] *Ezokola* set out a contribution-based test for finding complicity and explicitly rejected the "guilt by association/passive acquiescence approach" (*Ezokola* at paras 30, 81-82). The Supreme Court explained that in order to establish that there are serious reasons for considering whether an individual has been complicit in furthering the commission of a crime against humanity, they must have voluntarily and knowingly made a significant contribution to a crime against humanity or the organization's criminal purpose (*Ezokola* at para 84).

[22] A key issue in complicity cases is determining the degree of an individual's contribution to international crimes and whether it was "significant". It is not sufficient to find that there is "some" contribution to the crime or the criminal purpose at issue. The degree of the contribution must be explained. The Supreme Court in *Ezokola* cautioned: "Given that contributions of almost every nature to a group could be characterized as furthering its criminal purpose, the degree of contribution must be carefully assessed" (*Ezokola* at para 88). Further, where, like in Mr. Wadud's case, the organization in question performs both legitimate and criminal acts, "the link between the contribution and the criminal purpose will be more tenuous" (*Ezokola* at para 94).

[23] *Ezokola* explains that in order to be complicit in crimes committed by a government, an individual "must be aware of the government's crime or criminal purpose and aware that his or

her conduct will assist in the furtherance of the crime or criminal purpose" (*Ezokola* at para 89) An individual does not have to "mean to cause the consequence of their conduct" to be found complicit in the furthering of a government's crimes. The "intent and knowledge" requirement of the legal test for complicity is sufficiently made out if the individual "is aware that it [the consequence of furthering the government's crimes] will occur in the ordinary course of events" (*Ezokola* at para 90).

V. Analysis

[24] The Officer did not find Mr. Wadud complicit in a particular crime; rather the Officer found that because of Mr. Wadud's supervisory position, he was complicit in furthering the crimes committed by the Bangladesh Police. In particular, the Officer focused on the lack of evidence of tangible actions Mr. Wadud had taken as a senior official in the police, who at some point supervised 200 officers, to oppose the widespread and systematic crimes against humanity.

[25] Ms. Wadud's challenge on judicial review is a narrow one. She is not challenging the Officer's finding that her husband's service in the Bangladesh Police was voluntary. She also does not challenge that the Bangladesh Police committed crimes against humanity during the period in which her husband worked there, or that he was aware that crimes against humanity were taking place on a systematic basis in the Bangladesh Police Force.

[26] Ms. Wadud only raises one issue on judicial review, arguing it impacted the Officer's analysis on two elements – significant contribution and knowing contribution. She argues the Officer misconstrued and/or failed to take into account her husband's responses in his interview

about the steps he took in his supervisory role to ensure that crimes against humanity did not occur by his subordinates.

[27] Throughout the decision, the Officer comes back to their concern that Mr. Wadud had not taken any tangible action, despite having a role where he could have influenced the manner in which the officers under his command behaved. While the Officer acknowledged that Mr. Wadud stated in his interview that he never committed human rights violations and he advised his subordinates to use other techniques, they focused on Mr. Wadud's statement that he had not personally disciplined anyone for mistreating suspects. However, as noted by the Applicant, the interview notes indicate the following response: "I did not personally discipline anyone but I complained to my supervisor stating their behaviour, and there were times they were transferred to other stations and there were times they got punished as well."

[28] The Respondent accepted that the Officer's decision does not address this next part of Mr. Wadud's response that indicates that he was responsible for directing some of his subordinates for discipline by his supervisors. The Respondent argues this is not a significant shortcoming because the Officer drew a negative inference about these responses, based on the Officer's statement: "his account of how he attempted to prevent such actions amongst his subordinates lacked coherence and soundness."

[29] I disagree with the Respondent that the Officer provided an adequate basis on which to disregard the Applicant's testimony. The Officer does not explain how the response lacked coherence; without more explanation, I cannot understand how it lacks coherence or soundness.

If the Officer was making a credibility determination about Mr. Wadud's account, they had to do so in "clear and unmistakable terms" (*Hilo v Canada (Minister of Employment and Immigration)*, 1991 CanLII 14469 (FCA), [1991] FCJ No 228 (FCA) at para 6; *Lawani v Canada (Minister of Citizenship and Immigration)*, 2018 FC 924 at para 26). This was not done here.

[30] Given the stakes involved, the Officer had a heightened obligation to provide responsive reasons that justify their decision to the Applicant (*Vavilov* at para 133). I do not find that the reasons adequately explain, in light of the evidence in the record, the Officer's treatment of Mr. Wadud's evidence. The full context of Mr. Wadud's responses on a key issue had to be addressed in the Officer's reasons. This is a sufficient basis, and the only basis the Applicant argued, on which to grant the application.

[31] I have two further points for the benefit of redetermination.

[32] First, given the nature of the analysis required, it is important for decision makers to be precise in their language and the relevant factual details (*Muhmud v Canada (Citizenship and Immigration)*, 2025 FC 470 at para37, *Hernandez v Canada (Citizenship and Immigration)*, 2025 FC 1179 at para 40). Throughout the interview with Mr. Wadud and the decision, in discussing the inadmissibility concerns, the Officer makes reference to "mistreatment" and "human rights violations" and sometimes "crimes against humanity". While the Officer was specific about the prescribed acts that amounted to crimes against humanity in one part of the decision, in other parts it is less precise and in the interview, Mr. Wadud is asked about witnessing and addressing

his subordinates' "human rights violations" and "mistreatment of suspects". It risks confusion to speak about "mistreatment" or general "human rights violations" instead of the specific crimes of concern. It is particularly challenging when reviewing Mr. Wadud's interview responses because of the lack of precision in how questions were posed.

[33] There is also imprecision with respect to the time period at issue given Mr. Wadud's long career and lengthy period in which he was an officer-in-charge (1995-2010). The precise time period is potentially significant depending on whether crimes post dated the coming into force of the *Rome Statute of the International Criminal Court* (1998) and the CAHWCA (2000) that incorporated the *Rome Statute* into domestic legislation. This Court, in *Canada (Public Safety and Emergency Preparedness) v Verbanov*, 2021 FC 507, confirmed that post ratification of the *Rome Statute*, there is a policy requirement for crimes against humanity.

[34] Lastly, though the Supreme Court of Canada in *Ezokola* listed six non-exhaustive factors that may be helpful to consider in evaluating whether complicity has been established, and the Officer did consider these six factors, the focus of the analysis "must remain on the actual role played by an individual, and whether they made a voluntary, significant and knowing contribution not just to the organization found to have committed a crime against humanity, but to the crime or criminal purpose of the organization" (*Ezokola* at paras 84-90, *Singh v Canada (Minister of Citizenship and Immigration)*, 2025 FC 838 at para 37). It will likely be unreasonable for a decision maker to go through the six factors without coming back to the focus of the analysis – the voluntary, knowing, and significant contribution of the individual to the crime or criminal purpose of the organization.

[35] For the reasons set out above, I find the decision unreasonable and requiring redetermination. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-16076-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated December 11, 2023 is set aside and sent back to be redetermined by a different decision maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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