

Federal Court



Cour fédérale

Date: 20220309

Docket: IMM-4534-20

Citation: 2022 FC 322

Ottawa, Ontario, March 9, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

MOHAMEED MNDHER AL-FAHHAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mohameed Mndher Al-Fahham was a member of the Ba'ath Party between 1969 and the overthrow of Saddam Hussein's government of Iraq in 2003. He occupied various positions in the Iraq Ministry of Trade, ending as Director of the Office of the former Minister of Trade. He seeks refugee protection alleging he faces persecution in Iraq due to his Ba'ath Party affiliation, his prior employment, and his faith as a Sunni Muslim.

[2] While Mr. Al-Fahham's Ba'ath Party affiliation and employment in the Ministry of Trade ground his refugee claim, they are also the context for the Refugee Protection Division's (RPD) conclusion that he is excluded from refugee protection. The RPD found that in light of his senior government roles, his position and actions in the Ba'ath Party, and the conceded history of crimes against humanity by the Hussein government, there are serious reasons for considering Mr. Al-Fahham was complicit in crimes against humanity. It also found Mr. Al-Fahham's denials of having senior positions in the Iraqi government and the Ba'ath Party to be not credible. It therefore concluded he is excluded from refugee protection by operation of Article 1F(a) of the *United Nations Convention Relating to the Status of Refugees* [*Refugee Convention*] and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[3] I conclude the RPD's decision that Mr. Al-Fahham was excluded from refugee protection was reasonable. Although aspects of the RPD's decision could have been presented with greater clarity, I cannot agree with Mr. Al-Fahham that its conclusions were based on no more than "guilt by association" or that it failed to make necessary findings regarding his significant contributions to the criminal actions and purpose of the Ba'ath Party and the Hussein government. Rather, the RPD addressed specific aspects of Mr. Al-Fahham's participation in Ba'ath Party indoctrination in particular, as well as his role as a person of influence and power in the Ministry of Trade, and concluded these constituted a significant contribution to the criminal purposes of the Ba'ath Party and the Iraqi government. These findings were reasonable and supported by the evidence and the RPD's credibility findings.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] Mr. Al-Fahham raises the following issues on this application:

- A. Was the RPD's finding that there are serious reasons to consider he was complicit in crimes against humanity unreasonable?
- B. Were the RPD's credibility findings unreasonable?

[6] I agree with the parties that the reasonableness standard applies to the Court's review of the RPD's decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. A reasonable decision is one that is based on coherent reasoning, shows the hallmarks of justification, transparency and intelligibility, and is justified in light of the legal and factual constraints that bear on it: *Vavilov* at para 99.

[7] Three aspects of reasonableness review are of particular importance to the issues in this case. First, the legal constraints on a decision include relevant binding jurisprudence. A decision may be unreasonable if it does not conform with that jurisprudence: *Vavilov* at paras 105–106, 111–112. Second, the decision maker's factual findings must be supported by the evidence, but the Court will not generally interfere with those findings and should refrain from reweighing and reassessing the evidence: *Vavilov* at paras 125–126. Third, the principle of justification requires the decision and outcome to be *justified*, and not simply *justifiable*, showing the reasoning that

led to the conclusion, without fundamental gaps or an unreasonable chain of analysis: *Vavilov* at paras 85–87, 91–98, 102–103.

III. Analysis

A. *The RPD's finding of complicity in crimes against humanity was reasonable*

(1) The legislative and jurisprudential framework

[8] Section 98 of the *IRPA* provides that a person referred to in Article 1F of the *Refugee Convention* is not a Convention refugee or a person in need of protection, and thus cannot obtain protection under section 96 or 97 of the *IRPA*. Article 1F(a) in particular excludes from the Convention, among others, any person who there are serious reasons to consider has committed a crime against humanity:

1 F The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

[Emphasis added.]

1 F Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;

[Je souligne.]

[9] The Supreme Court of Canada considered the scope of this exception in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40. The Supreme Court confirmed that those

who are complicit in crimes against humanity are culpable for having committed those crimes and thus fall within the scope of Article 1F(a): *Ezokola* at paras 1, 7–10, 29. However, the notion of complicity does not allow for an exclusion based on mere “guilt by association” or passive acquiescence: *Ezokola* at paras 3, 81–83.

[10] The Supreme Court in *Ezokola* clarified the line between guilt by association and culpable complicity, setting out principles and factors for consideration. It held that to exclude a refugee claimant for complicity in one of the crimes enumerated in Article 1F(a) based on crimes committed by an organization, “there must be serious reasons for considering that the claimant has voluntarily made a significant and knowing contribution to the organization’s crime or criminal purpose”: *Ezokola* at paras 8, 29, 36, 84. This effectively creates a three-part assessment, requiring that there be (1) a *voluntary* contribution to the group’s crime or criminal purpose; (2) a *significant* contribution to the group’s crime or criminal purpose; and (3) a *knowing* contribution to the group’s crime or criminal purpose: *Ezokola* at paras 85–90. The requirement for a “significant” contribution is distinguished from a higher “essential” or “substantial” contribution standard on the one hand, and from a lower “infinitesimal” contribution on the other: *Ezokola* at paras 55–58.

[11] Recognizing the factual nature of these requirements, the Supreme Court gave guidance on factors useful in assessing whether the requisite act and mental element of complicity are present. The factors are directed to the combination of the three requirements as a whole rather than any one individually:

Whether there are serious reasons for considering that an individual has committed international crimes will depend on the

facts of each case. Accordingly, to determine whether an individual's conduct meets the *actus reus* and *mens rea* for complicity, several factors may be of assistance. The following list combines the factors considered by courts in Canada and the U.K., as well as by the ICC. It should serve as a guide in assessing whether an individual has voluntarily made a significant and knowing contribution to a crime or criminal purpose:

- (i) the size and nature of the organization;
- (ii) the part of the organization with which the refugee claimant was most directly concerned;
- (iii) the refugee claimant's duties and activities within the organization;
- (iv) the refugee claimant's position or rank in the organization;
- (v) the length of time the refugee claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and
- (vi) the method by which the refugee claimant was recruited and the refugee claimant's opportunity to leave the organization.

[Emphasis added; citations omitted; *Ezokola* at para 91.]

[12] As the Supreme Court underscored, these factors are only for guidance. The focus in relying on and weighing these factors remains on the individual's voluntary, significant, and knowing contribution to the crime or criminal purpose: *Ezokola* at paras 92–100. This contribution-based test for complicity is to be shown on the “serious reasons for considering” standard set out in Article 1F(a). This language imports a standard above mere suspicion, but below that of the balance of probabilities and is effectively equivalent to “serious reasons to believe.” However, the evidentiary standard does not change the substantive requirements nor permit an exclusion finding based on complicity by association: *Ezokola* at paras 101–102.

(2) Mr. Al-Fahham's refugee claim

[13] Mr. Al-Fahham, his wife, and their two daughters fled Iraq in July 2006. Mr. Al-Fahham had been a long-standing member of the Ba'ath Party and held various positions over his career in the Ministry of Trade, including foreign postings in Iraqi missions and trade centres in Kuwait, Morocco, Jordan, and Dubai, as well as positions in Baghdad. In his final posting from 2000 to 2003, he acted as Director of the Office of Iraq's then Minister of Trade.

[14] After the fall of Saddam Hussein and the Ba'ath Party in 2003, Mr. Al-Fahham received threats from Shia militants. In 2005, the Badr Organization asked him to cooperate by telling them the names and locations of friends in the Ba'ath Party, threatening him with death if he did not. After moving around Baghdad to avoid the organization, the family left for Syria.

[15] For a number of years, Mr. Al-Fahham would return to Baghdad secretly every year to check on his sister who remained there. His sister was killed in September 2012 for refusing to disclose information about Mr. Al-Fahham's whereabouts. He left Syria for the United Arab Emirates, where he was sponsored by one of his daughters. When his daughter emigrated to Australia from the UAE, the couple faced the loss of their temporary resident visas there. They came to Canada in January 2015 to join a son who had come here earlier and they claimed protection as Convention refugees.

[16] Mr. Al-Fahham's refugee claim was severed from that of his wife after the RPD notified the Minister of the potential application of Article 1F and the Minister served a Notice of

Intention to Participate in Mr. Al-Fahham's claim. Mr. Al-Fahham's claim was suspended between June 2016 and September 2018 pursuant to subsection 100(2) of the *IRPA*, during which time his wife's claim was heard and decided. Mr. Al-Fahham gave evidence at his wife's refugee hearing. The RPD concluded his wife was a Convention refugee and granted her claim in April 2018. Mr. Al-Fahham's claim was heard by the RPD over two days on October 24, 2019 and January 8, 2020, the Minister opposing the claim on grounds that Mr. Al-Fahham was complicit in crimes against humanity and thus excluded from protection.

(3) The RPD's decision

[17] On August 26, 2020, the RPD dismissed Mr. Al-Fahham's claim for refugee protection on the basis of Article 1F(a) of the *Refugee Convention* and section 98 of the *IRPA*.

[18] The RPD in its decision noted that both parties relied on *Ezokola* and referred at length to the contribution-based test for complicity established in that decision. The RPD set out the various factors described in paragraph 91 of *Ezokola* (reproduced at paragraph [11] above) and reviewed those factors as they applied to Mr. Al-Fahham. It discussed the structure of the Ba'ath Party, Mr. Al-Fahham's role and duties within the party and the Ministry of Trade, and his voluntary membership in the Ba'ath Party from 1969 until the fall of the Hussein government in 2003.

[19] In particular, the RPD made the following findings:

- that as a senior employee of the Ministry of Trade, Mr. Al-Fahham "would have facilitated government activity";

- that the Ministry of Trade, where Mr. Al-Fahham was employed, was “inextricably intertwined with the party as an organisation”;
- that Mr. Al-Fahham held a higher level of membership in the Ba’ath Party and a higher level position in the Ministry of Trade than he admitted to;
- that Mr. Al-Fahham had the duty within the Ba’ath Party to educate supporters (new recruits) on a weekly basis when in Baghdad, which amounted to “indoctrination in Ba’ath Party Policy and philosophy,” thereby strengthening the ideological foundation of recruits to the Ba’ath Party;
- that Mr. Al-Fahham joined the Ba’ath Party of his own volition with a view to furthering his economic ambitions and likely remained in the party for more than three decades for similar reasons;
- that Mr. Al-Fahham performed functions within the Ba’ath Party and in the course of his employment that fostered the aims and purposes of the Ba’ath Party and the Hussein government;
- that Mr. Al-Fahham knew of the Iraqi government and Ba’ath Party’s atrocities and their criminal purpose; and
- that Mr. Al-Fahham voluntarily made a significant and knowing contribution to the criminal purposes of the Iraqi government.

[20] The RPD's findings about Mr. Al-Fahham's role and knowledge were based in part on its adverse findings about Mr. Al-Fahham's credibility. In particular, the RPD found Mr. Al-Fahham provided vague and contradictory testimony about his work with the Ministry of Trade, rejecting his denial that he ever held a high-level position in the Iraq government. It noted Mr. Al-Fahham was "never more than four or five steps away from the ultimate power in Iraq" and in his final position as Director of the Office of the former Iraq Minister of Trade, he was two reporting steps away, reporting directly to the Minister. The RPD emphasized that the RPD panel that granted his wife's refugee claim found he "held a high profile and high power position," a conclusion based in part on Mr. Al-Fahham evidence in which he "discuss[ed] with ease the personal situations of various high-profile members of the former regime, including a former Minister he worked with."

[21] Similarly, the RPD rejected Mr. Al-Fahham's efforts to distance himself from the upper echelons of the Ba'ath Party, noting the evasive nature of his responses to questions about his role in the party. This lack of candour was also seen in Mr. Al-Fahham's testimony about his knowledge of Iraqi atrocities, where his responses to questions on the subject focused on what he had personally seen rather than what he was aware of, and his account of discussions with neighbours were found to be inconsistent and implausible.

[22] Based on its assessment of the evidence, the RPD concluded there were serious reasons for considering Mr. Al-Fahham voluntarily and knowingly made a significant contribution to the criminal purposes of the Iraqi government and the Ba'ath Party. As a result, it found he is a

person described in Article 1F(a) of the *Refugee Convention* and is excluded from protection under sections 96 and 97 of the *IRPA* by operation of section 98 of the *IRPA*.

(4) The RPD's findings were reasonable

[23] Mr. Al-Fahham's primary argument is that the RPD did not identify what significant contribution Mr. Al-Fahham made to crimes against humanity committed by the Ba'ath Party and/or the Hussein government. He argues the RPD failed to distinguish between the legitimate functions of the Iraqi government and the Ba'ath Party and their criminal activities, and to identify his contribution to the latter. He underscores the prohibition against "guilt by association" set out in *Ezokola*, and cites subsequent cases of this Court that have overturned exclusion decisions that were based simply on a claimant's contributions to an organization that was committing crimes against humanity, rather than the claimant's contributions to a crime or the criminal purpose of the organization: *Concepcion v Canada (Citizenship and Immigration)*, 2016 FC 544 at paras 17–18; *Niyungeko v Canada (Citizenship and Immigration)*, 2019 FC 820 at paras 58–65.

[24] Mr. Al-Fahham points in particular to a number of statements by the RPD made in the course of its review of the *Ezokola* factors, claiming they show the RPD was applying a guilt-by-association analysis. I agree with Mr. Al-Fahham that if some of these statements were taken independently and treated as the core of the RPD's analysis or its final conclusion, they would not meet the *Ezokola* standard of complicity. For example, in discussing the size and nature of the Ba'ath Party as an organization, the RPD concluded that Mr. Al-Fahham's senior role with the Ministry of Trade made it quite likely that he "would have facilitated government activity."

As Mr. Al-Fahham points out, this is not the standard of *Ezokola*, which requires a significant contribution not simply to “government activity” but to the crime or criminal purpose of the organization. Similarly, the RPD’s observation that the Ba’ath Party “exerted control over government functions” is not alone a finding of contribution to criminal activity.

[25] However, these statements cannot and should not be read in isolation. The RPD made them in discussing the various factors leading to its overall conclusion and not as independent statements of either the complicity standard or Mr. Al-Fahham’s contributions. The RPD elsewhere in its decision underscored that Mr. Al-Fahham’s admitted duties within the Ba’ath Party amounted to indoctrination of new recruits in Ba’ath Party policy and philosophy. The RPD found this to be an “important function as it both ensured the dissemination of Ba’ath Party policies and philosophies and strengthened the ideological foundation of recruits to the Ba’ath Party.” The RPD also found that in both his Ba’ath Party and Ministry of Trade positions, Mr. Al-Fahham performed functions that “fostered the aims and purposes of the Ba’ath Party and the Hussein government.”

[26] The RPD went on to describe the evidence of widespread crimes against humanity committed by the Hussein government, noting its agreement with the Minister’s position that through his work with the Ministry of Trade, Mr. Al-Fahham facilitated the commission of these crimes, particularly after sanctions were imposed on Iraq after the Gulf War. It noted the recognition in *Ezokola* that a claimant’s contribution does not have to be directed to specific identifiable crimes but can be directed to “wider concepts of common design, such as the accomplishment of an organisation’s purpose by whatever means are necessary including the

commission of war crimes”: *Ezokola* at para 87, citing *R (JS (Sri Lanka)) v Secretary of State for the Home Department*, [2010] UKSC 15 at para 38 *per* Lord Brown. The RPD also specifically considered the Supreme Court’s statement that the panel must carefully assess the degree of contribution, concluding that Mr. Al-Fahham’s contributions met the significant contribution standard.

[27] While Mr. Al-Fahham challenges a number of these findings, as discussed below, I cannot conclude that the RPD failed to identify Mr. Al-Fahham’s contributions to the crimes against humanity perpetrated by the Ba’ath Party-led Iraqi government. Rather, the RPD identified Mr. Al-Fahham’s work in indoctrination of lower level Ba’ath Party recruits and his work in supporting Iraqi finances, particularly during the period of sanctions, as particular contributions to the criminal purpose of the Ba’ath Party and Iraqi government. While the RPD might have been clearer in places in identifying the impugned conduct constituting Mr. Al-Fahham’s contributions, administrative decisions are not to be held to a standard of perfection: *Vavilov* at para 91. To use Justice Rennie’s evocative language, I am satisfied there are enough “dots on the page” that reading the RPD’s decision in an effort to understand it shows the RPD adequately identified the contributions at issue: *Vavilov* at para 97, citing *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11.

[28] I am also not persuaded by Mr. Al-Fahham’s challenges to the RPD’s findings with respect to his conduct and contribution. With respect to the question of indoctrination, Mr. Al-Fahham argues the RPD did not find that the Ba’ath Party had a “limited brutal purpose.” Since not all Ba’ath Party policies were found to be criminal, he argues that merely teaching

Ba'ath Party policy could not itself be evidence of a contribution to the criminal purpose of the party. I cannot accept this argument. It was not incumbent on the RPD to conclude that the Ba'ath Party or the Iraqi government had an exclusively criminal purpose. *Ezokola* does not require this. It only notes that it will be easier to establish a link between the contribution and the criminal purpose if a group is one with a limited and brutal purpose: *Ezokola* at para 94.

[29] If a claimant only supports the non-criminal purposes of a government, or only passively acquiesces in its criminal conduct, this will not constitute complicity in crimes against humanity: *Ezokola* at paras 53, 61, 68, 79; *Concepcion* at para 17. However, making material contributions to both the non-criminal and criminal aspects of a government engaged in crimes against humanity is sufficient to establish the requisite nexus for complicity. Put another way, engagement in the indoctrination of recruits in Ba'ath Party policy and philosophy may be complicity even if not *all* of that policy and philosophy is directed to crimes against humanity. It is clear the Ba'ath Party was willing to accomplish its purpose by whatever means necessary, including the commission of war crimes. The RPD found the documentary evidence showed the Ba'ath Party was "very public about its aims, strategies and actions" as to its criminal purpose and that Mr. Al-Fahham continued to serve the party in a high-level capacity, assisting in the furtherance of its criminal purpose. This was sufficient to establish a significant contribution to that purpose, even if some aspects of Ba'ath Party policy and philosophy were not specifically directed to the perpetration of crimes against humanity.

[30] Nor can I accept Mr. Al-Fahham's argument that *Ezokola* requires the RPD to identify a direct "causal" link between the particular conduct alleged and either a particular crime or the

criminal purpose of the Iraqi government. The Supreme Court did not impose such a standard. Rather, it reiterated that the focus of the analysis was on the existence of a voluntary, significant, and knowing contribution to the criminal purpose of the organization. Of relevance, the Supreme Court cited Lord Brown's statement in *JS* that he would hold a claimant "disqualified under article 1F if there are serious reasons for considering him voluntarily to have contributed in a significant way to the organisation's ability to pursue its purpose of committing war crimes, aware that his assistance will in fact further that purpose" [emphasis added]: *JS* at para 38; *Ezokola* at paras 59, 71.

[31] Similarly, the Supreme Court accepted the possibility that a senior official could be complicit in the government's crimes by remaining in their position without protest and continuing to defend the interests of the government while being aware of the crimes, provided this was not taken further to cover a claimant who committed no guilty act and had no criminal knowledge beyond mere awareness: *Ezokola* at para 80. Given the RPD's findings regarding Mr. Al-Fahham's knowledge of the crimes of the Ba'ath Party and the Iraqi government, and his voluntary contributions to their ability to commit them, I am satisfied that the RPD's analysis conforms with the *Ezokola* analysis and adequately defines the requisite elements of its exclusion finding.

[32] I am also not persuaded by Mr. Al-Fahham's arguments that the RPD did not find that the Ministry of Trade itself committed crimes against humanity, that it exclusively financed crimes against humanity, or that Mr. Al-Fahham was involved in the procurement of military supplies or chemical weapons. While such findings might have formed other grounds for a finding of

complicity, they were not necessary to support the RPD's finding. The Supreme Court in *Ezokola* confirmed that complicity is not confined to those directly involved in the commission of crimes by, for example, the procurement of weapons. Provided there are serious reasons to consider the claimant made a significant contribution of any nature to the crimes against humanity, which the RPD reasonably found to be present, complicity is established on the standard necessary for exclusion: *Ezokola* at para 57.

[33] The applicant also criticizes the RPD for its focus on Mr. Al-Fahham's seniority in the Ba'ath Party and the Ministry of Trade, noting that the level of his position is not the point in issue. However, these findings must be viewed in the context of the case presented to the RPD. Mr. Al-Fahham's written submissions after the hearing, although brief, argued that he was not a high-ranking official in either the Ba'ath Party or the Ministry of Trade. The RPD directly addressed these submissions and it cannot be faulted for doing so: *Vavilov* at paras 127–128.

[34] Nor is Mr. Al-Fahham's standing in the Ba'ath Party and the Ministry of Trade irrelevant. While complicity is not established merely based on rank, it is a relevant inquiry and is specifically enumerated as a factor in the complicity analysis: *Ezokola* at paras 67, 73, 83, 91, 97. A claimant's position can go both to their knowledge of the criminal purposes of the organization and the individual's contribution to that criminal purpose. A high rank may itself also provide evidence of support of the organization's criminal purpose: *Ezokola* at para 97. Contrary to Mr. Al-Fahham's argument, the RPD's consideration of his role in the Ba'ath Party did not become guilt-by-association reasoning simply because it did not specifically find that he showed support for the party's criminal purposes.

[35] I therefore conclude that Mr. Al-Fahham has not demonstrated that the RPD's conclusion on complicity was unreasonable.

[36] This is not to say that a finding of complicity was the only conclusion open to the RPD on the record before it. However, as the Supreme Court has affirmed, an exclusion finding will be largely factually driven and the Court's role is not to reassess the facts or reweigh the factors going into the RPD's decision: *Ezokola* at paras 10, 91; *Vavilov* at para 125. Parliament has entrusted decision making and fact finding on the applicability of Article 1F(a) to the RPD and this Court can only interfere with that decision making and fact finding if it is unreasonable. I conclude it is not.

B. *The RPD's credibility findings were reasonable*

[37] Mr. Al-Fahham challenges the RPD's adverse credibility findings on two main grounds. First, he argues that credibility findings cannot be a substitute for finding and identifying a significant contribution to the criminal purpose of the Ba'ath Party and the Iraqi government. Second, he challenges the credibility findings themselves. I am not satisfied that either argument demonstrates the unreasonableness of the RPD's decision.

- (1) Credibility findings are not a substitute for a significant contribution but are relevant to the analysis

[38] I agree with Mr. Al-Fahham that adverse credibility findings are not themselves sufficient to establish complicity in crimes against humanity: *Elve v Canada (Citizenship and Immigration)*, 2020 FC 454 at paras 43–46, citing *Ventocilla v Canada (Minister of Citizenship*

and Immigration), 2007 FC 575 at paras 29–30. However, as Mr. Al-Fahham concedes, the credibility of a claimant with respect to material aspects of their evidence, including their knowledge of crimes against humanity and their position within the organization committing them, is a relevant consideration in the overall assessment.

[39] As addressed above, Mr. Al-Fahham in his testimony downplayed his knowledge of the Iraqi government's crimes against humanity. He also described his role in the Ba'ath Party as fairly low level and his position in the Ministry of Trade as merely administrative. Counsel's submissions to the RPD stressed his credibility, and the fact that he was not a senior official in the government or a high-ranking member of the Ba'ath Party. The RPD's credibility findings were directly relevant to these submissions and to the assessment of Mr. Al-Fahham's status and role in the Ba'ath Party and the Ministry of Trade. While this status does not alone constitute a contribution to the criminal purpose of those organizations, the RPD did not conclude that it did. Rather, it considered Mr. Al-Fahham's status, role and lengthy history with the Ba'ath Party and the Ministry of Trade, the positive evidence with respect to his actions and conduct in those roles, the evidence of the regime's crimes against humanity, and his knowledge of those crimes to conclude there were serious grounds for considering Mr. Al-Fahham had made a significant contribution to them.

[40] I therefore cannot conclude that the RPD based its complicity finding simply on its adverse credibility findings, or unreasonably used those findings in its assessment of complicity under the *Ezokola* framework.

(2) The credibility findings themselves were reasonable

[41] Mr. Al-Fahham contests the RPD's findings that his testimony was "vague and contradictory" and its conclusions based on his demeanour in his testimony. He also disputes the RPD's contention that he held a higher-level position in the Ministry of Trade than he acknowledged, claiming it was illogical to rely on reporting status or degrees of hierarchy in the Hussein government. I am not satisfied that Mr. Al-Fahham has identified an unreasonableness in the RPD's assessment that would justify this Court's intervention in a credibility finding.

[42] Contrary to Mr. Al-Fahham's arguments, the RPD identified the evidence it was rejecting, namely his assertions about his limited role within the Ba'ath Party and the Hussein government, and his limited knowledge of their atrocities. It also set out in some detail the basis for those findings, including evasiveness, changes in the quality of his evidence when describing his own role within the Ba'ath Party, and implausibilities. It noted inconsistencies between, for example, Mr. Al-Fahham's initial claim that he had conversations with neighbours about human rights violations and a later statement that these conversations were simply tacit; and between his evidence about his role in the Ministry of Trade and the Ba'ath Party and his evidence at his wife's refugee hearing, which led the RPD to describe him as holding a "high profile and high power position."

[43] With respect to the question of degrees of hierarchy, the RPD did not rely solely on the number of "reporting steps" in assessing Mr. Al-Fahham's proximity to power. Rather, it considered this factor in addition to his reporting relationships, the length of his service, his

responsibilities, his direct association with the Minister, and the earlier RPD panel's conclusion that he was a person of influence and power in the Ministry. In any event, I cannot agree that a consideration of Mr. Al-Fahham's rank in the overall Iraqi hierarchy, including the number of reporting steps to power, is an unreasonable or absurd consideration as part of the overall assessment of complicity.

[44] While Mr. Al-Fahham contests the RPD's credibility conclusions, I agree with the Minister that the RPD did not make any material errors in assessing credibility that would justify this Court's intervention.

IV. Conclusion

[45] The RPD's finding that there were serious reasons for considering Mr. Al-Fahham made a significant contribution to the criminal purposes of the Iraqi government and the Ba'ath Party, and was thereby complicit in crimes against humanity and excluded from refugee protection, was reasonable. The application for judicial review is therefore dismissed.

[46] Neither party proposed a question for certification. I agree that none arises in the matter.

JUDGMENT IN IMM-4534-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4534-20

STYLE OF CAUSE: MOHAMEED MNDHER AL-FAHHAM v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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