Federal Court  Cour fédérale

Date: 20220527

Docket: IMM-3493-21

Citation: 2022 FC 771

Vancouver, British Columbia, May 27, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

ABDIRASAAK IBRAHIM HASSAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of a decision by the Immigration Division ("ID") of the Immigration and Refugee Board of Canada dated May 12, 2021 (the "Decision"). The Decision concluded that the applicant is a permanent resident of Canada who is inadmissible on grounds of organized criminality. The ID issued a Deportation Order against him, also dated May 12, 2021.

[2] The ID made the Decision under paragraph 37(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (the *"IRPA"*). It made the Deportation Order under paragraph 229(1)(*e*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[3] For the reasons below, I conclude that the applicant has not shown that the ID's Decision was unreasonable, applying the principles in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[4] The application will therefore be dismissed.

I. Background and the ID's Decision

[5] The applicant is a citizen of Somalia. He entered Canada as a permanent resident on September 20, 2011, at age 15.

[6] On October 11, 2018, an officer of Canada Border Services Agency prepared a report under subsection 44(1) of the *IRPA* finding that the applicant may be inadmissible to Canada under paragraph 37(1)(*a*). That provision reads:

Inadmissibility	**Interdiction de territoire**
Organized Criminality	**Activités de criminalité organisée**
37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	**37 (1)** Emportent interdiction de territoire pour criminalité organisée les faits suivants : **a)** être membre d'une organisation dont il y a des

(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern.	motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan

[7] By decision under *IRPA* subsection 44(2) dated May 12, 2021, a delegate of the Minister referred the matter to an admissibility hearing before the ID.

[8] In its Decision, the ID considered whether the applicant is inadmissible to Canada on the grounds of organized criminality because he is or was a member of the street gang known variously as SB–47 (Somali Boyz 47), the South African Robbery Crew or the Surrey Robbery Crew. The group was alleged to have committed many street robberies and swarmings, targeting electronic devices and other personal property. The incidents occurred primarily in Surrey, British Columbia and sometimes in other places in the Lower Mainland.

[9] The Decision first considered the testimony of a retired police constable and the testimony of the applicant. It then reviewed an apparent intelligence summary prepared by

Burnaby RCMP in August 2014 and the contents of police occurrence reports prepared between June 2014 and February 2016.

[10] The intelligence report identified eight individuals who were members of the South African Robbery Crew, including the applicant. The intelligence report described more than a dozen street robberies in a two to three month period, with increasing violence.

[11] The ID's review of the police occurrence reports showed:

- *Occurrence Reports dated October 17, 2015*: an incident involving theft with violence that occurred on Granville Mall in downtown Vancouver. A group of male individuals blocked the passage of an individual on the sidewalk who was then threatened, chased and violently assaulted without provocation. Afterwards, the victim discovered that his cell phone was missing. Police arrested a group of males near the edge of a downtown park. One of them was the applicant, who also attempted to flee from the police, resisted arrest and fought with the police. The cell phone was recovered in the park. The ID noted that with the names redacted from the police report, it was difficult to associate the event with any of the individuals identified as members of the SB–47. In addition, the Minister did not offer any evidence of criminal convictions resulting from this incident;
- *Occurrence Reports date*d February 26, 2016: these reports concerned the applicant and two other men identified in the intelligence report, one of whom was considered the leader of the street gang. Police responded to a report that a backpack was stolen. A group of males approached the victim asking to buy

cocaine. Afterwards the victim noted that his backpack was missing. The victim found the males sitting in a fast food restaurant. The police arrived and located his backpack and contents in the possession of the males. The leader had the victim's laptop. Video footage from the restaurant showed the applicant in possession of the backpack at various times. The suspects were arrested but there was no evidence of criminal convictions;

- *Occurrence Reports dated October 8, 2015*: the applicant and two other male suspects distracted a woman playing a piano in a public atrium in downtown Vancouver. Her purse was stolen. The applicant was identified from video footage and, when stopped by police in a nearby park, was in possession of the victim's property including her credit card. The applicant was arrested for theft and possession of stolen property. The Minister offered no evidence of criminal convictions;
- *Occurrence Reports dated November 1, 2014*: the applicant was found in possession of a box cutter, in breach of his probation. The Minister offered no evidence of criminal conviction;
- *Occurrence Reports dated February 15, 2016*: police stopped the applicant on Granville Mall in Vancouver after a foot chase. He was found in possession of a black imitation firearm and suspected cocaine. He was arrested for breach of recognizance, breach of probation order, possession of a controlled substance and obstruction. The Minister did not offer any evidence of criminal conviction arising from the incident;

- *Occurrence Report dated June 9, 2014*: the highly redacted occurrence report referred to multiple robberies at gunpoint in June 2014 near Skytrain Stations in Burnaby. The applicant was located as he matched the ethnicity and dress of one of the suspects. He was in breach of a curfew and in possession of a cell phone reported stolen by one of the victims. The Minister did not offer evidence of resulting criminal convictions.

[12] The ID noted that the Minister's evidence did not include a summary of the applicant's criminality. While it was clear that he was repeatedly charged with property crimes, it was not apparent whether any of those charges resulted in convictions.

[13] Following its review of the evidence, the ID's Decision analysed two questions: first, was there a criminal organization? Second, was the applicant a member of the organization or did he engage in the activities of the organization? The answer to both questions was yes.

[14] On the first issue, the ID was satisfied that there was organizational structure to the alleged criminal organization. The Decision found that "[p]articipants in the activities of the organization were identified by a coordinated review of police reports and linking of particular individuals with other individuals involved in the same types of crimes on a repeating basis". It was this "repetitive association in similar crimes that suggest[ed] a degree of organization". The decision referred to continuity in the *modus operandi* of the crimes, a consistent group of participants, a singular purpose of the organization (to rob victims of their personal property), a defined territory in which the organization operated and that its purpose was purely criminal for

profit. The ID was therefore “satisfied that the threshold of structure [had] been met by inferences reasonably drawn from the evidence”. On this first issue, the decision concluded that this group of individuals was “a criminal organization in that they engaged in activity that was part of a pattern of criminal activity planned and organized by three or more persons acting in concert in furtherance of the commission of indictable offences” punishable under the *Criminal Code*, RSC 1985, c C-46.

[15] On the second issue, the Decision stated that there was “no reliable evidence of self-identification as a member; no confidential information linking [the applicant] to the organization; no evidence of recruitment rituals…; and lacking an obvious identity, there were no gang symbols, distinctive clothing or gang colours for [the applicant] to have displayed”.

[16] The Decision stated that “[p]rominent in [the applicant’s] case was police-observed association with other gang members and involvement in the activities of the gang”. The police constable did not directly observe the applicant participating in any criminal activity, but believed he had seen him with other known gang members in the precursor activity of picking targets to assault and rob. In addition, the police occurrence reports identified the applicant on numerous occasions participating in robberies and in possession of goods taken from victims. He was known to carry weapons or imitation weapons. The ID found that the police occurrence reports created reasonable grounds to believe that the applicant participated in the criminal acts associated with the organization.

[17] The ID was therefore satisfied that, for the purposes of the final phrase in *IRPA* paragraph 37(1)(*a*), the applicant was "engaged in activity that [was] part of such a pattern". In other words, the decision concluded that the applicant was engaged in activity that was part of a pattern of criminal activity planned and organized by number of persons acting in concert in furtherance of the commission of an offence punishable by way of indictment.

[18] The applicant was therefore inadmissible under paragraph 37(1)(*a*) of the *IRPA*.

[19] The applicant asks this Court to review the Decision, applying the principles in *Vavilov*.

II. Standard of Review

[20] The standard of review is reasonableness. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15.

[21] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33.

[22] The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the

decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, at paras 24-35.

[23] The Supreme Court has identified two types of fundamental flaws in administrative decisions: a failure of rationality internal to the reasoning process; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it: *Vavilov*, at para 101; *Canada Post*, at paras 32, 35 and 39.

[24] A minor misstep or peripheral error will not justify setting aside a decision. In order to intervene, the court must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

[25] The applicant bears the onus to demonstrate that the decision was unreasonable: *Vavilov*, at paras 75 and 100; *Canada Post*, at para 33.

III. Analysis

[26] The applicant submitted that the ID made three reviewable errors. I will analyze each argument in turn.

[27] First, the applicant challenged the ID's application of the "reasonable grounds to believe" legal standard, found in *IRPA* section 33, to the evidence in the record. The applicant submitted that the ID provided no reasoning and did not conduct any analysis of the evidence he presented in order to determine whether it met the standard of reasonable grounds to believe. In addition, he submitted that the ID discounted the evidence proffered by the Minister, yet relied upon the same evidence to find him inadmissible under paragraph 37(1)(*a*). Generally, the applicant argued that the ID provided no reasoning about how the Minister's evidence met the reasonable grounds to believe standard, or how a reasonable person would find the evidence persuasive and credible.

[28] The respondent argued that the ID conducted a thorough review of the evidence, including the strengths and weaknesses of both witnesses who testified. The respondent noted that the ID found the applicant to be a poor witness who attempted to frame himself in the best possible light with unconvincing, blanket denials or claims of memory loss. The respondent also submitted that the ID conducted a thorough examination of the police occurrence reports. Despite a duplicative and disorganized file, with heavy redactions to some documents, the ID conducted a four-page analysis of only the relevant occurrence reports.

[29] The respondent also submitted at the hearing that in *Betancour v Canada (Citizenship and Immigration)*, 2009 FC 767, at paras 47-52, the Court found that a warrant for arrest in the United States was sufficient to support a finding of "serious reasons for considering". The respondent submitted that the present circumstances were stronger, given the involvement of

police and that police occurrence reports disclose that the applicant had been found in possession of a fake gun, cocaine and stolen items.

[30] In my view, the ID made no reviewable error on the basis alleged by the applicant. The ID stated the correct legal standard for "reasonable grounds to believe" as described in *Mugesera*. That standard demands "more than mere suspicion, but less than the standard applicable in civil matters of proof on a balance of probabilities… [i]n essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information": *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100, at para 114; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 FCR 344, at para 89; *Canada (Public Safety and Emergency Preparedness) v Gaytan*, 2021 FCA 163, at para 40. The Federal Court of Appeal in *Mahjoub* confirmed that each fact only had to be established to that standard: *Mahjoub*, at para 88.

[31] The ID had the responsibility for determining whether the evidence was sufficiently cogent and clear to show the elements of paragraph 37(1)(*a*), on the legal threshold set out in section 33. The applicant's submissions did not persuade me that the ID failed to apply that standard.

[32] The respondent is correct that the ID found the applicant to be a poor witness. As the fact finder, it was open to the ID to make determinations about what evidence it found credible and reliable and specifically, to determine whether it would rely upon the applicant's testimony. It made no reviewable error in doing so in this case.

[33] I also see no reason in principle why the ID could not rely on police occurrence reports, supported by the testimony of a veteran police constable, as the evidentiary basis to determine whether there were reasonable grounds to believe that the requirements of paragraph 37(1)(*a*) were met. That the ID recognized some weaknesses in the Minister's evidence does not necessarily imply that the evidence was wholly unreliable or had to be rejected in its entirety.

[34] I do not agree with the applicant's submission that the ID failed to provide sufficient reasoning about how the Minister's evidence met the "reasonable grounds to believe" standard. The bulk of the ID's 50 paragraphs of reasons addressed that very issue – whether the evidence met the requirements of paragraph 37(1)(*a*) on the "reasonable grounds to believe" standard established by section 33. There is no doubt that the ID's reasons met and exceeded the requirement for a discernible reasoned explanation: *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at paras 7, 32, 64-66 and 70. In addition, the applicant has not shown that the reasons contained inadequate reasoning on "reasonable grounds to believe" to meet the standards for justification described in *Vavilov* and *Farrier v Canada (Attorney General)*, 2020 FCA 25, at paras 13-14 and 19. Although the applicant submitted otherwise, I do not find any gaps in the ID's reasoning that give rise to inadequacy concerns (Bragg Communications Inc v UNIFOR, *2021 FCA 59, at paras 6 and 9-11)* or unintelligibility concerns (*Vavilov*, at paras 102-104).

[35] Second, the applicant contended that the ID provided no cogent reasoning with respect to the existence of a criminal organization. According to the Applicant, the ID failed to determine that the alleged organization had structure and failed to explain how its finding of continuity in

modus operandi satisfied the requirement of reasonable grounds to believe that the criminal organization had a structure.

[36] The respondent's answer was that the police reports formed the basis of the ID's decision. The respondent noted that the ID was well aware that there was no evidence of "significant" structure to the organization, unlike for example a motorcycle gang. When considering the organizational structure, the ID concluded that the police reports linked participants in the activities of the organization, which was involved in the same type of crime on a repeating basis. The respondent submitted that it was this repetitive association in similar crimes that suggested a degree of organization and continuity in the *modus operandi*: defining a territory for the day's criminal activities (near Skytrain stations), identifying victims, distracting them, assaulting them and stealing their electronic devices.

[37] I agree substantially with the respondent. The ID expressly stated that it was "satisfied that the threshold of structure has been met". The ID recognized that the organization at issue was a street-level group, without a true hierarchy, but relied on the repetitive association of individuals involved in similar crimes, of which there were many examples. There was a consistent group of individuals, a consistent purpose, a pattern of criminal conduct and common or connected locations for that conduct. The threshold of structure was met on "inferences reasonably drawn from the evidence". The applicant has not demonstrated a basis to disturb those inferences by applying *Vavilov* principles. At the end of its assessment, the ID linked its conclusion back to the contents of paragraph 37(1)(*a*).

[38] As a result, there is no basis to interfere with the ID's conclusion on this issue.

[39] Third, the applicant challenged the ID's determination that he was a member of the alleged criminal organization. The applicant submitted that there was no evidence that he was charged with or convicted of any indictable offence as a member of the alleged criminal organization. In addition, it did not conduct any analysis to show why or how the police occurrence reports automatically established the reasonable grounds requirement.

[40] The respondent submitted that the analysis under paragraph 37(1)(*a*) did not necessarily concern criminal charges, but rather criminal conduct upon which the Minister can show reasonable grounds to believe that an individual engaged in a pattern of activity related to a criminal organization. The respondent also noted that the ID concluded, based on a review of the police reports, that the applicant has been identified on numerous occasions participating in robberies or in possession of stolen property related to robberies by the SB–47.

[41] The respondent further submitted that, as a matter of law, paragraph 37(1)(*a*) does not require membership in an organization. The individual may be inadmissible, as in this case, where there are reasonable grounds to believe that they have engaged in activity as part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence. The respondent also maintained that belonging to an organized crime group does not require the existence of criminal charges or a conviction (citing *Canada (Citizenship and Immigration) v Tran*, 2016 FC 760; *Castelly v Canada (Minister of Citizenship and Immigration)*, 2008 FC 788, [2009] 2 FCR 327; *Odosashvili v Canada*

(Citizenship and Immigration), 2017 FC 958; and *Lai v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 258). The respondent submitted that no single piece of evidence is necessarily determinative of the finding that an individual is engaged in gang-related activity; one must look at the totality of the evidence to make that determination (citing *Canada (Minister of Citizenship and Immigration) v Thanaratnam*, 2005 FCA 122).

[42] Overall, the respondent submitted that the ID's reasons met the standard in *Vavilov*. In the respondent's view, the ID's reasoning "adds up". In addition, the ID did not ignore relevant evidence that could have affected the analysis under paragraph 37(1)(*a*), particularly because in this case the ID's analysis focused on a pattern of behaviour rather than a particular incident.

[43] For the reasons below, I agree with the respondent's position.

[44] The ID recognized that in a "casually organized criminal organization it is not easy to assign the indicia of membership" to the applicant. The ID also recognized that there was no reliable evidence of self-identification as a member nor any confidential information linking the applicant to the organization. The police constable had never directly observed him participating in any criminal activity. However, the police occurrence reports identified the applicant on numerous occasions participating in robberies and, importantly, in possession of goods taken from victims: "a victim's credit card, another's backpack and in another case a stolen cell phone". He was known to carry weapons or imitation weapons. In the ID's view, although he may not have been convicted of property defences in respect of these occurrences, the police occurrence reports created reasonable grounds to believe that the applicant participated in the

criminal acts associated with the organization. For those reasons, the ID was satisfied that according to the final phrase in paragraph 37(1)(*a*), the applicant was "engaged in activity that is part of such a pattern".

[45] Neither party doubted that engaging in "activity that is part of such a pattern" (as described earlier in the words of paragraph 37(1)(*a*)) could form the factual basis of reasonable grounds to believe under that paragraph. The ID's references to the imitation weapon, credit card, backpack and stolen cell phone referred back to the ID's description of the police occurrence reports earlier in its reasons, namely:

- October 8, 2015: applicant arrested for theft and possession of stolen property, including victim's credit card;
- February 26, 2016: video of applicant with just-stolen backpack;
- June 9, 2014: applicant in possession of cell phone reported stolen by a victim after multiple armed robberies near Skytrain stations in Burnaby;
- February 15, 2016: applicant arrested and found in possession of an imitation firearm and suspected cocaine.

[46] The applicant provided no cases to establish that he had to be convicted of a criminal offence in order for the facts to disclose reasonable grounds to believe for the purposes of *IRPA* section 33 and paragraph 37(1)(*a*), and offered no justification in principle to require proof of such convictions as a prerequisite under those provisions. Cases cited by the respondent support the position that criminal convictions are not required: *Castelly*, at paras 25-26; *Odosashvili*, at paras 27, 76 and 83.

[47] The ID did not state that the police occurrence reports automatically provided "reasonable grounds to believe" and it did not analyse them in a manner suggesting blind reliance on their contents or an unthinking conclusion. The ID recognized the weaknesses in the Minister's evidence but was nonetheless satisfied that the aggregate contents of numerous police occurrence reports met the legal threshold of reasonable grounds to believe, with support in the testimony from an experienced police constable. It was open to ID to reach that conclusion on the totality of the evidence: *Thanaratnam*, at para 32-34; *Nagulathas v Canada (Citizenship and Immigration)*, 2012 FC 1159, at paras 29 and 34.

[48] Accordingly, I conclude that the applicant has not demonstrated any basis for intervention on judicial review: *Vavilov*, at paras 99-101, 102-104 and 125-126.

IV. Conclusion

[49] The application is therefore dismissed. Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-3493-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	ABDIRASAAK IBRAHIM HASSAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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