Federal Court  Cour fédérale

Date: 20220915

Docket: IMM-6770-20

Citation: 2022 FC 1299

Toronto, Ontario, September 15, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

AMAR ABDALLA AHMED IBRAHIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In a decision dated December 15, 2020, the Immigration Division (the "ID") concluded that the applicant was inadmissible to Canada on security grounds under paragraph 34(1)(*a*) and paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "IRPA"). The ID issued two Deportation Orders dated December 15, 2020.

> The ID concluded that there were reasonable grounds to believe that the applicant engaged in acts of espionage contrary to Canada's interests and that he was a member of the Sudanese National Intelligence and Security Service ("NISS"), an organization that engaged in acts of espionage contrary to Canada's interests.

[2] The applicant applied to this Court for judicial review of the ID's decision, arguing that it was unreasonable under the principles set out by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019] 4 SCR 653, 2019 SCC 65.

[3] For the reasons below, the application is dismissed.

I. The Situation in Sudan and Events Leading to this Application

A. *The Applicant, NISS and the UN Missions*

[4] The applicant is a citizen of Sudan, born in 1978.

[5] The NISS was the intelligence service agency under Sudan's former president Omar al-Bashir from 1989 to 2019.

[6] In 2004, the United Nations established a mission in Sudan, in anticipation of a peace agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army. It was known as the United Nations Advance Mission in Sudan or "UNAMIS". To implement the peace agreement, the UN created the United Nations Mission in Sudan or "UNMIS". UNMIS was made official in March 2005.

[7] The ID found that the UN missions were an "unwelcome presence" to the Government of Sudan and that the al-Bashir regime was adverse to the United Nations missions in Sudan. The applicant testified that NISS took a special interest in UNMIS because the government of Sudan believed the UN was full of spies and NISS protected the government.

[8] In December 2005, a panel arranged by the UN Security Council recommended sanctions against a list of individuals that included government ministers and the director of the NISS.

[9] The UNMIS mandate expanded to Darfur in 2006. The Sudanese government heavily opposed the expansion to Darfur. The Sudanese government accused the UN of “manufacturing a Western invasion”.

[10] In 2009, the International Criminal Court issued a warrant to arrest Omar al-Bashir for war crimes and crimes against humanity.

B. ***Events leading to this Application***

[11] Sometime before 2004, the applicant began working for a private company that operated ground handling services at the airport in Khartoum. The applicant advised that he served as personal assistant to the Chief Executive Officer and public relations manager for the company, roles he obtained due to family connections.

[12] Around the time it hired the applicant, the company acquired a contract with UNAMIS for ground handling services of their aircraft. The applicant began to supervise the team handling the UN’s luggage, flight plans, and aircraft refueling.

[13] Around April or May 2006, the NISS recruited the applicant. NISS instructed him to hire two NISS agents to work as cargo workers at the airport, where they could surreptitiously inspect

incoming and outgoing luggage belonging to UN personnel and gather information. They did so for four years. The applicant kept their activities secret.

[14] NISS also instructed the Applicant to attend UN social parties and obtain information in 2006 and 2007. He claimed to have done so only after receiving threats and money.

[15] The applicant advised that, in this time period, NISS officers showed him people being tortured at their offices and threatened him.

[16] The Applicant further claimed that NISS tortured him on several separate occasions, in 2012, 2014, and 2018. Each time he was beaten and threatened until the Applicant agreed to do whatever NISS wanted. After the second incident of torture in 2014, the Applicant claimed he started trying to avoid NISS agents, and to escape by travelling often outside Sudan. Although already married to his wife, he entered into a marriage with a Danish friend who worked for the UN, to try to obtain a visa to live in Denmark. They soon divorced.

[17] In April 2016, the applicant and his wife (who was pregnant with triplets) applied for visas to the United States. They arrived there in July 2016 and the triplets were born three months later. In January 2017, they applied for asylum. However, they had to leave the US in June 2017 due to the illness of his wife's mother in Egypt. With the US asylum claim abandoned, the applicant returned to Sudan without his family.

[18] Upon his return, the NISS again wanted the applicant to assist it. He rejected the advances and was tortured in March 2018. After pleading for release and promising that he would return, the applicant paid a bribe to fly to Egypt.

[19] Upon rejoining his family in Egypt, they all applied for Canadian visitor visas. They arrived on April 2, 2018.

[20] On June 1, 2018, the applicant and his wife made refugee claims from within Canada. The applicant wrote in detail about his NISS involvement in his Basis of Claim narrative.

[21] In July 2018, Canada Border Services Agency ("CBSA") interviewed the applicant.

[22] On March 24, 2019, an officer of the CBSA issued a report under *IRPA* subsection 44(1). It found reasonable grounds to believe the applicant was inadmissible to Canada pursuant to *IRPA* paragraphs 34(1)(*a*) and 34(1)(*f*) and requested an admissibility hearing for the applicant.

[23] On March 25, 2019, a delegate of the Minister referred the matter to an admissibility hearing.

[24] In November 2019, the applicant submitted amendments to his BOC.

[25] The ID's admissibility hearing occurred over six sittings between December 10, 2019 and July 8, 2020, during which the applicant provided oral testimony.

II. The Decision under Review

[26] By decision dated December 15, 2020, the ID found that the applicant inadmissible to Canada on security grounds, for two reasons: first, under *IRPA* paragraph 34(1)(*a*), for engaging in acts of espionage that were "contrary to Canada's interests"; and second, under paragraph 34(1)(*f*), for being a member of an organization that there were reasonable grounds to believe had engaged in acts of espionage contrary to Canadian interests.

[27] The ID rejected the applicant's claim that he acted under duress.

[28] The ID applied the "reasonable grounds to believe" standard of proof under *IRPA* section 33, as described in *Mugesera v Canada (Minister of Citizenship and Immigration)*, [2005] 2 SCR 100, 2005 SCC 40, at para 114. The ID recognized that "reasonable grounds to believe" requires something more than mere suspicion, but less than a balance of probabilities, and will exist where there is an objective basis for the belief that is based on compelling and credible information. There is no issue in this application related to this legal standard.

A. *IRPA paragraph 34(1)(a)*

[29] The ID found reasonable grounds the Applicant engaged in two acts of espionage. First, he hired and maintained the secrecy of NISS agents working as undercover cargo workers at the airport so they could covertly gather information about UN staff and their operations. Second, he collected information at staff parties attended by UN employees and reported that information back to the NISS.

[30] Relying on Justice Norris's decision in *Weldemariam v Canada (Public Safety and Emergency Preparedness)*, [2020] 4 FCR 354, 2020 FC 631, and Justice O'Reilly's reasoning in

Yihdego v Canada (Public Safety and Emergency Preparedness) 2020 FC 833, the ID found that for an activity to be "contrary to Canada's interests", the interests at stake must have a nexus with national security.

[31] The ID concluded that there were reasonable grounds to believe that the applicant's espionage activities targeting the UN missions in Sudan were contrary to Canada's interests and that those interests had a nexus to Canada's national security.

B. ***Duress***

[32] The ID adopted the legal test for duress from *R v Ryan*, [2013] 1 SCR 14, 2013 SCC 3, in accordance with this Court's decision in *Ghaffari v Canada (Citizenship and Immigration)*, 2013 FC 674. The ID concluded that the applicant failed to establish reasonable grounds that he acted under duress when he hired the NISS agents. The ID also concluded that the evidence failed to establish reasonable grounds to believe that he was under duress when he collected information for the NISS while attending UN parties.

[33] The ID's findings included:

- NISS agents' statements that the applicant would get in "trouble" and that his "life would be hell" were vague, and not explicit or implicit threats of present or future death or bodily harm;
- an incident where the applicant was slapped and told "worse things could happen" could be construed as a threat even though it was vague. However, even if it was accepted as a threat, the applicant failed to satisfy an element of the *Ryan* test

(that he was not a party to a conspiracy where he knew threats were possible as a result of participating in the conspiracy);

- the applicant was paid $10,000, which weighed against finding that he was coerced or engaged in espionage under duress;
- expert and medical evidence adduced by the application did not help to establish duress;
- the applicant did not perceive himself as being under serious threat when he hired the agents, maintain secrecy and attended parties in 2006 – 2007, because his own evidence was that the situation did not become life-threatening until 2012; and
- between 2011 and 2018, the applicant had a safe avenue of escape from the NISS because he left and returned to Sudan on many occasions.

C. ***IPRA paragraph 34(1)(f)***

[34] The ID found reasonable grounds that the applicant's participation in NISS activities amounted to membership and that there were reasonable grounds to believe that the NISS was an organization that had engaged in acts of espionage targeting UN missions in Sudan, which acts of espionage were contrary to Canadian interests.

[35] The ID applied a broad, unrestricted interpretation of "member" and found his participation in the NISS to constitute membership because:

- The applicant was aware of the NISS's methods and goals;
- the applicant participated in NISS activities voluntarily, was paid, and was not under duress;

- his hiring of the agents at the airport and attending UN parties to collect information were activities that furthered NISS's objectives enough that it was worth paying him a large sum of money;
- he contributed to those objectives for at least four years, between 2006 and 2010; and
- he was able to leave and return to Sudan in 2014 with no problems because he "fulfilled certain requests" by the NISS.

[36] The ID also found that the applicant's espionage activities were not marginal or minimal as they directly connected to the core work and fundamental purpose of the NISS.

[37] The ID found the applicant inadmissible and issued two Deportation Orders.

[38] The applicant now seeks judicial review of the ID's decision.

III. Standard of Review

[39] The parties both submitted that the standard of review of the ID's substantive decision is reasonableness, as described in *Vavilov*.

[40] A reasonable decision is internally coherent, contains a rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194.

[41] The Supreme Court has identified two types of fundamental flaws in administrative decisions that may justify intervention by a reviewing court: 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 Corp. v Canadian Union of Postal Workers*, [2019] 4 SCR 900, 2019 SCC 67, at paras 32, 35 and 39.

[42] Not all errors or concerns about a decision will warrant intervention by a reviewing court. A minor misstep or peripheral error in the decision will not justify setting it aside. 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 (leave to appeal to the Supreme Court granted: SCC File No. 39855 (March 3, 2022)); *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

[43] This Court's role is not to agree or disagree with the decision under review, to reassess the merits or to reweigh the evidence: *Vavilov*, at para 126; *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50, at paras 53-54; *Canada (Public Safety and Emergency Preparedness) v Gaytan*, 2021 FCA 163, at para 118; *Mason*, at para 12. The Court's task is to determine whether the decision maker made one or more of the kinds of errors described in the appellate cases above and if so, whether the decision should be set aside as unreasonable.

[44] The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

IV. Analysis

[45] In this application for judicial review, the applicant challenged the reasonableness of the ID's decision on the following bases:

A. **Duress**: The ID made numerous errors in its analysis and rejection of the applicant's claim of duress, including by failing to account for the context in Sudan in which threats were made to him.

B. **Membership** under *IRPA* paragraph 34(1)(*f*): The ID erred in finding that the applicant was a member of the NISS by ignoring the evidence.

C. **Nexus** under *IRPA* paragraph 34(1)(*a*): The evidence did not support the ID's finding of a nexus between Canada's interests in Sudan and Canada's national security.

[46] I will address each argument in turn.

A. *Duress*

[47] The parties both proceeded on the basis that the applicant could claim duress to respond to allegations of inadmissibility under *IRPA* paragraphs 34(1)(*a*) and (*f*).

[48] The applicant submitted that the ID erred in its application of the legal test for duress set out in *Ryan* to the evidence in this case: see *Ryan*, at para 55; *Ghaffari*, at para 20. The applicant submitted that in making its findings concerning espionage, the ID failed to account for the context in which the applicant was recruited, threatened and carried out activities at the request of the NISS.

[49] Specifically, the applicant referred to the ID's analysis of the first element in *Ryan* – an explicit or implicit threat of death or bodily harm proffered against the applicant. The applicant challenged three specific findings in the ID's reasons. In the first two, found at paragraphs 70 and 72 of the ID's reasons, the ID found no reasonable grounds to believe that the "vague reference" to the applicant getting into "trouble" was an explicit threat of present or future death or bodily harm. The ID also found that there was "nothing in the context" to lead the ID to find reasonable grounds to believe that it was an implicit threat of present or future death or bodily harm. The ID's third impugned finding, at paragraph 84, was that there were no reasonable grounds to believe that the threat that the applicant's "life would be hell" was an explicit threat of present or future death or bodily harm, and that the "context of that statement" did not provide reasonable grounds to believe that it was an implicit threat of present or future death or bodily harm.

[50] The applicant argued that the ID erred by failing to appreciate the broader context in Sudan and failed to find that the third statement was an express threat on its face. The relevant context, according to the applicant, included the NISS's well-known violent character and practices and its use of arrest and detention without process in Sudan. The applicant noted grave human rights abuses committed during the al-Bashir regime, "most perpetrated by the NISS", which operated with impunity from prosecution and disciplinary action under Sudanese law. In this context, statements made to the applicant that he would get into "trouble" and that his "life would be hell" were, according to the applicant, clear threats to his safety that he had no choice but to obey. The applicant also referred to his evidence that he was scared of the NISS and that there was really no rule of law in Sudan with respect to the activities of NISS.

[51] The applicant also referred to the context as described in a report prepared by Amnesty International titled *Agents of Fear: The National Security Service in Sudan*, which, according to the applicant, outlined widespread use of torture and other forms of ill-treatment, forced disappearances, extrajudicial executions and other grave human rights violations by the NISS to silence dissent and keep the al-Bashir government in power. The applicant noted that the ID only referred to this report in the following sentence (ID reasons, para 71):

> [The applicant] argued that the broader context was that the NISS were known to have extensive and unchecked powers of arrest and detention and that they held "the power of life and death over Sudan's citizens".

[52] The applicant noted that his post-hearing submissions to the ID referred to this overall context.

[53] The applicant submitted that the ID ignored the evidence concerning the "level of terror instilled in Sudanese citizens by the NISS" that existed before the threatening statements were made to the applicant.

[54] The respondent submitted that the applicant's position in substance invited this Court to reconsider the evidence and come to its own conclusion – something that a reviewing court cannot do (citing *Gaytan*, at para 118). The respondent argued that the applicant's real concerns were with the inferences drawn (or not drawn) by the ID from the evidence. The respondent observed that the ID's analysis of duress occupied 60 paragraphs of its reasons. Read as a whole, the respondent argued that there was no basis to set aside the decision as unreasonable.

[55] The respondent also submitted that the applicant did not raise these threats when he was interviewed by CBSA in July 2018. The applicant's amended Basis of Claim, while referring to some threats and his fears, stated that the situation "did not become life-threatening until 2012". The NISS paid the applicant a large sum of money to assist it. On his own evidence, the applicant was not under duress in 2006 – 2007 when he hired the agents as cargo workers and gathered information at UN parties.

[56] In my view, there is no basis to intervene with the ID's conclusions on duress. As in *Gaytan*, the applicant did not allege that the ID made an error of law, but instead challenged its application of the elements of duress in *Ryan* to the evidence.

[57] Applying *Vavilov* principles related to factual constraints in the record, I find insufficient cause in this case to intervene. The ID appreciated the applicant's position on the evidence and expressly recognized the position he advanced on this application with respect to the "context", albeit briefly. The ID did not agree with the applicant's perspective on the alleged threats.

[58] The ID's reasons included a detailed analysis of the applicant's original and amended Basis of Claim, noting the changes he made after his admissibility to Canada became an issue. The ID found that the applicant "changed his story twice" on how the NISS recruited him and made tailored changes to his claim to deny inadmissibility concerns raised by the respondent. The ID also found that poor translation of his original Basis of Claim did not account for certain later changes. The ID considered the expert and medical evidence tendered by the applicant, which it did not find helpful. These findings affected the ID's conclusions on the alleged threats

as they related to duress. Noting that his amended Basis of Claim stated that the situation did not become life threatening until 2012, the ID concluded that that he did not perceive himself as being under serious threat when he hired the NISS agents, attended the parties and maintained the secrecy of the NISS agents.

[59] I pause to add that in his written submissions to this Court, the applicant referred to country condition evidence and to his own evidence in his amended Basis of Claim narrative that he was fearful and scared of the NISS when the threats were made. However, he did not refer to any evidence where his narrative or his testimony specifically linked his fears, or any of the alleged threats, to his own knowledge of the overall "context" of the NISS conduct and practices, as outlined above.

[60] Considering what the ID expressly considered and addressed with respect to the alleged threats, and the "context" in the evidence as identified by the applicant to the ID and in this Court, I cannot conclude that the ID's conclusions on duress were untenable on the evidence as a whole, or that the ID fundamentally misapprehended the evidence or otherwise failed to respect the factual constraints bearing on it: *Vavilov*, at paras 101 and 126. As already noted, a reviewing court is not permitted to reweigh the evidence and reach its own conclusions: *Vavilov*, at para 125; *Gaytan*, at para 118.

[61] The applicant submitted that the ID erred by speculating that the applicant would be protected by a family friend, and by failing to find that one statement made to him was, on its face, an explicit threat. The same legal principles and conclusion apply to these arguments.

[62] The applicant also made submissions concerning the availability of a safe avenue of escape from the NISS: *Ryan*, at paras 55 and 80. The applicant submitted that there was no legal alternative for him other than to comply with the NISS's demands, because its operations were state-sanctioned and they could not be prosecuted or subject to any disciplinary actions under Sudanese law. His only option was to flee Sudan. The applicant submitted that the ID did not consider what options were actually open to him to find a safe avenue of escape or what he realistically could have done in response to the NISS's demands in light of the threats he received. According to the applicant, applying the criteria in *Ryan*, a reasonable person in the same situation as the applicant, and with his characteristics and experience, would have concluded that he had no safe avenue of escape from the NISS.

[63] The applicant also criticized the ID for assessing his ability to escape during the period between 2012 and 2018 (a period during which he claims he was tortured three times) rather than during 2006 – 2007. Citing this Court's decision in *Canada (Public Safety and Emergency Preparedness) v Lopez Gaytan*, [2020] 2 FCR 617, 2019 FC 1152, the applicant argued that the ID also ignored highly relevant evidence that the applicant went to the police for protection in 2006, only to be advised that no complaint could be made against the NISS owing to its legal immunity.

[64] The respondent argued that the ID was not required to assess the absence of a safe avenue of escape, given its other conclusions on duress that were adverse to the applicant. The respondent emphasized that the ID's analysis was cogent and complied with the principles of rationality in *Vavilov*.

[65] I agree substantially with the respondent's position. The applicant did not claim that the ID erred in law but again argued that the ID erred in its application of the correct legal principles from *Ryan* to the evidence. I see no basis on which to interfere, given the burden on the applicant to establish the elements of duress and the ID's reasonable conclusions on the issues, as analyzed above: *Ryan*, at para 55.

[66] In addition, the ID recognized that it was analyzing a later period of time (2012 to 2018), not the period in which the acts of espionage occurred (2006-2007), stating that duress during the later period did not apply to the earlier one but that the later events could have "some bearing" on the quality of his claim to have been under duress during the earlier period. While the applicant sought to find inconsistency in those statements, in my view, any tension is more apparent than real and did not affect the outcome.

B. ***Membership***

[67] The applicant challenged the ID's brief reasons concluding that he was a member of the NISS for the purposes of paragraph 34(1)(*f*) of the *IRPA*. On this application, his submissions built on the position he advanced with respect to the "context" in Sudan, described above. The applicant submitted that he had no intention to support the NISS, that any acts of espionage he committed at their request were not voluntary and that the ID made its findings without regard to the exculpatory evidence. The applicant submitted that in *Gaytan*, the Federal Court of Appeal noted that this Court held in *Jalloh* that a person cannot be considered to be a member of a group when his or her involvement with it is based on duress: *Gaytan*, at para 78, quoting *Jalloh v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 317, at para 37. The Federal

Court of Appeal also referred to factors to determine whether an individual is a member of an organization in light of the particular circumstances of each case and that coerced membership cannot reasonably have been intended to be captured by *IRPA* section 34: *Gaytan*, at para 80.

[68] The respondent's position was that the ID made no reviewable error in applying the law to the facts with respect to the applicant's membership. The respondent argued that this Court has applied an "unrestricted and broad" interpretation of the words "membership" and "organization" in *IRPA* section 34 and that there is no requirement to show a mental element to establish membership (citing *Poshteh v Canada (Minister of Citizenship and Immigration*), 2005 FCA 85, at paras 27-32; *Chiau v Canada (Minister of Citizenship and Immigration)* [2001] 2 FC 297 (CA), at paras 55-60; *Sittampalam v Canada (Minister of Citizenship and Immigration),* 2006 FCA 326, at paras 34-41; *Mahjoub (Re),* 2013 FC 1092, paras 59-65; *Vukic v Canada (Minister of Public Safety and Emergency Preparedness*, 2012 FC 370, at para 47; and *Mahjoub v Canada (Citizenship and Immigration),* [2018] 2 FCR 344, 2017 FCA 157, at para 94).

[69] I am not persuaded that the ID's analysis of membership under paragraph 34(1)(*f*) contained a reviewable error. The applicant has not identified an error of law in the ID's analysis, nor any material facts or evidence that the ID ignored or fundamentally misapprehended. Given the close relationship between the duress analysis and the evidence of membership in this case, there is no basis for this Court to intervene on *Vavilov* grounds of unreasonableness.

C. ***Nexus***

[70] Paragraph 34(1)(*a*) of the *IRPA* provides that a permanent resident or foreign national is inadmissible on security grounds for "engaging in an act of espionage that is against Canada or that is contrary to Canada's interests". The requirements for inadmissibility therefore include that the person (i) engaged in an act of espionage, and (ii) that the act of espionage was either "against Canada" or was "contrary to Canada's interests": *Weldemariam*, at para 42.

[71] In *Weldemariam*, Norris J. found three reasons to set aside an ID decision made under *IRPA* paragraphs 34(1)(*a*) and (*f*): at para 43 and following. Two of those reasons are relevant here. The first was that the ID's analysis rested on an equivocal use of the term "Canada's interests", in that the ID treated the latter phrase as equivalent to things Canada is "interested in" without considering that there must be some actual nexus to Canada for paragraph 34 (1)(*a*) to apply: *Weldemariam*, at paras 51-55. The other relevant reason was that the ID failed to explain the nexus between the actions of the organization that committed the alleged espionage and Canada's national security: *Weldemariam*, at paras 68-74.

[72] In *Yihdego*, the Court set aside an ID decision on grounds similar to *Weldemariam.* The Court held that the impugned organization's actions may have been contrary to Canadian values, but that was not enough to suggest that Canada's national security was imperilled for the purposes of paragraph 34(1)(a). Justice O'Reilly found that for a finding of inadmissibility, there had to be a "more tangible connection" to Canada's national security than merely a finding of conduct contrary to Canadian values or democratic principles: *Yihdego*, at para 26. O'Reilly J.

also concluded that the ID failed to explain how Canada's national security interests would be affected by espionage against the citizens of an important Canadian ally: at para 27.

[73] In this case, the ID considered that it was bound by *Weldemariam* and *Yihdego.* The ID did not agree with the applicant's submission that the requirement of a nexus with Canada's national security meant that the espionage activities must "target" Canada's national security. The ID found that this Court's decisions meant that Canada's interests must have a nexus with national security.

[74] The ID was satisfied that the required nexus existed between "Canada's interests" and its national security. The ID set out excerpts from several reports describing the UN missions in Sudan and Canada's role and reasons for engaging in them. The ID found that Canada had an interest in the UN missions in Sudan as its engagement in those missions was significant. The ID referred specifically to the number and role of people deployed to Sudan (including Canadian Forces personnel) and the financial resources spent on projects there.

[75] The ID found that a report from Canada's Department of Foreign Affairs and International Trade ("DFAIT", now Global Affairs Canada) spoke to the nexus between Canada's interests and national security, in its evaluation of the Canadian Police Arrangement and the International Police Peacekeeping and Peace Operations ("PIP") program that manages Canadian police deployments to international peacekeeping missions (among other things). The ID relied on information connecting those roles with the safety of Canadians and Canadian interests domestically and internationally. With respect to Sudan, the ID referred to a report

stating that the focus on Sudan was informed not only by lasting peace as an objective for political, humanitarian and human rights reasons, but also due to a "concern for regional instability in neighbouring countries due to the availability of small arms and light weapons and the potential for escalation in armed violence with future repercussions on global and domestic security". The ID also noted that national security was a factor in approving Canada's participation in PIP operations.

[76] With that evidence in mind, the ID concluded, at paragraph 61 of its reasons:

> I find reasonable grounds to believe that [the applicant]'s espionage activities targeting UN missions in Sudan were contrary to Canada's interests. The UN missions were a joint effort in which Canada has significant involvement. Canada has every interest in the integrity and success of these missions, whereas the al-Bashir regime was averse to these missions. There are reasonable grounds to believe that Canada's interests had a nexus to national security as Canada engaged in these UN missions because it understood there to be a connection between these missions and Canada's national security.

[77] The applicant submitted that it was unreasonable for the ID to determine that the acts of espionage allegedly committed by the applicant and by the NISS had a nexus to Canada's national security. The applicant also argued that the evidence relied upon by the ID did not support its conclusion that there was a nexus between Canada's interests in Sudan and Canada's national security. Correcting for the ID's allegedly selective use of the evidence, the applicant submitted that a plain reading of the evidence showed there were no links to Canada's national security that led to Canada's engagements in Sudan. He argued that the ID failed to identify a tangible connection between Canada's role in Sudan and Canada's national security (citing *Yihdego*, at para 26).

[78] The applicant argued that the ID's reasoning with respect to the phrase "contrary to Canada's interests" in *IRPA* paragraph 34(1)(a) disclosed no connection with national security, only a connection with Canadian values such as respect for human rights and the rule of law – which is insufficient in law (citing *Weldemariam* and *Yihdego*, which the applicant submitted were binding on the ID at the time of its decision). Any impact on Canada's national security was, according to the applicant at the hearing, several steps away from its involvement in Sudan, although that involvement did affect Canada's values.

[79] The applicant also contended that the ID failed to explain how Canada's national security interests were affected by the acts of espionage he and the NISS allegedly committed. He argued that, as in *Weldemariam*, his alleged actions at the behest of the NISS and the NISS's espionage actions targeting the UN missions "may well be contrary to Canada's values but this alone does not entail that they were also contrary to Canada's interests in a way that engages paragraph 34(1)(a) of the IRPA" (quoting *Weldemariam*, at para 54).

[80] The respondent did not contest the proposition in *Weldemariam* that espionage "contrary to the Canada's interests" must have a nexus to Canada's national security, while noting that it was likely an "open question" following the Federal Court of Appeal's decision in *Mason* (now on appeal to the Supreme Court).

[81] The respondent maintained that the ID's nexus reasoning was reasonable. The respondent contended that the ID's decision that the applicant's espionage had a tangible nexus to Canada's national security was based on the evidence, given Canada's role in the UN missions with

Canadian soldiers and police on the ground in Sudan. In addition, the respondent argued that Canada has an apparent national security interest in ensuring that Canadian nationals are safe wherever they are deployed by the Canadian government or located (including in Sudan at the time).

[82] The applicant's submissions have not persuaded me that the ID's nexus analysis contained a reviewable error. The applicant did not identify an error of law in the ID's analysis. The ID expressly considered the nexus issue on the more narrowly-defined legal standard for the phrase "contrary to Canada's interests" in *Weldemariam* and *Yihdego*.

[83] In my view, the applicant's submissions about the contents of the reports do not demonstrate that the ID had a fundamental misapprehension or similar profound flaw in its appreciation of the evidence. The ID's stated conclusion, quoted above, may not have drawn together the excerpts from various reports into a detailed, neat and tidy summary. However, reading the ID's explanation leading to its conclusion, including its excerpts from the reports, there is a clear line of reasoning to reach and justify the ID's finding that a nexus to national security existed. That conclusion was open to the ID on the reports it cited.

[84] Specifically on the applicant's submission concerning the ID's selective use of certain passages in the DFAIT report, I note that the additional passage relied upon by the applicant refers to Canada's involvement in Sudan as being consistent with Canada's core values of freedom, democracy, human rights and the rule of law, "and in support of Canada's previous G-8 commitments to peace and stability in Africa". The latter appears to echo the passage considered

by the ID in its decision and quoted above ("concern for regional instability in neighbouring countries due to the availability of small arms and light weapons and the potential for escalation in armed violence with future repercussions on global and domestic security").

[85] Similarly, I find sufficient explanation in the ID's reasons as a whole to support a connection between, on one hand, the applicant's two acts of espionage and activities of the NISS and, on the other hand, Canada's national security on the basis of Canada's participation and role in the UN missions, as described by the ID.

[86] I therefore conclude that the applicant has not demonstrated that the ID made a reviewable error in its analysis of nexus.

V. Conclusion

[87] The application is therefore dismissed.

[88] The applicant proposed the following questions for certification (as revised after the discussions at the hearing):

- Is it reasonable to interpret "contrary to Canada's interests" in paragraph 34(1)(*a*) of the *Immigration and Refugee Protection Act* in a manner that does not require proof of conduct that affects Canada's "national security" or the "security of Canada"?

- To be inadmissible to Canada pursuant to paragraph 34(1)(*a*) of the *Immigration and Refugee Protection Act*, must there be a direct link between the acts of espionage and the negative effects on Canada's national interests?

[89] To be certified for appeal under *IRPA* paragraph 74(*d*), a proposed question must (i) be a "serious question" that is dispositive of the appeal, (ii) be a question that has been raised and dealt with in this Court's decision; (iii) transcend the interests of the parties and (iv) raise an issue of broad significance or general importance: *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, [2018] 2 FCR 229, at para 36; *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, [2018] 3 FCR 674, at para 46; *Canada (Public Safety and Emergency Preparedness) v XY*, 2022 FCA 113, at para 7.

[90] A question that is in the nature of a reference or whose answer turns on the unique facts of the case cannot be properly certified: *Lunyamila*, at para 46 (citing *Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, at paras 15, 35).

[91] The premise of a certified question must fully accord with the facts of the case: *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50, at para 34.

[92] Finally, certified questions should be posed in a manner that recognizes the proper standard of review and links the certified question to the decision under review, so as to address a point that arises in the decision itself rather than an abstract question or one that focuses on the unique facts of the case: *Galindo Camayo*, at paras 35, 40 and 44-45.

[93] I find that neither question is appropriate to certify for appeal in this proceeding.

[94] The first proposed question does not arise in the present case. The ID's decision applied a legal standard for "contrary to Canada's interests" in paragraph 34(1)(*a*) that required a link to Canada's national security and found that the nexus was established. An answer to this proposed question would not affect the outcome of an appeal in this proceeding.

[95] The second proposed question concerns a legal argument that was not addressed by the ID and was only made briefly during oral argument to the Court on this application. Specifically, whether a link must be "direct" or could be something else ("indirect") did not feature prominently in the applicant's arguments; there was no mention of it in the applicant's written submissions. It was not the subject of legal argument. I can find no discussion of the point in the ID's reasons. Nor was the notion of "national interests", a phrase not found in *IRPA* paragraph 34(1)(*a*) or used for this purpose in the cases cited on this application.

[96] In my view, an appeal to the Court of Appeal on the second proposed question would present an abstract question on which neither the ID's decision nor this Court's decision turned. It is not clear that this issue would be dispositive of an appeal to the Federal Court of Appeal. Accordingly, I am not persuaded that the issue is appropriate for appeal in this case.

JUDGMENT in IMM-6770-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

1. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6770-20
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PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 16, 2022
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APPEARANCES:

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