Federal Court  Cour fédérale

Date: 20240312

Docket: IMM-11265-22

Citation: 2024 FC 411

Ottawa, Ontario, March 12, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SHAHBAZ ALI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] Subsection 63(5) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, provides that the Minister may appeal a decision of the Immigration Division [ID] of the Immigration and Refugee Board of Canada [IRB] in an admissibility hearing to the Immigration Appeal Division [IAD] of the IRB. The Applicant frames the issue in this application for judicial review to be one requiring the Court to describe the obligations imposed by the legislation and jurisprudence on the IAD when it reaches a result that is contrary to that reached by the ID.

[2] For the reasons that follow, I confirm that the IAD owes the ID neither comity nor deference so long as it considers the full record before it. The application is dismissed.

I. Background

[3] The background facts are not challenged.

[4] The Applicant is a 30-year-old citizen of Pakistan. He arrived in Canada as a permanent resident in March 1999 at the age of 5-years-old after being included as a dependant on his father's permanent resident application under the protected persons category.

[5] The Applicant has an extensive history of criminal charges and convictions leading up to the IAD hearings. In addition to numerous youth offenses and convictions for assault, the Applicant has received countless convictions between 2014 and 2020 for possession of Schedule I and II substances, particularly cocaine. He is a known drug trafficker in the city of Calgary in Alberta. The Applicant was a target of Calgary's Serious Habitual Offenders Program from 2010 to 2018, surveilled by the Guns and Gangs and Gang Suppression units for over a decade, and involved with the Security Operations and Organized Crime units of the Calgary police service.

[6] In February 2019, the Applicant was convicted of possession for the purpose of trafficking cocaine. This conviction led to a deportation order against him on the grounds of serious criminality under paragraph 36(1)(a) of the Act, upheld by the ID in August 2020. The Applicant appealed the order to the IAD, which dismissed it on February 25, 2021, for lack of

jurisdiction. He further appealed to this Court which similarly dismissed it without leave. This removal order continues to be in force against the Applicant.

[7] On May 1, 2017, the Canadian Border Services Agency issued a separate deportation order against the Applicant, declaring that he was inadmissible to Canada pursuant to paragraph 37(1)(a) of the Act which provides:

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) 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;	a) être membre d'une organisation dont il y a des 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 prévue sous le régime d'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;

[8] The ID heard and dismissed this matter in September 2019. It found that the Minister did not meet its burden of demonstrating that a criminal organization had been established, specifically that the Applicant's drug trafficking network amassed the requisite continuity and structure to be considered organized crime under the Act:

> I have reasonable grounds to believe that Mr. Ali is a drug trafficker, and can surmise, on some level, that he does not run his operation alone. But without specific clear evidence to establish the organization's structure, continuity and interdependent role of its members. I cannot make a finding that a criminal organization has been established.

[9] The Minister appealed the ID decision to the IAD. It is the IAD decision finding that the Applicant is inadmissible pursuant to paragraph 37(1)(a) of the Act on grounds of organized criminality that is under review.

II. The IAD Decision under Review

[10] On October 21, 2022, following two hearings in which additional evidence was adduced, the IAD overturned the ID decision and determined that the Applicant was inadmissible to Canada for organized criminality under paragraph 37(1)(a) of the Act.

[11] The IAD noted that while the ID did not make an error in law, as it identified and applied the correct legal test in determining whether a foreign national is inadmissible under paragraph 37(1)(a) of the Act, it disagreed with the ID on its assessment of the facts.

[12] In particular, the IAD found that there was sufficient reliable and credible evidence to conclude that there were reasonable grounds to believe that the Applicant had been involved in a planned pattern of criminal activity with two or more persons since 2014. The IAD considered the opinions and testimonies of Detective Da Silva-Spence from 2016 and 2020, both before the ID and IAD, in addition to the other evidence and testimony before it. Like the ID, the IAD found that the Applicant operated a dial-a-dope operation and that such operations generally

require coordination with other individuals. The IAD found that there is "ample evidence" to establish the Applicant worked together with other individuals for a continuous enough period to meet the definition of organized criminality.

[13] In reaching the Decision, the IAD acknowledged the ID's concern that there is a lack of clear evidence on the manner in which the Applicant's drug trafficking cell operates, particularly who the key consistent contributors were, what their roles might be, and how they might fit within a loose hierarchal structure. While the IAD agreed there was insufficient evidence to establish "whether there is sufficient structure to the cell to meet the definition for organized crime," it found that there was enough evidence to infer that the Applicant leads a drug trafficking network or cell. In its reasons, the IAD stressed that a flexible approach should be taken in assessing whether a collective criminal enterprise amounts to organized criminality.

III. Issue

[14] The sole issue for determination on this application is whether the IAD's decision was reasonable. As I mentioned above, the Applicant frames this issue as asking how much comity the IAD owes the ID. The Applicant argues the IAD's decision is unreasonable for failing to explain why it departed from the ID's decision.

IV. Standard of Review

[15] The parties agree, and I concur, that the Decision is reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[16] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12–13. The court must give considerable deference to the decision-maker, as the entity delegated power from Parliament and equipped with specialized knowledge and understanding of the "purposes and practical realities of the relevant administrative regime" and "consequences and the operational impact of the decision" that the reviewing court may not be attentive towards: *Vavilov* at para 93. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[17] That being said, reasonableness review is not a mere "rubber-stamping" process: *Vavilov* at para 13. It is the reviewing court's task to assess whether the decision as a whole is reasonable; that is, it is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.

[18] Reasons "are the primary mechanism by which administrative decision makers show that their decisions are reasonable:" *Vavilov* at para 81. However, reasons "must not be assessed against a standard of perfection" and administrative decision makers should not be held to the "standards of academic logicians:" *Vavilov* at paras 91, 104. Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis:" *Vavilov* at para 128.

V. Principles Guiding the Interpretation of Paragraph 37(1)(a)

[19] Paragraph 37(1)(a) of the Act establishes that a permanent resident or foreign national is inadmissible on grounds of organized criminality where that person is 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 the furtherance of criminal offences. The Minister bears the burden of demonstrating that an individual falls within this definition.

[20] As both the ID and IAD correctly noted, the Supreme Court held in *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58, that section 37 of the Act must be interpreted harmoniously with the definition of criminal organization found in subsection 467.1(1) of the *Criminal Code*, RSC 1985, c C-46 [the *Code*]:

criminal organization means a group, however organized, that	*organisation criminelle* Groupe, quel qu'en soit le mode d'organisation :
(a) is composed of three or more persons in or outside Canada; and	a) composé d'au moins trois personnes se trouvant au Canada ou à l'étranger;
(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.	b) dont un des objets principaux ou une des activités principales est de commettre ou de faciliter une ou plusieurs infractions graves qui, si elles étaient commises, pourraient lui procurer — ou procurer à une personne qui en fait partie — , directement ou indirectement, un avantage matériel, notamment financier.

It does not include a group of persons that forms randomly for the immediate commission of a single offence.	La présente définition ne vise pas le groupe d'individus formé au hasard pour la perpétration immédiate d'une seule infraction.

[21] In *R v Venneri*, 2012 SCC 33 [*Venneri*], the Supreme Court addressed the *Code*'s definition of "criminal organization." It found that the phrase "however organized" used in the *Code* is meant to capture differently structured criminal organizations: *Venneri* at para 31. The Supreme Court emphasized that "while the definition must be applied 'flexibly', structure and continuity are still important features:" *Venneri* at para 27. In other words, to be considered a criminal organization, the group must be "organized" in the sense that it has at least some form of structure and degree of continuity.

VI. Analysis

[22] The Applicant submits that the Decision is unreasonable because the IAD failed to indicate where the ID erred in its decision-making process and failed to provide a substantive and cogent chain of analysis.

[23] In making this submission, the Applicant concedes that the IAD owes no deference to the ID: *Verbanov v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 324 [*Verbanov*] at para 26. He instead argues that judicial comity is owed similar to how this Court should follow substantially similar decisions issued by the Court or how the Refugee Protection Division [RPD] of the IRB should explain why a contrary result was reached when reviewing a claim of an individual who is similarly situated to one whose claim had already been evaluated

by the RPD: *Zupko v Canada (Citizenship and Immigration)*, 2010 FC 1319 at para 14; *Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at paras 24–25.

[24] I agree with the Respondent that the IAD owes no judicial comity to the ID. This is not analogous to the situations the Applicant relies on where judicial comity is required to advance certainty in the law. In circumstances where this Court follows a similar decision by the Court or the RPD explains how it came to a different conclusion than one it reached for a different yet similarly situated individual, the principle of judicial comity exists to ensure that persons are treated equally and fairly under the law.

[25] Here, the IAD exists to hear appeals from the ID; while the principle of judicial comity may exist where the ID reviews a claim from an individual similarly situated to an individual already reviewed by the ID, the IAD owes no judicial comity to the ID when hearing an appeal from the ID on a *de novo* basis. As the Respondent cites, this Court has held that, in addition to not owing the ID any deference, the IAD is not required "to explicitly state that either (a) the Immigration Division's decision was wrong in law or fact or mix law and fact, or (b) a principle of natural justice has not been observed:" *Castellon Viera v Canada (Citizenship and Immigration)*, 2012 FC 1086 at para 12; see also *Popovici v Canada (Citizenship and Immigration)*, 2023 FC 960 at para 25. Since the Applicant testified before the IAD, this Court has held that there was no need for the IAD to consider the ID's findings: *Verbanov* at para 26, citing *Patel v Canada (Citizenship and Immigration)*, 2013 FC 1224 at para 27.

[26] I acknowledge the recent jurisprudence questioning the extent to which an appeal before the IAD is considered a true *de novo* proceeding: see *Patel v Canada (Citizenship and Immigration)*, 2024 FC 191 at para 32. In *Verbanov* at paragraph 26, Justice St-Louis described an appeal before the IAD as *de novo* "in the broad sense." Justice Strickland in *Singh Bains v Canada (Citizenship and Immigration)*, 2023 FC 892 [*Bains*] at paragraph 30, further confirmed this characterization, citing the Federal Court of Appeal's decision in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93. Her primary concern was that the IAD must consider the totality of the evidence, including any evidence that was before the ID: *Bains* at para 33. That issue does not arise in this case, where the Applicant even submits that the IAD formed its decision based almost exclusively on the evidence that was before the ID. I find that even in the broadest sense of a *de novo* appeal, the IAD was not required to explicitly state how its reasons differ from those of the ID, so long as it considered the full record, including the ID's decision and the evidence before it. I am satisfied that the IAD complied with this requirement.

[27] The Applicant's argument that the IAD failed to provide a fulsome explanation as to how the *new* evidence advanced by the Minister at the IAD resulted in a different conclusion than that reached by the ID suffers from the same flaw as described above. As there is no judicial comity owed to the ID, the IAD was free to base its contrary conclusions on the same evidence that was before the ID. I disagree with the Applicant that the IAD did not make much use of the new evidence advanced by the Minister—but, in any event, it did not need to. From the evidence before it, some of which was previously before the ID, the IAD determined that the Applicant met the conditions for inadmissibility under paragraph 37(1)(a) of the Act.

[28] The Applicant's other arguments amount to a disagreement over how the IAD weighed the evidence before it, in contrast to how the ID weighed it, to find there were reasonable grounds to believe the Applicant's drug trafficking network possessed the adequate structure and continuity to be considered an organized criminal organization as required by *Venneri*. For example, the IAD assigned greater weight than the ID to the evidence regarding the Applicant's arrests for possession for the purpose of trafficking, in particular his first conviction in 2014, and the intercepted phone calls. While the ID did not find this evidence compelling enough to establish the existence of a criminal organization, the IAD found the evidence demonstrated reasonable grounds to believe that the Applicant was continuously working together with others with a common client base. The IAD further found it was unreasonable in the circumstances to find that the Applicant acted independently or only engaged with others on an *ad hoc* basis.

[29] It is not the role of the reviewing Court to interfere with a tribunal's weighing of the evidence: *Vavilov* at para 125. While the Applicant disagrees with how the IAD interpreted the evidence, I note, as the IAD did, that the IAD needed to only establish "reasonable grounds to believe" there was a criminal organization of which the Applicant was a member. This is a lower standard of proof than a balance of probabilities, though more than a mere suspicion: *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114, citing *Chiau v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 297 (CA) at para 60. Reasonable grounds to believe exist where there is compelling and credible information that provides an objective basis to make a finding of fact.

[30] Given the preponderance of evidence before the IAD, both new and that which was previously before the ID, I find it was reasonable for the IAD to find there were reasonable

grounds to believe the essential elements of paragraph 37(1)(a) of the Act were met. As the IAD stressed in its reasons for the Decision, "criminal organization" must be interpreted liberally, keeping in mind that organized criminal groups tend to have loose, informal structures that can vary substantially: *Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326 at para 39; *Venneri* at para 38. The IAD considered the evidence before it and determined there were reasonable grounds to believe that the Applicant has operated a drug trafficking network since at least 2014, demonstrating, in the IAD's words, "cohesiveness and endurance" and a "continuous pattern" of planned criminal activity with a group. The IAD found this was sufficient in establishing that the Applicant engaged in a criminal organization with the requisite level of structure and continuity to meet the definition in paragraph 37(1)(a) of the Act. In doing so, the IAD did not commit any reviewable error warranting the intervention of this Court.

VII. Conclusion

[31] For the foregoing reasons, the application for judicial review is dismissed. The IAD owes the ID no judicial comity, and it properly came to its own conclusion on a reasonable assessment of the evidence before it.

[32] The parties raised no question for certification and I agree none arises.

JUDGMENT in IMM-11265-22

THIS COURT'S JUDGMENT is that the name of the Respondent is changed to The Minister of Public Safety and Emergency Preparedness, with immediate effect, this application is dismissed, and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11265-22
STYLE OF CAUSE:	SHAHBAZ ALI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 6, 2024
JUDGMENT AND REASONS:	ZINN J.
DATED:	MARCH 12, 2024

APPEARANCES:

Bjorn Harsanyi, KC	FOR THE APPLICANT
Galina Bining	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart Sharma Harsanyi Barristers and Solicitors Calgary, Alberta	FOR THE APPLICANT
Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT