Federal Court  Cour fédérale

**Date: 20150612**

**Docket: IMM-5146-14**

**Citation: 2015 FC 746**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, June 12, 2015**

**Present: The Honourable Mr. Justice Shore**

**BETWEEN:**

**IONEL ION**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**
**(judgment delivered from the bench)**

I. Preliminary

[1] The Immigration Division (ID) of the Immigration and Refugee Board of Canada found that the applicant's conviction on the charges brought against him, with respect to the applicant was represented by counsel at the time of his guilty plea, is sufficient to conclude that the

applicant engaged in activities linked to a criminal organization, according to the terms of paragraph 37(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] The Federal Court has recognized that a guilty plea from an individual affiliated with a criminal organization following a *modus operandi* is the best proof possible of a criminal offence since it is recognition of the commission of an offence. In this respect, the Court adopts the words of Justice Yvan Roy in *Daia c Canada (Ministre de la Sécurité publique et de la Protection civile)*, 2014 CF 198 at para 15 (*Daia*):

> [15] She pleaded guilty to five offences relating to her activities with this same group of people, which is the best proof possible. She acknowledged that she committed these offences, including having the required *mens rea*. These admissions cannot be reversed. Other charges weigh on her for similar activities in Ontario. The applicant asks for leniency in the sentence that would have been imposed on her and claims that [translation] "the panel did not review the applicant's testimony in its context and in light of all the evidence". These allegations had nothing to do with the standard of reasonableness that was described in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, (*Dunsmuir*) at paragraph 47.

[3] The ID notes, in particular, that the applicant is a key player in the criminal operations for which he was accused and convicted. The evidence shows that the applicant facilitated the commission of two robbery attempts as a driver and that his role was essential to the *modus operandi* of the organization, which required the motorized transportation of its members to businesses and financial institutions. The applicant's role as a "facilitator" was also confirmed by the testimony of Ms. Tremblay before the ID (Transcript of hearing, Tribunal Record, at p 477).

[4] The Court finds that in light of the evidence and the facts that were available, it was reasonable for the ID to find that there were reasonable grounds to believe that this organization falls within paragraph 37(1)(*a*), thus, a criminal organization.

## II. Introduction

[5] This is an application for judicial review under the IRPA of a deportation order issued by the ID against the applicant for organized criminality in accordance with paragraph 37(1)(*a*) of the IRPA.

## III. Factual background

[6] The applicant is a citizen of Romania. On July 12, 2005, the applicant became a permanent resident of Canada.

[7] On February 8, 2012, following the applicant's arrest in the police operation "Feinte 2" of the Service de police de la Ville de Montréal, the applicant pleaded guilty to three counts of attempted robbery of credit cards, including one count of complicity. The applicant received a suspended sentence and a probation order for a period of 18 months.

[8] On October 31, 2012, the applicant was reported under subsection 44(1) and paragraph 37(1)(*a*) of the IRPA. The report was then referred to the ID for an investigation.

[9] On March 13, 2013, proceedings were instituted by City of Quebec against the applicant in connection with allegations of fraud in March 2013.

[10] On June 13, 2014, after a hearing that lasted 15 days between November 21, 2012, and May 7, 2014, the ID found that there were reasonable grounds to believe that the applicant engaged in activities related to a criminal organization under paragraph 37(1)(*a*) of the IRPA and an exclusion order was issued against him.

## IV. Statutory provisions

[11] Sections 33 and 37 of the IRPA are reproduced below:

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| **Rules of interpretation** | **Interprétation** |
| **33**. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur. | **33**. Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir. |
| **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*) 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 | *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 |

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| 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; or | 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; |
| (*b*) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime. | *b*) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité. |
| **Application** | **Application** |
| (2) Paragraph (1)(a) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity. | (2) Les faits visés à l'alinéa (1)a) n'emportent pas interdiction de territoire pour la seule raison que le résident permanent ou l'étranger est entré au Canada en ayant recours à une personne qui se livre aux activités qui y sont visées. |

V. Issues

[12] Is the ID's decision finding that the applicant falls under paragraph 37(1)(*a*) of the IRPA reasonable?

VI. Analysis

[13] Case law established that the ID's findings relating to the participation in activities linked to an organization referred to in paragraph 37(1)(*a*) are subject to the standard of reasonableness.

These determinations of fact and mixed fact and law fall within the ID's expertise and are entitled to a high level of deference from the Court (*Sittampalam v Canada (Minister of Citizenship and Immigration)*, [2006] FCJ 1512 at para 53 (*Sittampalam*); *Molares v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 768 at para 7).

[14] The applicable standard of proof of "reasonable grounds to believe", set out in section 33 of the IRPA, requires "more than mere suspicion" but nevertheless remains "less than the standard applicable in civil matters of proof on a balance of probabilities" (*Mugesera v Canada (Minister of Citizenship and Immigration)*, [2005] SCJ 39 at para 114).

[15] Case law establishes that the expression "organization" provided at paragraph 37(1)(*a*) of the IRPA must receive a broad, flexible and liberal interpretation so that looseness and informality in the structure of a group do not thwart the purpose of the IRPA to ensure public safety (*Lennon v Canada (Minister of Public Safety and EmergencyPreparedness*), 2012 FC 1122 at para 19; *Sittampalam*, above at para 35 and 36).

[16] This principle is further stated in paragraphs 3(1)(*h*) and (*i*) of the IRPA, which set out that the purpose of the IRPA includes, among other things, protecting "public health and safety", maintaining the "security of Canadian society", and promoting "international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks".

[17] Moreover, since the structure of criminal organizations varies, the ID must have some latitude to assess all the evidence in light of the purpose of the IRPA (*Sittampalam*, above at para 39).

[18] In its reasons, the ID first conducts an analysis to determine whether there are reasonable grounds to believe that the organization with which the applicant is associated falls under paragraph 37(1)(*a*) of the IRPA.

[19] Following a review of the evidence, including the testimony of Ms. Tremblay and of the applicant, the ID first noted that the organization in question was not formed by accident for the immediate commission of a single offence.

[20] The ID observed that the organization is composed of sub-cells of three to five persons, formed of individuals of Romanian origin with connection to family or friends, working together according to a *modus operandi*, i.e. committing robbery of debit and credit cards by distracting their victims. The ID also noted that these individuals used the same residence, which was a starting point for committing offences.

[21] Furthermore, the ID observed that the organization does not consist of a proper name or symbol, or a formal or organizational structure. However, the ID found that [TRANSLATION] "the members committed criminal offences according to a well-established *modus operandi*, specific to their organization" (ID's decision, at para 44).

[22] The Court finds that in light of the evidence and the facts before it, it was reasonable for the ID to conclude that there were reasonable grounds to believe that this organization falls within paragraph 37(1)(*a*), thus a criminal organization.

[23] It should be noted that the Federal Court had come to this very conclusion in *Daia*, above, in which Justice Roy found that the organization in question, which was similar to that in this case, is a criminal organization within the meaning of paragraph 37(1)(*a*) of the IRPA.

[24] In addition, the ID considered whether there were "reasonable grounds to believe" that the applicant engaged in activities linked to this organization.

[25] The ID notes, in particular, that the applicant is a key player in the criminal operations, for which he was charged and sentenced. The evidence shows that the applicant facilitated the commission of two attempted robberies as a driver and that his role was essential to the *modus operandi* of the organization, which required the motorized transportation of its members to businesses and financial institutions. The applicant's role as a [TRANSLATION] "facilitator" was also confirmed by Ms. Tremblay's testimony before the ID (Transcript of hearing, Tribunal Record, at p 477).

[26] The ID found that the applicant's criminal conviction regarding the charges brought against him, with respect to the fact that the applicant was represented by a lawyer when he pleaded guilty, is sufficient to conclude that the applicant engaged in activities linked to a criminal organization, under paragraph 37(1)(*a*) of the IRPA.

[27] The Federal Court has recognized that a guilty plea from an individual affiliated with a criminal organization following a *modus operandi* is the best proof possible of a criminal offence since it is recognition of the commission of an offence. In this respect, the Court adopts the words of Justice Roy in *Daia*, above at para 15:

> [15] She pleaded guilty to five offences relating to her activities with this same group of people, which is the best proof possible. She acknowledged that she committed these offences, including having the required *mens rea*. These admissions cannot be reversed. Other charges weigh on her for similar activities in Ontario. The applicant asks for leniency in the sentence that would have been imposed on her and claims that [translation] "the panel did not review the applicant's testimony in its context and in light of all the evidence". These allegations had nothing to do with the standard of reasonableness that was described in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, (*Dunsmuir*) at paragraph 47.

[28] With respect to the ID's analysis, as set out in these reasons and the record as a whole, the Court considers that the ID's decision is reasonable.

## VII. Conclusion

[29] It was reasonable for the ID to find that there are reasonable grounds to believe that the organization concerned referred to in paragraph 37(1)(*a*) of the IRPA and that the applicant engaged in activities linked to this criminal organization.

[30] The application for judicial review is dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. There is no question of importance to certify.

"Michel M.J. Shore"

Judge

Certified true translation
Catherine Jones, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5146-14 |
| **STYLE OF CAUSE:** | IONEL ION v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | JUNE 10, 2015 |
| **JUDGMENT AND REASONS:** | SHORE J. |
| **DATED:** | JUNE 12, 2015 |

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| Isabelle Brochu | FOR THE RESPONDENT |

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