Federal Court  Cour fédérale

Date: 20230328

Docket: IMM-3479-22

Citation: 2023 FC 423

Montréal, Quebec, March 28, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

DAVIES CHIJIOKE CHUKWUDI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Davies Chijioke Chukwudi, is a citizen of Nigeria. Mr. Chukwudi seeks judicial review of a decision rendered on March 22, 2022 [Decision] by the Immigration Division [ID]. In its Decision, the ID held that Mr. Chukwudi was inadmissible to Canada on

security grounds, pursuant to paragraphs 34(1)(b) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Chukwudi submits that the Decision is unreasonable because the ID ignored objective documentary evidence, did not properly review the reliability of all documentary evidence it relied on, and failed to acknowledge the difference between the use of force as a self-defence mechanism and the use of force with the intent to subvert a government.

[3] For the following reasons, Mr. Chukwudi's application for judicial review will be dismissed. Having considered the Decision, the evidence before the ID, and the applicable law, I conclude that the Decision is reasonable, that it relies on a proper analysis of paragraphs 34(1)(b) and 34(1)(f) of the IRPA, and that the evidence amply supports the ID's conclusions regarding Mr. Chukwudi's inadmissibility. I am satisfied that the ID's reasons have the qualities that make its analysis logical and consistent in relation to the relevant legal and factual constraints.

II. Background

A. *The factual context*

[4] Mr. Chukwudi joined the Indigenous People of Biafra organization [IPOB] on February 15, 2018. Mr. Chukwudi claims that the IPOB is a non-violent separatist group that advocates for Biafran independence and the rights of people of Igbo ethnicity. First tasked with recruiting new members, Mr. Chukwudi became a local coordinator of the IPOB in 2019.

[5] On June 25, 2019, while in the United States for business purposes, Mr. Chukwudi was informed by a coordinator of the IPOB that the Nigerian authorities were arresting coordinators and leaders of their organization in the Delta State region, where Mr. Chukwudi acted as a local coordinator.

[6] Because of his fear to be persecuted by the Nigerian government and authorities, Mr. Chukwudi decided not to return to Nigeria. On August 5, 2019, Mr. Chukwudi sought refugee protection in Canada at Roxham Road.

[7] After his arrival in Canada, Mr. Chukwudi joined the Canadian branch of the IPOB. He still identifies himself as a member of the organization.

B. ***The ID Decision***

[8] In its Decision, the ID first observed that Mr. Chukwudi is a member of the IPOB, as he himself acknowledged.

[9] The ID continued with its analysis of the documentary evidence, and concluded that the IPOB's goal to achieve secession of Biafra constituted an intent to subvert the government of Nigeria. The ID found that the IPOB's leader, Nnamdi Kanu, through his radio and television channels and his social media, encouraged violent acts against the Nigerian state on numerous occasions. Accordingly, the evidence of his incitements to violence was found to be contrary to the IPOB's — and Mr. Chukwudi's — claim that the IPOB is a peaceful organization. While the

ID found that the IPOB's discourse was not sufficient to establish subversion of the government of Nigeria by force within the meaning of paragraph 34(1)(b) of the IRPA, the ID came to the conclusion that the IPOB undertook acts of violence. The documentary evidence demonstrates that the IPOB claims responsibility for the attacks on Nigerian government's representatives in Spain and in Germany in 2019, and created a militarized group, the Eastern Security Network [ESN], that engages in numerous fights against the government forces. In sum, the IPOB's actions are indicative of its willingness to use force.

[10] The ID therefore stated that the evidence submitted by the Minister showed an intention, on the part of the IPOB, to subvert the government of Nigeria by force. Consequently, the ID concluded that Mr. Chukwudi is a person inadmissible to Canada because he is described under paragraph 34(1)(f) of the IRPA, in reference to paragraph 34(1)(b). The ID then issued a deportation order against Mr. Chukwudi.

C. *The standard of review*

[11] Mr. Chukwudi and the Minister of Public Safety and Emergency Preparedness [Minister] both submit that the standard of reasonableness applies to this application for judicial review (*Fatlum v Canada (Citizenship and Immigration)*, 2022 FC 1495 [*Fatlum*] at para 27; *Canada (Public Safety and Emergency Preparedness) v Edom*, 2021 FC 1220 [*Edom*] at para 12). I agree.

[12] Reasonableness is the presumptive standard that reviewing courts must apply when conducting judicial review of the merits of an administrative decision (*Canada (Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*]. Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must therefore consider whether the "decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[13] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with "respectful attention," and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13).

[14] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for a reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100). When the reasons contain a fundamental gap or an unreasonable chain of analysis, a reviewing court may have grounds to intervene.

III. Analysis

[15] Mr. Chukwudi raises three main grounds to challenge the ID's Decision. Each will be dealt with in turn.

A. *Subversion by force and the evidence before the ID*

[16] Mr. Chukwudi first submits that the ID failed to consider relevant evidence of the Nigerian government's persecution of the IPOB, which explains the organization's resort to violence as a survival response to attacks instigated by the Nigerian government. According to Mr. Chukwudi, the ID also failed to consider objective evidence that the IPOB is a nonviolent organization.

[17] The Minister responds that acts committed by the Nigerian government against the IPOB are not at stake, and that even a legitimate purpose such as the right to self-determination cannot be used to legitimize acts of subversion by force. Accordingly, the Minister argues that the IPOB's motivation is irrelevant to the analysis under paragraphs 34(1)(b) and 34(1)(f) of the IRPA. Furthermore, the Minister maintains that threats to use force is sufficient to conclude that an organization is described under paragraph 34(1)(b) of the IRPA.

[18] I agree with the Minister. Subversion by force has been defined by the courts in a number of cases. According to the Federal Court of Appeal, "subversion" means "the act or process of overthrowing the government" (*Najafi v Canada (Public Safety and Emergency Preparedness)*,

2014 FCA 262 [*Najafi*] at para 65). In *Oremade v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077 [*Oremade*], this Court held that the term "by force" is not strictly equivalent to "by violence;" rather, it "includes coercion or compulsion by violent means, coercion or compulsion by threats to use violent means, and (…) reasonably perceived potential for the use of coercion by violent means" (*Oremade* at para 27). In *Canada (Citizenship and Immigration) v USA*, 2014 FC 416 [*USA*], this Court further determined that subversion by force means "[any] act that is intended to contribute to the process of overthrowing a government, or most commonly as the use or encouragement of force, violence or criminal means with the goal of overthrowing a government, either in part of its territory or in the entire country" [emphasis in original] (*USA* at para 36). Subversion by force thus has an extensive meaning.

[19] In the circumstances of this case, the ID could reasonably determine that the pursuit of secession of Biafra is a form of overthrow of the Nigerian government in part of its territory, as it intends to have the Nigerian government withdraw from the region and allow the Biafrans to exercise their right to self-determination. As well, Mr. Chukwudi's evidence about the persecution of the IPOB and the Biafrans by the Nigerian government is irrelevant at the inadmissibility stage under paragraphs 34(1)(b) and 34(1)(f) of the IRPA, since the legality or legitimacy of acts of subversion by force is not part of the analysis (*Najafi* at para 65). Therefore, even if the IPOB used force for a legitimate purpose such as self-defence on some occasions, the Minister has met his burden of proof since the evidence demonstrates that the organization also used force with the intent to subvert the Nigerian government and achieve the secession of Biafra.

[20] Moreover, an organization's motivation to oust a government by force is irrelevant; only its intent to subvert a government by force is required *(Zahw v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 934 [*Zahw*] at para 54). This means that even the right to self-determination claimed by an oppressed people is not a sufficient consideration to exclude the use of force in legitimate circumstances from the scope of paragraph 34(1)(b) of the IRPA (*Najafi* at paras 46, 109).

[21] Consequently, it was reasonable for the ID not to discuss the evidence on the Nigerian government's acts of persecution, because there is simply no point in the ID engaging with irrelevant material (*Fatlum* at para 47).

[22] As to Mr. Chukwudi's argument that the ID failed to consider the objective evidence stating that the IPOB is a nonviolent organization, I disagree and I am rather of the opinion that the ID was well aware of this argument and of the evidence that supposedly pointed in that direction. At paragraph 20 of the Decision, the ID states the following: "[c]ounsel also argues that some of the Minister's exhibits reveal that IPOB members participated in non-violent agitation, protests and rallies. For example, a report from Amnesty International shows that on some occasions, these protesters were met with violence from the Nigerian security forces (C-25)." As such, nothing indicates that the ID did not properly consider all the evidence before it, and "it is settled law that an adjudicator is not required to refer to every piece of evidence" (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 [*Kanagendren*] at para 36). As reiterated by the Supreme Court of Canada in *Vavilov*, " [r]eviewing courts cannot expect administrative decision makers to 'respond to every argument or line of possible analysis'

(Newfoundland Nurses, at para. 25), or to ‘make an explicit finding on each constituent element, however subordinate, leading to its final conclusion’ (para. 16)” (*Vavilov* at para 128).

[23] Regardless, as soon as the ID found evidence of violent acts, or threats thereof, intended to subvert the Nigerian government, the evidence on the IPOB’s peaceful activities became irrelevant. An organization can conduct both peaceful and violent acts in order to achieve its goal. Evidence of peaceful actions is not enough to erase evidence of acts of subversion by force when the decision maker considers such evidence reliable. The ID had to determine whether the IPOB committed subversion by force, and in the circumstances, it found evidence to support that conclusion. I agree with the Minister that such an analysis is reasonable.

[24] At the hearing, counsel for Mr. Chukwudi claimed that the ID misused evidence, either by taking excerpts out of their context or by making evidence say what it did not. For example, counsel identified excerpts from messages delivered by the IPOB leadership to which the ID referred and maintained that, when placed in context, such excerpts reveal that the violent threats were not directed at the Nigerian government but at other terrorist groups.

[25] These alleged errors are not decisive when considered in the context of the entire Decision, as shortcomings must be evident on critical points and must be “more than merely superficial or peripheral to the merits of the decision” (*Alexion Pharmaceuticals Inc v Canada (Attorney General),* 2021 FCA 157 at para 13, citing *Vavilov* at para 100). “It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep” (Vavilov at para 100. See also *6586856 Canada Inc (Loomis*

Express) v Fick, 2021 FCA 2 at para 37). In this case, any error regarding the use of certain excerpts, as identified by Mr. Chukwudi's counsel, is not sufficiently salient to the ID's analysis to render the overall Decision unreasonable (*Shi v Canada (Citizenship and Immigration)*, 2022 FC 196 at para 69).

[26] The Decision is based on a considerable amount of unchallenged evidence which, on its own, supports the findings of the ID (*Makivik Corporation v Canada (Attorney General)*, 2021 FCA 184 at paras 98–99). The path that Mr. Chukwudi's counsel is attempting to take the Court on leads to a reassessment of the evidence and a treasure hunt for errors, which is not the role of this Court on judicial review (*Gordillo v Canada (Attorney General)*, 2022 FCA 23 at para 122). Even if the Court were to remove from the Decision the portions of the evidence used by the ID that Mr. Chukwudi claims are "out of context," there remains enough material in the record to follow the ID's reasoning without losing "confidence in the outcome reached by the decision maker" (*Vavilov* at para 122). The errors alleged by Mr. Chukwudi are not sufficiently central or significant to make an overall finding that the Decision, "taken as a whole, including both the rationale for the [D]ecision and the outcome to which it led, was unreasonable" (*Davidson v Canada (Attorney General)*, 2021 FCA 226 at para 47).

[27] I pause to observe that there is no case law from this Court on the IPOB under paragraph 34(1)(b) of the IRPA. To the Court's knowledge, the only case in which the issue of whether the IPOB engaged in subversion has been raised is another ID case on which Mr. Chukwudi relied in his submissions to the Court, namely *Nwachukwu v Canada (Public Safety and Emergency Preparedness)*, 2022 (CA IRB) [*Nwachukwu*]. *Nwachukwu* is a recent case in which the ID ruled

that, in light of the record before it, there was insufficient evidence that the IPOB was involved in subversion of the Nigerian government. The ID held the following at paragraph 43 of that decision:

> There is no question that the IPOB is a controversial organization whose leadership has a rhetoric that can be aggressive, racist and provocative but there is little evidence to indicate that the IPOB has taken concrete action to subvert the Nigerian government by force. As for any reasonably perceived potential for the use of coercion by violent means, the panel is of the opinion that the evidence as whole is speculative and not persuasive enough to establish that there is potential for use of coercion by violent means.

[28] It is quite clear that the ID's findings in *Nwachukwu* are based on the sufficiency of the evidence adduced in that specific matter. The IPOB was recognized as a controversial organization, but the ID was not satisfied based on the evidence before it that it engaged in acts of subversion. As such, the ID's conclusion in that case cannot be blindly replicated here, as subversion must be determined on a case-by-case basis in light of the available evidence. I do not dispute that some of the evidence relied upon by the ID in *Nwachukwu* appears to be similar to that in the present case. But, since the Court does not have access to the record in *Nwachukwu*, it cannot verify whether all of the evidence is precisely the same as in the present case. Contradictory or mixed evidence about the IPOB can account for the presence of more than one reasonable outcomes. Further, *Nwachukwu* was decided after the Decision, and therefore the ID could not benefit from the findings in that case.

B. ***Reliability of the evidence***

[29] As a second ground for his application for judicial review, Mr. Chukwudi argues that the ID failed to ensure the reliability of the evidence on which its reasons rest, making the Decision unreasonable. Because Nigeria has limited press freedom and lacks journalistic integrity, Mr. Chukwudi claims that, if the ID had properly analyzed the Nigerian sources it used in its Decision, it would have found them inadmissible and unreliable.

[30] I am not convinced by Mr. Chukwudi's argument. Mr. Chukwudi raised his concerns on the reliability of the Minister's documentary evidence before the ID, as it was duly noted by the ID at paragraphs 19 to 21 of the Decision. Weighing of evidence is within the ID's expertise, and the Court should not intervene "when the decision is within a range of reasonable outcomes, and when the reasoning is intelligible and defensible on the facts and law" (*Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1213 at para 33). In addition, the ID specifically refers to section 173 of the IRPA regarding the rules of evidence in proceedings before the ID. This rule gives the ID some flexibility in its evaluation of evidence:

> This evidentiary flexibility allows the ID to consider evidence from sources that may not be acceptable in a court. It also expressly leaves to the ID the discretion to make determinations of credibility and trustworthiness: it is what "it considers" credible in the circumstances that matters. Nonetheless, this discretion is not "unbridled." As with any statutory discretion, it must be exercised reasonably: *Demaria* at para 121.
>
> *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 at para 15.

[31] Here, I am satisfied that the ID "sifted through the record and was alive to [Mr. Chukwudi's] challenge to the credibility of certain documents" (*Kanagendren* at para 36). Mr. Chukwudi's disagreement with the ID's analysis of the evidence is not sufficient for this Court to intervene on judicial review of the Decision (*Burjanadze v Canada (Citizenship and Immigration)*, 2011 FC 1394 at para 22).

[32] As noted by the Minister, Mr. Chukwudi himself also relied on multiple Nigerian sources which he now says were too doubtful and unreliable for the ID. Regardless, the Nigerian climate of corruption and its doubtful freedom of press does not make all evidence unreliable. It was the ID's role to determine what documentary evidence was reliable, and nothing indicates that it did not do so.

[33] In *Edom*, a case on which Mr. Chukwudi relies, the Court found that the Immigration Appeal Division's [IAD] finding of a lack of journalistic integrity in Nigeria was reasonable in the circumstances, based on the IAD's proper analysis of the evidence. However, such a conclusion is based on the evidence available to the decision maker, and it is typically decided on a case-by-case basis. The fact that the evidence in one case may support a conclusion that Nigeria's sources are unreliable does not mean that a similar conclusion would be reached in all cases.

[34] It is worth noting that, contrary to what Mr. Chukwudi argues, the ID does not solely rely on Nigerian sources to support its conclusions. For example, at paragraph 64 of the Decision, the ID referred, among others, to Exhibit C-32 — an article from DW news, which is a German

international broadcaster — to support its finding of fights happening between the Nigerian military and the ESN. Moreover, contrary to Mr. Chukwudi's argument that ESN is not an army, the author in this article describes it as the "armed wing" of the IPOB. Yet, this article does not emanate from the Nigerian press and Mr. Chukwudi does not challenge its reliability. All things considered, the Decision is rooted on a variety of sources, from both the Nigerian press and other international sources (*Kablawi v Canada (Citizenship and Immigration)*, 2010 FC 888 at para 46). In the end, I am not persuaded that the ID could not find reasonable grounds to believe, upon analysis of the evidence submitted and in light of its overall picture, that the IPOB intended to use force as a tool for the subversion of the Nigerian government.

C. *Use of force with the intent to subvert the Nigerian government*

[35] Mr. Chukwudi finally claims that the ID failed to acknowledge the difference between the use of force as a self-defence mechanism and the use of force with the intent to subvert a government. According to Mr. Chukwudi, the ID erred by confusing the concept of "conflict" with "subversion by force," as the violent acts committed by the IPOB were a mere self-defence response to the Nigerian government's attacks rather than an instigation to secure the secession of Biafra. Mr. Chukwudi submits that the use of force against the government, where it is not aimed at overthrowing the government but merely at defending oneself, cannot engage paragraph 34(1)(b) of the IRPA.

[36] Despite the able submissions made by counsel for Mr. Chukwudi, I am not persuaded that the ID erred in its analysis. While it might be true that the IPOB, as submitted by Mr. Chukwudi

at paragraph 64 of his memorandum, “never proclaimed that the [events described by the ID as violent acts were] in any way linked to their goal of independence,” it was open to the ID to infer that these acts of violence were intended to “contribute to the process of overthrowing” the Nigerian government (*USA* at para 36). At paragraph 59 of the Decision, the ID stated that “[t]hese attacks commanded by the leader of the IPOB show that the organization's violent discourse is not only metaphorical but rather indicative of the IPOB's willingness to use force.” I understand from this explanation that the ID made the connection between the bellicose rhetoric of the IPOB leadership — a rhetoric that was demonstrated by credible documentary evidence such as Amnesty International’s report (Exhibit C-25, at paragraph 47 of the Decision) — and the violent actions that followed. Because the IPOB threatened on multiple occasions that they would obtain secession of Biafra by any means necessary, the ID could reasonably conclude that the IPOB’s violent acts were simply the fulfillment of the threats made.

[37] In sum, I find that the ID could reasonably conclude, based on the documentary evidence before it, that the IPOB used force against the Nigerian government with the intention to subvert it and obtain secession of Biafra. “It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from ‘reweighing and reassessing the evidence considered by the decision maker’” (*Vavilov* at para 125; *Opu v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 650 at para 72). An administrative decision maker is entitled to weigh the evidence and to attach greater weight to sources which it regarded as reliable and credible than to other evidence (*Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 946 (QL) (FCA); *Tawfik v Canada (Minister of*

Employment and Immigration), [1992] FCJ No 835 (QL)). This is not one of those exceptional circumstances where the Court would be justified to intervene.

[38] In any event, it should be noted that the harsh results arising from the broad interpretation of inadmissibility under paragraphs 34(1)(b) and 34(1)(f) of the IRPA can be mitigated by the Minister pursuant to an application under section 42.1 of the IRPA (*Kanagendren* at para 26; *Najafi* at paras 80–81; *Zahw* at para 39; *Yamani v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 1457 at paras 13–14).

IV. Conclusion

[39] For the above-mentioned reasons, Mr. Chukwudi's application for judicial review is dismissed. The Decision constituted a reasonable outcome based on the law and the evidence, and it has the requisite attributes of transparency, justification, and intelligibility. According to the reasonableness standard, it is sufficient for the Decision to be based on an internally coherent and rational analysis, and to be justified having regard to the legal and factual constraints to which the decision maker is subject. This is the case here with respect to the ID's conclusions, and there are no grounds justifying the Court's intervention.

[40] The parties did not raise a question of general importance to be certified, and I agree there is none.

JUDGMENT in IMM-3479-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. No question of general importance is certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3479-22
STYLE OF CAUSE:	DAVIES CHIJIOKE CHUKWUDI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 8, 2023
JUDGMENT AND REASONS:	GASCON J.
DATED:	MARCH 28, 2023

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