

Federal Court



Cour fédérale

**Date: 20231114**

**Dockets: IMM-8727-22  
IMM-9740-22**

**Citation: 2023 FC 1507**

**Ottawa, Ontario, November 14, 2022**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**Docket: IMM-8727-22**

**GEORGE KENEDY CHRISTHOTHIRAM**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS**

**Respondent**

**AND BETWEEN:**

**Docket: IMM-9740-22**

**GEORGE KENEDY CHRISTHOTHIRAM**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This Judgment and Reasons addresses two related applications for judicial review. In Court file IMM-8727-22, the Applicant challenges a decision of the Immigration Division [ID] of the Immigration Refugee Board of Canada [IRB] dated August 23, 2022, which concluded that there were reasonable grounds to believe that the Applicant had engaged in terrorism within the meaning of subsection 34(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and therefore found him inadmissible to Canada [Inadmissibility Decision].

[2] As a consequence of the Inadmissibility Decision and pursuant to subsections 101(1)(f) and 104(1)(b) of the IRPA, it was also determined on September 14, 2022 that the Applicant was ineligible to have his refugee claim determined by the Refugee Protection Division [RPD] of the IRB [Ineligibility Decision]. In Court file IMM-9740-22, the Applicant challenges the Ineligibility Decision.

[3] As explained in greater detail below, these applications are granted, because the ID failed to make the required express finding that the Applicant intended to cause death or serious harm by the use of violence. Based on that error, the Inadmissibility Decision must be set aside and, as the Inadmissibility Decision was the foundation for the Ineligibility Decision, the Ineligibility Decision must be set aside as well.

## II. Background

[4] The Applicant is a citizen of Sri Lanka who moved to Saudi Arabia in 1985 and remained there, employed as a waiter at a Saudi catering company, until 2002. The Applicant married in 1991 and returned to Sri Lanka from time to time to visit with his wife and their children. In 2002, the Applicant left his employment in Saudi Arabia and subsequently worked in Colombo, Sri Lanka as a labourer, studying for his seafarer's qualifications to work on board commercial ships.

[5] In May 2004, the Applicant was arrested in Colombo by Sri Lankan police, who accused him and his family of supporting the Liberation Tigers of Tamil Eelam [LTTE], including the Applicant having helped the LTTE raise funds in Saudi Arabia. The Applicant told the police that he had never been an LTTE supporter but that he had paid them money under duress. Sri Lankan authorities would periodically detain and question the Applicant about his connections to the LTTE.

[6] The Applicant came to Canada in June 2018 and claimed refugee protection. During his interview with the Canada Border Services Agency, he indicated that he had donated money to

the LTTE during the period when he lived in Saudi Arabia. As a consequence, following an inadmissibility allegation by the Minister of Public Safety and Emergency Preparedness [Minister] and the resulting hearing, the ID made the Inadmissibility Decision on the basis that there were reasonable grounds to believe that the Applicant had engaged in terrorism.

### III. Inadmissibility Decision

[7] As the ID explained in the Inadmissibility Decision, the issue for its determination was whether the Applicant, by contributing \$10 per month to the LTTE while working in Saudi Arabia, had engaged in terrorism and was therefore inadmissible to Canada pursuant to subsection 34(1)(c) of the IRPA. The ID further explained that, in accordance with section 33 of the IRPA, it was the Minister's burden to prove the allegations against the Applicant on a standard of "reasonable grounds to believe," requiring something more than mere suspicion but less than proof on a balance of probabilities.

[8] The ID reviewed notes of the Applicant's port-of-entry [POE] interview in June 2018, the Basis of Claim [BOC] narrative he had submitted in support of his refugee claim, and his testimony at the hearing before the ID. It considered the parties' submissions and then commenced its analysis by making findings of fact.

[9] It was not particularly contested before the ID, and the ID found based on country condition evidence and applicable law, that the LTTE is a terrorist organization engaged in terrorist activity.

[10] The ID analysed the Applicant's evidence, finding that it was inconsistent and that he significantly lacked credibility, as his evidence across the POE statements, his BOC, and his testimony varied, was evolving, and was inconsistent. The ID found that the Applicant had made payments to the LTTE monthly for 13 years from 1987 to 2002 and that he approved of the LTTE in doing so. It also concluded that he was not credible in asserting that he made these payments under duress to save his family. The ID found that the Applicant knowingly and voluntarily made his contributions to the LTTE while being fully aware of their terrorist activities, such conduct representing approval of the terrorist organization.

[11] Based on those findings of fact, the ID then turned to what it described as the crux of the case, whether the Applicant's financial contributions to the LTTE fell within the meaning of "engaging" in terrorism for purposes of subsection 34(1)(c) of the IRPA. Following review of *Criminal Code* provisions surrounding terrorism, the *International Convention for the Suppression of Financing of Terrorism*, dictionary definitions, and applicable jurisprudence, the ID concluded that the concept of "engaging" in terrorism was to be interpreted broadly, flexibly, and liberally enough to include financing terrorism, even where the financial support was in only minimal amounts. The ID accepted the Minister's evidence that it was many small contributions of this sort that together sustained the LTTE as a terrorist organization for many years, and the ID found no basis for distinction between large and small contributions to terrorism.

[12] The ID concluded that the Applicant engaged in terrorism by providing financial support to the LTTE, that there were reasonable grounds to believe that he had engaged in terrorism

within the meaning of subsection 34(1)(c) of the IRPA, and that he was therefore inadmissible to Canada.

IV. Ineligibility Decision

[13] Following the Inadmissibility Decision, it was also determined in the Ineligibility Decision that the Applicant was ineligible to have his refugee claim considered by the RPD. This determination was made pursuant to subsections 101(1)(f) and 104(1)(b) of the IRPA and flows directly from the Inadmissibility Decision.

V. Issue and Standard of Review

[14] The sole issue raised in the application for judicial review challenging the Inadmissibility Decision (Court File IMM-8727-22) is whether the ID erred in finding reasonable grounds to believe that the Applicant's financial contributions to the LTTE constitute engaging in terrorism for purposes of subsection 34(1)(c) of the IRPA. The parties agree, and I concur, that this issue is reviewable on a standard of reasonableness (see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]).

[15] In his application for judicial review challenging the Ineligibility Decision (Court file IMM-9740-22), the Applicant does not argue that the Officer erred in relying on the Inadmissibility Decision to find him ineligible to have his refugee claim determined by the RPD based on the operation of subsections 101(1)(f) and 104(1)(b) of the IRPA. Rather, the outcome

of that application depends on whether the Applicant is successful in challenging the reasonableness of the Inadmissibility Decision in Court File IMM 8727-22.

VI. Analysis

[16] The Applicant has advanced a number of arguments in support of his position that the ID erred in finding reasonable grounds to believe that his financial contributions to the LTTE constitute engaging in terrorism for purposes of subsection 34(1)(c) of the IRPA. However, my decision to allow this application for judicial review turns on one particular argument, which I find fundamental to the determination required under subsection 34(1)(c) of the IRPA and therefore to undermine the reasonableness of the Decision.

[17] As the Applicant submits, it is well established that a person only engages in terrorism, within the meaning of section 34 of the IRPA, if the person has the specific intent to cause death or serious injury by the use of violence (see *Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404 [*Foisal*] at para 14, relying on *Saleheen v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 145 at para 41, *Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080 [*Rana*] at paras 65-66; *MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796 at para 10; *Islam v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 912, *Islam v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 108 at paras 17-21; *Miah v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 38 at para 34).

[18] In the case at hand, the ID did not make a finding that, through his financial contribution to the LTTE, the Applicant intended to cause death or serious injury. The Respondent does not dispute the application of *Foisal* and the other authorities cited above. Rather, the Respondent submits that the required finding is evident in the ID's conclusion that the Applicant intended to advance the cause of terrorism. The ID found that the Applicant was aware of LTTE's terrorist activities and that, in contributing to the LTTE, he intentionally supported and advanced a terrorist cause.

[19] The Respondent's argument is far from frivolous. It is possible that, in making the above findings upon which the Respondent relies, the ID was turning its mind to the requirement to consider whether the Applicant had the intention, through his financial support of the LTTE, to cause death or serious injury by the use of violence, and that the ID intended the required finding to that effect to be implicit in its analysis. However, based on the importance of the mental element underlying a section 34 determination, this Court has previously concluded that such a determination requires an express finding of intention to cause death or serious injury by the use of violence (see *Rana at para 66*; *Badsha v Canada (Citizenship and Immigration)*, 2022 FC 1634 at para 40).

[20] *Vavilov* emphasizes the importance of conducting a reasonableness review of administrative decision-making based on the justification for a decision as offered by the decision-maker (see para 15). In my view, it is not safe for the Court to infer from the ID's analysis that the required finding is implicit in the Decision. In response to the Minister's allegation, the ID conducted a detailed analysis of what it characterized as the crux of the matter,



whether the Applicant's financial contributions to the LTTE fell within the meaning of "engaging" in terrorism for purposes of subsection 34(1)(c) of the IRPA. However, the Decision does not demonstrate the same attention to the fundamental determination of the Applicant's intention.

[21] Based on the above analysis, I find that the Inadmissibility Decision is unreasonable and that the application for judicial review in Court file IMM-8727-22 must be allowed, the Inadmissibility Decision set aside, and the matter returned to a differently constituted panel of the ID for re-determination. It follows that the application for judicial review in Court file IMM-9740-22 must also be allowed, the Ineligibility Decision set aside and, if supported by the outcome of the re-determination by the ID, the matter returned to a different decision-maker for re-determination.

## VII. Certified Question

[22] The Applicant asks that the Court consider certifying a question for appeal. While he offers different proposed articulations of the question, its thrust is whether a voluntary contribution of cash to a terrorist organization constitutes reasonable grounds to believe that the donor has engaged in terrorist acts so as to make the donor inadmissible on security grounds under paragraph 34(1)(c) of the IRPA. A similar question was certified by Justice Mosley in *Toronto Coalition to Stop the War v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 957 [*Toronto Coalition*] (see para 157).

[23] However, unlike in *Toronto Coalition*, an answer to the above question would not be dispositive of an appeal of my Judgment, as my decision turns not on that question but on the absence of the required finding as to the Applicant's intention. As such, no question will be certified for appeal.

**JUDGMENT IN IMM-8727-22 AND IMM-9740-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review in Court file IMM-8727-22 is allowed, the Inadmissibility Decision is set aside, and the matter is returned to a differently constituted panel of the ID for re-determination.
  
2. The application for judicial review in Court file IMM-9740-22 is allowed, the Ineligibility Decision is set aside and, if supported by the outcome of the re-determination by the ID as required by paragraph 1 of this Judgment, the matter is returned to a different decision-maker for re-determination.
  
3. No question is certified for appeal.

"Richard F. Southcott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8727-22

**STYLE OF CAUSE:** GEORGE KENEDY CHRISTHOTHIRAM v THE  
MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**AND DOCKET:** IMM-9740-22

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MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 25, 2023

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** NOVEMBER 14, 2023

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