Federal Court  Cour fédérale

Date: 20240308

Docket: IMM-1950-23

Citation: 2024 FC 402

Ottawa, Ontario, March 8, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

ARJON DANAJ

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA], the Applicant, Arjon Danaj [the "Applicant"], is seeking a judicial review of a decision by the Immigration Division ["ID"] of the Immigration and Refugee Board of Canada ["IRB"] dated January 19, 2023 [the "Decision"]. In that decision, The ID concluded that the Applicant was a member of an organization that is believed, on reasonable grounds, 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 pursuant to section 37 IRPA.

[2] The Applicant is also challenging an interlocutory decision [the "Interlocutory Decision"] rendered on April 7, 2022, that made five interlocutory rulings:

a) the admission into evidence of documents translated from Danish to English;
b) the alleged failure to respect his right to counsel during CBSA interviews;
c) the failure to release CBSA interview notes from December 11, 2015;
d) the failure by the ID to provide a recording of the June 29, 2022 ID hearing due to a mechanical malfunction, and
e) the failure to allow his request to call as witnesses two CBSA Officers.

[3] The Applicant is a citizen of Albania who lived in Denmark as a refugee claimant from June 2013 until his deportation from that country in December 2014. The ID found that there were reasonable grounds to believe that during his stay in Denmark in 2013, the Applicant became a member of what became known as the Asylum Band [the "Band"], a group of six asylum claimants from Albania, Kosovo, Iran and Croatia, who committed multiple home invasions, burglaries and burglary attempts. The members of the Band all lived at an asylum centre north of Copenhagen. They committed their thefts in groups of two or three, the Applicant serving as the driver of the group, when he was involved in the series of burglaries planned on a given day.

[4] The Danish court found that Applicant was guilty of twelve (12) counts of Theft of a very aggravated nature, six (6) counts of Attempted Theft of a very aggravated nature and one (1) count of Receiving Stolen Goods. He was sentenced to two years and eight months of imprisonment. The indictment of the Danish Court refers to repeated acts by an "organized burglary criminal gang".

[5] After his deportation from Denmark to Albania, the Applicant ultimately came to Canada in November 2015 and then made a refugee claim. Once Canada Border Services Agency [the "CBSA"] reported him to the ID for inadmissibility, his refugee claim was suspended.

II. Decision

[6] I dismiss the Applicant's judicial review application because I find the decision made by the ID to be reasonable and that it was reached in a procedurally fair manner.

III. Standard of Review

[7] The Applicant raises the following issues on judicial review:

a) The ID member breached a number of the Applicant's procedural rights in the course of the proceeding that tainted the Decision.

b) The ID Decision was unreasonable.

[8] The standard of review applicable to admissibility decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at para 23 [*Vavilov*]. A reasonable decision 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). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

[9] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 [*Canadian Pacific Railway Company*]; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28 [*Baker*] (*Canadian Pacific Railway Company* at para 54).

[10] Regarding questions of procedural fairness, as Mr. Justice Regimbald recently wrote in *Nguyen v Canada (Citizenship and Immigration)*, 2023 FC 1617 at para 11:

> the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances *(Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to "shoehorn the question of procedural fairness into a standard of review analysis is… an unprofitable exercise" (at para 55). Instead, the Court must ask itself whether the party was given

> a right to be heard and the opportunity to know the case against them, and that "[p]rocedural fairness is not sacrificed on the altar of deference" (*Canadian Pacific Railway* at para 56).

IV. Analysis

A. *Legislated Framework*

[11] Division 4 of the IRPA is on inadmissibility, and the following sections are relevant to this case:

DIVISION 4	**SECTION 4**
Inadmissibility	**Interdictions de territoire**
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 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	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;

an offence, or engaging in activity that is part of such a pattern; or

(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.

[…]

B. *Was the Decision reached in a procedurally fair manner?*

[12] Even though much of the challenge to the breach of procedural fairness by the ID is on the Interlocutory Decision, it affects the Decision. For the following reasons, I find that the ID member reached his decision fairly and in accordance to the principles of natural justice.

a) The admission into evidence of documents translated from Danish to English

[13] In this case, the relevant evidence before the ID included the English translation of the Danish documents, namely the Danish Sentence court document and a press article. However, due to the deficiency on the face of the translation, the Applicant objected to their admission into evidence before the ID. The Applicant based his argument on the grounds that the translation was not provided by a certified translator, nor was it accompanied by an affidavit swearing to: (a) the accuracy of the translation; (b) the language proficiency of the translator; of (c) the qualifications of the translator. The translation was therefore not in compliance with the ID Rule 25:

Language of documents

25 (1) All documents used at a proceeding must be in English or French or, if in another language, be provided with an English or

Langue des documents

25 (1) Tout document utilisé dans une procédure doit être rédigé en français ou en anglais ou, s’il est rédigé dans une autre

French translation and a translator's declaration.

Language of Minister's documents

(2) If the Minister provides a document that is not in the language of the proceedings, the Minister must provide a translation and a translator's declaration.

Translator's declaration

(3) A translator's declaration must include the translator's name, the language translated and a statement signed by the translator that the translation is accurate.

langue, être accompagné d'une traduction française ou anglaise et de la déclaration du traducteur.

Documents transmis par le ministre

(2) Si le ministre transmet un document qui n'est pas dans la langue des procédures, il l'accompagne d'une traduction dans cette langue et de la déclaration du traducteur.

Déclaration du traducteur

(3) Dans sa déclaration, le traducteur indique son nom et la langue du document traduit et atteste que la traduction est fidèle.

[14] To further substantiate his argument, the Applicant referred to *Canada (Citizenship and Immigration) v Vujicic*, 2018 FC 116, where Justice O'Reilly had ruled that improperly translated foreign courts were inadmissible. I find that the Applicant's reliance on this case is misplaced. While courts are bound by the strict application of rules of evidence, as an administrative tribunal, the ID is not bound by any legal or technical rules of evidence. Also, it may receive and base a decision on evidence that is adduced in the proceedings and considered credible and trustworthy in the circumstances as per subsection 173(c) IRPA:

Proceedings	**Fonctionnement**
173 The Immigration Division, in any proceeding before it,	**173** Dans toute affaire dont elle est saisie, la Section de l'immigration :
(a) must, where practicable, hold a hearing;	**a)** dispose de celle-ci, dans la mesure du possible, par la tenue d'une audience;
(b) must give notice of the proceeding to the Minister and to the person who is the subject of the proceeding and hear the matter without delay;	**b)** convoque la personne en cause et le ministre à une audience et la tient dans les meilleurs délais;
(c) is not bound by any legal or technical rules of evidence; and	**c)** n'est pas liée par les règles légales ou techniques de présentation de la preuve;
(d) may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.	**d)** peut recevoir les éléments qu'elle juge crédibles ou dignes de foi en l'occurrence et fonder sur eux sa décision.

[15] While in his Interlocutory Decision, the ID member mistakenly referred to subsections 170(g) and (h) IRPA instead of section 173, this mistake is not determinative. Section 170 of IRPA applies to the Refugee Protection Division ["RPD"] but offers the exact same language of subsections 173(c) and (d) IRPA.

[16] In addition to not being bound by the strict rules of evidence, the ID has some flexibility to apply its own rules as long as the flexibility does not affect the parties' procedural fairness rights.

[17] In this case, once the Applicant first objected to the translations for their non-adherence to the ID Rule 25, the ID adjourned the proceedings to give CBSA an opportunity to comply.

Then, CBSA provided new translations provided by the Government of Canada's "Translation Bureau". This translation was signed by two Public Works managers. The Applicant continued his objection because it still did not contain a translator's declaration. The ID dismissed his objections and proceeded. In its reasons, the member referred to the applicable rules, including Rule 51 that allows the member to apply all other rules with flexibility. In its reasons, the ID member mistook the Public Works managers with CBSA managers, but this is not a substantive mistake.

[18] Most importantly, at no time did the Applicant argue that the translation before the ID contain an error or that it led to any prejudice. At no time did the Applicant provide a certified translation for comparison or disputed the underlying facts because of translation issues. At no time did the Applicant argue that there are issues surrounding the credibility or the trustworthiness of the translation. As counsel for the Applicant agreed during the judicial review hearing, his objection on this point was purely as a "matter of principle". I find that it was reasonable for the ID member to apply the ID Rules fairly and flexibly and not to sacrifice the efficiency of the administrative process for a "matter of principle", when he had done everything he could to assure that the process remained fair. In fact, Rule 51 on which the ID member correctly relied was meant to remedy technical, "matter of principle" issues such as this:

Failing to follow a rule	**Non-respect des règles**
51 Unless proceedings are declared invalid by the Division, a failure to follow any requirement of these Rules does not make the proceedings invalid.	51 Le non-respect d'une exigence des présentes règles ne rend pas l'affaire invalide, à moins que la Section ne la déclare invalide.

[19] The ID member reasonably and fairly dealt with the counsel objection over the admission of the translation, over-ruled the objection and provided reasons that clearly demonstrate a chain of reasoning. There is nothing to suggest that the existing translations resulted in an injustice. I therefore reject the Applicant's argument on this point.

b) Failure to respect the Applicant's right to counsel during CBSA interviews

[20] The Applicant alleges that CBSA's failure to notify counsel ahead of the interview of May 23, 2019 constituted a breach of procedural fairness. This was a significant interview. It was shortly after this interview, which proceeded without the knowledge or presence of counsel, that the Minister prepared the s. 44 referral for inadmissibility to the ID and suspended the Applicant's refugee claim at the RPD. All along and at least since February 16, 2015, both the IRB and the CBSA knew that the Applicant was represented by counsel, Ms. Melissa Singer. The Applicant referred to all the instances where the RPD had duly communicated with counsel or had sent all notices to both the Applicant and his counsel. The Applicant relies on *Canada (Citizenship and Immigration) v Paramo de Gutierrez*, 2016 FCA 211, [2017] 2 FCR 353 [*Paramo de Gutierrez*] to substantiate his argument.

[21] In *Paramo de Gutierrez,* CBSA interviewed a refugee claimant without the knowledge or presence of their counsel shortly before their refugee hearing, even though counsel was on record and was named as early as when the Basis of Claims Form was filed. CBSA then prepared a statutory declaration of the interview notes and disclosed it to the RPD in advance of the claimant's refugee hearing. Criminality, or other potential inadmissibility, was not an issue in that case, and the statutory declaration was disclosed to impeach the claimant's credibility. Not particularly relevant to this case, in *Paramo de Gutierrez*, there was an issue on the jurisdiction

of CBSA to conduct a credibility-related interview. The issue relevant to this case was on the claimant's right to counsel. Ultimately, the Federal Court of Appeal answered the following certified question in the affirmative:

> **Question**: If a refugee claimant has indicated on the basis of claim form or elsewhere so that it appears on the record of the Refugee Protection Division that the claimant has counsel of record, is it a breach of subsection 167(1) of the *Immigration and Refugee Protection Act* and a breach of procedural fairness for an officer to examine the refugee claimant about their refugee claim after the claim has been referred to the Refugee Protection Division for determination without advising counsel of record of the proposed examination and providing counsel an opportunity to attend?
> **Answer**: Yes.

[22] The Applicant argues that just like the claimant in the *Paramo de Gutierrez*, the Applicant here was a refugee claimant, and that he had the right to have his counsel present at all of his CBSA interviews. However, I find that *Paramo de Gutierrez* should be distinguished from his case. In *Paramo de Gutierrez*, the FCA agreed with the Federal Court's finding that the RAD sent back the case to the RPD for redetermination with the direction to exclude the problematic evidence was reasonable. In other words, the IRB was in possession of tainted documents, namely the statutory declaration, and that it had the jurisdiction to do something about it: to exclude the tainted evidence from its record and rehear the case. However, in this case, once the s. 44 report was referred to the ID, the ID member had no jurisdiction to go behind it. His duty was limited to conduct a fair hearing and see whether the Minister's evidence would amount to reasonable grounds to believe that the Applicant was as described by s. 37 IRPA.

[23] The only decision before me on judicial review is the one made by the ID, and the ID member exercised his jurisdiction fairly. This Court cannot reasonably make a finding that the

ID breached the Applicant's procedural fairness rights when, as the Applicant argued, every correspondence issued by the IRB was communicated to counsel, and when the ID did not have jurisdiction to look behind the s. 44 referral.

c) The failure to release CBSA interview notes from December 11, 2015

[24] There is a factual dispute between the parties on the disclosure of notes not before the ID. The Applicant argues that the interview notes dated December 14, 2015, which were disclosed and were before the ID as an exhibit, are marked as "Supplementary notes from Officer Mathieu Dépatie". The word "supplementary" implies an earlier interview and that the notes refer to an interview from four days earlier on December 11, 2015. However, CBSA never disclosed the December 11, 2015 notes to the Applicant. The Applicant makes another "matter of principle" argument that the failure to disclose all evidence, in this case the December 11, 2015 notes, constitute a breach of procedural fairness.

[25] It is the Respondent's position that CBSA had disclosed the December 11th notes and that the Applicant's statement is simply inaccurate.

[26] Regardless of whether the December 11th notes were disclosed, I find that the Applicant's argument to expect full disclosure is more relevant to the duty of Crown in a criminal case towards the accused than towards an individual facing admissibility hearing. The Applicant does not rely on any authority to suggest that a full duty of disclosure should apply to admissibility hearings. There is also no right to discovery.

[27] The Applicant agreed at the judicial review hearing that the December 11th notes were not before the ID. I therefore disagree with his argument that these undisclosed documents are at the heart of the allegations made by the Respondent that the Applicant participated in organized criminality.

[28] To discharge its onus that there were reasonable grounds to believe that the Applicant participated in organized criminality, the Minister had disclosed the documents that are part of the ID record. At no time did the Applicant argue that the ID member was privy to a document not disclosed to the Applicant. At no point did the Applicant lead evidence to suggest that the account of the December 11th interview was different from how it was referenced in the Supplementary notes of December 14th.

[29] I find that the absence of disclosure to the Applicant of the notes of the interview that took place on December 11th, which was not relied upon by anyone at the ID, does not constitute a breach of procedural fairness.

d) The failure by the ID to provide a recording of the June 29, 2022 ID hearing due to a mechanical malfunction

[30] The Applicant argues that the failure by the ID to produce the transcript of approximately three hours of hearing on June 29, 2022 amounts to a breach of procedural fairness. The Applicant argues that it was during this time that he testified to the defence of necessity because he could not eat the food provided to him by the Danish asylum authorities, and that he needed the money to buy the type of food he could eat. He further argues that it was during this time that

he testified to facts relevant to the definitions of a “criminal network” and “organized criminality”, but that he cannot demonstrate that the ID member misunderstood.

[31] There is no legal obligation for the ID to record its hearings, although it is its practice *Antunano Martinez v Canada (Citizenship and Immigration)*, 2019 FC 744 at para 7. The issue is therefore whether this Court can, without part of the transcript, properly dispose of the application for judicial review *(Canadian Union of Public Employees, Local 301 v Montreal (City)*, 1997 CanLII 386 (SCC), [1997] 1 SCR 793, at para 81 and *Ait Elhocine v Canada (Citizenship and Immigration)*, 2020 FC 1068, at paras 28 to 30).

[32] In the case at bar, the ID discussed the defense of necessity at length at pages 5 and 6 of its reasons, largely based on the same factors argued by the Applicant, i.e., his dependence on a co-conspirator, Flamur Sula and for food. Therefore, there is no suggestion that there is a breach of his procedural fairness rights because there is no record of the hearing for that part.

[33] As to his role in the crimes in Denmark, the documents from Denmark speaks at length as to his implication. The Applicant also discussed at length his role in the April 27, 2022 hearing, for which there is a transcript. The Applicant has therefore not demonstrated that this Court cannot dispose of his application with the evidence on record.

[34] Moreover, at no time in the course of this judicial review, did the Applicant attempt to put in the missing evidence in the form of an affidavit and to give the Respondent an opportunity to cross-examine him, pursuant Rule 83 and following of the *Federal Courts Rules*.

[35] While as a general rule, the evidentiary record is restricted to that which was before the decision-maker, new evidence that responds to questions of procedural fairness can be a legitimate exception *(Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Association of Universities*], at paras 19 and 20. This Court can therefore not speculate that the Applicant had provided the ID with sufficient credible evidence during the missing period that would overcome the judicial evidence from Danish authority, or that that the ID member failed to properly consider it in light of the entirety of the record. I therefore find that the missing record does not amount to a breach of procedural fairness.

e) The failure to allow his request to call as witnesses two CBSA Officers

[36] At the ID hearing, the Applicant had wished to call as witnesses the two immigration officers who had interviewed the Applicant, but the ID member dismissed this request. The written application was dismissed at the March 24th, 2022 hearing, on the ground that it did not follow the requirements of the ID Rule 32(1)(a):

Providing witness information	**Transmission des renseignements concernant les témoins**
32 (1) If a party wants to call a witness, the party must provide in writing to the other party and the Division the following witness information:	**32 (1)** Pour faire comparaître un témoin, la partie transmet par écrit à l'autre partie et à la Section les renseignements suivants :
(a) the purpose and substance of the witness's testimony or, in the case of an expert witness, a summary of the testimony to be given signed by the expert witness;	**a)** l'objet du témoignage ou, dans le cas du témoin expert, un résumé, signé par lui, de son témoignage;
(b) the time needed for the witness's testimony;	**b)** la durée du témoignage;
(c) the party's relationship to the witness;	**c)** le lien entre le témoin et la partie;

(d) in the case of an expert witness, a description of their qualifications;

(e) whether the party wants the witness to testify by videoconference or telephone; and

(f) the number of witnesses that the party intends to call.

Time limit

(2) The witness information must be received by the Division and the other party

(a) as soon as possible in the case of a forty-eight hour or seven-day review or an admissibility hearing held at the same time; and

(b) in all other cases, at least five days before the hearing.

d) dans le cas du témoin expert, ses compétences;

e) le fait qu'elle veut faire comparaître le témoin par vidéoconférence ou par téléphone, le cas échéant;

f) le nombre de témoins qu'elle veut faire comparaître.

Délai

(2) Les renseignements doivent être reçus par l'autre partie et la Section :

a) dans le cas du contrôle des quarante-huit heures ou du contrôle des sept jours, ou d'une enquête tenue au moment d'un tel contrôle, le plus tôt possible;

b) dans les autres cas, au moins cinq jours avant l'audience.

[37] The ID member tried to explore the purpose and substance of the witness' testimony, but the Applicant's counsel had stated that he could not divulge the information because it would be prejudicial to his hearing strategy. With no idea on the purpose of the testimony, the ID member rejected the request and explained why. I find that the ID's decision to refuse the witnesses under these circumstances to not amount to a breach of procedural fairness.

[38] The Applicant argues that it was unfair for the ID to be flexible with the application of Rule 25 and strict with Rule 32. I find this argument to be without merit. The flexibility applied to Rule 25 was to ensure that the hearing would proceed efficiently and fairly. This was in the context of translated documents deemed to be credible and trustworthy, even if they were not

accompanied by a translator's certificate. On the other hand, the ID's reasons to not allow the witnesses under the circumstances was also for the same reason: to ensure that the hearing would proceed efficiently and in a fair manner to both parties. In fact, the ID member stated that he denied the request because: "The applicant was not able to demonstrate how the testimonies of the Immigration Officers are necessary for a full and proper hearing instead of the disclosure their Statements made under oath."

[39] For all these reasons, I find that the ID engaged in a procedurally fair proceeding.

C. *Was the ID Reason reasonable?*

[40] On inadmissibility, the applicable standard of proof required from the Minister before the ID is set at "reasonable grounds to believe". Reasonable grounds to believe is described as a standard lower to both the criminal standard of proof beyond a reasonable doubt, and the civil standard of proof on a balance of probabilities *(Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114; *Uthman v Canada (Citizenship and Immigration)*, 2018 FC 583 at paras 66 and 67 and *Hassan v Canada (Citizenship and Immigration)*, 2022 FC 771 at para 30).

[41] In this case, the Applicant is contesting that he acted within a "criminal organization" or that he was a "member". He argued that the ID erred by not applying the definition of the *Criminal Code* to a "criminal organization", where there is a prerequisite of three or more persons in or outside Canada, and that it does not include a group of persons that forms randomly for the immediate commission of a single offence.

[42] It is trite law that the words “member” and “organization” at paragraph 37(1)(a) IRPA must be given a broad interpretation. Being a member in a criminal organization is a matter of “unrestricted and broad interpretation”. Membership may include simply belonging to an organization and requires no formalities (*Poshteh v Canada (Minister of Citizenship and Immigration) (F.C.A.)*, 2005 FCA 85 [2005] 3 FCR 487 and *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 at para 13).

[43] Similarly, the term organization must be interpreted broadly, some characteristics of an organization must be found such as identity, leadership, some type of loose hierarchy and a basic organizational structure. In *Hassan v Canada (Citizenship and Immigration)*, 2022 FC 771 at para 37, a street-group responsible for thefts in Surrey, British Columbia was found to meet the definition of an organization:

> [37] I agree substantially with the respondent. The ID expressly stated that it was “satisfied that the threshold of structure has been met”. The ID recognized that the organization at issue was a street-level group, without a true hierarchy, but relied on the repetitive association of individuals involved in similar crimes, of which there were many examples. <u>There was a consistent group of individuals, a consistent purpose, a pattern of criminal conduct and common or connected locations for that conduct.</u> The threshold of structure was met on “inferences reasonably drawn from the evidence”. The applicant has not demonstrated a basis to disturb those inferences by applying *Vavilov* principles. At the end of its assessment, the ID linked its conclusion back to the contents of paragraph 37(1)(a).
>
> [Respondent’s emphasis]

[44] In *Sittampalam v Canada (Minister of Citizenship and Immigration) (F.C.A.)*, 2006 FCA 326 [2007] 3 FCR 198 [*Sittampalam*] at para 40, the Federal Court of Appeal held that Parliament deliberately chose not to adopt the definition of criminal organization as it appears at

paragraph 467.1(1) of the *Criminal Code* nor the definition of the *U.N. Convention against Transnational Organized Crime*.

[45] The Applicant argued that The Supreme Court of Canada decision in *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 SCR 704 restricted the definition of a "criminal organization". However, the Applicant's argument is misplaced because the Supreme Court's reference is to transnational crime in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime, as defined by paragraph 37(1)(b) IRPA, and not paragraph 37(1)(a). Accordingly, the definition of member and organization, as defined by the Federal Court of Appeal in *Sittampalam*, remains good law.

[46] Further, as seen on the ID transcript, during the hearing, the Applicant admitted the content of two of the counts (from counts 92 to 97 inclusively). Counts 92 to 96 refer to home invasions involving three people. the Applicant, Flamur Sula and Vujklija Borislav held on August 19, August 20, August 22, August 23 (twice) 2013, where together and by prior agreement and as part of an organized burglary criminal gang, they stole five (5) portable computers, four (4) anniversary coins, a computer case, a safe, and silverware. One attempt proved unsuccessful as they were seen by the inhabitant of the targeted villa and fled the scene. Therefore, even the member was to apply the *Criminal Code*'s definition of an organization needing at least three (3) individuals, his analysis would remain reasonable.

[47] I find that the ID member considered the record and made clear findings of relevant facts which included the following:

- The Applicant was found guilty on 19 counts by the Danish Court. These included 12 counts of theft of a very aggravated nature, six counts of attempted thefts of a very aggravated nature and one count of receiving stolen goods (ID Reasons, paragraph 6). The Applicant was sentenced to two years and eight months of imprisonment and ordered to pay 81 000DKK to his victims.
- The counts refer to the Applicant's involvement in an organized burglary criminal gang and the offences, save for one of the counts (count 99), involve the Applicant and one or more individuals who proceed to breaking and entering villas and stealing computers, electronic tablets, smart phones, jewelry, cameras, passports and money. These devices can easily be resold to make profit (ID Reasons, paragraphs 8 and 10).
- Three cars were involved in the commission of these crimes, one of which, a Volkswagen, was registered in the Applicant's name (ID Reasons, paragraph 11). The role of the Applicant was to drive the gang members to the residences to commit the break-ins and return them to the asylum centre (ID Reasons, paragraph 12).
- As stated above, the Applicant had testified to at least two of the counts where he acted in concert with two other individuals.
- The Applicant personally benefitted from these crimes, earning between 12,000 to 13,000 DKK, about 1700$CDN. Indeed, the Applicant told a CBSA official that the amounts stolen during these break-ins amounted to between 30,000 and 50,000$CDN (ID Reasons, paragraph 15). At the judicial review hearing, the Applicant argued that the low share of the Applicant's cut from the total revenue

> is more consistent with being hired as a driver for a legitimate purpose. I find that the ID member based his analysis based on the totality of evidence on record, and that it was reasonable for him to not have speculated as to all other explanations or possibilities.

[48] The Applicant argued that the ID member ignored the fact that he had no knowledge of the organization, and no knowledge of the fact that crimes were being committed. He thought that he was hired to be a driver. I reject this argument. The ID member referred to the evidence carefully and demonstrated a clear chain of reasoning on how he found that the Applicant was a member of an organization engaged in a pattern of criminal activity, repeatedly breaking and entering in villas and homes in Denmark and stealing electronic devices, money, passports, jewelry etc. for easy resale. Furthermore, these crimes were perpetrated with at least two other individuals. All six gang members lived in the asylum centre, they were known to be the "Asylum Band", and its leader, Flamur Sula, recruited the Applicant to drive them to the break-ins, which makes him a core member of this expansive criminal operation, which was structured and well planned (ID Reasons, paragraph 19).

[49] The Applicant also argued that he could not have been a member of an organization because of his lack of contact with other members of the gang, or in some cases, his lack of a common language. The ID member analysed the evidence and found that the Applicant was fully aware that he was taking part in an operation of multiple breaking and entering villas for theft. Indeed, the group did not need rules, by-laws, or a constitution. It is not for this Court to weigh the evidence differently.

[50] Based on the evidence before him, and applying the facts to the Minister's low evidentiary burden of "reasonable grounds to believe", the ID member found that there was substantial evidence to find reasonable grounds to believe that the Applicant was a member of a criminal organization under paragraph 37(1) IRPA. He found that these crimes were committed in a structured and repetitive manner, and that they were not isolated incidents or one-time events (ID Reasons, paragraph 17). If there was a possibility for the ID member to look at the evidence differently, it is not for this Court to reweigh the evidence.

[51] I find that the ID made a reasonable decision and I therefore dismiss the judicial review.

[52] Neither party proposed a certified question and I agree that none arises in this case.

V. Conclusion

[53] The Application for judicial review is dismissed.

[54] There is no question to be certified.

JUDGMENT IN IMM-1950-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1950-23
STYLE OF CAUSE:	ARJON DANAJ v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	FEBRUARY 28, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	AZMUDEH J.
DATED:	MARCH 8, 2024

APPEARANCES:

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