Federal Court Cour fédérale

Date: 20250120

Docket: IMM-13815-23

Citation: 2025 FC 111

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 20, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

GUILNAVE LAPAIX

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Minister of Citizenship and Immigration [Minister] claims that Mr. Guilnave Lapaix [the applicant or Mr. Lapaix] is inadmissible on security grounds under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. More specifically, he alleges

that Mr. Lapaix was a member of an organization within the Haitian Armed Forces that there are reasonable grounds to believe engaged in or instigated the subversion by force of a government, namely the Corps des Léopards [Léopards], which allegedly engaged in an attempted coup in April 1989 against Haitian president General Prosper Avril. Mr. Lapaix would therefore be inadmissible under paragraph 34(1)(f), with reference to paragraph 34(1)(b) of the IRPA.

[1] Throughout his refugee claim, the applicant voluntarily disclosed to the authorities that he had been a member of the Haitian Armed Forces, and the Léopards in particular. However, he alleged before the Immigration Division [ID] of the Immigration and Refugee Board [IRB] that he was not aware of the planning or execution of the attempted coup. Rather, he maintains that the April 1989 attempted coup was the work of certain members of the Léopards, and that the attempt was repudiated by the other members of the battalion, which demonstrates a division within the group. Accordingly, only the members who participated in the attempted coup should be held responsible for the acts alleged by the Minister. The applicant's line of argument concedes membership in the group, but warns against attributing the acts of certain soldiers to the Léopards as a whole.

[2] In a decision dated June 28, 2022, the ID concluded that the applicant was inadmissible to Canada under paragraph 34(1)(f), with reference to paragraph 34(1)(b) of the IRPA. The decision largely relies on a finding of fact made by the ID, namely that the ID did not agree with the applicant's argument that "only some officers from the Léopards were involved in the coup d'état and not the entire battalion" and that the "evidence shows that it was the commander of the Léopards, Himmler Rébu, who arranged the [coup] attempt. … It was not an act carried out by a

few soldiers with no connection to the organization" (Decision at paras 26–27). The applicant could therefore not disassociate himself from the attempt by raising his disagreement with or non-complicity in it. The applicant's conceded membership in the Léopards necessarily made him inadmissible.

[3] The applicant now seeks judicial review of the decision before the Federal Court. He alleges that the ID's reasons did not sufficiently account for a central concern he raised in his submissions, namely the existence of an internal division among the Léopards in April 1989. In his view, the principles of justification and transparency require a more thorough analysis of this issue, especially considering the severe repercussions he could encounter should he be deported from Canada to Haiti. He is therefore requesting the intervention of this Court to overturn the decision rendered by the ID, which he finds unreasonable pursuant to the principles stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[4] This application for judicial review is granted. In my view, the ID's reasons were not sufficiently responsive to the issue of internal division among the Léopards, a core concern the applicant raised throughout his submissions. This shortcoming is neither peripheral nor superficial; it is the very basis of the applicant's argument. It is therefore appropriate for the Court to remit this case to the ID for reconsideration, with the benefit of the reasons that follow.

II. Facts

[5] Mr. Lapaix is a citizen of Haiti. On June 1, 1987, he voluntarily joined the Léopards of the Haitian Armed Forces and remained a member of its 45th Company until the Léopards were disbanded in April 1989. He was then at the rank of private.

[6] The events that led to the Léopards disbanding are complex and contested, and it is not necessary to examine them in detail. It is sufficient to state that in April 1989, Philippe Biamby and his comrades, Himmler Rébu, Guy François and Léonce Qualo, participated in a coup attempt against Haitian president Prosper Avril. At the time, Himmler Rébu was the commander of the Léopards, which had been created to bolster presidential power and reduce the influence of other branches of the Haitian Armed Forces, while preventing military coups.

[7] In his testimony, the applicant alleged that the 45th company of the Léopards did not participate in the attempted coup organized by Himmler Rébu. He stated that only a few people who were part of Colonel Rébu's inner circle participated in the attempt and the rest of the Léopards were not aware of it. As for himself, he was at the Léopards' camp with other soldiers who had been instructed not to leave the camp. He said he did not know anything about the attempted coup beforehand and only learned of it when some of the soldiers involved began to return to the camp.

[8] In turn, the applicant also alleges that he disagreed with the coup attempt to overthrow the government by force, since the few people who participated in the event showed that they

were acting against the Léopards' organizational mission, which was precisely the opposite, to prevent coup attempts. According to his testimony, there was an ideological division within the Léopards at the time, and only the rebel side participated in the coup. The applicant denies ever being associated with this part of the Léopards, and he was never imprisoned or prosecuted by the Haitian government following the events of April 1989.

[9] The Léopards were disbanded in April 1989, after this coup attempt. It was then that the applicant was transferred to the 20th company, until the arrival of the US Forces in Haiti in September 1994. The applicant was then assigned to the 58th company in Gonâve, until the demobilization of the Haitian Armed Forces in December 1994 or January 1995. Mr. Lapaix's military career therefore ended after more than seven years with the armed forces of his country.

[10] On or around October 25, 2017, Mr. Lapaix submitted a claim for refugee protection in Canada on the grounds that he was experiencing persecution and fearing for his life and that of his family in Haiti. During the refugee claim process, he voluntarily disclosed his involvement with the Léopards to the authorities.

[11] On October 29, 2019, the Canada Border Services Agency issued a report to the applicant pursuant to subsection 44(1) of the IRPA indicating that he was a member of an organization that there are reasonable grounds to believe engages, has engaged or would engage in or instigate the subversion by force of a government, including a coup attempt in April 1989.

[12] The report was then referred to the ID pursuant to subsection 44(2) of the IRPA on May 17, 2021. Mr. Lapaix thus attended a hearing before the IRB on February 10, 2022, during which his testimony was deemed credible and was not questioned. However, the ID rendered a decision on June 28, 2022, finding him inadmissible under paragraphs 34(1)(f) and 34(1)(b) of the IRPA. This is the decision under review.

III. Decision under Review

[13] The ID found Mr. Lapaix inadmissible to Canada on security grounds, pursuant to paragraph 34(1)(f) and in reference to paragraph 34(1)(b) of the IRPA. Before reaching this conclusion, the ID made three important findings in its reasons. Only the third is contested, but I will address all three for the sake of comprehensiveness.

[14] First, the ID confirmed that Mr. Lapaix was a member of the Haitian Armed Forces and more specifically, of the Léopards. It reached this conclusion in light of the evidence on record, including the applicant's testimony; he never denied his membership in the organization.

[15] Second, the ID stated that the Haitian Armed Forces met the required criteria to be considered an organization within the meaning of paragraph 34(1)(f) of the IRPA, and that the Léopards were part of that organization. It reached this conclusion in light of the "objective and credible documentary evidence establishing the identity, objectives and organizational structure of [the Haitian Armed Forces], as well as Mr. Lapaix's testimony" (Decision at para 13). Without citing the jurisprudential authority on the subject, the ID was alluding to the "non essential" criteria used to identify "organizations" in the context of an inadmissibility finding

(*Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 at para 38 [*Sittampalam*]). The applicant does not contest this finding.

[16] Third, the ID concluded that the Léopards engaged in the subversion by force of a government within the meaning of paragraph 34(1)(b) of the IRPA, namely the coup attempt in April 1989 led by Himmler Rébu. In its reasons, the ID cited the applicable authorities to interpret the terms in the paragraph, in particular "subversion" (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at paras 65, 70 [*Najafi*]; *Canada (Citizenship and Immigration) v USA*, 2014 FC 416 at para 36 [*USA*]), the criterion regarding a "government" (*Najafi* at para 70) and the need for it to be "by force" (*Oremade v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077 at paras 25–28 [*Oremade*]). It also cited the definition of "coup d'état" from the Larousse dictionary.

[17] After having established the relevant framework under paragraph 34(1)(b), the ID cited several excerpts from the documentary evidence affirming the central role of Himmler Rébu, commander of the Léopards, in the coup attempt in April 1989. It is in light of this evidence that the ID stated that the Haitian Armed Forces "engaged in the subversion by force of a government" and that the "Corps des Léopards was directly involved" (Decision at para 24).

[18] As for Mr. Lapaix, he claimed to have had no direct involvement in the coup attempt, and that the attempt was not by the Léopards or the army, but by soldiers acting on their own. In response, the ID noted that the relevant jurisprudential framework does not require the person to have knowingly supported or actively participated in the subversion by force of a government. It

is sufficient for them to have been a member of the organization involved (see, for example, *Zahw v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 934 at para 32 [*Zahw*] citing *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 at paras 33–35 [*Alam*]).

[19] Lastly, the ID refused to countenance Mr. Lapaix's claim that "only some officers from the Léopards were involved in the coup d'état and not the entire battalion" (Decision at para 26). The ID was of the opinion that "[t]he evidence shows that it was the commander of the Léopards, Himmler Rébu, who arranged the attempt. … It was not an act carried out by a few soldiers with no connection to the organization" (Decision at para 27). The ID therefore concluded that the applicant was inadmissible under paragraphs 34(1)(f) and 34(1)(b) of the IRPA and issued a deportation order against him.

[20] The reasonableness of this last finding is the main subject of this judicial review.

IV. Issue and Standard of Review

[21] The only issue is whether the ID's decision is reasonable.

[22] There is no dispute that the applicable standard is reasonableness (*Vavilov* at paras 10, 25; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). This analytical framework imposes a limited and deferential role on the Court, based on a respect for the legislative choice to delegate certain duties to non-judicial decision makers. Under the IRPA, it is the responsibility of the IRB, and not the Federal Court, to determine the merits of the case under review (see subsection 162(1) of the IRPA). This is a cornerstone of Canadian

administrative law as it relates to matters of immigration: the member is the merit-decider, not this Court (see *Safe Food Matters Inc v Canada (Attorney General)*, 2022 FCA 19 at para 37 and the authorities cited therein).

[23] When the applicable standard of review is reasonableness, the role of a reviewing court is to examine the decision maker's reasoning and 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" (*Mason* at para 64; *Vavilov* at para 85). The reviewing court must therefore ask "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (Vavilov at para 99).

[24] It is not enough for the decision to be justifiable. Where reasons for a decision are required, the decision "must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies" [emphasis in original] (*Vavilov* at para 86). Thus, a reasonableness review properly considers both the outcome of the decision and the reasoning process that led to that outcome (*Vavilov* at para 87). In its analysis of the reasonableness of a decision, the reviewing court must adopt an approach "which puts those reasons first," examine the reasons with "respectful attention" and seek to understand the reasoning process followed by the decision maker to arrive at their conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84).

[25] In *Mason*, the Supreme Court of Canada [SCC] guides reviewing courts on how to conduct a judicial review. A decision may be unreasonable if the reviewing court identifies a

fundamental flaw, either a failure of rationality internal to the reasoning process, or a failure of justification given the legal and factual constraints bearing on the decision (*Mason* at para 64).

[26] The SCC identifies a series of factual and legal constraints that the decision maker must examine and justify, according to the applicable context, in order for its decision to be sufficiently justified within the meaning of *Vavilov*. The burden of justification is variable, but the decision maker must demonstrate that it was "alive" to the essential elements, "sensitive to the matter before it," and "meaningfully grapple[d] with key issues or central arguments raised by the parties" (*Mason* at paras 69, 74; *Vavilov* at paras 120, 128). The decision maker must consider the central arguments and evidence presented by the parties and provide reasons regarding the impact of these arguments on its decision (*Mason* at paras 73–74; *Vavilov* at paras 126–28).

[27] In particular, the decision maker must ensure that it considers principles of statutory interpretation, the governing statutory scheme, rules of common law or international law, the evidence and central arguments of the parties, the past practices and decisions of the administrative tribunal and the potential and possibly harsh consequences of the decision on the affected party or a broad category of individuals, as well as overarching issues. Failure to properly consider one of these elements or explain why it was not considered could be a serious shortcoming that leads a reviewing court to "lose confidence" in the decision under review (*Mason* at paras 64, 66–76).

[28] When the decision maker provides reasons, it is not sufficient for the decision to be justifiable; it must be justified by way of reasons that demonstrate the transparency and intelligibility of the decision-making process (*Mason* at paras 59–60; *Vavilov* at paras 81, 84, 86). The Court must determine whether, on examining the reasoning followed and the result obtained, 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 (*Mason* at paras 8, 58–61; *Vavilov* at paras 12, 15, 24, 85–86). The decision will be unreasonable if there is a failure of internal rationality or if the reviewing court is unable to trace the decision maker's reasoning without encountering any "fatal flaws in its overarching logic" (*Mason* at para 65, citing *Vavilov* at paras 102–03).

[29] However, the reviewing court should not create its own yardstick and then use it to measure what the decision maker did (*Mason* at para 62; *Vavilov* at para 83). Nonetheless, the Court's assessment remains sensitive and respectful, but it is not a formality: judicial review remains a robust exercise (*Mason* at paras 8, 63; *Vavilov* at para 12).

[30] As a result, during a reasonableness review, the reviewing court must assess the reasons of the decision "holistically and contextually" in light of the history of the proceedings, the evidence submitted and the central arguments of the parties (*Mason* at para 61; *Vavilov* at paras 91, 94, 97). The role of the court is not to reweigh the evidence presented to the decision maker or to question the exercise of its discretionary power or conduct its own interpretation of the law. That is the decision maker's responsibility. Insomuch as the decision maker's

interpretation of the law is reasonable and the reasons for its decision are justifiable, clear and intelligible, the court must show restraint (*Vavilov* at paras 75, 83, 85–86, 115–24).

[31] Regardless of the approach used by the decision maker, the reviewing court's task is to ensure that the interpretation of the legislative provision complies with the "modern principle" of statutory interpretation, which focuses on the overall context of the legislation, assessing the words chosen by the legislature in their grammatical and ordinary sense harmoniously with the scheme of the act, its object and the legislature's intent (*Mason* at paras 67, 69–70, 83; *Vavilov* at paras 110, 115–24; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 42; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at paras 20, 36 [*Alexion*]; *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 66 at para 16; *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 21; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559 at para 26; Elmer Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87). Similarly, an interpretation involving a "result-oriented analysis" that is expedient or tendentious is unreasonable (*Alexion* at para 37, citing *Vavilov* at paras 120–21; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para 42).

[32] In this case, the ID member was not required to imitate the courts' way of providing reasons—the standard of perfection does not apply. Nor does the ID have to provide reasons addressing all the arguments, legislative provisions or details raised by the parties (*Mason* at paras 61, 69–70; *Vavilov* at paras 119–20). The length of the reasons is also not a determining

indicator of the reasonableness of a decision (*Vavilov* at paras 92, 292–93; *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at paras 16–19; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17).

[33] However, the more severe the impact of the decision is on the rights and interests of a party, the more the reasons must reflect those stakes and be sufficient for the parties, and the decision maker must explain "why its decision best reflects the legislature's intention" (*Mason* at para 76; *Vavilov* at paras 133–34; *Alexion* at para 21). As a result, a decision may be unreasonable simply because the decision maker failed to consider or address the particularly harsh consequences for the parties in its reasons (*Mason* at paras 69, 76; *Vavilov* at paras 133–135; *Onex Corporation v Canada (Attorney General)*, 2024 FC 1247 at paras 92, 105, 121, 137, 147).

[34] That said, the reasons on key points do not always need to be explicit. They can be implicit or implied. As the Federal Court of Appeal [FCA] recognized in *Zeifmans LLP v Canada*, 2022 FCA 160 at paragraph 10 [*Zeifmans*], "[l]ooking at the entire record, the reviewing court must be sure, from explicit words in reasons or from implicit or implied things in the record or both, that the administrator was alive to the key issues, including issues of legislative interpretation, and reached a decision on them" (see also *Vavilov* at paras 94, 128).

[35] When the reviewing court looks at "the entire record" to determine whether the administrator was alive to the key issues and reached a decision on them, this record includes all the documents, evidence and arguments that were presented to the decision maker (*Zeifmans* at

para 10; *Vavilov* at para 94). However, although the reviewing court may review "the entire record" where the reasons are silent on a critical issue, it can only "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn" (*Vavilov* at para 97). The reviewing court cannot deduce from the record or find in the decision maker's reasons an "implicit" justification in the abstract to justify a result that the decision maker itself did not reach (*Mason* at paras 96–97, 101).

[36] The principles of justification and transparency require administrative decisions to meaningfully account for the central issues and concerns raised by the parties. This notion of sufficiency of reasons is closely linked to procedural fairness. Individuals affected by a decision have the right to present their case fully and fairly, and the administrative decision maker's reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties (*Vavilov* at para 127).

[37] Of course, reviewing courts cannot expect administrative decision makers to respond to every argument submitted to them, regardless of their importance to the case. The main point is to "meaningfully grapple with key issues or central arguments raised by the parties" such that there can be no doubt that the decision maker "was actually alert and sensitive to the matter before it" (*Vavilov* at para 128). This kind of analysis is what strengthens a "culture of justification" (*Vavilov* at para 2).

V. Analysis

A. *Legislative Framework for Inadmissibility under Paragraphs 34(1)(f) and 34(1)(b) of the IRPA.*

[38] The right to enter, remain in and leave Canada is reserved for Canadian citizens (*Constitution Act, 1982*, s 6, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11). Canada has full control over the admission (or not) of foreign nationals to its territory. This control is in large part governed by the IRPA, one of the immigration objectives of which is "to promote 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" (para 3(1)(i), IRPA).

[39] The relevant provisions in this case involve inadmissibility on security grounds, in particular sections 33 and 34 of the IRPA. They state the following:

Rules of interpretation **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.	**Interprétation** **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.
Security **34 (1)** A permanent resident or a foreign national is inadmissible on security grounds for **(a)** engaging in an act of espionage that is against Canada or that is contrary to Canada's interests; **(b)** engaging in or instigating the subversion	**Sécurité** **34 (1)** Emportent interdiction de territoire pour raison de sécurité les faits suivants : **a)** être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada; **b)** être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement

by force of any government; **(b.1)** engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada; **(c)** engaging in terrorism; **(d)** being a danger to the security of Canada; **(e)** engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or **(f)** being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).	par la force; **b.1)** se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada; **c)** se livrer au terrorisme; **d)** constituer un danger pour la sécurité du Canada; **e)** être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada; **f)** être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

B. *The Jurisprudential Test for Inadmissibility under Paragraphs 34(1)(f) and 34(1)(b) of the IRPA*

(1) The Standard of Assessment

[40] Paragraph 34(1)(b) of the IRPA addresses concrete participation in acts of subversion by force of a government, while paragraph 34(1)(f) is only concerned with membership in an organization that engaged in such acts (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 24 [*Kanagendren*]). In both cases, the facts constituting inadmissibility must be assessed in light of section 33 of the IRPA.

[41] Under section 33 of the IRPA, the facts that constitute inadmissibility under section 34 include facts for which "there are reasonable grounds to believe that they have occurred, are occurring or may occur." This standard of assessment requires more than mere suspicion, but

less than the standard applicable in civil matters of proof on the balance of probabilities (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114 [*Mugesera*]). Under this standard, "[i]n essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information" (*Mugesera* at para 114).

[42] In the context of judicial review, the Court's task is not to determine whether there were reasonable grounds to believe the applicant was inadmissible pursuant to paragraph 34(1)(f) of the IRPA, but instead to determine whether the ID's conclusion that there were such grounds was itself reasonable (*Rahaman v Canada (Citizenship and Immigration)*, 2019 FC 947 at para 9). The Court must therefore analyze and determine whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99).

[43] Although the standard of reasonable grounds to believe under section 33 of the IRPA is rather permissive, it is not without limits. The information on which the objective basis for the belief lies must be "compelling and credible" (*Mugesera* at para 114), and the decision under review cannot be based on reasoning or an assessment of the evidence that "causes the reviewing court to lose confidence in the outcome reached by the decision maker" (*Vavilov* at para 122). In other words, a lower standard of proof does not entitle the decision maker to rely on ambiguous, suspect or unverifiable information (*Gonzalez Nunez v Canada (Citizenship and Immigration)*, 2024 FC 1948 at para 40; *USA* at paras 19–24).

(2) Subversion by Force of any Government

[44] The expression “subversion by force of any government” is not explicitly defined in the IRPA. Case law on the matter exists, and must be used to guide the interpretation of the terms for the purposes of paragraph 34(1)(b).

[45] In *Najafi*, the FCA concluded that “Parliament intended for the provision to be applied broadly” (at para 80), and that the “legality” or “legitimacy” of the alleged acts was not relevant to the application of paragraph 34(1)(b) (at para 90). The FCA explained that the inadmissibility set out in section 34 had to be broad because Parliament provided authority to the Minister to exempt foreign nationals from inadmissibility if it is not contrary to national interest to do so. Thus, the legitimacy of a government’s overthrow, in the context of a people ruled by a dictator for example, could be a relevant factor for the Minister to consider under section 42.1 of the IRPA, but it is not a relevant factor in the context of an inadmissibility analysis under section 34 (at para 90; see also *Oremade* at para 18). In an application under section 42.1, the Minster must review the facts of the case and balance them with other Canadian fundamental values, such as national interest and national security (at para 106). Insomuch as the “member” within the meaning of paragraph 34(1)(f) did not participate actively or in a sufficiently significant way in the activities the organization is accused of, or for other reasons, the Minister could consider a waiver of inadmissibility since it would not be contrary to national interest to do so. In other words, the lawful or unlawful nature of the subversive acts is irrelevant at the inadmissibility stage. The type of “government” targeted by the acts is also irrelevant: the words of the Act “do not on their face, imply a qualification of any kind with respect to the government in question”

(*Najafi* at para 70). It is sufficient for the acts to have been committed with the intent to contribute to the process of overthrowing a government (*USA* at para 36).

[46] The essential aspect of the analysis is "force." This expression includes coercion or compulsion by violent means, in addition to "the reasonably perceived potential for the use of coercion by violent means" (*Oremade* at para 27; see also *Fituri v Canada (Citizenship and Immigration)*, 2024 FC 502 at para 15). It is therefore possible to establish intent by presuming "that a person knows or ought to have known and to have intended the natural consequence of their action" (*Oremade* at para 30).

[47] Overall, the applicable jurisprudential test for "subversion by force of any government" is defined by its flexibility.

[48] There is nevertheless an interpretive aspect of paragraph 34(1)(b) worth clarifying with regard to "oppressed people" and the principle of "self-determination." Although the issue of "legality" or "legitimacy" is not strictly relevant to the analysis of "subversion by force of any government," there is nonetheless a very specific set of circumstances in which an "oppressed people" can have recourse to the use of force in the exercise of its right of self-determination (see generally James Crawford, *Brownlie's Principles of Public International Law*, 9th ed (Oxford: Oxford University Press, 2019) at 113–114, 125, 131–132, 622; see also Phillip M Saunders & Robert J Currie, eds, *Kindred's International Law: Chiefly as Interpreted and Applied in Canada*, 9th ed (Toronto: Emond Publishing, 2018) at 131–137). These circumstances are defined in the *Protocol Additional to the Geneva Convention of 12 August 1949, and relating to*

the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 art 1(4) (entered into force 7 December 1978, accession by Canada 20 November 1990), which is incorporated into Canadian law through the *Geneva Conventions Act*, RSC 1985, c G-3, Schedule V, subsection 2(2) (see also *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217 at paras 131–39). These situations are described as "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination" (*Protocol I*, art 1(4); see also *Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31 art 2, Can TS 1965 No 20).

[49] In such specific and unique situations, use of force for the purposes of national liberation does not necessarily amount to "subversion by force of any government" within the meaning of paragraph 34(1)(b). It would instead be an international armed conflict as set out in the *Geneva Conventions*, in particular article 2 (provision common to all the *Geneva Conventions*), since the armed conflict would involve an oppressed people facing an "alien" government or a "racist régime" (International Committee of the Red Cross, *Commentary to the Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (Geneva: ICRC, 1987) at 38–46). In such cases, one is not dealing with "subversion by force of any government" within the meaning of paragraph 34(1)(b) of the IRPA, but rather a true international armed conflict between an occupying authority and an oppressed people (Antonio Cassese, "The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law" (1984) 3 UCLA Pac Basin LJ 55 at 68–71). In theory, the standard applicable to the participation of non-state groups

in armed conflicts defined under article 1(4) of *Protocol I* is the same as for any other international armed conflict, meaning that the conflict, even if it occurs within the borders of a single country, is governed by the law of international armed conflict and is considered to be a regular war, just like the current conflict between Ukraine and Russia. The combatants would therefore be participating in an international armed conflict as understood within the law of war and not in an activity of subversion or insurrection—an activity that is not, in itself, governed or permitted by international law (see *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, UNGA, 25th Sess, UN Doc A/RES/2625(XXV) (1970) Res 2625 (XXV)).

[50] An administrative decision that does not address the constraints imposed by international law risks being unreasonable (*Mason* at paras 85, 104–09, 111). In the specific context of armed conflicts described under article 1(4) of *Protocol I*, it could therefore be relevant for the ID to consider *Protocol I* and make the necessary findings of fact applicable to the case. Further to a finding that article 1(4) of *Protocol I* applies to the conflict, an applicant might not be inadmissible because of the "subversion by force of any government," since the specific circumstances established in international law under article 1(4) of *Protocol I* would be met. If so, even if the conflict leads to a change in government because of the conflict, it would be the result of an international armed conflict as understood under the principles of international law and not an act of "subversion by force" of a government within the meaning of paragraph 34(1)(b).

(3) The Membership Criterion

[51] Being a member of an organization that there are reasonable grounds to believe has engaged in acts referred to in paragraph 34(1)(b) results in inadmissibility under paragraph 34(1)(f) of the IRPA. While the IRPA does not define the word “member” or the word “organization,” relevant case law provides several possible avenues of interpretation.

[52] The relevant FCA case law states that an “unrestricted and broad” interpretation should be given to the word “organization” (*Sittampalam* at para 36). This interpretative breadth can be partially explained by the factual context in which the acts referred to in subsection 34(1) occur: organizations that engage in the acts listed under subsection 34(1) will rarely have formal structures, but this lack of structure should not thwart or hinder the national security objectives of the IRPA (*Sittampalam* at para 39; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at para 92 [*Mahjoub*]). In other words, a group that commits acts listed under paragraph 34(1)(f) can be considered an “organization” for the purposes of the IRPA even if it does not “have charters, by-laws or constitutions” (*Sittampalam* at para 39). A group may have several characteristics of an organization, namely “identity, leadership, a loose hierarchy and a basic organizational structure” (*Sittampalam* at para 38), but none of these factors is essential when making a determination under paragraph 34(1)(f). Again, this is a flexible and contextual analysis, not a conceptually strict one.

[53] This analytical framework can be transposed to the term “member,” which in turn must be given “an unrestricted and broad” interpretation to meet the objectives of subsection 34(1) of

the IRPA, namely Canada's public safety and national security (*Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at para 27 [*Poshteh*]; *B074 v Canada (Citizenship and Immigration)*, 2013 FC 1146 at paras 28–29).

[54] In *Mahjoub* at paragraphs 92, 96–97, the FCA suggests that passive membership in a group could be insufficient to find someone inadmissible under paragraph 34(1)(f), but that participating in certain activities that support the objectives of the group could be enough (even if these acts are not violent in themselves), even without requiring evidence of an intention to contribute to the group or satisfying a specific mental element (*Mahjoub* at paras 93–94). Informal participation or support may therefore suffice to support a finding of membership (*Kanapathy v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 459 at para 34).

[55] There is nothing in paragraph 34(1)(f) of the IRPA that requires "a 'member' to be a 'true' member who contributed significantly to the wrongful actions of the group" (*Kanagendren* at para 22). On the contrary, the requirements for finding membership in an organization that engages in subversion within the meaning of paragraph 34(1)(f) are not stringent (*Kanagendren* at para 22; *Mirmahaleh v Canada (Citizenship and Immigration)*, 2015 FC 1085 at para 10; *Haqi v Canada (Citizenship and Immigration)*, 2014 FC 1167 at paras 36–37). There is no requirement for genuine or formal membership in an organization or a genuine or active participation in the acts of subversion committed by that organization (*Opu v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 650 at para 100). Moreover, there is no requirement regarding the significance of one's integration within the organization (*Poshteh* at paras 30–31).

[56] For example, in *Zahw* at paragraph 32, Justice Walker (as she was then) determined that it was reasonable for the ID to find that there were reasonable grounds to believe that the Egyptian military had instigated and engaged in subversion by force against the Morsi government in summer 2013. Accordingly, it was also reasonable for the ID to find that the applicant was inadmissible to Canada, since he was a member of the Egyptian military and it was sufficient to establish his membership in the organization in question for the purposes of paragraph 34(1)(f). The ID was therefore not required to conduct an investigation into the exact duties or role of this applicant in the military and it was not required to find that the applicant had participated or was complicit in the alleged acts (see also *Alam* at paras 33–25). All members of the Egyptian military were thus, *a priori*, inadmissible to Canada.

[57] At this point in the analysis, and in light of the arguments the applicant raised in this case, it is worth clarifying that the membership criterion applicable to paragraph 34(1)(f) is not the one that applies to article 1F(a) of the *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 art 1F(a) (entered into force 22 April 1954, accession by Canada 4 June 1969) [Refugee Convention]. This article is incorporated into Canadian law under section 98 of the IRPA.

[58] The Refugee Convention excludes from its protective ambit “any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes.” A person who falls under this exclusion is not a Convention refugee or a person in need of protection (see section 98 of the IRPA).

[59] According to *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*], article 1F(a) ought to be strictly interpreted. To deny refugee protection to an applicant under this exception, there must be "serious reasons for considering that an individual has voluntarily made a significant and knowing contribution to a group's crime or criminal purpose" (*Ezokola* at para 8). The criterion on which this ground for inadmissibility is based is therefore a "significant contribution," and not mere membership (*Ezokola* at para 8). This is a contribution-based test for complicity that requires a "voluntary, knowing, and significant contribution to the crime or criminal purpose of a group" (*Ezokola* at para 36), as opposed to "guilt by association" (*Ezokola* at paras 81–82; see for example *Gupa v Canada (Citizenship and Immigration)*, 2023 FC 157 at paras 89–122).

[60] The standard set forth in *Ezokola* does not apply in the present context, however. It is perhaps hard to understand how an individual could represent a danger to the "security" of Canada under paragraph 34(1)(f), sufficient to result in an inadmissibility finding, by their mere membership of an organization, but without proof that they personally contributed to an act. In fact, this logic was rejected in the context of citizenship revocation, as the FCA concluded on the basis of *Ezokola* (at para 79) that a person cannot be held responsible for the actions of a group unless they made a knowing and significant contribution to it (*Oberlander v Canada*, 2016 FCA 52 at paras 21–22).

[61] That said, in *Kanagendren* (at para 22), The FCA found that *Ezokola* did not change the broad meaning of the word "member" at paragraph 34(1)(f) since "nothing in paragraph 34(1)(f) requires or contemplates a complicity analysis in the context of membership" and nothing

requires the "member" to have contributed significantly to the actions of the group (at para 22). The FCA explains that the issue of complicity is not relevant with regard to the question of inadmissibility under section 34; it only becomes relevant when the Minister considers applications under section 42.1, which allows them to grant relief from inadmissibility if it is not contrary to the national interest (at para 26; see also *Najafi* at paras 80, 106-107). As such, the applicable test in this case is therefore the one stated in *Zahw*, according to which "it is sufficient for purposes of paragraph 34(1)(f) to establish membership in the organization in question" (*Zahw* at para 32).

[62] However, as Justice O'Reilly explained in *Hosseini v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 171 at paragraphs 47–48 [*Hosseini*], "the effects of Ezokola can be felt outside the sphere of the exclusion clauses in which it arose" and "[i]nvoking the idea of guilt by mere association may not be acceptable" (*Hosseini* at paras 43, 47–48). That case involved paragraph 34(1)(d), since it was alleged that the applicant had participated in the development of weapons of mass destruction in Iran. The issue was therefore not whether he was a member of an organization under paragraph 34(1)(f), but whether the individual was inadmissible for having himself participated in acts that constituted a danger to the security of Canada. With regard to paragraph 34(1)(f), Justice O'Reilly stated in *obiter* at paragraph 43 that "the Supreme Court's concern that individuals should not be found complicit in wrongful conduct based merely on their association with a group engaged in international crimes may extend to inadmissibility, generally, and to the definition of membership specifically," and that without imposing the *Ezokola* test "to find a person inadmissible to Canada based on his or her association with a particular terrorist group, there must at least be some evidence that the person

had more than indirect contact with that group." Justice O'Reilly continued at paragraph 44 and relied on the FCA's decision in *Mahjoub* (*Mahjoub* at paras 92–94), in which Justice Stratas suggests that passive membership in a group could be insufficient for the purposes of 34(1)(f), but nevertheless affirmed that evidence of complicity of the type described in *Ezokola* is not required.

[63] It is also relevant to question whether the current interpretation of the scope of paragraph 34(1)(f) remains adequate following *Mason*, which concerned the interpretation of the term "security grounds" under subsection 34(1) as applied by paragraph 34(1)(e). The SCC suggests that to comply with the principle of non-refoulement set out in article 33 of the Refugee Convention, paragraph 34(1)(e) (together with the term "security grounds") must be interpreted as requiring a link to national security or the security of Canada. Moreover, the applicant in that case argued that section 34 as a whole required a nexus to national security or the security of Canada (para 92), which the SCC accepted (at paras 121, 183). An overly flexible interpretation of paragraph 34(1)(f) that would not require any active connection or even knowledge of the activities of the organization in question could therefore be too broad, to the extent that mere "membership" within an "organization" does not necessarily result in a risk to "national security" or the "security of Canada."

[64] The notion of *Mason* extending beyond paragraph 34(1)(e) and requiring a review of the scope of certain other inadmissibility measures, in particular paragraph 34(1)(a) and section 35, was accepted in *Canada (Public Safety and Emergency Preparedness) v Weldemariam*, 2024

FCA 69 (at paras 51, 53, 59–60, 64–65, 80–81, 97–99, 103) [*Weldemariam*] and *Wahab v Canada (Citizenship and Immigration),* 2024 FC 1985 [*Wahab*], respectively.

[65] In *Weldemariam*, the FCA found that the principle of non-refoulement is fundamental to issues of inadmissibility due to the harsh consequences facing the individuals affected, and that the ID cannot ignore it in its interpretation of those provisions (at paras 5, 43–47, 51–52, 62–65; see also *Wahab* at paras 19–26). In that case, the individual was an employee of an Ethiopian state security and intelligence agency, which was suspected of having committed acts of espionage "contrary to Canada's interests" within the meaning of paragraph 34(1)(a). The Minister wanted Mr. Weldemariam declared inadmissible because he was a "member" of this organization within the meaning of paragraph 34(1)(f) of the IRPA, despite the fact there was no evidence that Mr. Weldemariam himself had any personal involvement in any espionage activities (*Weldemariam* at paras 10, 14).

[66] *Wahab*, albeit under paragraph 35(1)(b), concerns an issue related to the one in the present case, namely that of being held responsible for actions without necessarily participating in the alleged acts. Paragraph 35(1)(b) imputes participation when an individual holds a senior rank within a régime (in that case, the Afghan National Army), that engaged in systematic or gross human rights violations. Although the *Ezokola* test does not apply, individuals holding a senior rank are deemed by irrebuttable presumption to be able to influence the exercise of power by virtue of their duties, and are therefore deemed responsible for the acts committed. Justice Fuhrer concluded that *Mason*, and the principle of non-refoulement in international law, must be considered in order to determine the scope of paragraph 35(1)(b) and whether the irrebuttable

presumption of responsibility established under paragraph 16(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 remains valid (at paras 33, 36–37).

[67] It is worth reiterating that the presumption of statutory interpretation by which "legislation is presumed to operate in conformity with Canada's international obligations" (*Mason* at para 105, citing *Vavilov* at para 114; *Weldemariam* at para 54, 63) is even more important in the legislative context of the IRPA. Parliament has specifically enjoined courts and administrative decision makers to construe and apply the IRPA in a manner that "complies with international human rights instruments to which Canada is signatory" (see paragraph 3(3)(f) of the IRPA). An IRB decision that neglects to consider the constraints imposed by international law according to paragraph 3(3)(f) could be unreasonable (*Mason* at paras 85, 108–09, 111; *Weldemariam* at paras 81–82; *Wahab* at paras 10, 20–25, 37, 64–65).

[68] As complicity by association or passive acquiescence could be incompatible with international law in certain contexts, as explained in *Ezokola* at paragraph 83, the scope of the inadmissibility on the ground of merely being a "member of an organization," without necessarily having actively participated, is perhaps worth close examination. If, as discussed in *Wahab*, the principle of non-refoulement can affect the validity of the irrebuttable presumption of responsibility that applies to paragraph 35(1)(b), which imputes responsibility to an individual on the basis of having held a senior rank in a régime (but without concrete proof of intent to commit or participation in the alleged acts), the same principle of non-refoulement could have an impact on the applicable test for an individual to be inadmissible under paragraph 34(1)(f) for

having been a “member of an organization” (again without establishing any intent to commit or participation with regard to the organization’s alleged acts).

[69] That said, if the substantive test currently imposed on paragraph 34(1)(f) is to be clarified, whether to require more than an indirect or passive link with the group and require some evidence of additional activities supporting the group’s objectives, as suggested by Justice O’Reilly in *Hosseini* (at paras 43–44) and Justice Stratas in *Mahjoub* (at paras 92, 96–97), the test must be more flexible than for an inadmissibility finding under paragraphs 34(1)(a) to 34(1)(e), at the risk of rendering paragraph 34(1)(f) redundant (*Kanagendren* at para 24; *Mahjoub* at para 97; *R v Proulx*, 2000 SCC 5 at para 28).

[70] At any rate, the Court is not called upon to decide this issue in the present case, as the applicant admitted he was a member of the Léopards and the Haitian army. For the same reason, the FCA did not decide the issue in *Weldemariam*, as the applicant’s admitting his employment in an Ethiopian state security and intelligence agency was sufficient to establish that he was a “member” for the purposes of paragraphs 34(1)(a) and 34(1)(f) of the IRPA with regard to the acts of espionage of his employer, despite the fact that the ID did not have any evidence to suggest that Mr. Weldemariam had participated in the espionage activities and drew no conclusion on the issue (*Weldemariam* at paras 10, 14).

[71] Lastly, as discussed in *Najafi* at paragraph 54, inadmissibility should not be confused with removal. Thus, a person’s inadmissibility does not automatically imply that the person will be removed, since they continue to benefit from other important provisions in the IRPA that aim

to ensure protection against “refoulement,” as required by the Refugee Convention. That said, as the SCC explained in *Mason* and the FCA in *Weldemariam*, the protection offered by the IRPA differs in the case of an individual who is inadmissible, which implies that protection against non-refoulement remains a principle that constitutes the “centrepiece” or “cornerstone” of the refugee protection régime and must be considered in an inadmissibility analysis (Mason at paras 93, 106–14; *Weldemariam* at paras 43–51, 53–57, 61–64, 100–02).

C. *The ID’s Decision is Unreasonable because the Reasons do not Address one of the Applicant’s Central Concerns*

(1) The Central Concerns

[72] The applicant is not contesting his membership in the Léopards nor the conclusion that it is an “organization” within the meaning of paragraph 34(1)(f) of the IRPA. He is instead alleging that the ID ignored contradictory evidence regarding the ideological division that allegedly existed within the Léopards in April 1989, and therefore did not render a transparent and intelligible decision in light of the legal and factual constraints of the case.

[73] In support of this argument, the applicant cites several excerpts from his testimony and the documentary evidence on the record that show, in his opinion, that the actions of Colonel Himmler Rébu were condemned, not only by the applicant but also by other members of the Léopards. He says that the ID was required to justify its decision by explaining the reasons it dismissed this evidence, which he feels demonstrated that only a few people were involved in the April 1989 event and that this event was not linked to the Léopards, but instead to a group of rebel soldiers.

[74] In the only passage that addresses the issue of division within the Léopards, the ID concludes rather abruptly that "[t]he evidence shows that it was the commander of the Léopards, Himmler Rébu, who arranged the attempt" (Decision at para 27). According to the applicant, this was a hasty and erroneous conclusion. Mr. Lapaix refers to *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paragraph 17 [*Cepeda-Gutierrez*] in raising the argument that the ID had an obligation to provide him with an explanation based on the relevance of the evidence in question and the disputed facts in the case. A blanket statement that the ID has considered the evidence will not suffice when the evidence omitted appears to contradict the decision maker's finding (*Cepeda-Gutierrez* at para 17).

[75] On the other hand, the Minister states that it was the ID's responsibility to assess the evidence and come to a conclusion. It could therefore conclude that the coup attempt was carried out by the Léopards and not a few rebel individuals within the organization. Through his application for judicial review, Mr. Lapaix is asking the Court to reconsider the evidence and substitute its own findings for those of the ID. It is therefore a request that would force the reviewing court to step out of its circumscribed role in such matters.

(2) The ID Reasons Failed to Consider One of the Applicant's Central Concerns

[76] As a starting point, it is worth reiterating that the ID is presumed to have considered all the evidence, and that it may assess and evaluate the evidence before it (*Simpson v Canada (Attorney General)*, 2012 FCA 82 at para 10). The applicant cannot expect to rebut this presumption by simply criticizing the weight the administrative decision maker gave to one or many of the pieces of evidence: "the Court will consider putting aside this presumption only

when the probative value of the evidence that is not expressly discussed is such that it should have been addressed" (*Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498 at para 51, citing *Cepeda-Gutierrez* at paras 14–17). The fact remains that an administrative decision maker is not required to make an explicit finding on each constituent element leading to their final conclusion (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[77] Nonetheless, contradictory evidence should not be ignored. This is particularly true when the evidence relates to one of the main points on which the decision maker relies to reach their conclusions. Although reviewing courts should refrain from putting the decision maker's reasons under a microscope, the decision maker cannot act "without regard to the evidence" (*Cepeda-Gutierrez* at paras 16–17). When a decision maker's reasons do not mention the evidence that contradicts its conclusions, the Court may intervene and infer that they did not review the contradictory evidence when reaching their finding of fact.

[78] In this case, the ID did an overview of the facts relevant to paragraphs 34(1)(b) and 34(1)(f) of the IRPA. It then identified the correct legal test and applied it to the facts. However, I agree with the applicant that the ID omitted any explanation as to why the critical and contradictory evidence in the case could not be accepted.

[79] Throughout his testimony and written submissions, the applicant went to great lengths to demonstrate the existence of a division within the Léopards (see for example the Certified Tribunal Record at 981; see also Exhibit A: Record created before the Immigration Division,

Certified Tribunal Record at 84–85). It is his central concern and main argument. To this end, he repeatedly cites passages from the documentary evidence suggesting that there was an internal division among the Léopards with respect to the April 1989 events (Certified Tribunal Record at 119, 126, 136; Applicant's Memorandum at paras 94–95, 98–99, 105).

[80] Without reproducing all of the documentary evidence marshalled by the applicant, it is worth noting that the articles the applicant cited indicate [TRANSLATION] "that only part of the Léopards participated in the coup, another was hostile to it" and "the point of view expressed by [certains Léopards] did not reflect that of the battalion as a whole" (Applicant's Memorandum at paras 94–95; Certified Tribunal Record at 119, 126). These passages are not reviewed in the decision maker's reasons; nothing indicates that they were considered.

[81] The only passages in which the ID addressed the internal division among the Léopards are the following:

> [26] The panel does not agree with the following argument made in Mr. Lapaix's submissions:
>
> > [Translation]
> > If it were concluded, as the sponsor testified, that only some officers from the Leopards were involved in the coup d'état and not the entire battalion, the organization itself would not be referred to in paragraph 34(1)(b). (written submissions, para. 53)
>
> [27] The evidence shows that it was the commander of the Léopoards, Himmler Rébu, who arranged the attempt. Mr. Lapaix confirmed this in his testimony. It was not an act carried out by a few soldiers with no connection to the organization.
>
> (ID decision at paras 26–27)

[82] It was open to the decision maker to weigh the evidence and draw conclusions from it. However, the ID could not omit and reject important and contradictory evidence without providing transparent or intelligible reasons for doing so (see *Banovic v Canada (Citizenship and Immigration)*, 2024 FC 1990 at para 66). In the current situation, the Court cannot be certain that the ID truly considered the arguments and evidence the applicant submitted to it. In this case, the ID drew the conclusion that soldiers linked to the Léopards indeed participated in the attempted coup. However, there is no reason justifying the rejection of the evidence that could suggest that these soldiers, although part of the Léopards, acted in their own name and not on behalf of the Léopards. The ID's conclusion above was a broad and general statement that it considered the evidence, which is insufficient when the important and contradictory evidence goes ignored (*Cepeda-Gutierrez* at para 17). In my opinion, such a conclusion does not meet the standard of transparency and justification set forth in *Vavilov*.

[83] In the absence of responsive reasons on the issue, the decision is not reasonable and must be returned to the ID for redetermination before a different member. It is not open to this court to "fashion its own reasons in order to buttress the administrative decision…and substitute its own justification for the outcome" (*Vavilov* at para 96).

VI. Conclusion

[84] A culture of justification requires that an administrative decision maker's reasons meaningfully consider the central concerns raised by the parties. The decision under review failed to consider one such concern, which undermines this Court's confidence in the result obtained by the ID. The application for judicial review is therefore granted.

[85] Neither party proposed a question for certification, nor does any such question arise here.

JUDGMENT in IMM-13815-23

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.

2. There is no question to certify.

"Guy Régimbald"
Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT

SOLICITORS OF RECORD

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