Federal Court  Cour fédérale

Date: 20210315

Docket: IMM-4448-19

Citation: 2021 FC 226

Ottawa, Ontario, March 15, 2021

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

YAN WANG

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is challenging a decision made by a single member of the Immigration Division [ID] of the Immigration and Refugee Board of Canada. In the decision, dated June 28, 2019, the ID found the Applicant was inadmissible to Canada on grounds of organized criminality pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC

2001 c27 [*IRPA*] [the Decision]. As required by the legislation following such a finding, the ID issued a deportation order against the Applicant.

[2] The Applicant alleges that the ID erred by failing to properly apply the test supporting their finding of organized criminality under paragraph 37(1)(a) of the *IRPA*. The Applicant asks this court to set aside the Decision and send the matter back to the ID for re-determination, either by a different panel, or the same panel with directions that the court considers to be appropriate.

[3] For the reasons that follow, this application is dismissed.

[4] Key legislation referred to herein is set out either in the body or in the attached Appendix.

II. **Relevant Background Facts**

A. *The Applicant*

[5] The Applicant is a citizen of the People's Republic of China who came to Canada as a live-in caregiver. She has been a permanent resident of Canada since October 19, 2009.

[6] During the period June 2010 - June 2012, the Applicant was employed by Xun "Sunny" Wang (Sunny) who owned the company New Can Consultants Ltd. (New Can). New Can was in the business of immigration consulting.

[7] Sunny Wang and the Applicant are not related.

[8] The Applicant's responsibilities for New Can included:

- finding addresses to receive letters from Citizenship and Immigration Canada (CIC) on behalf of clients who had applied through New Can for permanent residence;
- forwarding such correspondence to New Can;
- providing New Can clients with transportation to and from the Calgary airport and CIC offices;
- acquiring telephone numbers for the alleged purpose of being used by New Can employees.

B. *New Can and Sunny Wang*

[9] In 2015, Sunny pled guilty to fifteen separate offences, including indictable offences. Sunny entered into an agreed statement of facts (ASF) prepared for the BC Provincial Court proceeding against him. The ASF is part of the record in this application.

[10] Although not a party to the ASF, the Applicant was listed in it by name as having provided six addresses and four telephone numbers to New Can for the purpose of receiving mail and telephone calls on behalf of Sunny's clients. In addition there were copies of emails back and forth between Sunny and the Applicant concerning correspondence received at the addresses as well as pickup and delivery times at the Calgary airport for clients of New Can. The Applicant submitted her invoices by email to Sunny. They did not meet in person.

[11] On January 8, 2018, a CBSA officer made a section 44 *IRPA* report advising there were reasonable grounds to believe the Applicant is a permanent resident who was inadmissible to Canada on grounds of organized criminality pursuant to section 37(1)(a) of *IRPA.*

III. **The Admissibility Hearing**

[12] At the section 44 hearing on May 8, 2019, the ASF was before the ID. In addition, the Applicant, who was represented by counsel, filed an affidavit with the ID, testified in person and was cross-examined. The Applicant confirmed the dates she worked for New Can and conceded that Sunny and New Can engaged in illegal immigration consulting for profit, as well as misrepresentation, forgery, and fraud all directed toward overcoming the legal residency obligations for permanent residency and citizenship in Canada.

[13] However, the Applicant advised the Panel that she "did not maintain the requisite knowledge component for having 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".

[14] In her affidavit filed in this matter the Applicant states "[s]pecifically, I advised the Panel that I had no knowledge that my actions were part of a pattern of criminal activity, nor that New Can was engaged in a pattern of criminal activity at all."

[15] The Minister advised the ID that he was not alleging the Applicant was a member of a criminal organization.

[16] The Minister was alleging that the Applicant had engaged in activity that was part of a pattern of criminal activity planned and organized by Sunny and associates in furtherance of the commission in Canada of offences, including misrepresentation and fraud, which are indictable offences under sections 127 and 128(a) of the *IRPA* and under subsection 380(1) of the *Criminal Code,* RSC 1985 c C-46 [*Code*].

IV. **The Decision**

[17] On June 28, 2019, the ID concluded there were "reasonable grounds to believe the Applicant engaged in activity that was 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."

[18] In arriving at that conclusion, the ID noted the standard of proof required to sustain an allegation under paragraph 37(1)(a) is established in section 33 of the *IRPA* to be "reasonable grounds to believe". The ID referred to the Supreme Court of Canada decision in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 [*Mugesera*] to confirm that reasonable grounds to believe requires something more than mere suspicion but less than the standard applicable in civil matters of proof on the balance of probabilities. The ID noted that there must be an objective basis for the belief based on compelling and credible information and that the standard applies to questions of fact.

[19] The Applicant confirmed to the ID that she had intercepted mail at various addresses, scanned those letters and sent them to Sunny.

[20] After reviewing various details concerning the Applicant's activities, discussed below, and her interactions with Sunny, the ID found that the activities were all intended to mislead immigration officials about the clients' residency so that they could acquire or maintain immigration status without actually fulfilling the requirements. The ID noted this amounted to misrepresentation and fraud which are indictable offences under the *IRPA* and under the *Code*.

[21] The ID observed that Sunny's scheme required the coordination of the activities of various New Can employees in different cities to ensure that the right documents were processed and the client showed up at the right time and with the right information for their CIC interviews.

[22] The ID found that this pattern of activities brought Sunny, and to a lesser degree his employees like the Applicant, significant financial gain.

[23] The ID stated that that "[i]n terms of her knowledge, what is relevant is not whether she knew the organization's activities were illegal (ignorance of the law is not an excuse), but her knowledge of the organization's existence and of its pattern of activities, knowledge which she in fact possessed." As will be discussed below, this finding of fact is strenuously contested by the Applicant.

[24] In terms of the knowledge the Applicant did possess, the ID noted her testimony at the hearing "was not completely truthful" and that she "attempted to minimize her true level of involvement in the fraudulent New Can scheme."

[25] For example, the Applicant's testimony that she never found anyone to translate for clients was inconsistent with her signed affidavit in which she said "on a few occasions I would find the client a translator if they required one."

[26] A further example is that Sunny gave the Applicant instructions to assist clients arriving in Calgary by driving them around a specific address, which the ID noted was presumably their false "home" address. Sunny also instructed the Applicant to tell the client the name of a well-known local mall in support of his story that he had opened a food court there and mentioned that the client's daughter had already been coached.

[27] The ID found that the Applicant provided no reasonable explanation for those communications and denied knowing what Sunny was talking about. She stated that she felt she needed to do what he arranged for her to do, not knowing that it was fraudulent.

[28] The ID noted that "[t]he more likely explanation is that Ms. Wang did know more about the fraud scheme than she has admitted."

[29] As such, the ID concluded that the Applicant was inadmissible to Canada pursuant to paragraph 37(1)(a) of the *IRPA* for having "been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert" and issued a deportation order against her.

V. **Issues**

[30] The Applicant identifies the issue as being whether the ID erred in finding her to be inadmissible on the grounds of organized criminality.

[31] The Applicant articulates several different ways in which the ID erred:

1. The ID made unreasonable findings of fact in finding that the Applicant engaged in activities that were part of a pattern of criminal activity planned and organized by Sunny and his associates.
2. The ID did not properly assess the knowledge component required of the Applicant to fall within paragraph 37(1)(a). In doing so, the Applicant says that the ID failed to appreciate a legal opinion discussing wilful blindness and knowledge in relation to criminal organization offences.
3. The ID erred in distinguishing *Saif v Canada (Citizenship and Immigration)*, 2016 FC 437 [*Saif*] from the Applicant's case.
4. The ID erred when it did not seriously consider that the Applicant was never charged or questioned despite an extensive investigation into the elaborate fraud scheme.

[32] The Respondent states that the issue is whether the decision is reasonable and acknowledges that the several different matters raised by the Applicant will help determine this issue.

VI. **Standard of Review**

[33] The Applicant's written materials indicate the standard of review for all issues, other than assessing her knowledge component within paragraph 37(1)(a), is reasonableness but submits that the knowledge component is reviewable on the standard of correctness because by failing to assess it the ID committed an error of law.

[34] The written materials were filed before the Supreme Court released its decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] in which it extensively reviewed the law of judicial review of administrative decisions. The Supreme Court confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain exceptions, none of which apply to these facts: *Vavilov* at paragraph 23.

[35] Even before *Vavilov*, the standard of review of an administrative body considering its home statute, in this case the *IRPA*, presumptively was reasonableness: *Vavilov* at paragraph 7, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61.

[36] The Supreme Court stated very clearly that when applying the reasonableness standard while conducting judicial review, a Court is to refrain from deciding the issue afresh. The Court is to consider only whether the Decision, including the rationale for it and the outcome to which it led, is unreasonable: *Vavilov* at paragraph 83.

[37] The requirements of a reasonable decision were re-stated as possessing an internally coherent and rational chain of analysis […] that is justified in relation to the facts and law that constrain the decision-maker. Importantly, the reasonableness standard requires a reviewing court to defer to such a decision: *Vavilov* at paragraph 85.

[38] Importantly, the Supreme Court has reminded us that a reviewing court must remember that the written reasons given by an administrative body are not to be assessed against a standard of perfection. If the reasons given for a decision do not include all the arguments, statutory provisions, jurisprudence or other details a reviewing judge would have preferred, that, on its own, is not a basis to set aside the decision. The court's review is not to be divorced from the institutional context in which the decision was made nor from the history of the proceedings: *Vavilov* at paragraph 91.

[39] Considering *Vavilov* and noting that determining whether the Applicant's activities place her within paragraph 37(1)(a) of the *IRPA* requires determinations of fact as well as mixed fact and law, the standard of review of the Decision is reasonableness.

VII. **The ID made Reasonable Findings of Fact about the Applicant' Activities.**

A. *The ID's Reasoning*

[40] The ID found that the Applicant knew the essential contents and subject matter of the CIC letters she intercepted, scanned, and forwarded to Sunny.

[41] The ID also found the Applicant was aware that the clients whose letters were intercepted did not actually reside at their purported Canadian addresses. These conclusions are supported by Sunny's agreed statement of facts and copies of emails sent by the Applicant to Sunny that named specific clients and the types of CIC correspondence that had been received.

[42] The ID concluded that the Applicant could not credibly claim ignorance of the significance of the CIC communications or use of false addresses because she was a permanent resident who was subject to the same residency requirements as New Can's clients.

B. *Section 33 of the IRPA*

[43] In assessing her inadmissibility, the Applicant's knowledge is a fact to be determined by the ID in accordance with the provisions of section 33 of the *IRPA*:

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. (My emphasis)	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. (Non souligné dans l'original)

[44] The parameters of the "reasonable grounds to believe" test have been considered many times.

[45] In *Mugesera*, the Supreme Court indicated that the reasonable grounds test was more than mere suspicion, but less than a balance of probabilities. Reasonable grounds may be found to exist "where there is an objective basis for the belief which is based on compelling and credible information". Reasonable grounds to believe applies only to questions of fact: *Mugesera* at paragraphs 114 and 116.

C. *Analysis*

[46] The Applicant takes the position that it was improper for the ID to infer that she had knowledge of New Can's criminal activities based on her knowledge that no one lived at the addresses she provided to Sunny. She submits that she was no more than a pawn, did not know her actions were illegal or that New Can was a criminal organization, and simply did what Sunny instructed her to do because he had told her he was a lawyer and she trusted him. As a result, she states that she is not guilty of being a member of a criminal organization.

[47] However, as noted by the ID, paragraph 37(1)(a) of the *IRPA* does not require membership in an organization. An individual will also be found inadmissible where there are reasonable grounds to believe they have engaged in activity as 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: *Canada (Citizenship and Immigration) v Tran*, 2016 FC 760 at paragraph 21.

[48] The ID found the evidence showed the Applicant's participation in New Can's scheme involved more than just obtaining addresses. The Applicant provided multiple phone numbers in

addition to the addresses that were represented as belonging to New Can's clients. She was responsible for transporting clients to and from the Calgary airport and the CIC offices. The Applicant also retrieved mail at the addresses she had provided, opened it and summarized the content of the letters from CIC. She then communicated the contents to Sunny.

[49] The ID observed that the Applicant knew of the existence of Sunny's organization as she had used it for her own immigration processes. She also knew that there were other employees as they were referred to in emails she received. Based on the mail she retrieved for Sunny from the addresses she had provided, she knew the addresses had been presented to CIC as the residence of Sunny's clients. She knew that the clients did not live at the addresses as, for example, one of them was her own home and another was for the travel agency where she worked.

[50] Email exchanges also suggested the Applicant knew more than she admitted. In one email chain mentioned in the decision, Sunny indicated that the Applicant was "aware of the current adjustment with PR [permanent resident] card policy". Other emails provided instructions to the Applicant to drive clients around, tell the client the name of a well-known local mall related to Sunny's backstory of having opened a food court, or loan her cell phone so that clients would have a local number to call if CIC requested them to do so. All of these actions were in furtherance of New Can's criminal activities.

[51] Given the evidence in the ASF, particularly the copies of emails between the Applicant and Sunny, the Applicant's invoices to Sunny and the statements made by Sunny concerning the Applicant's activities, it was reasonable for the ID to find as a fact that she was aware of, or

participated in, several different aspects of New Can's fraudulent behaviour. The ID had reasonable grounds to believe it was unlikely that the Applicant was unaware of the nature of New Can's services.

VIII. **The ID properly assessed the knowledge component required of the Applicant.**

[52] With respect to the Applicant's knowledge, the ID stated that "what is relevant is not whether she knew the organization's activities were illegal (ignorance of the law is not an excuse), but her knowledge of the organization's existence and its pattern of activities, knowledge which she in fact possessed."

[53] The Applicant strenuously disagrees. She argues that to be found criminally liable she was required to have actual knowledge that the activities of New Can were illegal. She states that actual knowledge is an essential element for a finding of organized criminality.

[54] The Applicant submits that the ID "eviscerated the *mens rea* principle as it relates to organized criminality and the inadmissibility part of the Act."

[55] To support her position at the ID the Applicant relied upon a written legal opinion from a leading legal authority. The Applicant says that the ID failed to appreciate the legal opinion.

[56] That opinion discusses the knowledge requirements for criminal organization offences in Canada. The opinion discusses wilful blindness and how it differs from constructive knowledge.

It indicates that the Crown carries a heavy burden because *mens rea* "is strictly applied in the context of prosecutions for criminal organization offences".

[57] The opinion does not purport to address the facts of the Applicant's case or the degree of knowledge required under sections 33 and 37 of the *IRPA*. It refers strictly to criminal law jurisprudence and the *Code*.

[58] The question of whether the *Code* definition of a criminal organization and the associated jurisprudence applies to paragraph 37(1)(a) was resolved by the Federal Court of Appeal in *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 [*Sittampalam*] at paragraph 40:

> [40] With respect to the appellant's argument that criminal jurisprudence and international instruments should inform the meaning of a criminal "organization", I disagree. Although these materials can be helpful as interpretive aides, they are not directly applicable in the immigration context. Parliament deliberately chose not to adopt the definition of "criminal organization" as it appears in subsection 467.1(1) [as enacted by S.C. 1997, c. 23, s. 11; 2001, s. 32, s. 27] of the *Criminal Code*, R.S.C., 1985, c. C-46. Nor did it adopt the definition of "organized criminal group" in the *United Nations Convention against Transnational Organized Crime* [November 2000, GA Res. 55/25] (the Convention). The wording in paragraph 37(1)(a) is different, because its purpose is different.
>
> (My emphasis)

[59] The Applicant relies on paragraph 42 of *B010 v Canada (Citizenship and Immigration*), 2015 SCC 58 [*B010*] to say that the provisions of the *IRPA* (organized criminality) and the *Code* (criminal organization) should be interpreted in the same manner in terms of their legal definitions and principles. Paragraph 42 states:

> [42] While "organized criminality" and "criminal organization" are not identical phrases, they are logically and linguistically related and, absent countervailing considerations, should be given a consistent interpretation.

[60] Relying on this paragraph, the Applicant says that "*mens rea* is an imperative element to be considered when assessing organized criminality." and, she goes further saying that "when assessing any part of section 37, an assessment of the individual's knowledge of the organized criminality is essential."

[61] In other words, the Applicant is arguing that *B010* should be followed instead of *Sittampalam.*

[62] Mr. Justice Russell addressed this very argument in *Chen v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 13 [*Chen*]. I agree with and adopt his following comments:

> [42] The Applicant submits that the Supreme Court of Canada's decision in *B010* changed the law applicable to s 37(1)(a) of the Act. In *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 at para 40 [*Sittampalam*], the Federal Court of Appeal rejected the value of international instruments and criminal jurisprudence when interpreting the meaning of "organization" in s 37(1)(a) of the Act. Considering the immigration context, the Court concluded that a broad and unrestricted approach to the definition better suited the Act's purpose. The Applicant submits that *B010* held that s 37(1)(b) should be interpreted harmoniously with the *Criminal Code* and the *UNCTOC* because the purposes of the provisions are directed at transnational crime. The Applicant says that this is now the law for s 37(1)(a), and that proving membership in a criminal organization "should now follow criminal law standards." The Applicant maintains, however, that her membership in a criminal organization has not been proven under any standard.
>
> [. . .]

> [54] The Respondent says that should the Court wish to consider the Applicant's submissions regarding the application of *B010* to the interpretation of s 37(1)(a) of the Act, the narrow and technical interpretation offered by the Applicant should be rejected. In *Sittampalam*, above, at para 36, the Federal Court of Appeal held that the definition of organization in s 37(1)(a) of the Act should be given an "unrestricted and broad" interpretation, consistent with the Act's intention to "prioritize the security of Canadians." The Court noted Parliament had not adopted the Criminal Code definition of criminal organization in s 37(1)(a) of the Act: *Sittampalam*, above, at para 40. The Respondent points out that in s 121.1 of the Act, Parliament adopted the *Criminal Code* definition for other provisions of the Act. In these circumstances, the Respondent submits that had the Supreme Court of Canada intended to overturn *Sittampalam*, and change the meaning of s 37(1)(a) in a decision about s 37(1)(b), it could have done so expressly. Therefore, *Sittampalam* remains good law and the Applicant's interpretation should be rejected.
>
> [. . .]
>
> [85] I agree with the Respondent that the Applicant's submissions regarding the application of the Supreme Court of Canada's decision in *B010*, above, do not apply to the facts of this case.
>
> [86] The Supreme Court of Canada's analysis in *B010* involves s 37(1)(b) of the Act and the Court's reading in of the phrase "transnational organized crime."

[63] The jurisprudence of this court has been that the degree of *mens rea* required under paragraph 37(1)(a) is not that the Applicant have actual knowledge of the criminal activities but that she have knowledge of the criminal nature of the organization: *Chung v Canada (Citizenship and Immigration)*, 2014 FC 16 [*Chung*] at paragraph 84:

> [84] Under subsection 37(1)(a), the person concerned, as well as being a member in the criminal organization, only needs to have knowledge of the criminal nature of the organization. See *Stables*, above, at para 37. I see nothing in *Ezokola*, above, to suggest that the Supreme Court also intended its remarks to apply to subsection 37(1)(a) of the Act or to change the law that was identified and applied in this case. The Applicant is arguing that, in his view,

> *Ezokola* should be applied to the present situation, but I cannot accept that 1F(a) of the *Refugee Convention* can be equated with 37(1)(a) of the Act, because the two provisions use different language and it seems plain that the knowledge requirements are different.
>
> [85] The ID in the present case applied the jurisprudence applicable to subsection 37(1)(a) and there is nothing in *Ezokola*, in my view, to render that approach either incorrect or unreasonable.
>
> (Emphasis in the original)

[64] I note that *Chung* has been followed by Mr. Justice de Montigny, at the time a member of this Court, in *Bruzzese v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 230 [*Bruzzese*] at paragraph 53.

[65] The reference in *Chung* to *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*] also answers another of the Applicant's submissions being that in *Ezokola* the Supreme Court drew a dividing line between mere association and culpable complicity. The Applicant submits that mere association is not enough and that without *mens rea* she was merely engaging in activities for New Can and was not culpably complicit.

[66] *Chung* and *Bruzzese* each answer this argument, noting that *Ezokola* assessed paragraph 1F(a) of the United Nations *Convention Relating to the Status of Refugees*, not paragraph 37(1)(a) of the *IRPA* and "the two provisions use different language and it seems plain that the knowledge requirements are different.": *Bruzzese* at paragraph 53 citing *Chung* at paragraph 84.

[67] I have already determined that the ID reasonably found that the Applicant had knowledge of the criminal nature of the New Can organization based on the evidence before the panel.

[68] Given the provisions of section 33 of the *IRPA* and the foregoing jurisprudence, I find that actual knowledge by the Applicant of the criminal nature and activities of New Can was not required. Accordingly, it was reasonable for the ID not to follow the legal opinion the Applicant provided which only related to the *Criminal Code*.

IX. **The ID did not err in Distinguishing *Saif***

[69] The Applicant criticizes the ID for how it distinguished *Saif*.

[70] The Applicant confirms that the ID's understanding of the ruling in *Saif* was not wrong. She submits that the reviewable error was that the ID failed to consider that Mr. Saif possessed actual knowledge of the criminal activity in which he was engaged while the Applicant had no knowledge of the fraud that Sunny was perpetrating.

[71] The ID distinguished *Saif* on the facts. Although both cases involved providing addresses of convenience and other documentation to fraudulently establish Canadian residency for clients, the ID noted that in *Saif* the existence of a criminal organization had not been established.

[72] The ID did find that there was a criminal organization in the Applicant's case based on the falsified documents, the client interactions and that the offences of misrepresentation and fraud were indictable offences. In terms of structure, the ID found that the New Can scheme

required coordination of activities across the various employees, in different cities, to ensure the right documents were processed and the client showed up at the right time — and with the right information — for their CIC interviews. Sunny and his employees, including the Applicant, benefited from financial gain as a result.

[73] I will not repeat here my previous analysis and comments about the state of knowledge possessed by the Applicant regarding the criminal activities of the New Can organization other than to say it was not necessary for the ID to repeat its finding that the Applicant did possess such knowledge.

[74] For the foregoing reasons, I find that the ID did not err in distinguishing *Saif*.

X. **The ID did not err in its Consideration of the Lack of Charges against the Applicant**

[75] The Applicant says that she made no admissions, was not charged and not even questioned by the authorities despite extensive investigation into the elaborate fraud scheme carried out by Sunny through New Can.

[76] The ID noted that admissibility hearings and criminal prosecutions have different objects, different standards of proof, different rules of evidence, and different rules of procedure. The panel found that the lack of criminal charges against the Applicant was not determinative of whether she was admissible.

[77] This finding by the ID is consistent with the jurisprudence of this Court. In *Toor v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 68 [*Toor*], a foreign jurisdiction had failed to lay criminal organization charges against the people involved in an offence. One of Mr. Toor's grounds for challenging the ID decision that declared him inadmissible to Canada under paragraph 37(1)(a) was that "no decision-maker acting reasonably could have concluded that the evidence supported a finding that he had engaged in activity that was part of a pattern of criminal activity planned and organized by a number of persons acting in concert in the commission of a designated offence." He argued that the ID erred when it failed to consider that Mr. Toor and the other 19 involved parties were not prosecuted in California under available organized crime provisions.

[78] Mr. Toor argued that the failure to prosecute was relevant to the application of paragraph 37(1)(a) yet the ID made no mention of it.

[79] Mr. Justice Barnes held that "[i]t is the nature of the conduct that is relevant for Canadian immigration purposes, not the basis of how it was treated or prosecuted in the foreign jurisdiction. Indeed, even in a situation where no prosecution was undertaken, an inadmissibility finding can still be made in Canada.": *Toor* at paragraph 15.

[80] In *Castelly v Canada (Minister of Citizenship and Immigration)* 2008 FC 788 [*Castelly*], Mr. Justice Martineau found that belonging to an organized crime group, pursuant to paragraph 37(1)(a) of the IRPA, does not require the existence of criminal charges or a conviction.

[81] See also *Odosashvili v Canada (Citizenship and Immigration)*, 2017 FC 958 [*Odosashvili*], *Lai v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 258 and *M'Bosso v Canada (Citizenship and Immigration)*, 2011 FC 302.

[82] For the foregoing reasons, I find that the ID did not err in its consideration of the lack of charges against the Applicant.

XI. **Conclusion**

[83] It is important to remember that the ID is uniquely situated to assess credibility of evidence in an inadmissibility hearing. The panel's determinations of fact and mixed fact and law fall within its expertise and are entitled to a high level of deference from the Court: *Sittampalam* at paragraph 53.

[84] My review of the underlying record which included the ASF, the transcript of the hearing, including the oral submissions and the evidence in the disclosure documents of each party confirms my determination that the Decision is reasonable within the *Vavilov* framework outlined above.

XII. **An End Note**

[85] The Applicant argued before the ID that the Minister did not have any evidence with which to obtain a criminal conviction so they took the easy way of proceeding under the IRPA. In this Court the Applicant asks that the Decision be overturned because "[i]t creates a dangerous

precedent whereby the Respondent could not go in the front door, so they are trying to go in the back door because there is no actual evidence."

[86] In effect, this is the same argument that was made in *Odosashvili* when it was submitted that "the immigration process should not be used as an alternative method of removal in the way it is being done here.": paragraph 82.

[87] At the risk of repeating myself, I do understand this point and I have some sympathy for it. However, it is at odds with what the Supreme Court of Canada has found to be the appropriate interpretation of sections 33 and 37 of the *IRPA* as set out in *B010* and by the Federal Court of Appeal in *Sittampalam*.

[88] Parliament has said in sections 33 and 37(1)(a) of the *IRPA* that the immigration process, with the much lower fact finding standard for organized criminality of "reasonable grounds to believe", can be used to remove somebody in lieu of relying on a criminal conviction which would require proof beyond a reasonable doubt. It is not for the Applicant, the ID, nor this Court to determine otherwise.

JUDGMENT in IMM-4448-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no serious question of general importance for certification.

3. No costs.

"E. Susan Elliott"
Judge

APPENDIX

Immigration and Refugee Protection Act, SC 2001 c27

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 an offence, or engaging in activity that is part of such a pattern; or	**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 à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;
(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.	**b)** se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité**.**

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4448-19
STYLE OF CAUSE:	YAN WANG v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN, OTTAWA, ONTARIO AND CALGARY, ALBERTA
DATE OF HEARING:	SEPTEMBER 16, 2020
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	MARCH 15, 2021

APPEARANCES:

Bjorn Harsanyi	FOR THE APPLICANT
David Shiroky	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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