Federal Court  Cour fédérale

Date: 20220824

Docket: IMM-6157-21

Citation: 2022 FC 1224

Toronto, Ontario, August 24, 2022

PRESENT: Madam Justice Go

BETWEEN:

PRADEEP AMARATHUNGE WIJENAYAKE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant challenges a decision of the Immigration Division [ID] finding him inadmissible to Canada for violating human and international rights contrary to paragraph 35(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant is a citizen of Sri Lanka. He began working as a police officer with the Sri Lankan Police Force [SLPF] in 1992, and remained with the organization until 2016. He was promoted to Inspector of Police in 1999 and to Chief Inspector of Police in 2006. From 2011 to 2016, he was the Officer-in-Charge of the Colombo Fraud Investigation Bureau, which was responsible for criminal investigations related to monetary frauds, criminal breaches of trust, criminal misappropriations of funds, forged documents, and prosecutions.

[3] The Applicant made a refugee claim in Canada in 2017, based on threats and an attempted kidnapping by Sri Lankan government actors who wanted to stop him from uncovering political fraud. The Minister of Public Safety and Emergency Preparedness referred the Applicant for an admissibility hearing at the ID, pursuant to section 44 of the *IRPA*, on the grounds that the SLPF is an organization that perpetrated acts considered to constitute crimes against humanity during the period when the Applicant was employed with them in his various roles.

[4] After a two-day hearing, the ID found the documentary evidence established that the SLPF committed offences constituting crimes against humanity. The ID found that torture occurred in the context of the conflict between the Liberation Tigers of Tamil Eelam [LTTE] and the Security Forces of Sri Lanka, as well as within the ranks of general policing. While there was no allegation that the Applicant personally committed any crime against humanity, the ID found that he was complicit in the acts of the SLPF, as he made a voluntary, significant, and knowing contribution to the crime or criminal purpose of the organization. The ID cited evidence that the commission of these crimes was not limited to specialized units and that the various arms of the

police force worked together. The ID found that the Applicant was connected to the leadership structure, held various positions of authority, was part of the SLPF for 24 years, joined the force voluntarily, and was not under duress. In the ID's view, the Applicant "contributed significantly to the smooth operation of the SLPF and, potentially, to a structured scheme that thrived on torture." As such, the ID concluded that the Applicant was complicit in the SLPF's crimes against humanity and on August 24, 2021 found that the Applicant was inadmissible on grounds of violating human or international rights and made a removal order under paragraph 45(*d*) of the *IRPA* [the Decision].

[5] For the reasons set out below, I find the Decision reasonable. The application is therefore dismissed.

II. Issues and Standard of Review

[6] The Applicant argues that the ID: (1) engaged in speculation, (2) ignored evidence, and (3) misapplied the test for complicity set out by the Supreme Court of Canada in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*].

[7] Both parties submit that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] Reasonableness is a deferential but robust standard of review: *Vavilov*, at paras 12–13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov*, at para 15. A reasonable

decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88–90, 94, 133–35.

[9] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov*, at para 100.

III. Analysis

[10] The Decision was made pursuant to paragraph 45(*d*) of the *IPRA*, which is reproduced in Appendix A, along with paragraph 35(1)(*a*), the inadmissibility provision governing this matter, and the relevant provisions of the *Crimes Against Humanity and War Crimes Act*, SC 2000 c 24 [*CAH & WCA*].

[11] The parties agree that the test for complicity set out by the Supreme Court in *Ezokola*, which was developed in the context of section 98 of the *IRPA*, also applies to paragraph 35(1)(*a*) of the *IRPA*.

A. *Did the ID unreasonably engage in speculation and overstretch the scope of crimes against humanity?*

[12] The ID found that the SLPF is "multifaceted," and that the totality of the evidence established a "persuasive link" between the Applicant and the crimes of the SLPF. In the Applicant's view, the ID engaged in speculation and overstretched the scope of crimes against humanity. The Applicant argues that, according to the ID's logic, every member of the SLPF who has an elevated position would be complicit in crimes against humanity—and this, in the Applicant's submission, "simply cannot be."

[13] The Applicant acknowledges that the SLPF has a record of systemic abuses. However, the Applicant argues that this record did not allow the ID to conclude that that the "vast majority" of police officers are engaged in human rights abuses, that the force as a whole committed crimes against humanity, or that the Applicant was complicit in these crimes.

[14] The Applicant also acknowledges the Supreme Court's statement in *Ezokola* that "[a]n individual can be complicit without being present at the crime and without physically contributing to the crime": at para 77. However, the Applicant also points out the Supreme Court's insistence that "there must be evidence that the individual knowingly made at least a significant contribution to the group's crime or criminal purpose" and that "[p]assive membership would not be enough": *Ezokola,* at para 77.

[15] I find it necessary to break down the Applicant's arguments, as they appear to conflate the ID's findings about the SLPF having committed crimes against humanity and the Applicant's

contribution to these crimes. In this section, I will only address the ID's conclusion that the SLPF committed offences that would constitute crimes against humanity, as defined in the *CAH* & *WCA*. I will deal with the ID's findings about the Applicant's contributions later on.

[16] Contrary to the Applicant's assertion, I find that the documentary evidence before the ID amply supported its findings. This evidence came from reputable sources, including Amnesty International [AI], Human Rights Watch [HRW], and the United Nations High Commission for Refugees. The Federal Court has found these organizations to be "credible, reliable and independent sources of information": *Al Ayoubi v Canada (Citizenship and Immigration)*, 2022 FC 385 at para 32 and cases cited therein.

[17] As noted by the ID, these reports documented "widespread" and "systemic" acts of violence committed by the SLPF, such as torture, extrajudicial killings, enforced disappearances, and cruel, inhuman or degrading treatment, that would constitute offences enumerated and prescribed under the *CAH* & *WCH*, and the *Rome Statute of the International Criminal Court* [*Rome Statute*]. Specifically, based on AI reports, the ID noted that many people in police custody are subject to various forms of torture and cruel, inhuman or degrading treatment on an "almost daily frequency" even though such acts are expressly forbidden under Sri Lankan law. The ID further found, based on documentary evidence, that the SLPF "uses torture for diverse illicit purposes" such as compelling cooperation and confessions for minor offences. Basing itself on a HRW publication, the ID noted the SLPF's "widespread use of physical torture," and their use of inflicting torture as a "tool of coercion and cruelty." In addition to torture, which the Asian Human Rights Commission described as an "epidemic," the ID also referred to

documentary evidence of other related enumerated and proscribed crimes against humanity perpetrated by the SLFP.

[18] Importantly, the ID found, based on reports from these reputable sources, that the targets of torture are not limited to LTTE affiliates; they "have readily shifted to civilians all over the country from all walks of life." In light of all the documentary evidence, the ID concluded that there are reasonable grounds to believe that the SLPF perpetrated crimes against humanity.

[19] In my view, the ID conducted its analysis through the relevant legal framework (including the *CAH & WCA* and the Supreme Court of Canada's decision in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40) and its conclusion that there are reasonable grounds to believe the SLPF committed crimes against humanity was well supported by the evidence.

[20] As to whether the Applicant was complicit in these crimes because of his period of employment, the ID rightly noted that this issue must be determined using the *Ezokola* test, which I will address below.

[21] Finally, the Applicant argued that the ID made contradictory findings: on the one hand, that the "vast majority" of police officers are engaged in human rights abuses, and on the other hand, that the SLPF does not exist solely to commit crimes, but is "multifaceted." I reject this argument.

[22] Rather, I agree with the Respondent that the Court has accepted that there are police forces in the world which exercise a "normal" law and order function but often do so through brutal means: *Talpur v Canada (Citizenship and Immigration)*, 2016 FC 822 [*Talpur*] at paras 27–32, 37–38, 40; *Ali v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 698 [*Ali*] at paras 27–29; *Sarwary v Canada (Citizenship and Immigration)*, 2018 FC 437 at paras 43–49.

[23] While I note the ID cited *Fabela v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1028 [*Fabela*] in support, and I acknowledge the Applicant's position that *Fabela* has been rejected by the Supreme Court in *Ezokola* at paragraph 79, I find the ID's conclusion in this respect was supported by objective evidence. In particular, the ID noted, at paragraphs 279 and 280 of the Decision:

> [279] … The Asian Human Rights Commission stated that torture is the most common method of criminal investigation, and that it is unapologetically used by Police Officers and endorsed by Senior Officers. There are no real repercussions for Officers who engage in torture, and "[t]he consequences of all of the above are in inordinate escalation in acts of torture, their level of barbarity and concomitant brutality."
>
> [280] In this sense, the Panel is satisfied that there was widespread knowledge that the [SLPF] was regularly and pervasively engaged in the commission of crimes against humanity, and its members were widely perceived as being perpetrators of human rights violations….

[24] The Applicant does not point to any evidence that may contradict the ID's findings above, other than suggesting that the ID "overstretched" the scope of crimes against humanity. In view of the record and the ID's reasoning, I see no basis to interfere with its findings. Further, apart from its reference to *Fabela*, I find overall the ID appropriately and consistently referred to

and relied on *Ezokola* throughout the Decision. I do not find that referencing *Fabela* as it did gave rise to a reviewable error.

B. *Did the ID ignore evidence?*

[25] The Applicant argues that the ID ignored several pieces of cogent and relevant evidence before finding him complicit in crimes against humanity. Such evidence includes:

- A letter from the Royal Canadian Mounted Police [RCMP], which commends the SLPF for doing good work in the police fraud department and specifically names the Applicant, highlighting his "integrity, dedication and professionalism";
- The Applicant's deployment in a United Nations [UN] mission to East Timor, as part of his work with the SLPF; and
- Two United States Embassy letters addressed to the Applicant in his role at the SLPF. The first letter, from 2012, invites the Applicant to participate in a program in the USA concerning the rule of law regarding intellectual property. The second letter, from 2015, expresses gratitude for the Applicant's work, stating that he "went beyond the required" regarding the arrest of an alleged criminal, and expresses gratitude at the relationship between the USA and the SLPF.

[26] While the Applicant acknowledges that the Decision mentioned the RCMP letter and his deployment with the UN, he argues that the ID failed to engage with the letters as required by *Vavilov* and failed to assess whether he could both work for the UN as a member of the SLPF and be complicit in crimes against humanity.

[27] I find the Applicant's submission lacks merit. The ID was entitled to decide what weight, if any, to give to such evidence, and it is not the Court's role to reweigh the evidence. As the Respondent rightly points out, the Applicant has failed to demonstrate how his short-term service with an external organization informs his service with the SLPF.

[28] While the ID did not mention the letters from the USA government, it is trite law that decision-makers are presumed to have considered all of the evidence before them and are not obliged to refer to all of the evidence in their reasons. In any event, just like the Applicant's involvement with the UN and with the RCMP, the Applicant's service with the USA government is not determinative of the issues before the ID.

[29] In addition to the above, the Applicant argues that the ID failed to grapple with the implications of the threats he received because of his work to the question at hand. In the Applicant's view, the ID ought to have questioned whether the government would act in such a manner if a police officer were complicit in their agenda to abuse human rights and whether the evidence relating to the Applicant's departure from Sri Lanka instead illustrates that he was not.

[30] The Respondent argues that "victim" and "perpetrator" are not mutually exclusive categories, and that a person can be threatened by someone while also perpetrating crimes against humanity. I do not entirely agree. There may well be cases where the threats made against an individual would become relevant in assessing their potential exclusion under Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees*, as, for instance, where the threats are being made in retaliation of the individual's refusal to participate in the

commission of the crimes against humanity. That said, I reject the Applicant's argument that the ID erred by not considering the threats against him as he has not explained how being threatened by an individual politician excludes the possibility that he is also complicit in human right abuses.

C. *Did the ID misapply* Ezokola*?*

[31] The Supreme Court in *Ezokola* set out a three-part test for complicity, which requires a voluntary, significant and knowing contribution to a group's crimes: at paras 86–90. The Court also set out a non-exhaustive list of factors to consider in applying this test: *Ezokola* at para 91. They are:

i. the size and nature of the organization;

ii. the part of the organization with which the … claimant was most directly concerned;

iii. the … claimant's duties and activities within the organization;

iv. the … claimant's position or rank in the organization;

v. the length of time the … claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and

vi. the method by which the … claimant was recruited and the … claimant's opportunity to leave the organization.

[32] The Applicant disputes the ID's analysis of these factors, as well as the ID's assessment of whether his contributions were significant.

[33] I will first address the Applicant's submissions with respect to these factors.

(1) Size and nature of the organization

[34] The Applicant argues that the ID erred by acknowledging that the SLPF is multifaceted but nonetheless finding a link between him and the criminal activities of certain facets of the police force. The ID recognized that the Supreme Court in *Ezokola* distinguished between organizations that are multifaceted and those with a limited or brutal purpose, finding that the link between the contribution and the criminal purpose will be more tenuous in organizations that perform both criminal and legitimate acts.

[35] The Applicant cites *Ali* at paragraph 20, in which Justice Southcott accepted that "there could be circumstances in which an unintelligible inference from generalized evidence to a more particular conclusion could represent an unreasonable decision." The Applicant argues that the ID made an unintelligible inference because the evidentiary link needed to establish complicity is lacking.

[36] The Applicant also cites *Talpur* at paragraph 35, in which Justice Manson stated that a former police officer's "association with the Sindh Police Force and his knowledge and acquiescence towards the group's activities, without more, does not amount to complicity. Complicity requires a nexus between the person's conduct, and the group's crimes (*Ezokola*, at para 8)." The Applicant also argues that the evidence in *Talpur* supports Justice Manson's conclusion that "[t]his is not a case where the abuses are discrete, uncommon and perpetrated by few, wherein a link for finding individual complicity on these facts may indeed be more

tenuous": *Talpur* at para 39. However, according to the Applicant, the type of link found in *Talpur* is absent from the evidence here.

[37] In the Applicant's view, it was not open to the ID to conclude that the SLPF was multi-faceted and at the same time determine that it was a cohesive body. The Applicant argues that the ID failed to provide an evidentiary foundation for its theory that branches of the police force work together toward a common goal. As the Applicant points out, the ID accepted that he did not personally commit human rights violations, but it nonetheless found that he had knowledge that criminal activities took place generally.

[38] I am not persuaded by the Applicant's submissions. First, I note that the Applicant offers no basis for his position as to why a multi-faceted organization cannot be a cohesive body at the same time.

[39] As the Supreme Court in *Ezokola* explained:

> [94] … The size of an organization could help determine the likelihood that the claimant would have known of and participated in the crime or criminal purpose. A smaller organization could increase that likelihood. That likelihood could also be impacted by the nature of the organization. If the organization is multifaceted or heterogeneous, i.e. one that performs both legitimate and criminal acts, the link between the contribution and the criminal purpose will be more tenuous. In contrast, where the group is identified as one with a limited and brutal purpose, the link between the contribution and the criminal purpose will be easier to establish. In such circumstances, a decision maker may more readily infer that the accused had knowledge of the group's criminal purpose and that his conduct contributed to that purpose. That said, even for groups with a limited and brutal purpose, the individual's conduct and role within the organization must still be carefully assessed, on an individualized basis, to determine whether the contribution was

> voluntarily made and had a significant impact on the crime or criminal purpose of the group.

[40] Paragraph 94 of *Ezokola* thus reminds us that if the organization is multifaceted or heterogeneous, then the link between the contribution and the criminal purpose will be more tenuous. *Ezokola* does not stand for the notion that a multi-faced organization cannot also be considered a cohesive body for the purpose of assessing an individual's involvement in crimes against humanity.

[41] I also note that Justice Southcott found in *Ali* that the ID's use of evidence in that case was intelligible. As well, in *Talpur*, Justice Manson ultimately upheld the police officer's inadmissibility, while rejecting the notion that a finding of complicity effectively renders all police officers in Pakistan complicit.

[42] Here, the ID's analysis was consistent with the guidance of the Supreme Court. It began with a review of the historical and current mandate of the SLPF in dealing with both terrorism and crimes, and described at length the operation of the various arms of the SLPF and the "fluidity in their staffing arrangements." It went on to review the Applicant's knowledge about the SLPF and noted his acknowledgement of the crimes and human rights abuses committed by certain police units and police officers. The ID also noted the Applicant's contention that no such acts were committed by any officers under his area of responsibility nor by his peers.

[43] It was based on all the evidence, including the testimony given by the Applicant, that the ID concluded the SLPF is a "holistic entity with various arms that are interrelated" and "the

responsibility for the crimes of the organization would devolve, not only onto specialized Units particularly, but also onto the [SLPF] generally, or as a whole." The ID further concluded that the Applicant's service and oversight contributed to the SLPF's crime and criminal purpose, given the nature of the SLPF and the particular configurations present in this case. In my view, the ID's finding is one that is based on "an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85. I do not see any reviewable error.

(2) Part of the organization with which the person was most directly concerned

[44] The Applicant submits the ID engaged in pure speculation in finding that "there was a real possibility" that officers under his supervision committed human rights abuses and that regular police officers committed human rights violations, not only officers who worked in specialized units. According to the Applicant, this resulted in an absurd conclusion that the entire force, or at least those who have some authority, had a criminal purpose.

[45] I do not accept the Applicant's representations with regard to the ID's findings, which the Respondent rightly characterized as an "oversimplification." Instead, I agree with the Respondent that the ID's finding was not premised on the Applicant's employer alone, but on an analysis of the subjective evidence of his responsibilities against the objective evidence of the SLPF's practices.

[46] For instance, at paragraphs 135 to 140 of the Decision, the ID took a deep dive into the Applicant's work with the SLPF from 1992 to 2016, the roles that he played over the years, as

well as his duties and responsibilities. In particular, the ID noted the Applicant and the officers he supervised were responsible for "arresting criminals, interrogating them, maintaining public safety, and preserving law and order." Such a mandate "authorized their intrusion into personal spaces and encompassed actions such as the arrest and detention of citizens, the interrogation of persons, and the transfer of detainees to the Courts or to other specialized Police Units." These findings – which the Applicant did not challenge – allow the ID to reasonably conclude that the part of the organization to which the Applicant was directly connected did open him to a common purpose that would have contributed to the SLPF's crime and criminal purpose.

(3) Duties and activities within the organization

[47] The Applicant points out that after a lengthy and detailed review of his past positions and duties as a police officer, the ID found no evidence that he was himself involved in any human rights abuses. He had testified that he did not work in branches such as the Crime Detective Bureau, Criminal Investigations Department or Terrorism Investigation Department, which are the units notoriously associated with human rights violations. The Applicant disputes the ID's finding that he should have been aware that human rights violations were taking place.

[48] The Applicant submits that the ID did not have any credibility concerns with his testimony that (1) he never witnessed abuse during investigations, (2) nothing improper took place at his police stations, and (3) his unit was not involved in human rights violations to the best of his knowledge. In finding that the Applicant's expansive duties and activities within the police would have enabled him to contribute to a system that committed human rights abuses, the Applicant argues that the ID engaged in speculation by ruling that his mere position within the

police rendered him complicit. Alternatively, the Applicant argues that if the ID found his account implausible, such a finding was not made explicitly, nor was it supported in the reasons, contrary to *Vavilov*.

[49] I am unpersuaded by this argument as well, as I find the Applicant's arguments amount to an attempt to oversimplify the ID's findings to reach a result he seeks. The ID did in fact acknowledge there was no evidence that the Applicant himself has committed crimes against humanity, and the ID's analysis and reasons focused on whether the Applicant made a voluntary, significant and knowing contribution, as required by *Ezokola*.

[50] Once again, the ID devoted much of its analysis to dissecting the Applicant's responsibilities and duties throughout the years with the SLPF, noting in particular his work involving arrests and interrogations. The ID acknowledged the Applicant's evidence that he never worked or coordinated with the three aforementioned specialized units, nor did he hand over any suspects or detainees to these units. The ID also noted the Applicant insisting that he never witnessed the use of force during the arrests or interrogations in which he participated. However, given the Applicant's long history within the SLPF and his stated responsibilities and duties, the ID concluded that he was "well entrenched in the realm of law enforcement under the auspices of the [SLPF]" and that the Applicant's "expansive duties and activities within the organization would have enabled him, objectively, to contribute to a system that subjected people to acts of brutality or other human rights abuses."

[51] This conclusion was reasonably supported by the evidence before the ID, including the Applicant's own testimony and his employment records. The Applicant's disagreement notwithstanding, I find nothing unreasonable about the ID's findings.

(4) Position or rank in the organization

[52] The Applicant argues that the ID failed to account for the purpose of the admissibility provision when it found that his rank and position deserved a "strong weighting" because he occupied a high position in the police hierarchy with influence and oversight over officers. According to the Applicant, the purpose of the admissibility provision is to ensure that only people who knowingly and significantly contribute to human rights abuses are inadmissible, and paragraph 3 of *Ezokola* establishes that this does not include people who are guilty by association.

[53] I agree that only people who meet the *Ezokola* test for complicity, and not those who are guilty by association, should be caught by the inadmissibility clause. However, I see no evidence that the ID inappropriately found the Applicant complicit.

[54] The following passage of *Ezokola* explains the relevance of rank:

> [97] … A high ranking individual in an organization may be more likely to have knowledge of that organization's crime or criminal purpose. In some cases, a high rank or rapid ascent through the ranks of an organization could evidence strong support of the organization's criminal purpose. Moreover, by virtue of their position or rank, individuals may have effective control over those directly responsible for criminal acts, possibly engaging art. 28 of the *Rome Statute*.

[55] In this case, the evidence before the ID confirmed that the Applicant was a high-ranking official in the SLPF. As the Respondent points out, the evidence further confirmed that the Applicant supervised hundreds of officers throughout his career in different units.

[56] However, it is important to note that the ID's finding was not based on the Applicant's rank alone. Rather, the ID ascribed a "strong weighting … to the rank and position" the Applicant held in the SLPF in the context of the institutional support of torture and the Applicant's previously examined leadership role, assignments, duties and activities within the SLPF, including his role in conducting arrests and interrogations. This conclusion, in my view, was reasonable.

(5) Length of time in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose

[57] According to the Applicant, the ID erred by inferring that the Applicant was complicit because he was aware of the criminal purpose of the police, he remained there for over 20 years after acquiring this knowledge, and he failed to dissociate himself. The Applicant argues that the ID erred in conflating two distinct concepts: knowledge and contribution. In the Applicant's view, working for the police for over 20 years does not indicate that the Applicant was contributing to a criminal purpose, because evidence of contribution must exist in addition to the number of years employed and knowledge of human rights abuses.

[58] In my view, the Applicant's argument ignores the Supreme Court's comment in *Ezokola* at paragraph 98, stating that "it may be easier to establish complicity where an individual has been involved with the organization for a longer period of time."

[59] At the ID hearing, the Applicant himself testified that he was aware of the human rights abuses committed by other members and units within the SLPF, while denying his own role in these egregious violations. By his own account, he did not want to work for these specialized units, as he did not want to be "blamed." The ID found the Applicant was "in a place where he actually received, and had access to, information and updates about the [SLPF]'s actions, problems and international crimes, such as the arbitrary arrests and detentions, their ill treatment and torture of persons arrested and detained, and the extra-judicial killings." The Applicant has not challenged these findings.

[60] I find that the ID relied on the Applicant's many years of service, and his stated awareness of the crimes of the SLFP, and reasonably found that "acquiring knowledge of the crimes of the organization" without any real attempt to distance himself from those crimes "tips the scales towards a finding of his complicity."

(6) Method of recruitment and opportunity to leave the organization

[61] The Applicant argues that the ID erred in finding that he was complicit because he voluntarily joined the SLPF and he could have left sooner. According to the Applicant, the ID's reasoning was irrational because it had already determined that the SLPF is multi-faceted and yet it rendered the entire SLPF guilty of criminal activities. The Applicant also argues that the ID

cannot ignore the Applicant's exposure of government fraud as possible evidence of a lack of complicity. The Applicant submits that the ID ought to have considered these threats prior to reaching a complicity finding, given that the ID accepted the threats were based on his police work and precipitated his departure from the country. In the Applicant's view, as noted above, these threats could stand in direct contradiction to his complicity in human rights abuses.

[62] I have already rejected the Applicant's arguments for the reasons set out above at paragraphs 22, 29–30 and 37–40 and see no need to repeat my analysis.

(7) Conclusion on the ID's application of the *Ezokola* factors

[63] In conclusion, I find the ID did not err in its application of *Ezokola.*

D. *Did the ID unreasonably conclude that the Applicant's contribution was significant?*

[64] The Applicant acknowledges that the ID applied the correct test from *Ezokola* – i.e., that the contribution must be voluntary, significant and knowing – but argues that the ID did not justify its conclusion that his contribution was significant.

[65] According to the Applicant, the ID unreasonably leapt from his work with the police and knowledge of human rights violations in other departments, to a finding that he contributed to these crimes. In particular, the Applicant argues that the ID speculated when it found that he was "part of a well-oiled machine" and that he assigned officers to secure crime scenes for other units that abused human rights. In the Applicant's view, the ID reached an irrational outcome: that any

person who joined the police, worked their way up the ladder, and had nothing to do with elements or units that engaged in human rights abuses is complicit in crimes against humanity.

[66] The Applicant's arguments must fail because they ignore the bulk of the ID's analysis, some of which I have reviewed above.

[67] I also agree with the Respondent's argument that the ID reasonably articulated how the Applicant and those under his authority contributed to the SLPF's criminal purpose: they investigated, interrogated, and provided evidence in court. In the Respondent's view, the Applicant contributed significantly to a system of criminal processing where persons may have been victims of irregular investigative techniques and of torture by the SLPF.

[68] As noted in *Bedi v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1550 at para 26, "[a] significant contribution is less than a substantial contribution or an essential contribution (*Ezokola* at para 56) and is assessed with regard to the criminal purpose of an organization or a specific identifiable crime (*Ezokola* at para 87)."

[69] Also, as stated in *Ezokola*:

> [87] … As Lord Brown J.S.C. said in *J.S.*, to establish the requisite link between the individual and the group's criminal conduct, the accused's contribution does not have to be "directed to specific identifiable crimes" but can be directed to "wider concepts of common design, such as the accomplishment of an organisation's purpose by whatever means are necessary including the commission of war crimes": para. 38. This approach to art. 1F(a) is consistent with international criminal law's recognition of collective and indirect participation in crimes discussed above, as well as s. 21(2) of the Canadian *Criminal Code*, R.S.C. 1985, c. C-46, which

> attaches criminal liability based on assistance in carrying out a common unlawful purpose.

[70] The ID's analysis on this issue demonstrates its adherence to the *Ezokola* formulation of what constitutes significant contribution. Contrary to the Applicant's submission, the ID did not leap from his work with the police and knowledge of human rights violations in other departments to a finding that he contributed to these crimes. Instead, the ID engaged in a detailed analysis of the Applicant's career and voluntary service, before concluding that it represents a meaningful commitment to the organization and to the accomplishment of its cause. The ID noted that the Applicant attained ranks that displayed his hierarchical ascent, ascendancy and leadership in the SLPF; he had power, command and authority, and he directed the scope of SLPF functions with hundreds of subordinates. The ID also noted the Applicant's role in investigating and interrogating people, and turning over suspects to the Court to facilitate the persecution of suspects and accused. The ID concluded that the Applicant's contributions were significant in light of the totality of the evidence before it. In my view, this conclusion was reasonably justified in light of the factual and legal constraints in this case: *Vavilov*, para 99.

[71] While I acknowledge that the inadmissibility finding has a significant impact on the Applicant, particularly in light of the serious allegations of threats facing the Applicant and his family in Sri Lanka, I am not persuaded that the Decision was unreasonable, and must therefore dismiss the application.

IV. Conclusion

[72] The application for judicial review is dismissed.

[73] There is no question for certification.

JUDGMENT in IMM-6157-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

APPENDIX A

***Immigration and Refugee Protection Act* (S.C. 2001, c. 27)**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

Paragraph 45(d) of the *IRPA* reads as follows:

45 The Immigration Division, at the conclusion of an admissibility hearing, shall make one of the following decisions: […] **(d)** make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.	**45** Après avoir procédé à une enquête, la Section de l'immigration rend telle des décisions suivantes : […] **d)** prendre la mesure de renvoi applicable contre l'étranger non autorisé à entrer au Canada et dont il n'est pas prouvé qu'il n'est pas interdit de territoire, ou contre l'étranger autorisé à y entrer ou le résident permanent sur preuve qu'il est interdit de territoire.

Paragraph 35(1)(*a*) of the *IRPA* reads as follows:

35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for **(a)** committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*; […]	**35 (1)** Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants : **a)** commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la *Loi sur les crimes contre l'humanité et les crimes de guerre*; […]

Genocide, etc., committed outside Canada

6 (1) Every person who, either before or after the coming into force of this section, commits outside Canada

(a) genocide,

(b) a crime against humanity, or

(c) a war crime,

is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.

Génocide, crime contre l'humanité, etc., commis à l'étranger

6 (1) Quiconque commet à l'étranger une des infractions ci-après, avant ou après l'entrée en vigueur du présent article, est coupable d'un acte criminel et peut être poursuivi pour cette infraction aux termes de l'article 8 :

a) génocide;

b) crime contre l'humanité;

c) crime de guerre.

Conspiracy, attempt, etc.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.

Punition de la tentative, de la complicité, etc.

(1.1) Est coupable d'un acte criminel quiconque complote ou tente de commettre une des infractions visées au paragraphe (1), est complice après le fait à son égard ou conseille de la commettre.

Punishment

(2) Every person who commits an offence under subsection (1) or (1.1)

(a) shall be sentenced to imprisonment for life, if an

Peines

(2) Quiconque commet une infraction visée aux paragraphes (1) ou (1.1) :

a) est condamné à l'emprisonnement à perpétuité, si le meurtre

intentional killing forms the basis of the offence; and

(b) is liable to imprisonment for life, in any other case.

intentionnel est à l'origine de l'infraction;

b) est passible de l'emprisonnement à perpétuité, dans les autres cas.

Definitions

(3) The definitions in this subsection apply in this section.

crime against humanity means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (*crime contre l'humanité*)

[…]

Interpretation — customary international law

(4) For greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law,

Définitions

(3) Les définitions qui suivent s'appliquent au présent article.

crime contre l'humanité Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (*crime against humanity*)

[…]

Interprétation : droit international coutumier

(4) Il est entendu que, pour l'application du présent article, les crimes visés aux articles 6 et 7 et au paragraphe 2 de l'article 8 du Statut de Rome sont, au 17 juillet 1998, des crimes selon le

and may be crimes according to customary international law before that date. This does not limit or prejudice in any way the application of existing or developing rules of international law.

Interpretation — crimes against humanity

(5) For greater certainty, the offence of crime against humanity was part of customary international law or was criminal according to the general principles of law recognized by the community of nations before the coming into force of either of the following:

(a) the Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at London on August 8, 1945; and

(b) the Proclamation by the Supreme Commander for the Allied Powers, dated January 19, 1946.

droit international coutumier, et qu'ils peuvent l'être avant cette date, sans que soit limitée ou entravée de quelque manière que ce soit l'application des règles de droit international existantes ou en formation.

Interprétation : crimes contre l'humanité

(5) Il est entendu qu'un crime contre l'humanité transgressait le droit international coutumier ou avait un caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations avant l'entrée en vigueur des documents suivants :

a) l'Accord concernant la poursuite et le châtiment des grands criminels de guerre des Puissances européennes de l'Axe, signé à Londres le 8 août 1945;

b) la Proclamation du Commandant suprême des Forces alliées datée du 19 janvier 1946.

FEDERAL COURT

SOLICITORS OF RECORD

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