Federal Court  Cour fédérale

Date: 20230208

Docket: IMM-1417-22

Citation: 2023 FC 189

Montréal, Quebec, February 8, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

PAT OYAIMAMEN UKHUEDUAN

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, the Minister of Public Safety and Emergency Preparedness [Minister], asks for the judicial review of a decision rendered on January 12, 2022 [Decision] by the Immigration Appeal Division [IAD]. In its Decision, the IAD upheld the Immigration Division's

[ID] finding that the respondent, Ms. Pat Oyaimamen Ukhueduan, was not inadmissible to Canada on security grounds pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], by reason of her membership in the People's Democratic Party [PDP] of Nigeria.

[2] The Minister submits that the Decision is unreasonable because the IAD misinterpreted the concept of "member" of an organization that has engaged in subversion activities or terrorism pursuant to paragraph 34(1)(f) of the IRPA. Similarly, the Minister claims that the IAD erred in applying a temporal component to the analysis of the acts committed by the organization of which Ms. Ukhueduan was a member.

[3] This case raises two issues: 1) did the IAD err in concluding that Ms. Ukhueduan was not a member of the PDP prior to 2011?; 2) did the IAD err in applying a temporal component to the analysis of whether the PDP engaged in acts described at paragraph 34(1)(f) of the IRPA?

[4] For the reasons that follow, the Minister's application for judicial review will be granted. I agree with the Minister that the Decision is unreasonable because it relies on an improper analysis of paragraph 34(1)(f) of the IRPA and contradicts several binding precedents issued by the Federal Court of Appeal [FCA].

II. Background

A. *The factual context*

[5] Ms. Ukhueduan is a citizen of Nigeria. From 2006 to 2015, Ms. Ukhueduan was a member of the PDP in Nigeria. However, she did not become an "active" member until 2011, when she got involved in political activities.

[6] Due to alleged attacks from members of opposing political parties, Ms. Ukhueduan left Nigeria on August 28, 2015 and entered the United States. She lived there for over two years before claiming refugee protection in Canada in March 2018.

[7] Because of her membership in the PDP, Ms. Ukhueduan's refugee claim was deferred to the ID to determine whether she was inadmissible on security grounds. The Minister submitted that there were reasonable grounds to believe that the PDP is an organization that engages in acts of terrorism and of subversion against a democratic government, as contemplated by paragraphs 34(1)(b.1) and (c) of the IRPA.

[8] The ID found that, despite evidence that the PDP had knowledge of violent acts by its members, the Minister had not met his burden of establishing that there are reasonable grounds to believe that the PDP's leadership had the necessary intent to engage in acts of subversion against a democratic government. Accordingly, even though Ms. Ukhueduan admitted her membership in the PDP, the ID held that she was not a person covered by paragraph 34(1)(f) of the IRPA.

B. *Decision*

[9] On appeal, the IAD upheld the ID's decision, but for different reasons. The IAD held that Ms. Ukhueduan was associated with the PDP from 2006 to 2015, but could only be considered a "member" from 2011 given her more substantial involvement from that moment onwards. From 2006 to 2011, her role was limited to donating money to the PDP through her membership card, which the IAD found was not sufficient to conclude she was a "member" at that time, pursuant to paragraph 34(1)(f) of the IRPA.

[10] The IAD went on to state that, while the evidence demonstrates that the PDP committed subversive acts before the 2011 election in Nigeria, there is insufficient evidence to conclude that the PDP leadership engaged in the subversion of elections after 2011. According to the IAD, "[i]t is more accurate to speak of local subversive actions that were not the work of the organization as a whole" (Decision at para 26).

[11] In the same vein, the IAD found that the terrorist activities committed by the PDP were limited to the period before the 2011 elections, "a period when Ms. Ukhueduan was not an active member" (Decision at para 32).

[12] Consequently, as Ms. Ukhueduan was not an active member during the years when the PDP engaged in acts of terrorism and subversion, the IAD concluded that she could not be considered a "member" for the purposes of paragraph 34(1)(f) of the IRPA.

C. *The relevant provisions*

[13] The relevant IRPA provisions read as follows:

Rules of interpretation	**Interprétation**
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	**33** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
Security	**Sécurité**
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34 (1)** Emportent interdiction de territoire pour raison de sécurité les faits suivants :
…	[…]
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	**b.1)** se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
(c) engaging in terrorism;	**c)** se livrer au terrorisme;
…	[…]
(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).	**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).

D. *The standard of review*

[14] The Minister submits that the standard of reasonableness applies, and I agree (*Chowdhury v Canada (Citizenship and Immigration)*, 2022 FC 311 at para 7; *Abdullah v Canada (Citizenship and Immigration)*, 2021 FC 949 [*Abdullah*] at para 17).

[15] Reasonableness is the presumptive standard that reviewing courts must apply when conducting a judicial review of the merits of an administrative decision. Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcomes (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to 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" (*Vavilov* at para 85). A reasonable decision is justified with transparent and intelligible reasons that uncover an internally coherent reasoning (*Vavilov* at paras 86, 99). The reviewing court must be knowledgeable of the factual and legal constraints upon the decision maker (*Vavilov* at paras 90, 99), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[16] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. It must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

III. Analysis

A. *Member of an organization pursuant to paragraph 34(1)(f)*

[17] The Minister first argues that the IAD's analysis of Ms. Ukhueduan's membership with the PDP is flawed. I agree.

[18] As counsel for the Minister clearly established at the hearing before the Court, the evidence on the record leaves no doubt that Ms. Ukhueduan became a member of the PDP in 2006. Numerous pieces of evidence establish her membership, and both the decision of the ID and the IAD Decision expressly referred to the fact that Ms. Ukhueduan admitted being a member and holding a membership card of the PDP since 2006. Ms. Ukhueduan argued in her written and oral submissions that there is no indication anywhere in her refugee claim forms that she was a member of the PDP in 2006. This is incorrect. In her Basis of Claim form, she clearly stated that she had been "a member of Peoples Democratic Party (PDP) a democratic, political party in Nigeria, since 2006." This admission should have been sufficient for the IAD to conclude to her membership in the PDP, and the IAD was indeed aware of it. At paragraph 30 of the Decision, the IAD affirmed that "[t]he panel is aware that Ms. Ukhueduan has had a membership card since 2006, which is usually sufficient under the case law." Similarly, at paragraph 5 of its decision, the ID acknowledged that Ms. Ukhueduan had admitted to being a member of the PDP since 2006.

[19] However, in its Decision, the IAD observed that Ms. Ukhueduan was not an "active" member before 2011 and that, in the opinion of the IAD panel member, "her involvement prior

to 2011 does not meet the minimum threshold to be considered a member of an organization within the meaning of the Act" (Decision at para 13). The IAD also determined that getting a PDP membership was not "sufficient to be considered a member of an organization within the meaning of the Act" (Decision at para 8). Furthermore, the IAD opined that it "does not seem to be in the spirit of the Act to render people inadmissible when they are just ordinary donors with a membership card, as [Ms. Ukhueduan] was before 2011" and that "it is still appropriate to consider that a member [contemplated by paragraph 34(1)(f) of the IRPA] is someone who does somewhat more than just pay their dues" (Decision at para 30).

[20] With respect, those statements made by the IAD may well reflect the personal opinion of the IAD panel member, but they bluntly ignore the state of the law and create a new threshold for membership that flies in the face of FCA precedents. The IAD offers no explanation as to why it ignored the abundant case law on this issue, departed from it, and wrongly held that "a little more involvement is required in order to be considered a member." This constitutes a legal error justifying the Court's intervention.

[21] As the Minister correctly noted, the term "member" used at paragraph 34(1)(f) must receive an "unrestricted and broad interpretation" in order to meet the purposes of section 34 of the IRPA, which are public safety and national security (*Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 [*Poshteh*] at para 27; *B074 v Canada (Citizenship and Immigration)*, 2013 FC 1146 at paras 28–29). Informal participation or support can, in given circumstances, be sufficient to support a finding of membership (*Kanapathy v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 459 at para 34).

[22] Nothing in paragraph 34(1)(f) of the IRPA requires "a 'member' to be a 'true' member who contributed significantly to the wrongful actions of the group" (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 [*Kanagendren*] at para 22). On the contrary, it is trite law that the criteria for finding membership in an organization engaging in subversive acts or terrorism pursuant to paragraph 34(1)(f) are relatively easy to meet (*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). Actual or formal membership in an organization is not required, nor is an actual involvement or active participation in the wrongful subversive or terrorist activities of the organization (*Opu v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 650 at para 100). There is no need for a significant level of integration within the organization (*Poshteh* at paras 30–31).

[23] Moreover, a person's admission of membership in an organization is sufficient to meet the membership requirement within the meaning of paragraph 34(1)(f) of the IRPA, "[r]egardless of the nature, frequency, duration or degree of involvement" (*Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404 at para 11; see also *Khan v Canada (Citizenship and Immigration)*, 2017 FC 397 [*Khan*] at para 31). Once membership is admitted, it is membership for all purposes (*Al Ayoubi v Canada (Citizenship and Immigration)*, 2022 FC 385 at paras 24–25; *Khan* at para 31). In *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85, where the applicant admitted he was a member of the Amal Movement, the Court held the following at paragraph 57:

> Of note is that most of the case law requiring consideration of various criteria to determine if an applicant is a member in a terrorist organization, including all of the cases referenced above, is concerned with situations where the applicant had not admitted membership in a terrorist organization. That is not, and in my view

> distinguishes, the situation in this case where the Applicant has consistently acknowledged that he was a member of Amal.

[24] By referring to the nature of Ms. Ukhueduan's involvement in the PDP and opting to distinguish her situation based on her lack of "active" involvement in the PDP, the IAD's analysis and conclusion is clearly inconsistent with the jurisprudence regarding the unrestricted and broad interpretation of the term "member" for the purpose of paragraph 34(1)(f) of the IRPA.

[25] The Decision is therefore entirely unjustified in light of the legal and factual constraints which the IAD had to consider. In *Vavilov*, at paragraph 112, the Supreme Court of Canada was quite clear on the subject:

> Any precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide. An administrative body's decision may be unreasonable on the basis that the body failed to explain or justify a departure from a binding precedent in which the same provision had been interpreted. Where, for example, there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision maker to interpret or apply the provision without regard to that precedent.
>
> [Emphasis added.]

[26] Here, the IAD ignored the FCA precedents and the panel member opted to substitute his own view of the law, without any explanation or justification for disregarding the FCA's interpretation of paragraph 34(1)(f) of the IRPA.

[27] As the FCA repeatedly stated and very recently reminded, it is not the role of the courts to "fiddle around with the authentic meaning of the legislation passed by our elected representatives — for example, by injecting our own preferred policies or personal preferences into the analysis to skew the result" (*Canada (Commissioner of Competition) v Rogers Communications Inc*, 2023 FCA 16 at para 17, citing *Hillier v Canada (Attorney General)*, 2019 FCA 44 and *Williams v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252 at paras 41–50). Needless to say, it is not the role of administrative decision makers such as the IAD to do that either.

[28] This finding alone is sufficient to conclude that the Decision is unreasonable and to return it to the IAD for reconsideration.

[29] I would add, as the Minister noted, that the IAD seems to have forgotten that an applicant has the option of applying to the Minister under section 42.1 of the IRPA to overcome findings of inadmissibility. This exception is intended to remedy the harsh results that may arise in some cases from the broad interpretation which must be given to section 34 of the IRPA (*Abdullah* at para 26; *Yamani v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 1457 [*Yamani*] at paras 13–14).

B. *The analysis of acts of terrorism and subversion pursuant to paragraphs 34(1)(b.1) and (c) of the IRPA*

[30] As a second argument, the Minister submits that the IAD's error with respect to the analysis of Ms. Ukhueduan's membership carried over into its analysis of the PDP's acts of terrorism and subversion pursuant to paragraph 34(1)(f) of the IRPA. The IAD, said the Minister,

also erred by introducing the notion of temporality to the analysis of Ms. Ukhueduan's involvement with the PDP.

[31] Again, I agree with the Minister.

[32] There is no temporal component to the analysis contemplated in paragraph 34(1)(f) of the IRPA, whether for the organization or for its members. The wording of the provision refers explicitly to the past, present, and future activities of an organization. The Court has also established that paragraph 34(1)(f) does not require a temporal connection between membership and the subversive or terrorist acts of the organization:

> If there are reasonable grounds to believe that an organization engages today in acts of terrorism, engaged in acts of terrorism in the past or will engage in acts of terrorism in the future, the organization meets the test set out in s. 34(1)(f). There is no need for the Board to examine whether the organization has stopped its terrorist acts or whether there was a period of time when it did not carry out any terrorist acts.
>
> Membership by the individual in the organization is similarly without temporal restrictions. The question is whether the person is or has been a member of that organization. There need not be a matching of the person's active membership to when the organization carried out its terrorist acts.
>
> [Emphasis added.] (*Yamani* at paras 11–12)

[33] This principle was clearly confirmed by the FCA in *Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2010 FCA 274 [*Gebreab*]. In that case, the FCA affirmed that a temporal connection between an organization's acts of violence and an individual's membership

is not a requirement for inadmissibility under paragraph 34(1)(f): "[i]t is not a requirement for inadmissibility under s. 34(1)(f) of the IRPA that the dates of an individual's membership in the organization correspond with the dates on which that organization committed acts of terrorism or subversion by force" (*Gebreab* at para 3).

[34] As the IAD panel member did on his interpretation of "membership," he again ignored this binding precedent from the FCA as well as the specific wording of paragraph 34(1)(f) of the IRPA, which targets organizations that "engages, has engaged or will engage in acts" of terrorism or subversion. At paragraph 33 of the Decision, the IAD stated that despite the express wording of paragraph 34(1)(f) of the IRPA, "a time-related exception should be applied for the period during which Ms. Ukhueduan was not an active member, specifically, before 2011." The IAD's reasoning on this point is totally unjustified in light of the legal constraints it is subject to. The legislator certainly intended to include organizations that <u>have engaged</u> in acts of terrorism or subversion — and this was recognized by this Court. Considering that the IAD expressly acknowledged that the PDP had a history of engaging in such acts, it was not at liberty to limit its analysis to a particular time period and to conclude as it did without properly justifying its reasoning and explaining why the circumstances of Ms. Ukhueduan would be sufficient to circumvent the judgments from this Court and the language of the IRPA. The IAD, once again, departed from a binding precedent of the FCA and the statutory provision without any explanation as to why this was necessary in this particular case.

[35] Ms. Ukhueduan argues that the transition from subversive and terrorist activities to the PDP's call for free, nonviolent elections — which allegedly occurred after 2011 — demonstrates a fundamental change in circumstances, and that such change allowed the IAD to conclude that

she was not a member of an organization as contemplated by the meaning of paragraphs 34(1)(b.1) or (c) of the IRPA. To support her argument, Ms. Ukhueduan relies on *El Werfalli v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 612 [*El Werfalli*] — also cited in the Decision — and on *Abdullah*.

[36] I am not convinced by this argument as these two matters significantly differ from the case at bar and can easily be distinguished.

[37] In *Abdullah*, the Court held that there is an exception to the irrelevance of a temporal connection in the analysis under paragraph 34(1)(f) of the IRPA. A change in circumstances is relevant when an applicant joined an organization after it has undergone a substantial transformation (*Abdullah* at paras 28, 34). In the present case, Ms. Ukhueduan was already a member before the PDP "evolved towards democracy." As a result, the exception from *Abdullah* cannot apply to her situation.

[38] Similarly, in *El Werfalli*, the Court held that a temporal connection would be required when an organization gets involved in terrorist or subversive activities after the applicant left. Again, this case is of little relevance in Ms. Ukhueduan's situation, as she was already a member of the PDP when the acts of terrorism and subversion occurred. As the Court noted in paragraph 68, the situation of Ms. Ukhueduan differs from what was at stake in *El Werfalli*:

> Membership in an organization implies approval of the organization, its goals and activities. Where the individual's membership is contemporaneous with the terrorist activity, an inference may be drawn in that the person knew or ought to have known of the organization's terrorist activities. Even if the joining is innocent, there remains an implied approval of the organization.

[39] Again, these findings are sufficient to conclude that the Decision is unreasonable, as it is not based on an internally coherent reasoning nor is it justified in light of the applicable legal and factual constraints. Administrative decision makers that are constrained by settled decisions of the courts, and especially appellate courts, may find their decisions set aside if they ignore these constraints (*Vavilov* at paras 108–114; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para 33). That said, I am mindful of the fact that, even on departure from judicial precedents, the inquiry is always an inherently contextual one and the degree to which a precedent is constraining will depend on the nature of the precedent and the reasons given by the administrative decision maker for declining to follow it (*Vavilov* at paras 112–13; *Canada (Attorney General) v National Police Federation*, 2022 FCA 80 at paras 49, 54). Here, the IAD was totally silent on its reasons for declining to follow the FCA precedents.

C. *Proposed question for certification*

[40] The Minister suggests the following question for certification under paragraph 74(d) of the IRPA:

> For the purpose of determining whether a person is a member of an organization within the meaning of s. 34(1)(f) of the IRPA, is it necessary for the person to be actively involved in the organization when the organization engaged in the acts in question?

[41] This question about the scope of paragraph 34(1)(f) of the IRPA has two components: what is the required degree of membership of a member — whether he or she is actively involved or not —, and whether there is a possible temporal component in the analysis.

[42] In *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paragraph 46, the FCA described the criteria for a certified question as follows:

> This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para. 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211, at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186, at paras. 15, 35).

[43] Moreover, to be certified as a "serious question of general importance" under paragraph 74(d) of the IRPA, "the question must not have already been determined and settled in another appeal" (*Rinchen v Canada (Citizenship and Immigration)*, 2022 FC 437 at para 30, citing *Rrotaj v Canada (Citizenship and Immigration)*, 2016 FCA 292 at para 6; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at para 36; *Krishan v Canada (Citizenship and Immigration)*, 2018 FC 1203 at para 98; and *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at para 37).

[44] Further to my review of the case law, I am of the view that the FCA has already answered the proposed question for certification in three of the cases mentioned above. In *Poshteh* and in *Kanagendren*, the FCA answered the first component of the proposed question for certification on the degree of membership required, as it held that nothing in the text of paragraph 34(1)(f) of the IRPA requires a member to be actively involved or to be a member "who contributed significantly to the wrongful actions of the group" (*Kanagendren* at para 22). Turning to the second component, to repeat what I said earlier in these reasons, the FCA expressly held in *Gebreab* that "[i]t is not a requirement for inadmissibility under s. 34(1)(f) of the IRPA that the dates of an individual's membership in the organization correspond with the dates on which that organization committed acts of terrorism or subversion by force" (*Gebreab* at para 3). This resolves the second part of the proposed question for certification, namely its temporal component.

[45] Together, these precedents from the FCA therefore provide a satisfactory answer to the certification question proposed by the Minister. Accordingly, there are no grounds to certify the proposed question.

[46] At the hearing, counsel for Ms. Ukhueduan insisted on the importance of reducing what he perceives to be the too-broad definition of "member" under paragraph 34(1)(f) of the IRPA and invited the Court to reconsider the current state of the law. With respect, I am not convinced that this is a situation where the Court can, or should, do so.

[47] According to the principle of vertical *stare decisis* (*R v Comeau*, 2018 SCC 15 at para 26), "a lower court is bound by particular findings of law made by a higher court to which

decisions of that lower court could be appealed, directly or indirectly" (*Tuccaro v Canada*, 2014 FCA 184 at para 18). Adherence to well-established jurisprudence and legal rules supports the virtues of uniformity and predictability, two key principles that underlie the rule of law and the rule of vertical *stare decisis*. Of course, lower courts have the right to make a distinction based on the background facts before them. However, it is not open to them (or to administrative decision makers) to refuse to follow the decision of a higher court on the ground that they consider the decision of the superior court to be erroneous, that they disagree with it, or that another interpretation should have prevailed.

[48] Trial courts may reconsider settled rulings of higher courts in certain situations, specifically where a new legal issue is raised or where there is a change in the circumstances or evidence that "fundamentally shifts the parameters of the debate" (*Carter v Canada (Attorney General)*, 2015 SCC 5 [*Carter*] at para 44; *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 42).

[49] I concede that the law is constantly evolving, that courts can make incremental changes to the law in response to obligations of justice and fairness, and that "*stare decisis* is not a straitjacket that condemns the law to stasis" (*Carter* at para 44). However, the standard to review and revisit a question that has already been decided by appellate courts is not an easy one to meet. The rule of *stare decisis* is fundamental to our legal system and remains the presumed starting point for any analysis to settle the state of the law on a given point.

[50] In the case of Ms. Ukhueduan, no new legal issues were raised before the IAD or before me, and the circumstances or evidence in the record "[do not] fundamentally shift the parameters

of the debate" with respect to paragraph 34(1)(f) of the IRPA. It is therefore not a situation, in my view, where it is open to me (or where it was open to the IAD) to ignore and brush aside the settled FCA precedents on the interpretation of this provision.

[51] Following Ms. Ukhueduan's invitation to revisit the current state of the law would not lead to "a responsible, incremental change to the common law founded upon legal doctrine and achieved through accepted pathways of legal reasoning" (*Paradis Honey Ltd v Canada*, 2015 FCA 89 [*Paradis Honey*] at para 118). The result would, instead, "completely throw into doubt the outcomes of previous cases," something that the FCA has warned against (*Gligbe v Canada*, 2016 FC 467 at para 16, citing *Paradis Honey* at paras 116–118).

[52] Revisiting the scope of paragraph 34(1)(f) of the IRPA and the definition of "member" may be a question for the legislator. But it is certainly not for the IAD to turn the case law on its head, without any reasoning or justification.

IV. Conclusion

[53] For the reasons detailed above, the Minister's application for judicial review is granted. The matter is returned to the IAD for redetermination by a differently constituted panel, in accordance with the Court's reasons.

[54] There are no questions of general importance to be certified.

JUDGMENT in IMM-1417-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted, without costs.

2. The decision rendered on January 12, 2022, by the Immigration Appeal Division is set aside and the matter is referred back to a differently constituted panel for redetermination, in accordance with the Court's reasons.

3. No question of general importance is certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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