Federal Court Cour fédérale

Date: 20230306

Docket: IMM-2229-21

Citation: 2023 FC 309

Ottawa, Ontario, March 7, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

DELE JIMOH AKANBI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] On April 16, 2015, the applicant was driving on a highway in Austin, Texas when he was pulled over by a member of the Austin Police Department. A citizen of Nigeria, the applicant had come to the United States as a visitor in 2012 and taken up residence in the Austin area. There was one passenger in the car, Adeola Morenikeji Dosunmu, a Canadian citizen.

[2] After questioning both the applicant and Ms. Dosunmu, the officer concluded that he had grounds to search the vehicle and the applicant's belongings. He requested and obtained the applicant's consent to do so. Two other police officers arrived at the scene and assisted with the search. According to police reports, the officers located, among other things, multiple driver's licenses for both the applicant and Ms. Dosunmu, numerous bank cards and pre-paid debit cards, and "a plethora" of documents relating to banking information and money transfers. The banking documents were found throughout the vehicle. Police also reported finding a document later determined to be a fraudulent tax refund claim bearing the applicant's former residential address in Texas. Upon reviewing text messages on the applicant's phone, police found a text from one "Coker" that had been sent to the applicant earlier that day. It provided instructions concerning the transfer of $20,000 to various bank accounts.

[3] On the basis of what they found in the search, the officers concluded that the applicant and Ms. Dosunmu appeared to be involved in "some sort of fraud." After contacting a financial crimes detective with the Austin Police Department, the officers at the scene seized a number of the items they had found. As well, the officers were put in contact with Agent Witt, a local United States Postal Service ("USPS") investigator who was investigating a fraud ring with Nigerian and Canadian connections. (The applicant's vehicle had previously come to the attention of Agent Witt and an alert had been set up requesting law enforcement to notify him of any contact with the vehicle.)

[4] Agent Witt attended at the scene of the roadside stop a short time after being contacted. After seeing what the police had found, he concluded that the evidence was suggestive of identity theft. All of the items seized by police were turned over to Agent Witt.

[5] Agent Witt interviewed Ms. Dosunmu at the scene. According to Agent Witt's report of the interview, Ms. Dosunmu acknowledged that she was in possession of multiple pieces of identification bearing other people's personal information. She stated that the applicant (who she claimed to have met the week before at a nightclub) had taken several photographs of her and then returned with the pieces of identification. She did not know how the applicant had obtained the pieces of identification. Ms. Dosunmu stated that, on the applicant's instructions, she had used the identification to wire more than $20,000 on his behalf to Canada. He had told her that the funds related to the sale of motor vehicles.

[6] Two police officers were sent to the residential address in Austin the applicant had provided to police at the roadside (an address that also appeared on a number of documents found in the applicant's vehicle) – 305 East Yager Lane, Apartment 1122. They found two men there – Ibrahim Alu and Basit Akintonde. (It appears that Akintonde was simply visiting the apartment. He does not figure further in the narrative.)

[7] Alu agreed to be interviewed. He also agreed that the police and Agent Witt (who also attended) could search the apartment.

[8] Alu said he was renting the apartment with one George Ismail. He said the applicant was a friend who would stay there from time to time and that he had a key to the apartment. Upon searching the apartment with Alu's consent, investigators found, among other things, hundreds of pre-paid credit cards in a safe in a bedroom as well as medical forms containing personal identification information. Many of the documents were scattered around the apartment in plain view. Alu denied any knowledge of the cards or the documents and suggested that they may belong to the applicant. Investigators recovered similar documents from Alu's vehicle, which they also searched with Alu's consent.

[9] Meanwhile, the police at the scene of the roadside stop allowed the applicant and Ms. Dosunmu to go on their way.

[10] On June 12, 2015, the applicant entered Canada at Windsor, Ontario, using a fraudulent United States passport. On June 26, 2015, he made a claim for refugee protection in Canada under his true identity. In August 2016, the applicant and Ms. Dosunmu were married in Brampton, Ontario. In May 2017, the applicant, sponsored by Ms. Dosunmu, submitted an application for permanent residence in Canada.

[11] The US investigation into the stolen identity refund fraud ring continued. In April 2016, authorities returned to the East Yager Lane apartment and searched it as well as Alu's vehicle pursuant to a warrant. They also seized Alu's cell phone.

[12] In September 2017, the applicant, Ibrahim Alu, George Ismail, and George Najomo were indicted in the U.S. District Court (Western District of Texas, Austin Division) and charged with various offences relating to identity theft and fraud. A warrant for the applicant's arrest was issued but has not been executed. The other three individuals were all arrested in Texas.

[13] On April 9, 2019, an officer with the Canada Border Services Agency ("CBSA") wrote a report under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") stating the officer's opinion that the applicant is inadmissible under paragraph 37(1)(a) of that Act as a result of his membership in a criminal organization – namely, the identity theft ring in Texas. The report was referred to the Immigration Division ("ID") of the Immigration and Refugee Board of Canada for an admissibility hearing.

[14] The hearing before the ID took place on February 11, 2021. While not necessarily conceding the existence of a criminal organization as alleged, the applicant did not seriously contest this either. Rather, his position was that there was insufficient credible or trustworthy evidence establishing his involvement in the alleged criminal activities of the organization.

[15] In a decision delivered orally on March 19, 2021, the ID member found that the applicant is inadmissible under paragraph 37(1)(a) of the *IRPA* as a result of his membership in a criminal organization. She also issued a deportation order. As a result of this determination, on April 16, 2021, the applicant's claim for refugee protection was terminated under paragraph 104(2)(a) of the *IRPA*. As well, on April 23, 2021, the applicant's application for permanent residence was refused on the same basis.

[16] In the present application, the applicant seeks judicial review of the ID's determination that he is inadmissible to Canada on grounds of organized criminality. He has also applied for judicial review of the refusal of his application for permanent residence (IMM-3143-21) and of the termination of his claim for refugee protection (IMM-3456-21). IMM-3143-21 was heard together with the present matter. It will be addressed in separate reasons released concurrently with these reasons. IMM-3456-21 has been held in abeyance pending the determination of the present matter.

[17] As I explain in the reasons that follow, the applicant has not persuaded me that the ID's decision is unreasonable. While the ID's reasons for finding him inadmissible due to organized criminality are far from perfect, perfection is not the standard (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 91). I agree with the applicant that the ID made several unreasonable factual determinations but none are sufficiently material to call the reasonableness of the decision as a whole into question. Furthermore, read in light of the evidence before it, the positions of the parties, and the nature of its statutory task, the ID's reasons adequately explain the bases of its decision. Despite the flaws in the decision, it is possible to discern a reasoned explanation for the result that rests on a rational chain of analysis and a reasonable assessment of the evidence. This is sufficient to meet the reasonableness standard (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 30; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at para 7). This application for judicial review will, therefore, be dismissed.

II. BACKGROUND

A. *The Minister's Allegations*

[18] The Minister's allegations in support of the contention that the applicant is inadmissible on the basis of organized criminality were the same as those set out in the US indictment.

[19] In summary, the Minister alleged that the applicant (along with his three co-conspirators in the United States) obtained personal identification information from unsuspecting third parties in order to commit stolen identity fraud – including by submitting fraudulent tax returns claiming refunds and by obtaining credit cards in the names of the victims. This was accomplished by collecting the personal information of patients who had attended at medical facilities in the Austin, Texas area. The group had access to these facilities through a cleaning company owned and operated by George Najomo, one of the co-accused on the US indictment.

[20] It was alleged that Najomo would copy patient information forms and provide the forms to his co-conspirators. Information obtained in this way would then be used to claim fraudulent tax refunds and for other fraudulent purposes. For example, it was alleged that in 2015, 56 fraudulent tax returns using stolen personal identification information were filed requesting refunds totalling $827,230. These refunds were to be deposited directly into a bank account associated with at least one of the bank cards seized from the applicant on April 16, 2015. (None of these refunds were actually paid because the returns had been flagged as being suspected to be fraudulent.) Furthermore, personal information on patient information forms found in the East Yager Lane apartment was linked to 50 suspicious tax returns filed in 2014 and 2015. As

well, examination of pre-paid debit cards that had been seized from the applicant on April 16, 2015, determined that 18 of them had been created using the personal identifying information of other individuals.

[21] On the basis of these allegations, the applicant and his three co-accused were charged in the United States with conspiracy to fraudulently obtain funds using stolen personal identification information. The conspiracy was alleged to have continued from at least January 2013 until at least April 28, 2016. In addition, the applicant was separately charged with opening two bank accounts fraudulently using the stolen personal identity information of two individuals and with submitting a fraudulent tax return in the name of a third individual. The other three alleged co-conspirators also faced separate charges in the same indictment.

[22] In support of the allegation that the applicant is inadmissible under paragraph 37(1)(a) of the *IRPA*, the Minister tendered the following documentary evidence before the ID:

a) Copies of first-hand narrative reports from the police officers involved in the events on April 16, 2015 (the day the applicant's car was stopped and searched and Alu's apartment was also searched) as well as from Agent Witt, the USPS investigator who attended at the scene of the various searches that took place that day.

b) Copies of various administrative documents generated by the Austin Police Department in connection with the investigation.

c) Copies of photographs of various credit and debit cards.

d) Copies of transaction records for various Bank of America bank accounts.

e) A redacted patient information sheet with handwritten notes on it.

f) A copy of an affidavit sworn on April 21, 2016, by Jonathan Gebhart, a Special Agent with the Internal Revenue Service Criminal Investigation Division. The affidavit was prepared in support of an application for search warrants for 305 East Yager Lane, Apartment 1122, Austin, Texas (identified as the residence of George Ismail and Ibrahim Alu) and for Alu's vehicle. It provided a detailed account of the investigation into the applicant and other individuals allegedly involved in the identity theft and fraud ring up to the date the affidavit was sworn. This included analysis of the evidence that had been seized in April 2015 from the applicant, his vehicle, and the East Yager Lane apartment.

g) A copy of the US indictment dated September 19, 2017, charging the applicant and his co-accused.

h) A copy of the US warrant for the applicant's arrest dated September 19, 2017.

i) A copy of a press release from the United States Attorney's Office (Western District of Texas) dated September 27, 2017, announcing the arrests of Najomo, Alu, and Ismail. The press release also stated that authorities were "still looking to arrest" the applicant.

j) Copies of miscellaneous filings from the criminal proceedings against the applicant's co-accused. This included a memorandum filed on behalf of Alu at his sentencing hearing in which it was contended that the applicant was the "schemer in chief" of the identity fraud ring and that he had "conned everyone including his victims and co-conspirators."

k) A copy of a press release from the United States Attorney's Office (Western District of Texas) dated April 27, 2018. The press release states that in January 2018 Alu and Ismail

had each pled guilty to one count of conspiracy to commit fraud. It also states that on April 27, 2018, Alu had been sentenced to imprisonment for eight years and Ismail had been sentenced to imprisonment for seven years. As well, both were ordered to pay joint and several restitution in the amount of $1,358,489. (Other documents suggested that Najomo had absconded after being released on bond. There was no information in the record concerning any final disposition of the charges against him.)

B. *The Applicant's Response to the Allegations*

[23] The applicant denied having committed the criminal conduct alleged by the Minister.

[24] Prior to the hearing, the applicant produced certificates from Peel Regional Police, the RCMP, the FBI, and the State of Texas confirming that he did not have a criminal record in either Canada or the United States.

[25] The applicant also produced court filings relating to his divorce proceedings in Texas. The documents indicated that, while living in Texas, the applicant had married in July 2013 but he and his wife had separated in February 2015 and divorce proceedings were commenced at that time. The applicant's wife had sought divorce on the grounds that the applicant had failed to disclose to her that he was already married to another woman in Nigeria. These documents were meant to corroborate the applicant's account that he had stayed at the East Yager Lane apartment only occasionally because of his separation from his wife, as set out below. According to the applicant's testimony, he had had to move out of the last place he shared with his wife in April 2015.

[26] The Minister called the applicant as a witness in the ID proceeding.

[27] The applicant testified that he had arrived in the United States in 2012 as a visitor. He did not have status there but the plan was for his wife to sponsor him. The applicant and his then wife had lived together at two different addresses in Texas – the first for about three years and the second for only a few months before they separated. The applicant testified that he was friends with Ibrahim Alu and that Alu had let him stay at his apartment in April 2015 when he had nowhere else to go after he and his wife separated. The applicant denied ever having had a key to the apartment. He testified that he knew George Ismail, who was Alu's roommate. He also acknowledged having met George Najomo, a friend of Alu's who had visited the apartment a couple of times when he was there, but said he knew nothing about his cleaning business.

[28] The applicant agreed that he had been stopped by police in Austin, Texas on April 16, 2015, and that Ms. Dosunmu was with him. He testified that Ms. Dosunmu was visiting friends in Austin and the two of them had only just met. He denied that he was staying at the East Yager Lane apartment at that particular time (although, as noted above, he stated that he had stayed there for approximately two weeks earlier that month). He agreed that the police had searched his car with his permission. However, the applicant denied all knowledge of the items the police claimed to have found in the search. In fact, he denied that anything at all had been found by police or seized from his car or his person. He denied consenting to the search of any of his electronic devices and, in any event, the police did not search his devices that day. He also stated that Ms. Dosunmu had told him that she did not say the things attributed to her by Agent Witt in his report. (Ms. Dosunmu did not testify at the ID hearing.)

[29] The applicant also testified that, when he stayed at the East Yager Lane apartment, he never saw any of the items investigators claimed to have found there on April 16, 2015. In any event, he knew nothing about these things. Contrary to Alu's suggestion to the police, the applicant denied that any of the items police found in the apartment belonged to him. When asked if he had ever observed anything suspicious going on in the apartment, the applicant stated only that there were often different people coming and going. He did not know what they were doing because, when he was there, he minded his own business. It was only in retrospect, having read the Minister's disclosure, that he started to think this might be suspicious.

[30] The applicant denied having had any contact with Alu or Ismail since he left the United States for Canada in June 2015.

C. *The Submissions of the Parties*

[31] Citing *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, counsel for the Minister acknowledged that the burden was on the Minister to establish reasonable grounds to believe that the applicant is inadmissible on the basis of organized criminality under paragraph 37(1)(a) of the *IRPA*. Counsel explained that the reasonable grounds to believe standard is "not a high standard of proof and requires something more than a mere suspicion but less than [the] standard applicable in civil matters which is balance of probabilities." Counsel for the Minister submitted that, in essence, "reasonable grounds to believe exist where there is an objective basis for the belief which is based on compelling and credible information." Counsel for the Minister also noted section 173 of the *IRPA*, which provides that the ID is "not bound by any legal or technical rules of evidence" and that it "may

receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances."

[32] After reviewing the allegations summarized above, as support for the Minister's allegation that the applicant is inadmissible due to organized criminality, counsel for the Minister placed particular reliance on (1) the Austin Police Department reports relating to the April 16, 2015, traffic stop; (2) the investigation report prepared by Agent Witt (the USPS investigator); (3) the affidavit of Special Agent Gebhart (the IRS investigator) in support of the application for the search warrant; and (4) the US indictment.

[33] Counsel for the Minister submitted that, when read in chronological order, these documents "outline the genesis of the investigation into the fraudulent activity." The various reports by investigators "are internally cohesive and reflect very similar information," tracing the evidence of the fraudulent activity from its seizure to its analysis by investigators. Counsel submitted that USPS Agent Witt and IRS Special Agent Gebhart had extensive and specialized training and experience in fraud investigations. Further, they had "no vested interest in the outcome of this matter." On the other hand, the applicant "does very much have a vested interest in the outcome of this proceeding." Counsel observed that while the applicant "denies his wrongdoing he has proffered no supporting documentation." Counsel submitted that the evidence adduced by the Minister should be given greater weight than the applicant's testimony.

[34] Counsel for the Minister also noted that, to establish inadmissibility, it is not necessary to establish that criminal charges have been proven or even laid (although in the present case the evidence established that the applicant had been charged in the United States).

[35] In sum, according to counsel for the Minister, the evidence adduced by the Minister is credible and trustworthy and it establishes all the requisite elements of inadmissibility under paragraph 37(1)(a) of the *IRPA* on the applicable standard of proof of reasonable grounds to believe. The applicant's evidence, on the other hand, is neither credible nor trustworthy and should be rejected.

[36] In response, counsel for the applicant (not Mr. Kingwell) submitted that the Minister had failed to adduce credible or trustworthy evidence establishing the applicant's membership in the criminal organization. According to the applicant's counsel, the Minister "posits that the U.S. government has put forward all these affidavits but these affidavits contain statements that are naked, uncorroborated, without any witness brought before Madam Member today to test the veracity of this evidence." The Minister's evidence is only "circumstantial" and "does not show an actual involvement." As well, the various reports relied on by the Minister were inherently unreliable because there were "several inconsistencies" between them, in particular relating to events on April 16, 2015. Furthermore, doubt was cast on the credibility and trustworthiness of the police reports of the traffic stop because the initial officer had engaged in racial profiling when he decided to pull the applicant over. Counsel also contended that the Minister's case was deficient because none of the items allegedly seized from the applicant on April 16, 2015, had

been produced. Moreover, there was no original documentation to establish the applicant's connection to the various bank cards attributed to him or to the accounts he allegedly controlled.

[37] Counsel for the applicant contended that, to the extent that the evidence demonstrated the existence of a fraud ring, it was Alu who was the principal perpetrator. Alu was trying to shift blame onto the applicant, who was wholly innocent of any involvement. The applicant's counsel also noted that the criminal activity had continued in Texas well after the applicant had relocated to Canada.

[38] In sum, according to counsel for the applicant, the evidence relied on by the Minister "reeks of a crusade to point fingers at [the applicant] without evidence to support or corroborate it." In the absence of direct testimony to support the Minister's allegations, the applicant's denials should be preferred over the Minister's evidence. Finally, the applicant's counsel pointed to the applicant's "clean criminal record" in Canada and, especially, in Texas, "where this indictment supposedly exists."

III. DECISION UNDER REVIEW

[39] The presentation of evidence and submissions was completed on February 11, 2021. The ID member reserved her decision. She delivered her decision orally on March 19, 2021. The member concluded that the Minister had established that the applicant is inadmissible under paragraph 37(1)(a) of the *IRPA* on the basis of organized criminality.

[40] The member's reasons appear to have been delivered extemporaneously. They are poorly organized and, at times, are difficult to follow. Nevertheless, the following key findings concerning the evidence can be discerned in the reasons:

- The occurrence reports by members of the Austin Police Department, the report by USPS Agent Witt, and the affidavit sworn by IRS Special Agent Gebhart are credible and trustworthy. The information provided in these documents was "logical and internally consistent" and "those involved in the investigation appear to be experienced, well-educated in their fields, and therefore most likely very knowledgeable." Accordingly, the member accepted as accurate the accounts set out in these documents of the search of the applicant's vehicle and belongings on April 16, 2015, as well as the search of the East Yager Lane apartment the same day. The member also accepted that the documents established the existence of a large scale stolen identity fraud ring and that the evidence seized from the applicant implicated him in that ring.

- There was no basis to conclude that the applicant had been targeted on April 16, 2015, because of racial profiling on the part of the police. On the contrary, by his own admission, the applicant's manner of driving had given the police a valid basis to pull him over.

- On April 22, 2015, the IRS deposited a fraudulent tax refund to a Bank of America bank account associated with a pre-paid debit card that had been found in the applicant's possession during the April 16, 2015, traffic stop. The member found this evidence to be credible and trustworthy and to link the applicant directly to the fraudulent activities in question.

- Text messages extracted from Alu's cell phone (which had been searched in 2016 pursuant to the warrant obtained by Special Agent Gebhart) established communications between Alu, Ismail, and the applicant concerning a Mastercard obtained fraudulently in 2016. This "kind of information" confirmed the relationship between the applicant and the others and indicated that the applicant was "in fact engaged and aware of the fraudulent activity that was going on."

- On three occasions the applicant was observed in his vehicle outside a residence "believed to be directly linked to the Canadian-Nigerian fraud ring operating in Austin, Texas."

- The sheer number of documents and other evidence seized by the police "suggest that more likely than not there have been numerous instances where [the applicant has] engaged in the fraudulent activities alleged in the US indictment."

- Alu's allegation that the applicant is the leader of the criminal organization is not credible given the evidence that he was "capable of engaging in very significant misrepresentation" in his refugee claim and his overall lack of credibility. The evidence suggests instead that Alu was the leader of the organization and the applicant was second-in-command.

- The police clearance certificates produced by the applicant were not inconsistent with the Minister's allegations given that there was no suggestion that the applicant had been arrested or convicted in the United States. Furthermore, in the absence of information about the exact parameters of the records searches, the certificates did not raise any issue

about the credibility or trustworthiness of the Minister's evidence that there are outstanding charges against the applicant in Texas.

- For several reasons, the applicant was "lacking in credibility."
    - The applicant's denial of knowledge of the group and its involvement in fraud was "very difficult to believe under the circumstances" and "there is credible and trustworthy evidence to suggest otherwise."
    - With respect to the traffic stop on April 16, 2015, the member found "the evidence provided by the Minister's counsel to be a more accurate and trustworthy account of what actually transpired" than the applicant's account. The member found it "difficult to believe" that the police would say there were documents in the applicant's car when there weren't. In short, the police reports describing the discovery of incriminating evidence in the applicant's car were more believable than the applicant's denial.
    - With respect to Ms. Dosunmu's statement to Agent Witt on April 16, 2015, the member found that Agent Witt had recorded it accurately, Ms. Dosunmu would have told the applicant what she had said to Agent Witt, and the applicant's claim that she had denied saying anything to Agent Witt "impacts on [the applicant's] credibility." This was because the member did not accept that Ms. Dosunmu "would have been untruthful" to the applicant.
    - The applicant's claim that he did not make a refugee claim in the United States because he did not know he could was not credible given how widely known the US

refugee process is and given that he had lived with two individuals (Alu and Ismail) who had made refugee claims there. Since they were all friends, the member assumed that Alu and Ismail would have told the applicant about their own refugee claims. Likewise, the applicant's claim that he did not make a refugee claim in the US because he feared being detained was not credible because the applicant would have known that neither Alu nor Ismail had been detained even though they had sought refugee protection. The applicant had been untruthful in providing these explanations.

- The member found that the applicant had likely stayed at the East Yager Lane apartment "over a rather significant period of time" and not only occasionally, as he had testified. It was therefore "somewhat unbelievable" – even "extremely difficult to believe" – that the applicant would have lived at the East Yager Lane apartment but not have noticed the hundreds of bank cards and patient information forms scattered around the apartment in plain view, as observed by investigators on April 16, 2015.

- Given that documents connected to fraudulent activities were found in the applicant's car and that he was living with two friends who were subsequently convicted of fraud, it was "very difficult to believe" that the applicant was not involved in fraudulent activity as well.

[41] On the basis of this assessment of the evidence, the member concluded that the applicant was a member of a criminal organization consisting of himself, Alu, Ismail and Najomo and that

the organization had engaged in various fraudulent activities employing stolen personal identification information.

[42] In summary, the member found that the Minister had provided evidence found to be credible and trustworthy "with respect to the allegation" and, on the basis of this evidence, the member was satisfied that the Minister had discharged "the onus of proving the allegation is correct." Accordingly, the member concluded that the applicant is inadmissible due to organized criminality under paragraph 37(1)(a) of the *IRPA*.

IV. STANDARD OF REVIEW

[43] The parties agree, as do I, that the ID's decision should be reviewed on a reasonableness standard. Judicial review on this standard considers not only the outcome but also the justification for the result (where reasons are required) (*Canada Post Corp* at para 29). 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). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[44] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). At the same time,

reasonableness review is not a rubber-stamping process; it remains a robust form of review (*Vavilov* at para 13). The reasonableness of a decision may be jeopardized where the decision maker "has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[45] The onus is on the applicant to demonstrate that the ID's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

V. ANALYSIS

[46] The applicant challenges the reasonableness of the ID's decision on several grounds that I would summarize as follows: (1) the member failed to explain in a transparent and intelligible way why she found the documents tendered by the Minister to be credible and trustworthy and failed to link many key findings of fact to the evidence before her; (2) the member's adverse findings with respect to the applicant's credibility are unreasonable because they are based on unfounded assumptions, irrelevant considerations, and inconsistencies with other evidence whose credibility and trustworthiness was not explained; and (3) the member failed to explain in a transparent and intelligible way why the evidence found to be credible and trustworthy provided reasonable grounds to believe that the facts constituting inadmissibility occurred.

[47] Before addressing these grounds, it may be helpful to set out the legal framework within which a determination of inadmissibility under paragraph 37(1)(a) of the *IRPA* is made.

A. *The Legal Framework*

[48] The Minister alleged that the applicant is inadmissible to Canada on grounds of organized criminality under paragraph 37(1)(a) of the *IRPA*. This provision states:

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;	**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;

[49] Thus, to establish that a foreign national or permanent resident is inadmissible under paragraph 37(1)(a) of the *IRPA*, the Minister must establish (1) that there is (or was) a criminal organization (as defined) and (2) that the person in question is (or was) a member of it. The

Minister bears the onus of establishing inadmissibility (*Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 at para 14).

[50] As noted above, the applicant did not seriously contest that there was an identity theft and fraud ring in Texas (as alleged) or that it met the definition of criminal organization. Rather, his position was that the Minister had failed to adduce credible or trustworthy evidence establishing his involvement in the activities of the group.

[51] Section 33 of the *IRPA* sets out the rules of interpretation that govern, *inter alia*, determinations under paragraph 37(1)(a) of that Act. It states:

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.

[52] *Mugesera* instructs that, in the present context, the "reasonable grounds to believe" standard "requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities [citations omitted]" (at para 114). In essence, "reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information" (*ibid.*). While the evidentiary threshold is not meant to be an onerous one for the Minister, at the same time, the reasonable grounds standard "operates as a protection against arbitrary, capricious or ill-founded state action" and is "an

important and meaningful threshold" (*Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 349 at para 21; *Pascal* at para 16).

[53] In making its determination, the ID "is not bound by any legal or technical rules of evidence" and "may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances" (*IRPA* paragraphs 173(c) and (d)). Thus, the ID may consider evidence from sources that may not be acceptable in a court (*Bruzzese v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 230 at para 50; *Pascal* at para 15). This can include police reports (*Pascal* at paras 20-37), newspaper articles (*Bruzzese* at paras 57-58) and even a "true crime" book by a journalist (*Pascal* at paras 53-62), as long as the decision maker determines that the source is credible or trustworthy. Of course, this discretion to receive evidence must be exercised reasonably (*Pascal* at para 15; *Stojkova v Canada (Citizenship and Immigration)*, 2021 FC 368 at para 15) and any exercise of discretion "must accord with the purposes for which it was given" (*Vavilov* at para 108).

[54] While the ID is thus granted a certain latitude in evidentiary matters, "the threshold of reasonable grounds to believe does not justify an absence of facts to ground the reasonable belief" (*Ariyarathnam v Canada (Citizenship and Immigration)*, 2018 FC 162 at para 70). A finding of inadmissibility must be based on facts supported by evidence and those facts must give rise to more than a mere suspicion (*Demaria v Canada (Citizenship and Immigration)*, 2019 FC 489 at para 66).

[55] In short, to conclude that an allegation of inadmissibility is established, the ID must conclude that the evidence it finds to be credible or trustworthy is compelling and credible and, further, that it provides an objective basis for the conclusion that the person concerned is inadmissible. To be reasonable, these determinations must be justified, transparent and intelligible.

B. *The Grounds for Review*

(1) The ID's Assessment of the Minister's Evidence

[56] The applicant contends that the ID's assessment of the evidence relied on by the Minister to establish his inadmissibility lacks justification, transparency and intelligibility. In particular, the applicant submits that the ID treated all the evidence as equally relevant to the issue of whether he engaged in the conduct alleged against him when in fact the relevance of that evidence varies significantly. This, in turn, calls into question the reasonableness of the ID's determination that the evidence relied on by the Minister is credible and trustworthy. Moreover, according to the applicant, the member failed to link many of her key findings of fact to the evidence before her.

[57] As I will explain, while I agree with the applicant that the ID's assessment of the Minister's evidence is not as transparent or intelligible as it could have been, I do not agree that this undermines the overall reasonableness of the decision.

[58] The Minister submitted several different types of evidence to support the contention that the applicant is inadmissible due to serious criminality. As discussed above, section 173 of the *IRPA* does not impose any limitations on the types of things that the ID may receive as evidence. The only requirement is that before a piece of evidence may be the basis of a determination by the ID, it must be considered "credible or trustworthy in the circumstances." Nevertheless, in assessing the evidence presented to it, the ID must always consider what fact a piece of evidence is being offered to establish – in other words, the relevance of the evidence. This is because the same piece of evidence could be credible or trustworthy with respect to one fact but not with respect to another. For example, the press release dated September 27, 2017, could be credible or trustworthy evidence of the fact that Alu, Ismail, and Najomo had all been arrested in Texas and that a warrant had been issued for the applicant's arrest but not credible or trustworthy evidence that the allegations against the applicant are true.

[59] In submissions to the member, counsel for the Minister placed particular reliance on the police reports and the report from Agent Witt concerning the events on April 16, 2015, the affidavit in support of the search warrant, and the US indictment. In concluding that the Minister had established that the applicant is inadmissible due to organized criminality, the ID member treated these different types of evidence equally as evidence of the truth of the allegations against the applicant without considering any inherent limitations in them.

[60] The applicant challenges the reasonableness of the member's reliance on two related items of evidence to support the member's findings of fact: (1) the US indictment and (2) evidence that Alu and Ismail had pled guilty to the conspiracy count in that indictment.

[61] Looking first at the reliance on the indictment, the member relied on this document to find not only that the applicant had been charged in the United States but also as evidence of a key fact implicating the applicant in the fraud scheme – namely, that Alu's phone contained text messages with the applicant relating to a fraudulently obtained MasterCard. The member found that "this kind of information confirms the relationship between [the applicant] and Mr. Alu, as well as Mr. Ismail, indicating that [the applicant was] in fact engaged and aware of the fraudulent activity that was going on." However, no other evidence to support this allegation in the indictment (e.g. a police report of the search of Alu's phone) was produced.

[62] While the indictment could be credible or trustworthy evidence of the fact that the applicant has been charged with criminal offences in the United States, it is not evidence that the applicant engaged in the conduct it described; rather, it is simply a series of allegations. It is well established that "a distinction must be drawn between reliance on the fact that someone has been charged with a criminal offense, and reliance on the evidence that underlies the charges in question" (*Thuraisingam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 607 at para 35). The ID member failed to acknowledge this distinction and, instead, treated the indictment itself as evidence that the allegations it contained were true.

[63] It is not necessary for present purposes to determine whether it is ever permissible to rely on an indictment (standing alone) as evidence of the truth of the allegations contained therein. The important point is that the ID member simply presumes that the indictment has the same evidentiary value as the first-hand police reports and the affidavit from Special Agent Gebhart. In this respect, the decision lacks justification, transparency and intelligibility.

[64] Turning to the fact that Alu and Ismail pled guilty to the conspiracy count on which the applicant is a co-accused, the member used this fact in the following way:

> I find it extremely difficult to believe that you would have lived in those circumstances with two people that were clearly involved, two people who have now been convicted of fraud, and that you would have been unaware, completely unaware.
>
> And that is what you're saying as well, that you are completely – according to your testimony, you are completely unaware of any of this.
>
> You are unaware of any of the fraudulent activities, in spite of the documents that were found in your car, in spite of your connection, in spite of the fact that you were living with two people who are your friends and were subsequently convicted of fraud.
>
> I find it very difficult to believe under those circumstances that you as well were not involved in fraudulent activity.

[65] The evidence that Alu and Ismail had been convicted of fraud was a sentencing memorandum prepared by Alu's counsel and the press release dated April 27, 2018, which stated that both Alu and Ismail had pled guilty to conspiracy and been sentenced in the United States District Court in Austin, Texas. Before the ID, the applicant's counsel did not suggest that these documents were not credible or trustworthy evidence that Alu and Ismail had pled guilty and been sentenced in relation to the same scheme in which the applicant was alleged to have been involved. Thus, the applicant's complaint on review that the member erred in relying on this evidence in the absence of the record of the US court proceedings appears to me to be misplaced. Similarly, it is entirely speculative to suggest, as the applicant now does, that the guilty pleas may have been anything other than a truthful admission of guilt by Alu and Ismail. Rather, the important – and more difficult – question is whether the fact of their guilty pleas is evidence of the applicant's involvement in the fraud scheme.

[66] In my view, the member failed to engage with this question in any meaningful way. Under Canadian law, the guilty plea of a co-accused is not evidence of the guilt of an accused who is standing trial: see, for example, *R v Simpson*, [1988] 1 SCR 3 at 16-19; and *R v Dawkins*, 2021 ONCA 113 at paras 13-15. It is not necessary to determine whether this is a "legal or technical" rule of evidence that does not bind the ID. The important point is that the member does not engage with the relevance of this evidence at all. Instead, she simply presumes that the fact that the applicant's friends and alleged co-conspirators had been convicted in the US was evidence that the applicant was also involved in the scheme. This, too, was unreasonable. (In fairness to the member, this issue was not raised by counsel for the applicant at the hearing.)

[67] Nevertheless, I am not persuaded that these flaws in the member's reasoning call the reasonableness of the decision as a whole into question. This is because, as presented in submissions to the member, the foundation of the Minister's case was (1) the police reports and the report by Agent Witt concerning events on April 16, 2015, and (2) the affidavit sworn by Special Agent Gebhart. Unlike the indictment, the sentencing memorandum, and the press release, these documents are indisputably relevant to the central issue of whether the applicant in fact engaged in the conduct alleged to constitute the basis for his inadmissibility. The member expressly found these documents to be credible and trustworthy evidence on this issue. She found that the information in the documents was "logical and internally consistent" and that "those involved in the investigation appear to be experienced, well-educated in their fields, and therefore most likely very knowledgeable." It was open to the member to reach these conclusions on the record before her. The factors she relies on to support the finding that the reports and the affidavit are credible and trustworthy reasonably support that determination. As

well, it is at least implicit in the member's express findings that she understood that the reports describe first-hand investigative steps taken by the authors of the reports as well as their own first-hand observations of material evidence. None of the reports simply offer the unsupported opinion that the applicant is (or was) a member of the stolen identity refund fraud ring.

[68] Similarly, the member noted that the affidavit by Special Agent Gebhart set out the investigator's probable cause to believe that the applicant and the other three alleged co-conspirators were engaged in stolen identity refund fraud. The member must be taken to have understood that the affidavit is sworn evidence that had been prepared in support of an application for a judicial authorization and, further, that this also bears on the credibility and trustworthiness of that piece of evidence.

[69] Moreover, the member specifically addresses at least some of the applicant's submissions as to why these documents were not credible or trustworthy. She rejects for sound reasons the applicant's contention that the police officer who pulled him over on April 16, 2015, had engaged in racial profiling. She also rejects for sound reasons the applicant's contention that there were material inconsistencies between the various police reports.

[70] Taken together, the documents that the member expressly found to be credible and trustworthy are reasonably capable of establishing the facts that constitute the basis for the inadmissibility determination. Put another way, the member reasonably determined that these documents are credible and trustworthy evidence of the truth of the allegations against the applicant. This determination is unaffected by the member's unreasonable reliance on the

US indictment or the fact that Alu and Ismail had been convicted. Setting aside the specific findings concerning the applicant's text messages with Alu and Ismail and the fact of Alu and Ismail's convictions, the remaining evidence reasonably found to be credible and trustworthy by the member – most importantly, the evidence of the documents and other evidence found in the applicant's car when it was searched on April 16, 2015 – provides a sufficient basis to conclude that the applicant is (or was) part of the fraud ring, as alleged. The value of that evidence in supporting the Minister's allegations is unaffected by the erroneous reliance on the indictment and the fact that Alu and Ismail had been convicted.

[71] The applicant also submits that the member's assessment of the investigative reports and the affidavit is unreasonable because the member failed to engage with one of his main arguments as to why these documents should not be considered credible or trustworthy – namely, the absence of any of the evidence underlying the factual assertions in the documents (e.g. copies of the evidence seized from the applicant's car on April 16, 2015, or copies of records linking the applicant to bank accounts involved in the fraudulent activity). As *Vavilov* holds, "a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it" (at para 128).

[72] The applicant is correct that the ID does not engage with this submission. Nevertheless, I do not agree that the member's failure to address this argument expressly calls the reasonableness of the decision as a whole into question. The member certainly understood that a key issue in the case was the credibility or trustworthiness of the investigative reports relied on

by the Minister. While it may have been preferable for the member to explain why, contrary to the applicant's submission, the absence of the underlying evidence or *viva voce* testimony from the authors of the reports did not undermine the credibility or trustworthiness of the reports, the failure to do so does not undermine the reasonableness of the member's determination that the investigative reports are credible or trustworthy. Indeed, in the circumstances of this case, to have given effect to that argument would itself have been a reviewable error.

[73] The applicant cites the "best evidence" rule to support his position but this is precisely the sort of rule of evidence that, pursuant to paragraph 173(c) of the *IRPA*, does not apply in an inadmissibility proceeding. The purpose of paragraphs 173(c) and (d) of the *IRPA* is to relieve the Minister of the burden of producing such evidence and to permit the Minister to rely instead on indirect or second-hand evidence, as long as it is credible or trustworthy in the circumstances. The Minister may present his case as he sees fit; he omits the best and most reliable evidence at his own peril (*Bruzzese* at para 61). Absent a determination that the applicant could not have a fair hearing without access to the underlying evidence or the opportunity to cross-examine witnesses (and no such argument was made before the ID), the Minister is under no obligation to produce that evidence.

[74] In the present case, even assuming for the sake of argument that the underlying original evidence is more credible and trustworthy than the reports that discuss it, it does not follow that those reports are therefore not credible or trustworthy (*Bruzzese* at para 61). Any suggestion that the underlying evidence could undermine the credibility or trustworthiness of the reports that discuss it is entirely speculative. There is no merit to the argument that the member could not

reasonably determine the credibility or trustworthiness of the reports without considering the underlying evidence or hearing from the authors of the reports.

[75] In summary, read against the backdrop of the key documents relied on by the Minister, the bases for the member's findings of fact are transparent and intelligible. The factors relied on by the member to support the finding that those documents are credible or trustworthy are reasonably capable of supporting that determination. This is sufficient to meet the requirements of *Vavilov.* Furthermore, once the reports had been determined to be credible and trustworthy, this provided a reasonable basis on which to make the necessary findings of fact to support the ultimate determination of inadmissibility.

(2) The ID's Assessment of the Applicant's Testimony

[76] The applicant submits that the ID's adverse findings with respect to his credibility are unreasonable because they are based on unfounded assumptions, irrelevant considerations, and inconsistencies with other evidence whose credibility and trustworthiness was not explained. While I agree with the applicant that not all of the factors relied on by the member stand up to scrutiny, I do not agree that the determination that the applicant's evidence lacked credibility is unreasonable.

[77] In my view, the ID crossed the line between reasonable inference and unwarranted speculation in three specific respects when assessing the applicant's credibility.

[78] First, as set out above, the applicant testified that Ms. Dosunmu had denied to him that she had said the things in her conversation with Agent Witt at the roadside stop on April 16, 2015, that the investigator attributed to her (see paragraph 5, above). The member found that the applicant had not told the truth about what Ms. Dosunmu had told him about this conversation because she accepted that Agent Witt had recorded the interview accurately and she "can only believe that your wife would be honest with you and would be truthful with you" – in other words, that Ms. Dosunmu would have admitted to having said the things attributed to her by Agent Witt. However, even if, as the member found, Agent Witt recorded the interview accurately, there was no reasonable basis for the member to presume that Ms. Dosunmu would have told the applicant the truth about what she had said to the investigator. On the evidence before the member, it was at least equally possible that Ms. Dosunmu would deny having incriminated the applicant. As a result, it was unreasonable for the member to find that the applicant had not told the truth about what Ms. Dosunmu had told him and to then impugn his overall credibility on this basis.

[79] Second, the member found it "extremely difficult to believe" that the applicant actually believed he could be detained if he made a refugee claim in the United States. Since the applicant had testified that he did believe this, the member found that he had been "untruthful when [he] provided that information." The member reached this conclusion because the US refugee determination process is well-known and widely covered in the media. The member also considered that, since they were friends, the applicant would have known that Alu and Ismail had both made refugee claims in the US yet they had not been detained.

[80] Once again, this is a matter of speculation on the member's part. Even assuming that the applicant was aware of media coverage of the US refugee determination process (something he was never asked about), there was no evidence that the information the applicant was aware of was inconsistent with the belief that refugee claimants in the United States could be at risk of being detained. Moreover, there was no evidence that the applicant knew anything about the immigration status of either Alu or Ismail (something else he was never asked about). Relatedly, given how widely reported the US refugee determination process is in the news media, the member had also found it "very difficult to believe" that, as he claimed, the applicant did not make a refugee claim in the US because he did not know that he could do so. However, the applicant had said no such thing. The only reason he gave for not seeking protection in the United States was his concern that he could be detained if he did so. For these reasons, the member's adverse credibility finding in this regard is unreasonable.

[81] The applicant also argues that the whole issue of why he had not sought refugee protection in the US is irrelevant to the central allegations against him and that it was therefore unreasonable for the member to impugn his overall credibility on this basis. As I will explain, I do not agree that the applicant's failure to seek refugee protection in the United States is irrelevant to the grounds on which the Minister alleged that he is inadmissible.

[82] On one view of the evidence, the applicant promptly fled the United States for Canada using a false passport after his involvement in the fraud ring was discovered by US authorities. His failure to seek refugee protection in the United States despite having lived there without status for an extended period of time is arguably relevant to the validity of the claim for

protection he made in Canada within days of arriving here. And the validity of that claim is relevant to the question of whether the applicant's real concern was not a risk of persecution in Nigeria but, rather, a risk of prosecution for criminal activity in Texas. Since this area of inquiry is thus capable of giving rise to additional circumstantial evidence of the applicant's involvement in the fraud ring, it cannot be said to be irrelevant to the underlying allegations. Consequently, contrary to the applicant's submission, it was not unreasonable for the member to consider the applicant's credibility in this regard. Nevertheless, as I have explained, I do agree that how the member assessed the applicant's credibility in this regard is unreasonable.

[83] Third, as set out above, the applicant testified that he had stayed at the East Yager Lane apartment only occasionally. After he and his wife had separated, from time to time he needed somewhere to stay and Alu would let him stay at the apartment. The member rejected the applicant's evidence on this point, finding instead that he was in fact living there "a lot of the time." On this basis, the member also found that the applicant would have been aware of the incriminating documents and other items that the police found in the apartment on April 16, 2015. However, there was no reasonable basis for finding that the applicant lived at the apartment "a lot of the time." None of the applicant's personal effects were found at the apartment. The only evidence the applicant had a stronger connection to the apartment than he had admitted to came from Alu, who told police the applicant had a key to the apartment. The member gave cogent reasons for not finding Alu to be credible; however, she did not provide any reasonable basis for nevertheless apparently believing what Alu had said about the key to the apartment.

[84] These are not insignificant flaws in the member's assessment of the applicant's credibility. Nevertheless, I am not persuaded that they call the reasonableness of the decision as a whole into question. On the central issue of what happened on April 16, 2015, it was open to the member to find that the Minister's evidence was credible and trustworthy and that the applicant's very different account of events that day was not. The member gave sound reasons for assessing this evidence as she did. The soundness of these reasons is unaffected by the erroneous assessment of the applicant's credibility in other respects. Taken together, the Minister's evidence concerning what was found in the search of the applicant's vehicle and his belongings, the inculpatory information provided by Ms. Dosunmu to Agent Witt, the evidence found at the East Yager Lane apartment, and the applicant's admitted connection to that residence (including staying there for some two weeks during the month of April 2015) was more than sufficient to provide an objective basis for concluding that the applicant was involved in the activities of the fraud ring, as alleged.

[85] In short, the applicant has not persuaded me that these errors are sufficiently material in the sense that the member's assessment of his credibility would likely have been different had the errors not been made (*c.f. Rinchen v Canada (Citizenship and Immigration)*, 2022 FC 437 at paras 19 and 21).

(3) The ID's Application of the Standard of Proof

[86] Finally, the applicant submits that the ID failed to explain in a transparent and intelligible way why the evidence that was found to be credible and trustworthy provided reasonable grounds to believe that the facts constituting inadmissibility occurred. The applicant notes that,

crucially, the ID never expressly adverts to the applicable standard of proof (as set out in section 33 of the *IRPA* and interpreted in *Mugesera*) or explains why the Minister's evidence was found to meet that standard.

[87] While it would certainly have been preferable for the member to have articulated why the Minister's evidence, which had been found to be credible and trustworthy, was found to be sufficient to establish the applicant's inadmissibility on grounds of organized criminality, the failure to do so does not undermine the overall reasonableness of the decision.

[88] It is well-established that the fact that the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside (*Vavilov* at para 91, quoting *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). Furthermore, the review of the decision "can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings" (*Vavilov* at para 91). The reviewing court must "read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered" (*Vavilov* at para 94). This includes the positions of the parties before the administrative decision maker (*Vavilov* at para 94).

[89] In the present case, there was no dispute that the applicable standard is that of reasonable grounds to believe: see *IRPA* section 33. In submissions to the ID, counsel for the Minister cited *Mugesera* and set out its central holding on the meaning of this standard of proof (see paragraph

31, above). The applicant did not suggest to the ID that "reasonable grounds to believe" meant something other than what Minister's counsel had articulated in submissions. On the contrary, he cited and relied on the same passages in *Mugesera* as did counsel for the Minister. Rather, his position was that this standard had not been met by credible or trustworthy evidence.

[90] As discussed above, apart from the US indictment and the guilty pleas of Alu and Ismail, the key pieces of evidence relied on by the Minister were indisputably relevant to the issue of whether the applicant engaged in the conduct alleged to constitute membership in a criminal organization. Given the nature of that evidence, which provided both direct and circumstantial links between the applicant and the activities of the fraud ring, the case turned entirely on whether the evidence is credible or trustworthy. The applicant never suggested that even if the Minister's evidence was credible and trustworthy, it was insufficient to meet the legal standard of reasonable grounds to believe that the facts alleged to constitute inadmissibility under paragraph 37(1)(a) of the *IRPA* occurred. Instead, the focus of his evidence and submissions was an attempt to demonstrate that the Minister's documentary evidence was not credible or trustworthy.

[91] As discussed above, I am satisfied that the member reasonably concluded that the key documentary evidence relied on by the Minister was credible and trustworthy. In view of the nature of that documentary evidence and the factual narrative that emerges from those documents, once this determination was made, the only conclusion reasonably open to the member was that there were reasonable grounds to believe that the facts constituting inadmissibility under paragraph 37(1)(a) of the *IRPA* did occur. And given the nature of those

facts, the only conclusion reasonably open to the member was that the applicant is, indeed, inadmissible under that provision. While the member certainly could have said more about the application of the standard of proof, the failure to do so does not leave any room for doubt about the reasoning process that led to the ultimate conclusion.

VI. CONCLUSION

[92] For these reasons, the application for judicial review will be dismissed.

[93] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-2229-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2229-21
STYLE OF CAUSE:	DELE JIMOH AKANBI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 26, 2022
JUDGMENT AND REASONS:	NORRIS J.
DATED:	MARCH 7, 2023

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