Federal Court  Cour fédérale

Date: 20240827

Docket: IMM-12303-23

Citation: 2024 FC 1333

Toronto, Ontario, August 27, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

GAMAL ALI FARAJ ALAMRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] For many years, the Applicant was an unpaid volunteer in Libya's Green World Revolutionary Guard [Guard or Revolutionary Guard]. Throughout this period, the Applicant's sole task was to act as a bodyguard to Libyan dictator Muammar Gaddafi. Based on his involvement with the Guard, the Refugee Appeal Division [RAD] of the Immigration and Refugee Board found that the Applicant was excluded from refugee protection under s.98 of the

Immigration and Refugee Protection Act [IRPA] and Article 1F(a) of the *Refugee Convention*. The RAD found that there were serious reasons to consider that the Applicant had been complicit in the commission of crimes against humanity perpetrated by the Revolutionary Guard.

[2] For the reasons that follow, I will grant this application for judicial review. In brief, I have concluded that the RAD did not adequately justify the presumed link between the Applicant's duties and the crimes or criminal purpose of the Guard. I have also concluded that the RAD erred in failing to consider the Applicant's specific activities as a bodyguard to Gaddafi, and whether these activities themselves constitute an excludable offence under Article 1F(a) of the Convention.

II. BACKGROUND

A. ***Facts***

[3] The Applicant, Gamal Ali Faraj Alamri, is a citizen of Libya. He asserts a well-founded fear of persecution based upon his former membership in Gaddafi's Revolutionary Guard.

[4] The Applicant voluntarily joined the Guard in 1991 and remained a member until 2011, though he claims to have ceased his activities with the Guard in 2009. He underwent two months of training on how to use a Kalashnikov rifle, and subsequently reported for duty once every 30 days. Functionally, therefore, the Applicant's role was akin to a reservist – throughout his tenure with the Guard, he was also either in school, or employed.

[5] According to the Applicant, his only duty, alongside thousands of other volunteer Guards, was to act as a bodyguard for Gaddafi. He testified that Gaddafi had his personal security detail near him, comprised of his own private guards, and another level of security beyond them; the Applicant's role within the security detail was at a greater distance and in a peripheral area, such as outside a building where Gaddafi was located.

[6] Throughout his time with the Guard, the Applicant never personally used his firearm, and nor did he ever arrest, assault, or detain anyone.

[7] As part of his duties, the Applicant guarded Gaddafi four to eight times a year and accompanied Gaddafi on trips to other provinces on rare occasions. He was in Gaddafi's direct presence roughly four times.

[8] The Applicant also taught Gaddafi's political philosophy to youth at summer camps and participated in public displays of support for Gaddafi, including carrying a flag and banners, and wearing the Guard's green cap.

[9] Mr. Alamri arrived in Canada on a study permit in 2012. In 2019, the Applicant and his wife applied for refugee protection.

B. ***Procedural History***

[10] This matter has a somewhat lengthy procedural history. In brief, the Refugee Protection Division [RPD] excluded the Applicant from refugee protection under Article 1F(a) of the Refugee Convention and s.98 of the IRPA. In an initial appeal, the RAD found that the RPD had

erred; it concluded that the Applicant should not be excluded, and it granted his claim for refugee protection. This Court granted judicial review of this initial RAD decision. Following that, the RAD issued a new decision, in which it found that the RPD had correctly excluded the Applicant. It is this decision that is the subject of this application for judicial review.

(a) *RPD Decision*

[11] In excluding the Applicant from refugee protection, the RPD made the following factual findings about the Revolutionary Guard and the Gaddafi regime:

a) The Gaddafi regime perpetrated widespread and serious human rights violations that amounted to crimes against humanity.

b) The Guard was a “prominent organ” in the regime’s “diverse and complex” security service apparatus.

c) The Guard was directly controlled by Gaddafi and was among the organizations that carried out his policies of oppression.

d) The Guard was implicated in kidnapping, disappearances, and incidents of torture.

e) The Guard included 4000-5000 members of whom 2000 were, like the Applicant, unpaid volunteers.

f) Gaddafi faced threats of assassination from militant Islamist groups.

g) A significant portion of the Libyan population was associated with the Gaddafi regime in some capacity.

h) There was insufficient evidence to categorize the Guard as an organization with a limited, brutal purpose.

[12] In addition to the above, the RPD made the following specific findings with regard to the Applicant:

a) The Applicant was a voluntary member of the Guard from 1991 to 2009 of no specific rank.

b) The Applicant guarded the command building when Gaddafi was home, accompanied Gaddafi to other provinces on occasion, and was in his presence three or four times.

c) The Applicant acknowledged that, as a bodyguard for Gaddafi, he would have shot someone who attacked Gaddafi, though this never happened.

d) The Minister failed to substantiate its claim that Mr. Alamri "personally" committed any crime against humanity.

e) The Applicant must have known of the atrocities committed by the Guard and the regime during the time of his service.

[13] Based on the above findings, the RPD concluded that the Applicant had a shared common purpose with the Revolutionary Guard, one that consisted of "upholding and perpetuating Gaddafi's regime through force and terror directed at civilians." In evaluating the considerable body of evidence before it, including the testimony of an expert witness, the RPD concluded that the preponderance of the factors weighed in favour of the Applicant's complicity in the crimes against humanity committed by the Guard in service of Gaddafi's regime.

(b) *2022 RAD Decision*

[14] In its first consideration of the Applicant's appeal, the RAD agreed with the RPD that the Applicant's contributions to the Guard had been voluntary and knowing. It concluded, however, that any contributions that the Applicant had made to the Guard's crimes or criminal purpose were not significant. As such, the RAD concluded that the RPD had erred in excluding the Applicant. On the merits of his claim, the RAD found that the Applicant did face a well-founded fear of persecution in Libya and, as such, it granted both the appeal and his claim for refugee protection.

(c) *Federal Court Decision*

[15] The Minister sought judicial review of the RAD decision, which was granted in reasons dated February 10, 2023: *Canada (Citizenship and Immigration) v Alamri*, 2023 FC 203 [*Alamri*]. In granting the Minister's application, my colleague Justice Manson concluded that the RAD erred in finding that the Applicant's indirect involvement in the crimes committed by the Revolutionary Guard was a mitigating factor in the complicity analysis undertaken further to the decision of the Supreme Court of Canada in *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*]. Justice Manson stated in this regard (at para 28):

> Ezokola makes clear that neither personal participation, nor personal proximity to the relevant crimes is necessary to be found complicit in crimes against humanity (Ezokola at paras 7-9, 67-77, 87-88). The purpose of the Ezokola test is to address the fine line between mere association and complicity in a criminal enterprise. This requires assessing whether duties performed by an individual, that are not necessarily in and of themselves criminal, nonetheless amount to a significant contribution to a group's crimes or criminal purpose. The Ezokola inquiry is necessarily engaged only when contribution is indirect; to diminish an individual's criminal culpability simply because they did not themselves commit Article 1F(a) crimes is to, at least in part, circumvent that inquiry.

[16] Of note, the Court also found that the RAD failed to address the Minister's arguments that the Applicant was complicit in the Gaddafi regime's crimes, not only because of his contributions to the Revolutionary Guard, but also because of his role as one of Gaddafi's bodyguards.

[17] As a result of these findings, the Court remitted the matter to the RAD for redetermination.

(d) *2023 RAD Decision*

[18] In its subsequent decision, the RAD affirmed the RPD's initial determination and found that the Applicant was excluded from refugee protection under s.98 of the IRPA and Article 1F(a) of the Convention. In canvassing the relevant factors identified in *Ezokola*, the RAD determined that the Applicant made a voluntary, knowing, and significant contribution to the crimes against humanity committed by the Green World Revolutionary Guards between 1991 and 2009.

[19] In arriving at this conclusion, the RAD observed that the Applicant voluntarily joined the Guard and faithfully served them for 18 years. The Applicant had ample opportunities to leave the organization without significant adverse consequences, and there was little evidence to suggest that the Applicant served in the Guard under duress.

[20] The RAD also found that the Applicant's role was not only to protect the life of Libya's head of state, but to perpetuate Gaddafi's power through force and terror. To do so, the Guard "constantly" committed wide-ranging crimes against humanity.

[21] The RAD further noted that the Guard occupied a privileged position in the regime and the security services, and were able to give orders to even senior-ranking military officers. The Applicant himself had testified that Gaddafi looked at the Guard as "his sons."

[22] The RAD also observed that the Guard was a relatively homogenous organization in that its members were selected for their loyalty to Gaddafi, and there was "no apparent compartmentalization of the atrocities they committed."

[23] In addition to the broad findings outlined above, the RAD found that the Applicant was attempting to circumvent *Ezokola* by focusing the exclusion analysis on the fact that he did not directly participate in any crimes, as *Ezokola* stands for the principle that criminal responsibility does not fall solely to the direct perpetrators of crime.

[24] Because the RAD found that the Applicant was complicit in the broad crimes perpetrated by the Guard, it determined that it was not necessary to answer the question of whether the Applicant's specific role within the Guard - protecting the life of Muammar Gaddafi as an internationally recognized head of state – was a 'legitimate' purpose. The RAD noted in this regard that:

> the Guards were "constantly" implicated in kidnappings, forced disappearances, and torture, not simply in order to protect the life of Gadaffi, but to protect the power and interests of his regime and tribe. I agree with the RPD that there are serious reasons for considering that the Appellant's loyal and lengthy service to the Guards over a period of 18 years amounts to a significant contribution to the organization's criminal purpose. The Appellant not only reported for guard duty when and as requested by the Guards until 2009, he participated in public displays of support for Gadaffi, and promulgated his philosophy, as a Guard. His involvement could not reasonably be characterized as mere association, membership, or acquiescence. The dedicated service of volunteers such as the Appellant, was instrumental for the effective operation of the Guards and the regime in achieving their goals, including the criminal purposes identified above.

III. ISSUES

[25] The Applicant articulates a single broad issue for determination in this matter. That is, whether the RAD identified a reasonable basis for finding the Applicant complicit in a crime against humanity?

IV. LEGAL FRAMEWORK

[26] Article 1F(a) of the *Refugee Convention* is as follows:

> The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

[27] In *Ezokola*, the Supreme Court of Canada set out a contribution-based approach for determining whether an individual has been complicit in the crimes enumerated under Article 1F(a) of the Convention. Under *Ezokola*, an individual is excluded from refugee protection only where there are serious reasons for considering that the person has *voluntarily* made a *significant* and *knowing* contribution to an organization's crime or criminal purpose. To assist decision-makers in considering whether these contribution-based factors are present, the Court in *Ezokola* set out six non-exhaustive factors for consideration:

a) The size and nature of the organization;
b) the part of the organization with which the refugee claimant was most directly concerned;
c) the refugee claimant's duties and activities within the organization;
d) the refugee claimant's position or rank in the organization;

e) the length of time the refugee claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and

f) the method by which the refugee claimant was recruited and the refugee claimant's opportunity to leave the organization.

[28] Under the *Ezokola* formulation, it is clear that passive acquiescence to, or mere association with, an organization that has committed international crimes is not sufficient to ground a finding of complicity. Rather, there must be a link between the individual and the crimes or the criminal purpose of the group: *Ezokola* at paras 8, 77.

[29] It is also worth noting that this link does not have to be "directed to specific identifiable crimes", but may also relate to "wider concepts of common design": *Ezokola* at para 87, citing *R. (J.S. (Sri Lanka)) v. Secretary of State for the Home Department*, [2010] UKSC 15, [2011] 1 A.C. 184 at para 38. However, where an organization is multifaceted in nature – with both legitimate and criminal purposes – the link between an individual's contribution and the criminal purpose may be more tenuous: *Ezokola* at para 94; *Bedi v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1550 at para 26 [*Bedi*]; *Canada (Citoyenneté et Immigration) v. Singh*, 2021 FC 993 at paras 30-32.

[30] With regard to the significance of an individual's contribution, the Supreme Court cautioned in *Ezokola* at para 88, that:

> Given that contributions of almost every nature to a group could be characterized as furthering its criminal purpose, the degree of the contribution must be carefully assessed. The requirement of a significant contribution is critical to prevent an unreasonable extension of the notion of criminal participation in international criminal law.

[31] The evidentiary burden for establishing the elements of complicity falls on the party seeking the exclusion: *Ezokola* at para 29.

[32] The standard of proof for establishing the elements of complicity is of "serious reasons to consider", which is less than a balance of probabilities but more than mere suspicion: *Ezokola* at para 101.

V. STANDARD OF REVIEW

[33] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65* at para 23 [*Vavilov*]. In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[34] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker" (*Vavilov* at para 85). To make a determination on reasonableness, a reviewing court asks whether the decision in question bears the "hallmarks of reasonableness" – justification, transparency, and intelligibility – and whether it is justified in relation to the relevant factual and legal matrix (*Vavilov* at para 99). Reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). Any flaws or shortcoming relied upon must be sufficiently central or significant, to render the decision unreasonable (*Vavilov* at para 100).

[35] It should also be noted here that the rights at stake in exclusion cases are considerable. The allegations associated with such cases are invariably serious, as are the consequences of any decisions made in relation to these allegations. In *Vavilov*, the Court noted that the reasons provided in support of a decision – the justification for that decision – must reflect the stakes, which in this matter are at the high end of the spectrum: *Vavilov* at para 133.

VI. ANALYSIS

[36] There are several uncontroversial facts associated with this matter. The first is that the Gaddafi regime generally, and the Revolutionary Guard specifically, committed numerous crimes against humanity over the course of Gaddafi's reign in Libya, and throughout the period of the Applicant's involvement with the Guard.

[37] The second is that the Applicant is not alleged to have directly committed any Article 1F(a) offences. The RPD accepted that the Applicant never personally used his firearm, and nor did he ever arrest, assault, or detain anyone.

[38] The third is that the Applicant's participation in the Guard was voluntary, at least for a significant majority of the time that he served with them. The Applicant was not recruited into the Guard, and was not a professional member of the organization. He had a low (or no) rank within the Guard structure, but volunteered for them for a significant period - between 1991 and ostensibly 2009.

[39] This leaves several key points that *are* contested on this judicial review, and which I have distilled into two key issues: (i) whether the RAD erred in finding that the Applicant's

contributions to the crimes or criminal purpose of the Guard was significant; and ii) whether the RAD failed to consider the argument that the Applicant's bodyguard role had a legitimate purpose. I now turn to a consideration of these issues.

A. *Did the Applicant make a significant contribution to the crimes or criminal purpose of the Guard?*

[40] While the Applicant does not agree that his contributions to the Guard were made with knowledge of the organization's crimes or criminal purpose, his argument focuses primarily on the significance of his contributions.

[41] As noted above, the first RAD panel found that the Applicant had made a voluntary and knowing contribution to the Guard' atrocities, but concluded that such contribution was not significant for the purposes of assessing complicity.

[42] The second RAD panel took a different view of the Applicant's participation in the Guard, finding that it did constitute a significant contribution to the organization's atrocities.

[43] The Applicant's submission on the question of significance focuses on the following paragraph from the RAD reasons:

> The Guard were "constantly" implicated in kidnappings, forced disappearances, and torture, not simply in order to protect the life of Gadaffi, but to protect the power and interests of his regime and tribe. I agree with the RPD that there are serious reasons for considering that the Appellant's loyal and lengthy service to the Guard over a period of 18 years amounts to a significant contribution to the organization's criminal purpose. The Appellant not only reported for guard duty when and as requested by the Guard until 2009, he participated in public displays of support for Gadaffi, and promulgated his philosophy, as a Guard. His

> involvement could not reasonably be characterized as mere association, membership, or acquiescence. The dedicated service of volunteers such as the Appellant, was instrumental for the effective operation of the Guard and the regime in achieving their goals, including the criminal purposes identified above.

[44] Flowing from this paragraph, the Applicant makes a number of arguments, the most salient of which, in my view, are as follows. First, he argues that while the RAD made multiple references to the crimes of the Guard, it failed to make any link between the Applicant's role in the Guard and the organization's wrongdoing.

[45] Second, the Applicant contends that the RAD was overly reliant on the length of the Applicant's service in assessing significance, when this factor speaks more to voluntariness and knowledge.

[46] Third, the Applicant argues that his public displays of support for the Gaddafi regime cannot reasonably be said to amount to a significant contribution to the crimes or criminal purpose of the Guard, given that there are no allegations that the displays themselves amounted to incitement.

[47] The Minister characterizes the Applicant's argument as being, essentially, that the RAD erred in finding him complicit in the Guard' crimes because he was not directly involved in them. Much like Justice Manson found in *Alamri*, the Respondent argues that the Applicant's approach ignores the role of complicity in the commission of international crimes. An individual can be complicit in a crime, the Respondent notes, without physically contributing to it, and

without being present when it is committed. As Justice Manson noted, the *Ezokola* inquiry is engaged only when contribution is indirect.

[48] I do not think that the Minister has properly characterized the Applicant's arguments. Moreover, I am inclined to agree with the Applicant that at least some aspects of the RAD's analysis of his contribution to the Guard were unreasonable.

[49] Recall that a finding of complicity requires a significant contribution to an organization's crime or criminal purpose; that is to say that there must be a sufficient link between an individual's participation in an organization and that organization's crimes or criminal purpose. Contrary to the Minister's position, the Applicant does not argue that he should not be excluded because of his lack of direct involvement in crimes. The argument, rather, is that the RAD erred in failing to draw the necessary link that, per *Ezokola*, would justify a finding of complicity.

[50] As noted above, the RAD made several references to the human rights abuses committed by the Guard, but did not indicate with any specificity how the Applicant's actions (guarding Gaddafi and making public displays of support) made a significant contribution to those abuses. The indicia relied upon by the RAD to support its finding of a significant contribution were primarily the length of the Applicant's service, the high profile nature of the Guard in the Libyan security apparatus, and the fact that there was little differentiation between different groups of Guard. Furthermore, while the RAD acknowledged that the Applicant was only a part-time volunteer, it found that the "dedicated service of volunteers such as the Appellant, was instrumental for the effective operation of the Guard and the regime in achieving their goals, including the criminal purposes identified…"

[51] While the above considerations may well have been relevant to the exclusion analysis, they were not, at least in this case, sufficient, because this level of analysis would capture virtually anyone who provided *any* support to the organization in question. This was clearly the concern of the Supreme Court in *Ezokola* when it noted that "contributions of almost every nature to a group could be characterized as furthering its criminal purpose…" It was also why the Court underscored that the "degree of the contribution must be carefully assessed": *Ezokola* at para 88.

[52] It is true, as the Minister submits, that personal participation in a crime is not required for a finding of complicity in crimes against humanity: *Ezokola* at para 7-9, 76-77, 87-88; *Khudeish v Canada (Citizenship and Immigration)* [*Khudeish*], 2020 FC 1124; *Elve v Canada (Citizenship and Immigration)*, 2020 FC 454 [*Elve*]; *Shalabi v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 961 [*Shalabi*]. However, as held in *Bedi* at para 26, it is also true that the significant contribution prong of the *Ezokola* framework must be assessed with regard to a specific identifiable crime, or the criminal purpose of the organization.

[53] I pause here to note that the RPD found that there was insufficient evidence to categorize the Guard as an organization with a limited, brutal purpose, and the RAD did not question this factual finding. That is to say, the RPD acknowledged that the Guard played multiple purposes, though all of them were meant to support, in a broad sense, the Gaddafi regime. I also note that neither the RPD nor the RAD suggested that the Applicant was ever a part of a group within the Guard that committed crimes, or that he was ever exposed to them. Put differently, both the RPD and the RAD acknowledged, at least implicitly, some heterogeneity in the composition of the Guard and further acknowledged that the Applicant was not particularly proximate to the

organization's crimes. This being the case, I find that the RAD did not adequately justify its conclusion that the Applicant's general contributions to the Guard amounted to a significant contribution to its crimes or criminal purpose. As the Court noted in *Ezokola* (at para 94):

> If the organization is multifaceted or heterogeneous, i.e. one that performs both legitimate and criminal acts, the link between the contribution and the criminal purpose will be more tenuous. In contrast, where the group is identified as one with a limited and brutal purpose, the link between the contribution and the criminal purpose will be easier to establish.

[54] Given the RAD's heavy reliance on the length of time in which the Applicant remained active in the Guard, I would also note the caution provided by the Court in *Ezokola* related to omissions. That is, if the Applicant's service was not in itself culpable, his length of service would not, on its own, render him culpable. The Court stated (at para 82): "unless an individual has control or responsibility over the individuals committing international crimes, he or she cannot be complicit by simply remaining in his or her position without protest." I take the Court's reasoning here to suggest that while length of service may be an indicator of voluntariness, knowledge, or significance, it should not be taken as a standalone form of criminal liability, except in the circumstances identified.

[55] I also note here the Applicant's assertion that length of service is a factor that speaks more to voluntariness and knowledge, than to the significance of an individual's contribution. It is certainly true that an individual may be involved in an organization for many years, at least at a low level, and never contribute significantly to the organization's crimes. However, the Applicant's assertion is plainly incompatible with the Supreme Court's description of the 'length of service' criterion in *Ezokola*. The Court stated (at para 98):

> It may be easier to establish complicity where an individual has been involved with the organization for a longer period of time. This would increase the chance that the individual had knowledge of the organization's crime or criminal purpose. A lengthy period of involvement may also increase the significance of an individual's contribution to the organization's crime or criminal purpose. [Emphasis added]

[56] In sum, I take the significant contribution aspect of the *Ezokola* framework to mean that an individual will be excluded from refugee status if there are serious reasons for considering that the individual has contributed in a significant way to either: i) the organisation's crimes, or ii) the organization's ability to pursue its purpose of committing those crimes, aware that their assistance will in fact further that purpose: *Ezokola* at paras 84, 87; and see *R. (J.S. (Sri Lanka)) v. Secretary of State for the Home Department*, [2010] UKSC 15, [2011] 1 A.C. 184 at para 38.

[57] With this in mind, I further note that the cases cited by the Minister to support the RAD's findings all concern conduct with a clear link to the crime or criminal purpose at issue: managing the front gate of a prison where torture occurred (*Elve*); working a checkpoint, which was an integral part of a system of identifying, detaining, interrogating and torturing targets (*Shalabi*); issuing payments to the families of individuals who committed unlawful killings and acts of violence, which would in turn incite further acts of violence (*Khudeish*); providing administrative support without which a prison system could not have tortured prisoners (*Sarwary v Canada (Citizenship and Immigration)*, 2018 FC 437); operating a radar remotely, but participating in military atrocities (*Canada (Citizenship and Immigration) v Badriyah*, 2016 FC 1002).

[58] In each of these cases, there was an identifiable and explicitly drawn link between the individuals' duties – the actions they actually took, the contribution they actually made – and the crimes or criminal purpose of the organization. In this case, however, I find that the RAD did not adequately justify its finding that a similar linkage existed between the Applicant's duties as one of many thousand bodyguards to Gaddafi, and the crimes or criminal purposes of the Guard.

[59] As a result of the above, I find the RAD's reasons do not meet the justificatory requirements set out in *Vavilov*. While this finding is sufficient to dispose of this application for judicial review, I will briefly address the second issue identified above, namely whether the RAD erred in failing to consider the Applicant's duties as a bodyguard, and whether the act of preserving the life of Gaddafi in itself constitutes an excludable offence under the *Ezokola* framework.

B. *The Applicant's role as bodyguard to Gaddafi*

[60] The Applicant has argued that his specific role in the Guard must be considered in the exclusion analysis. In the absence of a specific link to any of the Guard's broader crimes, or to its criminal purpose, the Applicant argues that his sole contribution to the Gaddafi regime was to preserve the safety of Gaddafi himself.

[61] This role, he continues, had a legitimate purpose, which is relevant to both properly characterizing the Guard as a multifaceted organization, and to assessing his own contributions to the regime. If protecting Gaddafi was a legitimate objective, the argument goes, then the Applicant should not be excluded from refugee protection because this was the sole contribution

he made, and because it demonstrates that the Applicant made no larger contribution to the Guard' illegitimate actions.

[62] In support of this argument, the Applicant argues that protecting an internationally recognized head of state, even a remarkably oppressive one, is a legitimate activity. In his submissions before the RAD, the Applicant pointed to the fact that Gaddafi would have had American security protection while attending United Nations meetings, a fact that would not attract allegations of complicity on the part of U.S. officials in the crimes of the Libyan regime. The Applicant also draws an analogy to medical assistance: if a physician who provides lifesaving medical treatment to a dictator cannot be said to be complicit in that dictator's crimes, then neither should a bodyguard whose sole task is related to the protection of the dictator from external harm.

[63] The Minister again argues that the Applicant has misconstrued the *Ezokola* framework because the above argument is predicated on the erroneous notion that legitimate activities cannot support a finding of complicity. The Minister is correct in their assertion that a claimant can still be complicit in crimes against humanity, while participating in legitimate activities.

[64] At the same time, I agree with the Applicant that it was unreasonable for the RAD not to analyze whether protecting Gaddafi's life constituted a significant contribution to the regime's crimes or criminal purpose. Indeed, in *Alamri*, the Minister appears to have made a similar argument in suggesting that the first RAD decision was unreasonable. Justice Manson stated (at para 32): "I also find that the RAD failed to reasonably address the [Minister's] argument that the Respondent was criminally complicit through his role as one of Gaddafi's bodyguards."

VII. CONCLUSIONS

[65] This matter has now been the subject of two, and soon to be three, RAD decisions, and two decisions before this Court. To assist the third RAD panel in reasonably assessing the exclusion issue in this matter, I offer the following:

a) A proper assessment of the exclusion issue will have to rest on a nuanced characterization of the Revolutionary Guard – if it indeed is an organization with multiple purposes, those purposes, and the Applicant's place in them, should be carefully assessed.

b) If, in the RAD's assessment, the Guard were an organization with multiple purposes, the panel will have to assess whether the Applicant's role in protecting Gaddafi was a legitimate purpose that existed separate and apart from the criminal aspects of the Guard' purposes.

c) If, in the RAD's assessment, the Guard was an organization with only a limited or single purpose (which would involve a departure from the RPD's findings), the panel will still be required to consider whether the Applicant's contributions to the organization were significant.

d) The RAD will have to remain mindful of the fact that an individual can be complicit in crimes against humanity in the course of performing legitimate duties. As noted in *Akene v Canada (Citizenship and Immigration)*, 2024 FC 397 at para 27, the *Ezokola* test requires an assessment of whether the "duties performed by an individual, that are not necessarily in and of themselves criminal, nonetheless amount to a significant contribution to a group's crime or criminal purpose". This was also the caution provided

by Justice Manson in *Alamri*. The key consideration is not whether an individual's activities are, themselves, criminal in nature, but whether there exists a rational and significant link between the activities and the crime or criminal purpose of the organization, as there was found to be in the cases highlighted at para 56 of these reasons.

e) Equally, the RAD will need to assess the nature of the link between the Applicant's specific contribution as a bodyguard to Gaddafi and the crime(s) or criminal purpose of the Guard. Put differently, the RAD will need to focus on whether there was a rational and significant link between Mr. Alamri's specific contribution as a bodyguard to Gaddafi, and the crime(s) or criminal purpose of the Guard.

f) In assessing whether the Applicant's contributions to the Guard was knowing, the question is not simply whether the Applicant knew of the abuses that the Guard had committed, but whether the Applicant knew that his or her conduct in protecting Gaddafi would assist in the furtherance of the organization's crime or criminal purpose: *Ezokola* at para 89.

[66] As a result of the above, I grant this application for judicial review and remit the matter to a differently constituted panel of the RAD for determination. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-12303-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

3. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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