Federal Court  Cour fédérale

Date: 20150717

Docket: IMM-1144-14

Citation: 2015 FC 879

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 17, 2015

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

WILFRID NGUESSO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision rendered on December 20, 2013, by Constance Terrier (the officer), an immigration officer with the Immigration Section of the Canadian Embassy in Paris (the Immigration Section). In her decision, the officer declared the applicant inadmissible on grounds of organized criminality under paragraph 37(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), and she refused his application

for permanent residence as a member of the family class. For the following reasons, the application is allowed.

I. Background

[2] The applicant is a citizen of the Republic of the Congo (Congo), but during the relevant period, he resided in France, where he holds a residency permit that is valid until December 31, 2022. The applicant is the nephew and adopted son of Denis Sassou-Nguesso (DSN), who is the president of Congo. He is married to a Canadian citizen, with whom he has six children, all Canadian citizens.

[3] In 2006, the applicant's wife and four of their children moved to Montréal. On December 27, 2006, the applicant filed an application for permanent residence under the family class with the Immigration Section. It was this application that was refused on December 20, 2013. Between 2006 and the refusal of his permanent residence application, the applicant obtained several temporary resident visas enabling him to visit his family in Canada.

[4] The processing of the applicant's permanent residence application took seven years and was marked by various events. It is not necessary to describe each step of the process in detail, but since several breaches of the duty of procedural fairness have been raised, it will be useful to provide an overview of some of the steps involved in processing the application. It will also be useful to highlight some of the facts in the record that are not contested but that are relevant to understanding the nature of the disputes between the parties.

[5] In 1989, the Congolese government created a national marine transportation company, the Société Congolaise de Transports Maritimes (Socotram), with two private partners, SAGA and ELF Congo. The Congolese government held 45% of the shares, SAGA 49% and ELF Congo 6%. Socotram's main objective is to develop a domestic shipping fleet. In May 1990, the Congolese government designated Socotram [TRANSLATION] "a national shipping company" and granted the company all of its traffic rights.

[6] In 1998, after DSN had returned to power, the Congolese government granted Socotram the right to appropriate at least 40% of the marine traffic rights generated by foreign trade to and from Congo.

[7] In 1998, W.G.N. Trading and Shipping Negoce International S.A. (TS), a company created in 1995 in which the applicant is the sole shareholder, purchased all of the Socotram shares held by SAGA and ELF Congo. The applicant therefore became, through TS, Socotram's majority private shareholder. He was also appointed Socotram's Director of Transportation.

[8] In 2004, TS sold its Socotram shares to the Guinéa Gulf Shipping Company S.A. (GGSC), but the applicant remained in Socotram's employ, and, in June 2005, he was appointed Chief Executive Officer (CEO).

[9] The applicant had interests in other companies aside from TS, including S.C.I. St. Philibert (St. Philibert), Matsip Consulting S.A. (Matsip), Trading and Shipping S.A., International Shipping S.A. and S.C.I. Canaan Canada (Canaan).

[10] The record also shows the following facts relating to the processing of the applicant's file by the Immigration Section, and more specifically by the officer who processed his permanent residence application.

[11] In February 2008, the Security Intelligence Background Section of the Canadian Embassy in Paris (Section B) asked the war crimes and organized crime sections of the Canada Border Services Agency (CBSA) to verify whether the applicant's activities or associations rendered him inadmissible to Canada. The request indicated, among other things, that the applicant was the son of DSN; that he was CEO of Socotram, the principal shareholder of which was his company TS; and that he was president of the Club 2002-Pur, an association supporting DSN that became a political party in January 2007. The request also specified that the origins of President DSN's wealth, particularly his assets in France, was the subject of an investigation by the French police, following a complaint filed by associations regarding allegations of theft for the embezzlement of public funds (this investigation is known in France as the investigation into [TRANSLATION] "ill-gotten gains"). The request specified that the applicant's name appeared several times in this complaint and that some of the assets obtained through questionable funding were allegedly in his name. The request also mentioned that open sources spoke of [TRANSLATION] "clannish, family-centred" management of power in Congo, presenting the applicant as being very close with President DSN. The applicant was not informed of the requests made to the CBSA.

[12] On April 14, 2008, the CBSA's War Crimes Section concluded that there was insufficient evidence to establish that the applicant was inadmissible to Canada for war crimes under

section 35 of the IRPA. However, it recommended that the file be referred for screening under section 37 of the IRPA because of the [TRANSLATION] "opaque" transactions of Socotram and TS.

[13] On April 24, 2008, an email sent by an officer of the CBSA's Organized Crime Section to an officer of Section B highlighted major concerns about the origins of the applicant's properties and financial sources and suggested that additional information be obtained from the applicant.

[14] On May 13, 2008, the immigration officer responsible for the file at the time sent a letter to the applicant asking him to provide certain documents and information. The applicant sent some of the requested documents to the Immigration Section on August 1, 2008.

[15] The officer, Constance Terrier, was assigned to the applicant's file in August 2008.

[16] On January 14, 2009, the Financial Transactions and Analysis Centre (FINTRAC) prepared a report and disclosure regarding several electronic transfers of funds involving the applicant. The report indicated that FINTRAC had reasonable grounds to believe that some of the information was relevant in the context of a potential money laundering offence. The report also mentioned that FINTRAC believed that some of the information was relevant to the determination of whether an individual was inadmissible under sections 34 to 42 of the IRPA. This report was sent to the CBSA on January 14, 2009, and forwarded to Section B on May 4, 2009.

[17] On July 27, 2009, a representative of the CBSA's Organized Crime Section sent an email to Guy Langevin, an officer with Section B, in which he stated that despite lingering concerns regarding the links between the applicant and DSN, there was insufficient evidence that illegal activities had been committed. He concluded by indicating that the Organized Crime Section would be closing the file "pending further intelligence".

[18] A note entered into the Global Case Management System (GCMS) on October 29, 2009, by Mr. Langevin of Section B states that the file is still being studied by the CBSA's Organized Crime Section.

[19] The notes entered in the GCMS show no progress in the file between October 2009 and early March 2011.

[20] On March 3, 2011, the applicant's counsel at the time announced her intention to file a *mandamus* application to force the Immigration Section to render a decision on the applicant's permanent residence application.

[21] On April 5, 2011, FINTRAC prepared a second report on electronic transfers of funds involving the applicant, indicating that he was a "politically exposed foreign person" within the meaning of section 9.3 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (PCMLA).

[22] On August 12, 2011, the officer communicated with the investigating judge responsible for the investigation into the [TRANSLATION] "ill-gotten gains". He informed her that he was bound by professional privilege, but that the investigation was moving forward and that it should reach its conclusion in early 2012.

[23] On May 22, 2012, the applicant's counsel filed a *mandamus* application with this Court (Docket IMM-4924-12), to force the Immigration Section to render a decision on the applicant's permanent residence application. This dispute was settled out of court on July 3, 2012, on the basis of a timetable proposed by the respondent to complete the processing of the applicant's permanent residence application. It was established that the applicant would be called to an interview.

[24] On September 5, 2012, the applicant received a letter from the Immigration Section about concerns regarding his admissibility under paragraph 37(1)(*a*) of the IRPA. The letter indicated that the Immigration Section was concerned about the applicant's experience, knowledge and advancement in the professional world. The letter also mentioned specific concerns in connection with an alleged appropriation of proceeds from the sale of petroleum products. The letter contained the following excerpt:

> [TRANSLATION]
>
> We have reasonable grounds, supported by open, convergent and consistent documentation, to believe that you may belong to a group of persons embezzling part of Congo's national petroleum production, appropriating the proceeds of the resale of petroleum products and participating in the embezzlement of public property to the detriment of the Congolese state.
>
> We have reasonable grounds to believe that these transactions arose from a corporate structure involving a small number of

> individuals belonging to a single clan and closely related companies held and directed by the same small number of individuals.
>
> Finally, we have questions about a number of electronic transfers of funds made between November 2005 and October 2008, considered suspect by FINTRAC, the Financial Transaction and Reports Analysis Centre of Canada.
>
> You will be asked to provide additional documents at the end of the interview.

[25] The applicant's interview with the officer took place on September 25, 2012, and lasted about four hours, during which he was asked about 170 questions. It appears from the record that the officer prepared some of the interview questions and that several other questions were prepared by the CBSA.

[26] On September 28, 2012, the Immigration Section sent the applicant a letter in which it was indicated that based on statements made during the interview of September 25, 2012, the Immigration Section had concerns about his revenues, the companies in which he previously or still held shares, the nature of his contract of employment and the success of his businesses. The letter was accompanied by a six-page list of documents and information to be provided regarding the subjects raised during the interview, requesting that they be submitted within 90 days.

[27] On November 1, 2012, the CBSA prepared a report and a recommendation regarding the possibility that the applicant was inadmissible under paragraph 37(1)(*a*) of the IRPA. The report refers to two FINTRAC reports and information provided by the applicant during his interview. The CBSA concluded, after a thorough review, that despite suspicions that the applicant might be involved in embezzlement and money laundering activities, there was not enough evidence to

meet the standard of "reasonable grounds to believe" that he was inadmissible on grounds of organized criminality.

[28] On January 28, 2013, the Immigration Section was informed of a change of counsel; from that point on, the applicant was represented by Johanne Doyon.

[29] On February 1, 2013, Ms. Doyon asked for additional time to respond to the requests formulated on September 28, 2012, by the Immigration Section. She also asked to be provided with the documents referred to in the fairness letter of September 5, 2012, indicating that under the rules of procedural fairness, these should have been disclosed to the applicant before the interview of September 25, 2012.

[30] On February 27, 2013, the officer replied to the letter of February 1, 2013, by a letter dated February 1, 2013. In her letter, she extended the applicant's deadline for submitting the requested documents to April 30, 2013. However, she refused to disclose the documents and information that Ms. Doyon had requested on the grounds that [TRANSLATION] "at this stage of the process, there is no requirement to provide all of the sources or copies of the documents consulted, given that your client has been provided with a reasonable opportunity to review the information which we intend to use as a basis for our decision." The officer did, however, provide Ms. Doyon with her notes from the interview of September 25, 2012, as well as her analysis of the interview.

[31] On April 30, 2013, the applicant, by way of Ms. Doyon, filed a complaint with the Director of the Immigration Section. In the complaint, she alleged several breaches of procedural fairness in the processing of the applicant's file, in particular the refusal to disclose the documents mentioned in the letter of September 5, 2012. Ms. Doyon also invoked bad faith on the part of the immigration officers in processing the applicant's file and the way in which the interview of September 25, 2012, was conducted. More specifically, Ms. Doyon asked that the officer no longer be assigned to the applicant's file and that her interview notes be withdrawn from the record. In the same letter, Ms. Doyon enclosed some of the documentation that had been requested in the letter of September 28, 2012.

[32] This complaint was dismissed by Rénald Gilbert, the Immigration Section's Immigration Program Manager, in a letter dated December 6, 2013. Mr. Gilbert wrote that the officer would finish processing the applicant's permanent residence application and that her interview notes would not be withdrawn from the record. He also concluded that there had been no breach of the rules of procedural fairness.

[33] On May 13, 2013, the officer again contacted the office of the investigating judge responsible for the [TRANSLATION] "ill-gotten gains" investigation, but no information was provided to her because of the confidentiality of the investigation.

[34] On December 20, 2013, the officer refused the applicant's permanent residence application and declared him inadmissible on grounds of organized criminality.

II. The impugned decision

[35] Inadmissibility on grounds of organized crime is governed by paragraph 37(1)(*a*) of the IRPA:

Organized criminality	Activités de criminalité organisée
37(1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	(1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :
(*a*) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or	*a*) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;

[36] In her decision, the officer concluded that she had reasonable grounds to believe that the applicant was a member of a criminal organization through his family connections, which had enabled him to occupy positions unrelated to his education and contribute to a system of

embezzlement, misappropriation of company property, money laundering and opaque financial arrangements for personal enrichment at the expense of corporations. She added that she had reasonable grounds to believe that the applicant was involved in organized criminality that was part of a pattern of criminal activity organized by a number of persons acting in concert in furtherance of the commission of offences of embezzlement, misappropriation of company property and money laundering that, if committed in Canada, would constitute such offences.

[37] The officer noted that her conclusions were based on the position held by the applicant within Socotram and the benefits granted to him by Socotram or other companies with which he was connected. The officer then discussed the elements that had led her to these conclusions.

[38] First she indicated that she had doubts about the honesty of the transaction that resulted in the applicant, through TS, acquiring the Socotram shares held by SAGA and Elf-Congo. She wrote that she had reasonable grounds to believe that this transaction had been arranged or influenced by DSN after his return to power in Congo, when he was [TRANSLATION]"placing" those close to him in various key positions.

[39] She went on to state that she had reasonable grounds to believe that the applicant's appointment as Socotram's Director of Transportation was based more on his connection to DSN than his personal merits or qualifications for the position, that his remuneration was not based on his professional activities and that the benefits he received were for his personal enrichment, to the detriment of Socotram's activities. She added that she had reasonable grounds to believe that

his joining Socotram represented a desire to take control of a financially rich structure and bring it into the Nguesso family's sphere of influence for the purpose of personal enrichment.

[40] The officer also indicated that she did not believe the applicant's statement during the interview to the effect that he did not know the individuals behind GGSC and that he had sold his shares in Socotram through the transfer of the shares held by TS to GGSC. She noted that the documents provided by the applicant established that GGSC and TS had the same corporations as administrators or shareholders and that their head offices were in the same building. She also indicated that these companies had ties with Alain Sereyjol-Garros (ASG) or his fiduciary holdings and noted that she had reasonable grounds to believe that the applicant had withheld information at the interview by failing to indicate that he had ties with the various companies that were the majority private shareholders of Socotram. She also wrote that the companies' corporate structure was nebulous and confusing and that its purpose was to hide the true identity of the shareholders. She inferred that the applicant was the sole shareholder in control of Socotram and that the complex corporate structures had been set up by ASG, acting on his behalf.

[41] The officer also concluded that she had reasonable grounds to believe that Socotram's funds had been used for activities whose purpose was to enrich the applicant rather than to advance its corporate purpose, through the purchase of assets and transfer of funds for his benefit and for the benefit of companies in which he held shares.

[42] She then indicated that she had reasonable grounds to believe that the applicant was a member of a criminal organization through his involvement in a montage of companies, the organized and criminal nature of which was corroborated by the presence and involvement of ASG, who was known for his ability to disperse assets in a complex layer of financial and fiduciary transactions for the purpose of masking the origins of the investments and the identity of their true holders. She added that using tax havens is not in itself illegal, but that using tax havens to launder money constitutes organized criminality. She added that the financial structures, through trust companies, constituted an asset concealment system to perpetrate planned financial fraud and money laundering with the support of an illegal organization.

[43] She concluded by stating that she had reasonable grounds to believe that the applicant was involved in criminal activity (embezzlement, misappropriation of company property and money laundering) that was supported by a structured and deliberate plan and that he had directly participated, conscientiously and repeatedly, in these financial structures and activities.

III. First preliminary issue – the striking of the applicant's supplementary affidavits

[44] The respondent submits that the supplementary affidavits filed by the applicant should be struck. He submits that the right to file an affidavit was limited by the parameters that I had set out in the order of January 26, 2015, namely, to that needed to introduce in evidence documents that were not included in the Certified Tribunal Record (CTR) and that the applicant considered relevant to support the grounds raised in his application for judicial review.

[45] The respondent argues that the affidavit filed by Amélie Charbonneau on May 15, 2015, is not limited to introducing exhibits and contains several arguments in support of the application for judicial review, as well as a biased repetition of the facts already appearing in the court record. The respondent relies on *Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18, [2010] FCJ No 194 [*Quadrini*], in which the Court set out that "the purpose of an affidavit is to adduce facts relevant to the dispute without gloss or explanation". He adds that some of the exhibits filed in support of the affidavit should not be authorized either, in particular Exhibits G, H, I and J, on the grounds that they were not authorized by the order of January 26, 2015.

[46] The respondent also alleges that the applicant's supplementary affidavit, also filed on May 15, 2015, was not authorized by the Court and should be struck.

[47] The applicant submits that his supplementary affidavit is authorized by the order that I issued on March 20, 2015, in which I set a new timetable and authorized the filing of an additional memorandum and affidavit. I agree and find that there is no reason to strike the affidavit.

[48] As for Ms. Charbonneau's affidavit, the applicant submits that its purpose was to relate facts, not to issue opinions, and Ms. Doyon indicated during the hearing that she would not object to having the Court ignore anything that could be considered an opinion.

[49] The principles taught in *Quadrini* are clear: an affidavit must set out facts and not its author's opinions. I do not consider it necessary to analyze each paragraph of Ms. Charbonneau's affidavit; it will suffice to state that I intend to ignore any statement in the affidavit that may fall outside the framework of neutral factual statements. As for Exhibits G to J, I do not consider it necessary to declare them inadmissible, even though they were not helpful to my analysis of the record.

IV. Second preliminary issue: the applicability of the clean hands doctrine

[50] In his supplementary memorandum, the respondent argues that the applicant is not addressing the Court with "clean hands", as the latter made several false statements and provided several contradictory stories, particularly between his permanent residence application form, the information he gave during his interview with the officer and the information contained in the documents he submitted. The respondent submits that, among other things, the applicant provided conflicting information about his places of residence, especially during the period he was living in Gabon; the activities of TS; the shares he holds or has held in various other companies; property purchased by Socotram in Canada for his benefit and grants allegedly received by Socotram.

[51] The respondent adds that the applicant refused to submit several documents that were asked of him and that were relevant to the analysis of his permanent residence application, particularly those listed in the letter of September 28, 2012.

[52] The respondent alleges that a reviewing court may exercise its jurisdiction by refusing to hear an application for judicial review on the merits or refusing to grant the remedy sought where the applicant has acted dishonestly, illegally or in bad faith. The respondent maintains that the applicant lied on several occasions to the Canadian immigration authorities and voluntarily withheld facts from the authorities relating to important elements, and that he therefore deliberately misled or attempted to mislead the immigration authorities on many points. The respondent submits that this conduct undermines the integrity of the immigration system. The Court should therefore use its discretion to dismiss the application for judicial review without considering it on the merits.

[53] The respondent bases this position on subsection 16(1) of the IRPA and on the case law, including *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14, [2006] FCJ No 20 [*Thanabalasingham*] and *Dong v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1108, [2011] FCJ No 1370.

[54] The applicant, on the other hand, submits that he has not made any misrepresentations and that the clean hands doctrine does not apply in his case. He adds that the officer did not declare him inadmissible on the basis of alleged misrepresentations. He insists on the fact that the respondent is focusing on minor errors that have no incidence on the dispute.

[55] An application for judicial review is a recourse that involves judicial discretion. If the applicant does not come to the Court with “clean hands”, the Court may dismiss the application without determining the merits, but it is not obliged to do so. In exercising its discretion, the

Court must instead try to strike a balance between the attack on the integrity of the process brought about by the applicant's misconduct and the public interest in ensuring the lawful conduct of government (*Thanabalasingham*, at paras 9-10). In this case, I find that the application raises serious issues and has a significant impact on the applicant and his family. I am of the view that the interests of justice will be better served if I decide on the merits of this application for judicial review filed against the decision refusing the applicant's permanent residence application and declaring him inadmissible.

[56] Furthermore, the contradictions and conduct of which the respondent criticizes the applicant were in part considered by the officer and are relevant to the issue of whether the rules of procedural fairness were violated and whether the officer's decision was reasonable. It seems to me that it would be more appropriate to deal with them in that context.

V. Issues

[57] This application for judicial review raises the following issues:

1. Was the process that led to the decision tainted by breaches of procedural fairness?
2. Did the officer commit errors of law that warrant this Court's intervention?
3. Did the officer commit errors in her assessment of the applicant's permanent residence application that warrant this Court's intervention?

VI. Standards of review

[58] The standard of review applicable in matters of procedural fairness is correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339; *Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502). The issue to be determined is not whether the decision was correct, but rather whether the process followed by the decision-maker was fair (*Majdalani v Canada (Minister of Citizenship and Immigration)*, 2015 FC 294 at para 15, [2015] FCJ No 459; *Krishnamoorthy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1342 at para 13, [2011] FCJ No 1643 [*Krishnamoorthy*]; *Pusat v Canada (Minister of Citizenship and Immigration)*, 2011 FC 428 at para 14, [2011] FCJ No 541 [*Pusat*]).

[59] I am also of the view that the standard of reasonableness should be applied to the errors of law alleged by the applicant. All of the errors raised relate to how the officer should have interpreted and applied paragraph 37(1)(*a*) of the IRPA and section 33, which establishes the "reasonable grounds to believe" standard.

[60] In *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 49-50, [2013] 2 SCR 559 and *Canadian National Railway Co. v Canada (Attorney General)*, 2014 SCC 40 at paras 55-62, [2014] 2 SCR 135, the Supreme Court applied the presumption that the standard of reasonableness is applicable to issues that involve a decision-maker interpreting its own statute or statutes closely connected to its function in non-jurisdictional contexts.

[61] It is well established that the application of the "reasonable grounds to believe" standard by an immigration officer to the circumstances of a case involves questions of mixed fact and law reviewable on a standard of reasonableness (*Torre v Canada (Minister of Citizenship and Immigration)*, 2015 FC 591 at para 15, [2015] FCJ No 601; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, 53, [2008] 1 SCR 190; *Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 122 at paras 32-33, [2005] FCJ 587 [*Thanaratnam*]).

VII. Analysis

A. *Procedural fairness*

[62] The applicant submits that broad procedural protections are required in this case because of the enormous impact on his family of the decision to declare him inadmissible. He raises the failed family reunification resulting from this decision and negative impact on his children's constitutional right to remain in Canada.

[63] The respondent submits that the content of the duty of procedural fairness is variable, and its purpose is to ensure that the person concerned receives a fair hearing. It maintains that the content of the duty of fairness owed by a visa officer is at the lower end of the spectrum, since the interests at stake are less important than in other circumstances and that the issuing of a permanent resident visa is a privilege, not a right.

[64] In *Baker v Canada (Minister of Citizenship and Immigration*, [1999] 2 SCR 817 at paras 21, 33, [1999] SCJ No 39 [*Baker*], the Supreme Court of Canada recalled that the content

of the duty of procedural fairness is variable and flexible and must be considered in context. At paragraph 30, the Court notes that "[a]t the heart of this analysis is whether, considering all the circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly." The Court did not dictate the content of the duty of fairness, but it did identify factors to consider in determining the scope of the duty in a given context. These factors were summarized in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48, [2004] 2 SCR 650 at para 5:

> The content of the duty of fairness on a public body varies according to five factors: (1) the nature of the decision and the decision-making process employed by the public organ; (2) the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the party challenging the decision; and (5) the nature of the deference accorded to the body: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. . . .

[65] The case law also generally recognizes that the scope of the duty of fairness owed by a visa officer is at the lower end of the spectrum. In *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, at paras 31-32, [2001] FCJ No 1699 [*Khan*], the Federal Court of Appeal wrote the following:

> 31 The factors tending to limit the content of the duty in the case at bar include: the absence of a legal right to a visa; the imposition on the applicant of the burden of establishing eligibility for a visa; the less serious impact on the individual that the refusal of a visa typically has, compared with the removal of a benefit, such as continuing residence in Canada; and the fact that the issue in dispute in this case (namely, the nature of the services that Abdullah is likely to require in Canada and whether they would constitute an excessive demand) is not one that the applicant is particularly well placed to address.

> 32 Finally, when setting the content of the duty of fairness appropriate for the determination of visa applications, the Court must guard against imposing a level of procedural formality that, given the volume of applications that visa officers are required to process, would unduly encumber efficient administration. The public interest in containing administrative costs and in not hindering expeditious decision-making must be weighed against the benefits of participation in the process by the person directly affected.
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> [See also *Fouad v Canada (Minister of Citizenship and Immigration)*, 2012 FC 460 at para 14, (*sub nom Al-Ghazali v Canada (Minister of Citizenship and Immigration)*) [2012] FCJ No 768.]

[66] It should also be kept in mind that a decision on inadmissibility does not involve the exercise of a discretionary power. This factor militates in favour of a greater scope for the duty of fairness. In this respect, I consider the comments of Justice Dawson in *Mekonen v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1133 at paras 16-17, [2007] FCJ No 1469 [*Mekonen*] to be applicable to this case:

> 16 The decision with respect to inadmissibility is not an exercise of discretion. Officers are instructed to obtain evidence for subsection 34(1) decisions by collecting police or intelligence reports, statutory declarations supported by evidence of statements made to an officer, and other documentary evidence including media articles, scholarly journals, and expert reports.
>
> 17 The objective nature of the decision and the lack of any appeal procedure militate in favor of greater content to the duty of fairness.

[67] One must also consider the particular circumstances of the case and the significant impact that the decision declaring the applicant inadmissible and refusing his permanent residence application has had on his family. This decision prevents the family's permanent reunification in Canada, despite the fact that the applicant's wife and children are Canadian citizens. This

particular circumstance militates in favour of a duty of fairness more extensive than that owed, for example, to a visa applicant who is not in this situation (*AB v Canada (Minister of Citizenship and Immigration)*, 2013 FC 134 at para 55, [2013] FCJ No 166 [*AB*]).

[68] Specifically, the applicant has two principal grounds for claiming that his right to procedural fairness was violated: (1) his permanent residence application was refused on grounds of inadmissibility other than those disclosed to him and the officer failed to disclose documents and/or information relevant to the decision before her; and (2) his file was handled improperly and unfairly overall and the conduct of the officer and other employees in the Immigration Section raises a reasonable apprehension of bias.

(1) Failure to disclose the proposed grounds of inadmissibility as well as certain documents and information

(a) *Applicant's arguments*

[69] The applicant alleges that the grounds of inadmissibility relied on by the officer were not disclosed to him before she rendered her decision and that the officer never disclosed to him the true nature of the alleged inadmissibility.

[70] On this point, he submits that the fairness letter of September 5, 2012, sent before the interview that was held on September 25, 2012, raised the possibility of inadmissibility based on concerns that he might [TRANSLATION] "belong to a group of persons embezzling part of Congo's national petroleum production, appropriating the proceeds of the resale of petroleum

products and participating in the embezzlement of public property to the detriment of the Congolese state".

[71] The applicant submits that the grounds of inadmissibility relied on by the officer and mentioned in her decision are completely different from those raised in the letter; the officer found that there were reasonable grounds to believe that he was involved in a structure of companies organized in connection with ASG for the purpose of hiding assets, laundering money and committing tax fraud, embezzlement and misappropriation of public property.

[72] The applicant also submits that the letter sent to him on September 28, 2012, after the interview, did not raise any new concerns, but simply asked for additional information.

[73] The applicant adds that ASG's name was never communicated to him before he received the decision and that the officer had never informed him that she had concerns about his alleged ties to ASG. He submits that the officer had a duty to inform him of her concerns, even if they were prompted by documents that he himself submitted after the interview.

[74] He therefore states that he was not presented with the concerns and doubts that formed the basis of the officer's decision and that he never had the opportunity to address them and respond.

[75] The applicant also submits that the officer herself admitted that she had changed the grounds for inadmissibility when she indicated that the documents he had sent on and after

April 30, 2013, had [TRANSLATION] "provided new leads". The officer also admitted that she had learned about ASG's existence by reading the documents the applicant had sent her on April 30, 2013.

[76] The applicant adds that the unfair treatment has continued into the judicial review proceedings, with the respondent relying on undisclosed documents to justify the officer's decision on the basis of reasons other than those mentioned in the decision. The applicant argues that the respondent is now claiming that the criminal organization to which he is accused of belonging is allegedly made up of himself and his companies, President DSN, the administrators of Socotram and ASG. This organization was identified for the first time not in the officer's decision, but rather in the respondent's memorandum.

[77] The applicant alleges that the officer failed to disclose not only the true nature of the grounds of inadmissibility, but also the documents and information relevant to the processing of his application. Therefore, he was denied the opportunity to verify the accuracy of the information on which she was relying, to make full answer and defence against the allegations and to participate in a meaningful manner in the decision-making process.

[78] Among other things, the applicant accuses the officer of having failed to disclose to him several useful documents and pieces of information before the interview, particularly the [TRANSLATION] "open, convergent and consistent documentation" referred to in the fairness letter of September 5, 2012, and the nature of the electronic transfers of funds that FINTRAC found suspicious. The applicant maintains that if the officer's sources of information had been

disclosed to him, he could have verified their reliability and objectivity and, if necessary, made submissions and argued against the use of certain information in the public domain. The applicant submits that this opportunity would have been all the more important given his family ties with a political figure, who may be the subject of extensive media coverage that is not always neutral.

[79] He also submits that the January 2009 FINTRAC report should have been disclosed to him before the interview to enable him to verify the accuracy of the information it contained. The applicant submits that it was not enough for the officer to mention in the fairness letter that certain transfers of funds were considered suspect by FINTRAC without providing him with a list of transactions.

[80] The applicant also claims that the fairness letter should have identified the criminal organization in question, the list of questions that the officer intended to ask him and a list of the documents that she would ask him to submit. He also alleges that during the interview, the officer repeatedly referred to documents and information that had not been disclosed to him and that were not shown to him during the interview while the officer was referring to them to ask questions.

[81] The applicant also criticizes the officer for failing to disclose to him, before the interview, the April 2008 report of the CBSA (War Crimes Section) as well as the July 2009 conclusion of the CBSA's Organized Crime Section. The applicant submits that the officer should also have disclosed to him the CBSA's report of November 1, 2012, in which it concluded, after

verifications and an exhaustive review, that there was insufficient evidence on which to base reasonable grounds to believe that he was inadmissible under sections 34, 35 or 37 of the IRPA.

[82] The applicant insists on the importance of the report of November 1, 2012, particularly because the officer admitted that the significant concerns mentioned at paragraph 6 of her affidavit of September 24, 2014, came from the CBSA. It was the CBSA that sent the officer most of the questions that she asked during the interview. The applicant argues that by failing to disclose that report, the officer deprived him of evidence favourable to his case that was based on the same sources and/or information that she herself had consulted before declaring him inadmissible.

[83] The applicant adds that the second FINTRAC report of April 2011, to which the CBSA report of November 1, 2012, refers, should also have been disclosed to him. The applicant argues that this report was all the more relevant because it included his designation as a politically exposed foreign person under the PCMLA, which was relevant to his defence.

(b) *Respondent's arguments*

[84] The respondent submits that, in this case, the concerns that led to the declaration of inadmissibility of the applicant were disclosed to him and that he had ample opportunity to make representations and resolve the officer's doubts. The respondent submits that the officer's two principal categories of concern involved his rise within Socotram given his family ties and professional profile and the origins of his considerable wealth. The respondent submits that these

concerns were raised several times and that the applicant had numerous occasions to address them and submit information that would resolve the officer's doubts.

[85] The respondent submits that procedural fairness does not require that every document processed by an officer be disclosed to the applicant, but rather that he have real or presumed knowledge of the essential information contained in the relevant documents to enable him to provide his point of view on the information. The respondent submits that the applicant had access to all of the relevant information and documents to enable him to participate in the decision-making process.

[86] Referring to the letter of September 5, 2012, the respondent submits that the information included in the [TRANSLATION] "open, convergent and consistent documentation" mentioned therein (mainly newspaper articles about members of the Nguesso family, the wealth of certain African heads of state and the Congolese petroleum industry and Socotram) was public, that it could not have not been unknown to the applicant and that he had ample opportunity to respond to it.

[87] The respondent also insists on the fact that the applicant was represented by counsel and that at no time before or during the interview did he request a copy of the documents referred to in the fairness letter, implying that he was aware of the information it contained. There was no request for disclosure until February 1, 2013.

[88] Furthermore, the officer, on cross-examination, informed the applicant that the documentation mainly included newspaper articles about members of his family.

[89] The respondent acknowledges that the FINTRAC report of January 14, 2009, was not disclosed to the respondent, but submits that the report listed electronic transfers of funds made or received by the applicant, so he could not have been unaware of them. The respondent also argues that the issue involving the various transfers of funds was raised on several occasions. He alleges that the fairness letter of September 5, 2012, mentions it, that several of the questions asked during the interview of September 25, 2012, were about certain transactions and that the letter of September 28, 2012, demanded information on that subject. The respondent therefore argues that the applicant was informed of most of the information and allegations contained in the FINTRAC report and that he was given the opportunity to make whatever submissions he deemed appropriate.

[90] As for the second FINTRAC report dated April 5, 2011, the respondent submits that because the officer did not look at it or use it in her analysis of the permanent residence application, she had no obligation to transmit it to the applicant. The respondent also submits that it appears from the CBSA's recommendation of November 1, 2012, that this disclosure was similar to the first.

[91] The respondent also addressed the three reports prepared by the CBSA.

[92] He submits that the evaluation made by the CBSA's War Crimes Section did not need to be disclosed to the applicant because it addressed the possibility of inadmissibility for war crimes under section 35 of the IRPA, a ground that the officer rejected.

[93] As for the July 2009 email containing the opinion of the CBSA's Organized Crime Section, the respondent submits that it reveals no concerns that were not disclosed to the applicant. He adds that the CBSA opinion clearly mentioned that it was not final. The respondent adds that the preliminary nature of the opinion no doubt explains why the recipient of the email, Guy Langevin, wrote in the GCMS notes on October 29, 2009, that the file was [TRANSLATION] "still under review in the Organized Crime Section".

[94] As for the CBSA evaluation dated November 1, 2012, the respondent submits that it was essentially based on the responses provided by the applicant during the interview, the FINTRAC disclosures and the information in the public record. The CBSA therefore reveals no new concerns that had not been raised with the applicant and on which the officer based her decision.

[95] The respondent notes that the officer indicated, on cross-examination, that she had taken into consideration the CBSA's evaluation and that no inference could be drawn from the fact that the CTR did not contain any notes or exchanges about the evaluation or the fact that it was not mentioned in the officer's decision.

[96] The respondent adds that the report is based solely on the evidence that was before the CBSA on November 1, 2012. It has been demonstrated that the CBSA only had access to the

interview notes relating to the questions it had asked the officer to ask the applicant. Furthermore, this recommendation does not take into account the information and documents sent by the applicant on April 30, 2013. Finally, it is clearly stated in the CBSA report that its role was limited to providing support to the officer, who retained the authority to make whatever decision she considered appropriate.

[97] The respondent also refutes the applicant's allegation that the officer should have again confronted him with the concerns that emerged from the documents he submitted in April 2013. The respondent submits that the officer asked the applicant several questions about his various companies and that he deliberately chose not to respond or provide explanations about the transfers of funds between Socotram, several of his companies and himself.

(c) *Analysis*

[98] The case law recognizes that a visa applicant must be given a reasonable opportunity to respond to an immigration officer's concerns before his or her application is denied, and it goes without saying that he or she must therefore be informed of any such concerns (*Khan* at para 18; *AB* at para 67; *Pimentel v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1149 at para 7, [2004] FCJ No 1380; *Ghofrani v Canada (Minister of Citizenship and Immigration)*, 2008 FC 767 at paras 15-17, [2008] FCJ No 1005).

[99] This Court has dealt on several occasions with files in which the alleged breach of procedural fairness involved a failure to disclose documents or information before a decision was rendered, as is the case here.

[100] In *Haghighi v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 407 at paras 26-28, [2000] FCJ No 854 (CA) [*Haghighi*], the Federal Court of Appeal had to determine whether an immigration officer dealing with an application for a humanitarian and compassionate exemption based in part on a fear of persecution had breached procedural fairness by failing to disclose a pre-removal risk assessment report prepared by another officer. The Court held that the relevant issue was whether prior disclosure of the report was required to allow the applicant to participate meaningfully in the decision-making process, and it established guidelines for reviewing the scope of the duty of fairness in such a context.

[101] The Federal Court of Appeal was again invited to consider the obligation to disclose certain documents before a decision is rendered in *Bhagwandass v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 49 at para 22, [2001] 3 FC 3 [*Bhagwandass*], but this time, in the context of a public danger opinion. The Court applied the *Haghighi* test.

[102] At paragraph 12 of *Mekonen*, Justice Dawson summarized as follows the factors identified by the Federal Court of Appeal in *Haghighi* and *Bhagwandass*:

> 12 . . . In both cases, the Court applied five factors in order to determine whether disclosure of the report in question was required in order to provide the person concerned with a reasonable opportunity to participate in a meaningful fashion in the decision-making process. The factors were:
>
> (1) the nature and effect of the decision within the statutory scheme;
>
> (2) whether, because of the expertise of the writer of the report or other circumstances, the report was likely to have such a degree of influence over the decision-maker that advance disclosure was required in order to "level the playing field";

> (3) the harm likely to arise from a decision based upon an incorrect or ill-considered understanding of the relevant circumstances;
>
> (4) the extent to which advance disclosure of the report was likely to avoid the risk of an erroneously-based decision; and
>
> (5) any costs likely to arise from advance disclosure, including delays in the decision-making process.

[103] At paragraph 19 of *Mekonen*, Justice Dawson addressed the factor relating to the degree of influence that the report was likely to have over the decision-maker and used the expression "instrument of advocacy", a phrase often repeated in subsequent cases. She also emphasized, at paragraph 27 of her judgment, the fact that the relevant issue was not whether the applicant knew of the facts or information contained in the undisclosed report, but "whether the disclosure of the report is required to provide the person with a reasonable opportunity to participate in a meaningful manner in the decision-making process".

[104] The same test was applied in similar circumstances in various judgments of this Court, and, in most of those cases, the nature of the information contained in the undisclosed documents and the influence they had on the decision-maker were the determinative factors (*Okomaniuk v Canada (Minister of Citizenship and Immigration)*, 2013 FC 473 at paras 33-34, [2013] FCJ No 501 [*Okomaniuk*]; *Gebremedhin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 380 at para 9, [2013] FJC No 404 [*Gebremedhin*]; *Ulybin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 629 at para 23, [2013] FCJ No 661; *Krishnamoorthy* at para 37; *Pusat* at para 30; *Baybazarov v Canada (Minister of Citizenship and Immigration)*, 2010 FC 665 at paras 13-15, [2010] FCJ No 930 [*Baybazarov*]; *Kablawi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 283 at paras 12-14, [2009] FCJ No 348).

[105] At paragraph 33 of *Okomaniuk*, the Court specified that it is not always necessary for the report to be disclosed if the content or gist of the concerns are raised and conveyed (see also *Gebremedhin* at para 9).

[106] Like the respondent, I believe that the rules of procedural fairness were not breached in this case. I find that the applicant was validly informed of the nature of the inadmissibility being considered and the officer's concerns and that he had a reasonable and meaningful opportunity to participate in the decision-making process.

[107] As of May 13, 2008, the Immigration Section asked the applicant to provide additional documents and information. This request already indicated that the Immigration Section had concerns, or at least questions, about the applicant's assets and revenue sources. The Immigration Section instructed the applicant to provide his bank statements, the deeds of acquisition for his properties and vehicles, and details about the origin of the funding for these purchases. He was also instructed to provide the financial statements of Socotram and TS and the details of his brothers' and sisters' employment.

[108] Counsel then representing the applicant inquired about the reasons why the additional documents were being required of the applicant, and, in an email dated December 2, 2008, she called into question the relevance of several of the pieces of information sought. In an email dated December 5, 2008, the Immigration Section replied that in the context of an immigration application, immigration officers may ask for any document that will help establish a candidate's personal, professional and financial reality. The response specified that the research undertaken

had raised concerns and questions about some of the applicant's assets and that the public information available, published on Internet sites or in newspapers, justified a more in-depth investigation, which the Immigration Section was conducting in collaboration with partner agencies and Citizenship and Immigration Canada (CIC). The Immigration Section also noted that this was a routine check that could take time.

[109] The applicant then received the letter of September 5, 2012. This letter set out the various concerns of the Embassy's Immigration Section and specifically mentioned the ground of inadmissibility set out at paragraph 37(1)(*a*) of the IRPA. The letter indicated that the Immigration Section was concerned about the applicant's experience and knowledge and his advancement in the professional world. The letter also mentioned specific concerns in connection with the potential appropriation of proceeds from the sale of petroleum products.

[110] The file then evolved considerably, and although the concern regarding the potential misappropriation of the proceeds of petroleum production was no longer raised, the other concerns relating to the applicant's advancement in the professional world and the origins and legitimacy of his substantial financial resources remained. The same can be said for the concerns relating to certain transfers of funds.

[111] On September 25, 2012, the applicant participated in an interview that lasted almost four hours, during the course of which he was asked 170 questions. The applicant was accompanied by the counsel representing him at the time. As a result of the interview, additional information was obtained from the applicant, and he was informed of the officer's concerns. The

questions asked by the officer clearly revealed that she had concerns about various subjects, including the following:

- the applicant's academic history;
- the creation of TS, its financial resources and activities and the circumstances that enabled the applicant to move from a helicopter pilot position to that of TS administrator;
- the benefits that the applicant may have reaped from his family ties with DSN, particularly with respect to his advancement in the professional world;
- the creation of Socotram, its mandate, its activities, its funding model, its partners, its administrators and their proximity with DSN and the private shareholders who have successively held its shares;
- the purchase by TS of the shares held by SAGA and ELF Congo;
- the applicant's recruitment to Socotram, the lack of connection between his education and career path and his rise within Socotram through positions of great responsibility;
- the salary and benefits that the applicant receives from Socotram;
- the sale of TS's shares to GGSC and the reasons for the sale;
- the history of GGSC, its shareholders, its activities and its connections with the applicant, as well as the applicant's claimed ignorance regarding GGSC's activities, shareholders and administrators;
- the interests that the applicant allegedly holds in several companies, and particularly his role in St. Philibert, Matsip and Canaan;

- the real property and moveable assets owned by the applicant in France, Congo and Canada and the source of the funds used to purchase them;
- the many transfers of electronic funds made for the applicant's benefit that came from Socotram and several other companies, including TS, Matsip and Canaan;
- the apartment rented by Socotram for the applicant that belonged to St. Philibert, one of the applicant's companies;
- the transfer of a large sum of money from Socotram to Canaan via a Montréal notary that allegedly served to purchase the house in which the applicant's wife and children reside; and
- his involvement in the investigation by the French authorities into [TRANSLATION] "ill-gotten gains".

[112] Following the interview, the officer sent a letter to the applicant dated September 28, 2012. In the letter she indicated that based on the applicant's statements during the interview, the Immigration Section had concerns about his revenues, the companies in which he held shares, the nature of his employment contract and the success of his business.

[113] The applicant submits that this letter did not list the officer's new concerns, but merely requested additional information. This argument cannot succeed. The correspondence and the list of documents that the officer asked the applicant to provide clearly show that her concerns were broader and more numerous than those exposed in the letter of September 5, 2012. The officer asked the applicant to provide many documents about a variety of subjects, such as his revenues; the activities and resources of TS; the transaction by which he acquired, through TS, the shares

that SAGA and ELF Congo held in Socotram; Socotram's activities; Socotram's administrators; his employment contract; the salary and benefits that he received from Socotram; various companies in which he held interests, such as St. Philibert and Canaan; and several transfers of funds carried out by Socotram to the applicant or to some of his companies and other transfers of funds from the companies to the applicant.

[114] On February 27, 2013, the Immigration Section also sent the applicant's counsel the list of questions asked of the applicant during the interview, the answers he gave and the officer's analysis of the interview. The officer's concerns relating to the applicant's career path and the influence of DSN, the creation and development of TS, Socotram's operations, the applicant's other companies and the legitimacy of several transactions and transfers involving Socotram and the applicant are clearly reflected in the interview notes.

[115] I am therefore of the view that the applicant was validly informed of the officer's concerns, which were not permanently set when the letter dated September 5, 2012, was sent. I should reiterate that the fairness letter of September 5, 2012, was not limited to the allegations of potential misappropriation of the proceeds of petroleum production in Congo.

[116] The officer's concerns about the legitimacy of the applicant's business and sources of revenue, his companies' corporate structures, their ties with Socotram and the transfers of funds between Socotram and those companies evolved based on the responses provided by the applicant to the questions he was asked and the documents he provided. I am of the view that all the letters the applicant received, the questions asked of him during the interview and the

documents and information requested of him after the interview, as well as the officer's interview notes, enabled him to understand the gist and nature of the officer's concerns. He also had the opportunity to ask questions as needed, which he did not do. The applicant instead chose to respond only partially to the officer's questions and provide only some of the requested documents.

[117] I therefore find that he was validly informed of the officer's concerns and had a reasonable opportunity to respond to them. I reject the applicant's allegation that he was found to be inadmissible on grounds other than those alleged.

[118] I also find that the applicant was provided with the information that would enable him to participate meaningfully in the decision-making process.

[119] The letter of September 5, 2012, clearly indicates that inadmissibility for organized criminality was being considered under paragraph 37(1)(*a*) of the IRPA.

[120] I agree that the officer disclosed to the applicant neither the public sources on which her concerns mentioned in the letter of September 5, 2012, were based, nor the list of relevant electronic transfers of funds, and it would have been preferable for her to have done so. However, I find that the officer's concerns were specifically expressed during the interview and that they are clearly revealed by the interview notes disclosed to the applicant. I therefore find that this omission did not prevent the applicant from participating in the decision-making process in a meaningful way. The officer informed the applicant that the documentation was made up

mainly of newspaper articles. This information was in the public domain and was available. Moreover, the applicant could not have been unaware of the media coverage about his family or that relating to the investigation by the French authorities into [TRANSLATION] "ill-gotten gains". Furthermore, the public documentation referred to in the letter of September 5 was mentioned in relation with the concern about the potential misappropriation of a portion of the proceeds of petroleum products, and this element was not raised subsequently.

[121] The officer did not disclose to the applicant the FINTRAC report of January 2009, which included a list of the transfers of funds considered suspect, but she did ask him several pointed questions about specific transactions and transfers of funds that concerned her. Moreover, in the letter of September 28, 2012, the officer clearly asked the applicant to provide information about the transactions and transfers at issue. I therefore find that the gist of the information contained in the January 2009 FINTRAC report that was used by the officer was disclosed to the applicant and that he had the opportunity to make any submissions he wished to make in response to her questions and concerns. As for the second FINTRAC report from April 2011, the officer did not look at it before rendering her decision. It therefore could not have been used as an "instrument of advocacy" and did not have to be disclosed to the applicant.

[122] As for the CBSA reports, I find that the officer did not breach procedural fairness in failing to disclose them to the applicant.

[123] The first report from the CBSA's War Crimes Section in April 2008 concerned the possibility of inadmissibility for war crimes. This ground was rejected by the officer and was therefore not relevant to the decision she rendered.

[124] The CBSA's email of July 2009 was a preliminary opinion based on its analysis of the information in its possession at that time. The report contains very little information and does not refer to concerns that were not disclosed to the applicant.

[125] It is clear that the officer looked at the CBSA report of November 1, 2012, before rendering her decision. However, applying the test set out in *Haghighi* and *Bhagwandass* and repeated in *Mekonen* does not lead me to conclude that its disclosure was necessary, because the report was not relied on by the officer, and it is not based on information that was unavailable to the applicant. The report is an analysis performed by a partner agency on the basis of the evidence in the file at the time the report was prepared. The record also shows that the officer did not rely on the report in rendering her decision; instead she reached contrary findings based on her own analysis of the file and the evidence at her disposal. Therefore, the CBSA report was not an "instrument of advocacy" designed to have such a degree of influence on the officer that advance disclosure was required to level the playing field.

[126] It was not a report reflecting negatively on the applicant on which the officer relied to render her decision, as was the case in all of the authorities filed by the parties. On the contrary, this report indicated that the CBSA was of the view that there was insufficient evidence to support the existence of reasonable grounds to believe that the applicant should be declared

inadmissible for organized criminality. The question of whether the officer should have accepted the CBSA's findings is more relevant to the issue regarding the reasonableness of her decision.

[127] Essentially, the applicant submits that if he had had the CBSA report in his possession, he could have used it to try to persuade the officer that there was insufficient evidence to declare him inadmissible. This argument is not sufficient to create a duty to disclose the report to the applicant, particularly because the CBSA was not acting as the decision-maker and the officer's decision was based on much more information than the CBSA had available to it when it issued its opinion. In addition to the information available to the CBSA, the officer based her analysis on the responses provided by the applicant to the questions she herself had asked him and on the documents that he had provided on April 30, 2013. The influence that the CBSA report of November 1, 2012, could have had on the officer's decision was therefore limited and insufficient to require that it be disclosed to the applicant.

[128] The applicant submits that the officer should have sent him the "new" concerns that emerged following her analysis of the documents that he submitted on April 30, 2013. I disagree. The officer asked the applicant to provide her with a large number of documents. He had ample opportunity then to make any submissions he thought appropriate to explain or contextualize the documents he opted to send. The record also shows that the applicant chose to provide only partial responses to the officer's questions and to provide only some of the documents requested. The applicant had the opportunity to provide explanations to address the officer's concerns regarding the transactions between Socotram, TS and GGSC; his conditions of employment; the corporate structure of his companies and several transfers of funds, but he opted to do so only

partially. The officer had no duty to disclose to the applicant the results of her analysis of the documents he had submitted.

[129] Requiring another "round" of fairness would have been equivalent to requiring that the officer provide the applicant with an intermediate outcome of her analysis of documents he had submitted. The duty of fairness may require that the applicant have a fair opportunity to respond to concerns raised by documents that he himself has submitted if the officer has concerns about the credibility, accuracy or genuineness of the information submitted (*Baybazarov* at para 12; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2014 FC 678 at para 17, [2014] FCJ No 745 [*Kaur*]; *Chawla v Canada (Minister of Citizenship and Immigration)*, 2014 FC 434 at para 14, [2014] FCJ No 451; *Hussaini v Canada (Minister of Citizenship and Immigration)*, 2013 FC 289 at para 10; [2013] FCJ No 318). This duty does not stretch to the point of requiring an officer to provide an applicant with a preliminary analysis of the evidence that he has submitted (*Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at paras 22-23, [2004] FCJ No 317; *Baybazarov* at para 11; *Kaur* at para 17). In this case, the officer did not have doubts regarding the authenticity or credibility of the documents that the applicant provided; rather she drew inferences and conclusions from these documents.

[130] I therefore find that the applicant benefitted from the information that was necessary to enable him to participate meaningfully in the decision-making process and that the failure to provide the FINTRAC and CBSA reports and to question him further about the documents he submitted on April 30, 2013, does not constitute a breach of the rules of procedural fairness.

(2) Unfairness and reasonable apprehension of bias

(a) *Applicant's arguments*

[131] The applicant submits that several elements in the record show that he was treated unfairly throughout the processing of his permanent residence application. He also argues that the unfair treatment has extended into this judicial review and that the manner in which the file has been handled constitutes an abuse of process.

[132] The applicant alleges that despite the fact that the Immigration Section asked the CBSA three times to examine whether he was inadmissible and that the CBSA found three times that there was no evidence to support a finding of inadmissibility, his file was unduly blocked because of the ongoing investigation in France into [TRANSLATION] "ill-gotten gains".

[133] The applicant notes that the entry into the GCMS of October 29, 2009, indicated that his file was [TRANSLATION] "still under review in the Organized Crime Section", despite the fact that the CBSA had found no grounds for inadmissibility in July 2009. The applicant states that the officer was unable to explain this note.

[134] The applicant also submits that there was no progress in the file from October 2009 to March 2011 and that he had to file a *mandamus* application to move things forward. Moreover, he notes that the out-of-court settlement involved a timetable for finalizing the processing of the application without the issue of inadmissibility being raised by the respondent.

[135] The applicant also criticizes the respondent for filing an incomplete CTR, arguing that he was forced to file several applications to have the CTR completed and that it is still not complete.

[136] The application criticizes the officer for some of her statements regarding the preparation of the CTR. The officer indicated that the documents included in supplementary volumes 8 and 9 of the CTR were not included in the original CTR because they were not in her possession or under her control, because she was not aware of them or because they had been destroyed in accordance with the thin file policy.

[137] The applicant submits that the responses to the undertakings made by the officer on cross-examination and the cross-examination itself reveal that the majority of the documents that were not in the original CTR were indeed in her possession. They could mainly be found in her electronic mailboxes and her computer. He alleges that it also came out for the first time during the officer's cross-examination and her responses to her undertakings that she had decided to remove certain documents from the CTR on the ground that they contained privileged information.

[138] The applicant alleges that the officer also admitted that her affidavit of September 19, 2014, contained errors, particularly with respect to her statement about the completeness of the record, and that she should have specified, at paragraphs 6 and 7 of her affidavit, [TRANSLATION] "all my communication exchanges in the file still physically present in Paris". The applicant submits that the officer also admitted that she had not mentioned in her affidavit of September 19, 2014, that there existed other exchanges with the CBSA and CIC that had not

been included in Volumes 1 to 7 of the CTR on the grounds that they had not been relevant to the decision.

[139] The applicant therefore submits that the officer failed to prepare the CTR rigorously and made inaccurate statements.

[140] The applicant also takes issue with the officer for making misrepresentations, particularly when she claimed not to have had any direct communications with partners such as the CBSA on the basis that these communications were made through the officers of Section B. The applicant also complains that the officer made contradictory statements regarding the number of times she communicated with the investigating judges in charge of the [TRANSLATION] "ill-gotten gains" investigation in France.

[141] The applicant also submits that the officer's interview notes are incomplete and, in some respects, inaccurate, and that there are discrepancies and contradictions between the version of the notes provided to the CBSA and the one provided to him. The applicant also alleges that the officer's interview notes are replete with personal comments and unreliable.

[142] The applicant finally submits that the affidavit sworn by the officer on September 24, 2014, on the subject of procedural fairness, was incomplete because, among other reasons, there was no mention of the complaint he filed on April 30, 2013, or the way it was handled. The applicant criticizes the officer for having attempted to explain this omission by alleging that she

was not the one who had dealt with the complaint, when the record shows that she was involved in its handling.

[143] The applicant is also of the view that the officer's conduct raises a reasonable apprehension of bias. He is particularly critical of her communications with the French investigating judge, despite her awareness that he was bound by professional privilege. From the applicant's point of view, these communications raise concerns about potential interference or an attempt to let the investigating judge know about Canada's interest in the investigation. The applicant submits that the officer's conduct was improper and raises a reasonable apprehension of bias.

[144] The applicant also submits that the notes handwritten by the officer on the complaint of April 30, 2013, demonstrate that she believed that he had been charged with offences relating to the [TRANSLATION] "ill-gotten gains" complaint in France, before the investigation was even concluded. The applicant states that this confusion also raises a reasonable apprehension of bias.

[145] The applicant also alleges that the CTR (page 2040 of Volume 8) reveals that on June 22, 2012, well before the interview of September 25, 2012, the officer was already considering inadmissibility. In an email that the officer sent to another officer, she wrote, [TRANSLATION] "apart from security grounds, there aren't really any other grounds for refusal".

[146] The applicant also criticizes the officer for the way she conducted the interview, and more particularly the unreasonableness of several of her questions. He adds that the officer's

interview notes, as well as the notes summarizing her analysis, demonstrate the presence of biases, insinuations and arbitrary comments that lack any evidentiary basis.

[147] The applicant adds that on April 30, 2013, he submitted all of the documents relevant to the processing of his permanent residence application and the decision on inadmissibility. The applicant submits that it was abusive to ask him to submit all of the documents identified in the letter of September 28, 2012, and that only those documents regarding the lawfulness of his commercial activities and his sources of revenue were relevant. The applicant submits that several of the documents requested went beyond what was relevant and constituted a fishing expedition and an invasion of his private life.

(b) *Respondent's arguments*

[148] The respondent refutes any allegations that the applicant's file was handled improperly.

[149] He submits that the IRPA does not impose time limits for dealing with permanent residence applications. The investigations were necessary and could require considerable time to conduct. The respondent insists that the immigration system is based on the provision of accurate and complete information and that the officer was entitled to ask the applicant to provide additional information and documents. He adds that delays in handling complex files are indicative not of bias but of prudence.

[150] The respondent submits that the interview of September 25, 2012, was conducted according to standard practice and that the officer was under no obligation to disclose to the applicant in advance the questions she planned to ask him.

[151] The respondent refutes the argument that the handling of the applicant's file raises a reasonable apprehension of bias and notes that the onus is on the applicant to reverse the presumption of impartiality by demonstrating a reasonable apprehension of bias, which he has not done.

[152] The respondent also submits that the officer's role in the handling of the complaint of April 30, 2013, was not inappropriate, since it is often the decision-maker who first deals with an allegation of bias against him or her, and that, regardless, the final decision on this complaint was made by the officer's supervisor. The respondent alleges that the fact that the officer did not mention the complaint in her affidavit cannot form the basis of a reasonable apprehension of bias because the complaint was not part of the review of the file on the merits.

[153] As for the officer's communications with the French investigating judge, the respondent submits that the officer had a duty to inform herself of the progress of the investigation into [TRANSLATION] "ill-gotten gains" because any charges resulting from the investigation would have been relevant in the context of the processing of the applicant's permanent residence application.

[154] In relation to the officer's notes on the copy of the complaint filed by the applicant on April 30, 2013, the respondent submits that the officer admitted that, at the time, she had confused the investigation with charges, but she clearly indicated when rendering her decision that she was aware that the applicant had not been charged with anything.

[155] With respect to the officer's interview notes, the respondent submits that the officer acknowledged that translation errors may have slipped into the document sent to the CBSA and that she had translated into English, but that this had no impact on the decision and in no way indicated a reasonable apprehension of individual or institutional bias.

(c) *Analysis*

[156] There is no doubt that procedural fairness requires that decisions be rendered by an impartial decision-maker (*Baker* at para 45). The test for bias is that set out by Justice de Grandpré, writing in dissent, in *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 at 394, 68 DLR (3d) 716:

> 40 . . . the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."

[157] The impartiality of the decision-maker is presumed, and the apprehension of bias must be based on tangible elements. In this respect, I adopt the statements of Justice Layden-Stevenson in

Ayyalasomayajula v Canada (Minister of Citizenship and Immigration), 2007 FC 248 at paras 14-15, [2007] FCJ No 320:

> 14 In short, a finding of reasonable apprehension of bias on the part of a decision-maker requires something more than an allegation. The evidence before me does not demonstrate a reasonable apprehension of bias.
>
> 15 In the absence of any evidence to the contrary, it must be presumed that a decision-maker will act impartially: *Zündel v. Citron*, [2000] 4 F.C. 225 (C.A.) leave to appeal refused, [2000] S.C.C.A. No. 322. Even in the context of judicial hearings, the apprehension of bias must be reasonable and be held by reasonable and right-minded persons applying themselves to the question and obtaining the required information. The question is -- what would an informed person, viewing the matter realistically and practically, having thought the matter through, conclude? The grounds must be substantial and the test should not be related to the very sensitive or scrupulous conscience. A real likelihood or probability of bias must be demonstrated and mere suspicion is not sufficient: *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369.

[158] It is also important that the applicant be treated fairly while his application is being processed.

[159] Contrary to the applicant's claims, I am unable to find that his application was processed unfairly or that the officer's conduct, or that of any other person, raises a reasonable apprehension of bias.

[160] It is true that the handling of the applicant's file stretched out over a very long period, probably too long, and that it was finally resolved after the applicant initiated *mandamus* proceedings, but I am not prepared to infer procedural unfairness from this.

[161] The file was complex, and the Immigration Section waited for the results of the CBSA's analyses. The record also indicates that the Immigration Section hoped to know the outcome of the French authorities' [TRANSLATION] "ill-gotten gains" investigation before rendering its decision. This does not mean that it was appropriate for the file to be put on hold for such a long period, but there is no basis on which to infer bad faith or bias against the applicant. In the July 2009 email, the CBSA indicated that it was suspending the file "pending further intelligence". This, in my view, is what explains the note that Mr. Langevin entered into the GCMS in October 2009 in which he stated that the file was still under review at the CBSA's Organized Crime Section. I do not see that as a decision to [TRANSLATION] "block" the file as the applicant claims. The applicant availed himself of the legal recourse at his disposal, a *mandamus* application, and the resulting out-of-court settlement helped to move the file forward.

[162] The subsequent delays were mainly caused by the requests from the applicant's successive counsel for more time to provide the information sought in the letter of September 28, 2012. Delays also resulted from the complaint filed by the applicant on April 30, 2013.

[163] As for the CTR, I wrote in my amended order and reasons of February 2, 2015 (*Nguesso v Canada (Minister of Citizenship and Immigration)*, 2015 FC 102 at paras 79-99, 120-122) that it had possibly been prepared on the basis of incorrect parameters. I wrote at paragraph 122 of the amended order and reasons that all the documents at the officer's disposal during the processing of the application were presumed to be relevant and should have been included in the CTR. However, the officer's examinations on affidavit, which took place after the release of my amended order and reasons, revealed that the CTR was indeed prepared with only those

documents that were still in the officer's possession and that she considered relevant to the decision she had to render. The original CTR was therefore not prepared in accordance with the parameters that I described in my amended order and reasons.

[164] However, there is no evidence that the officer acted knowingly and in bad faith for the purpose of hiding information from the applicant. She prepared the record according to the parameters that the respondent considered appropriate. She admitted to having made certain errors and finding some of the documents on her computer. I also note that she made inaccurate statements in stating that she had not had any direct contact with the CBSA officer, while the CTR shows that she did have certain exchanges with CBSA officers who did not go through Section B. However, I find that these errors and contradictions do not indicate that the officer acted in bad faith or wished to hide information. The file was processed over a very long period and involved a significant number of exchanges and the handling of many documents, which could explain certain contradictions and omissions, which, in my view, did not affect the essential elements of the record.

[165] The discrepancies between the interview notes that the officer shared with the CBSA and the version provided to the applicant are translation errors of no bearing on the processing of the file. The officer recognized that certain errors may have crept in because she had translated the applicant's responses into English before sending them to the CBSA. However, since the officer based her analysis on her own interview notes, no harm could have resulted from any errors that may have crept into the summary sent to the CBSA.

[166] I also reject the applicant's claim that the officer's notes are replete with comments and insinuations that demonstrate a bias against the applicant. The officer described some of the applicant's reactions during the interview and commented on some of his answers, but none of the comments implies a bias or demonstrates that the officer's notes do not faithfully reflect what happened during the interview. Furthermore, nothing in the officer's notes indicates that she conducted the interview improperly, unfairly or unreasonably. She asked the applicant many questions that were all, in my view, relevant and objective.

[167] I also find that no inference of bad faith or reasonable apprehension of bias can be drawn from the officer's notes on the complaint filed by the applicant on April 30, 2013. The officer admitted that when she learned about the complaint, she mistakenly believed that the French investigation into [TRANSLATION] "ill-gotten gains" meant that he had been charged, but she clearly indicated that she knew, when the time came to render her decision, that he had not.

[168] The applicant also argues that the email sent by the officer on June 5, 2012, in which she indicated that there were no grounds for refusal apart from security grounds, demonstrated bias. I disagree. It is merely an indication that the only elements that could raise concerns about the applicant's permanent residence application involved the possibility of inadmissibility based on security grounds.

[169] With respect to the communication that the officer had with the investigating judge, who was responsible for the investigation on [TRANSLATION] "ill-gotten gains", I find that it was inappropriate, but that alone is not sufficient to raise a reasonable apprehension of bias or unfair

treatment. I understand from the record that the officer was trying to find out when the investigation would conclude because any resulting charges would have been relevant to the decision she had to render. In fact, the CBSA, in its opinion of November 1, 2012, suggested that the Immigration Section talk to the French authorities to find out whether the applicant had been charged following the investigation. No information was sent to the officer by the investigating judge or his office because it was confidential, and the officer's inquiries remained unanswered. I therefore find that it was unhelpful and inappropriate for the officer to contact the office of the investigating judge, but that these communications did not raise a reasonable apprehension of bias because their purpose was to find out whether the investigation was nearing its conclusion. Possible charges or an absence of charges following the investigation would have been relevant to the decision that the officer was to make.

[170] There was some confusion regarding the number of times the officer contacted the office of the investigating judge, but there were no false statements.

[171] Nor do I find any unfairness or bias in the processing of the complaint filed by the applicant on April 30, 2013. The record indicates that the officer was aware of the complaint and probably discussed it with her superior, but she is clearly not the one who dealt with it. The complaint was addressed and rejected by Mr. Gilbert. In this case, I find that the officer did not have a duty to address this complaint in her affidavit of September 24, 2014, because the complaint had no impact on her processing of the applicant's permanent residence application.

[172] Finally, contrary to the applicant's allegations, I find that the documents that the officer asked the applicant to provide in her letter of September 28, 2012, were all relevant.

B. *Errors of law*

[173] Under paragraph 37(1)(*a*) of the IRPA, a person may be declared inadmissible on the basis of membership in a criminal organization or participation in organization-related activities (*Thanaratnam* at para 30; *Mendoza v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 934 at para 27, [2007] FCJ No 1204 [*Mendoza*]). In this case, the officer concluded that there were reasonable grounds to believe that the applicant was a member of a criminal organization and had participated in that organization's activities.

[174] The applicant submits that the officer committed three errors of law warranting this Court's intervention: (1) she applied the wrong standard of proof, (2) she failed to identify the criminal organization at issue, and (3) she failed to identify the alleged offences in foreign law and their equivalents in Canadian law.

(a) *Standard of proof*

[175] The standard of proof applicable to inadmissibility for organized criminality is the "reasonable grounds to believe" standard set out at paragraph 33 of the IRPA:

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	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

reasonable grounds to believe that they have occurred, are occurring or may occur.	sont survenus, surviennent ou peuvent survenir.

[176] In her decision, the officer mentioned this standard of proof several times in support of her findings.

[177] The applicant submits that the officer applied the wrong standard. Relying on *R v MacDonald*, 2014 SCC 3 at paras 41, 69, [2014] 1 SCR 37 [*MacDonald*], particularly on the concurring opinions of Justices Moldaver and Wagner endorsed by Justice Rothstein, he alleges that the "reasonable grounds to believe" standard refers to the standard of "reasonable and probable grounds" and that this standard must be objectively verifiable.

[178] The respondent submits that the Supreme Court of Canada dealt with the applicable standard of proof in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114, [2005] 2 SCR 100 [*Mugesera*], and he refutes the applicant's position. He argues that the authorities cited by the applicant were rendered in a non-criminal-law context and that there is no reason to depart from the standard recognized in *Mugesera*.

[179] In *Mugesera*, the Supreme Court of Canada determined the standard of proof required by paragraph 19(1)(*j*) of the former *Immigration Act*, RSC 1985, c I-2, which set out that persons were inadmissible if there were reasonable grounds to believe they had committed an act or omission outside Canada that constituted a war crime or a crime against humanity that would have constituted an offence against the laws of Canada if it had been committed in Canada. The Court found, at paragraph 114, that 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: . . . . In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information . . .". The Supreme Court also set out, at paragraph 116, that this standard applied only to questions of fact, and that the follow-up issue of whether the facts in the case met the requirements of the offence at issue, in that case a crime against humanity, constituted a question of law.

[180] The principles set out by the Supreme Court in *Mugesera* are applicable to the determination of the standard to be applied in this case. Section 33 of the IRPA imposes the same standard of inadmissibility for crimes against humanity as for organized criminality, and the case law of this Court on inadmissibility for organized criminality applies the *Mugesera* principles (*Castelly v Canada (Minister of Citizenship and Immigration)*, 2008 FC 788 at para 13, [2008] FCJ No 999; *Lai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2014 FC 258 at para 11, [2014] FCJ No 282 [*Lai FC*], upheld on the ground that a general question had been incorrectly certified by 2015 FCA 21, [2015] FCJ No 125 [*Lai FCA*]).

[181] In *MacDonald*, the Supreme Court was called upon to determine the lawfulness of a safety search carried out by a police officer without a warrant. The majority held that such a search could be authorized if the police officer had reasonable grounds to believe that there was a threat to the safety of the public or the police, while the concurring judges, Justices Moldaver and Wagner, with Justice Rothstein's endorsement, were of the view that reasonable grounds to suspect were enough. Justice LeBel, writing for the majority, expressed the following test for

determining the "reasonable grounds to believe" that a police officer must have in a given context:

> 41 But although I acknowledge the importance of safety searches, I must repeat that the power to carry one out is not unbridled. In my view, the principles laid down in *Mann* and reaffirmed in *Clayton* require the existence of circumstances establishing the necessity of safety searches, reasonably and objectively considered, to address an imminent threat to the safety of the public or the police. Given the high privacy interests at stake in such searches, the search will be authorized by law only if the police officer believes on reasonable grounds that his or her safety is at stake and that, as a result, it is necessary to conduct a search (*Mann*, at para. 40; see also para. 45). The legality of the search therefore turns on its reasonable, objectively verifiable necessity in the circumstances of the matter (see *R. v. Tse*, 2012 SCC 16, [2012] 1 S.C.R. 531, at para. 33). As the Court stated in *Mann*, a search cannot be justified on the basis of a vague concern for safety. Rather, for a safety search to be lawful, the officer must act on "reasonable and specific inferences drawn from the known facts of the situation" (*Mann*, at para. 41).
>
> [Emphasis added.]

[182] The applicant relies on the following passage of the reasons of Justices Moldaver and Wagner:

> [69] Read in isolation, the "reasonable grounds to believe" language connotes the "reasonable and probable grounds" standard. See *Baron v. Canada*, [1993] 1 S.C.R. 416, at p. 447. But one cannot stop reading there, because the concept of being "at risk" inherently builds in the concept of possibility. See, e.g., the *Oxford English Dictionary* (online), *sub verbo* "risk" ("the possibility of loss, injury, or other adverse or unwelcome circumstance; a chance or situation involving such a possibility" (emphasis added)).
>
> [70] The language of *Mann* thus appears to stack a probability on top of a possibility — a chance upon a chance. In other words, *Mann* says a safety search is justified if it is *probable* that something *might* happen, not that it is *probable* that something *will* happen. As this Court only recently explained, the former is the

> language of "reasonable suspicion" (*R. v. MacKenzie*, 2013 SCC 50, [2013] 3 S.C.R. 250, at para. 74). The latter is the language of "reasonable and probable grounds".

[183] I do not believe that the Court's statements in *MacDonald* had the effect of changing the definition it had given to the standard of proof of "reasonable grounds to believe" in the IRPA context. First, *MacDonald* was rendered in a criminal context, not in the context of the application of the IRPA. Second, *MacDonald* was rendered several years after *Mugesera*, and the Court neither set aside nor even addressed the definition adopted in *Mugesera*. Finally, I do not understand Justice LeBel's statements in *MacDonald* to be requiring that the standard of reasonable grounds to believe correspond to a standard of "reasonable and probable grounds", and the statements of Justices Moldaver and Wagner must be read in their context.

[184] I therefore find that the officer set out the correct standard of proof.

(b) *Failing to specify the criminal organization*

[185] The applicant submits that the officer erred in law by failing to identify in either the fairness letter or her reasons the criminal organization of which he was a member. The applicant maintains that the existence of a criminal organization, which must be specified, is required for a finding of inadmissibility for organized criminality, for both the first part of paragraph 37(1)(*a*) of the IRPA (membership) and the second (engaging in the activities of a criminal organization). The applicant argues that it was clearly insufficient for the officer to state that he was allegedly a member of criminal group through his family connections and/or his involvement in a corporate structure whose criminal and organized nature is supposedly corroborated by the presence and

involvement of ASG, without specifically identifying the organized group in question. Among other cases, he relies on *Thanaratnam* at paras 23, 30-31, *Mendoza* at para 27 and *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326, [2006] FCJ No 1512 [*Sittampalam*].

[186] The respondent, on the other hand, submits that the term "organization" employed at paragraph 37(1)(*a*) of the IRPA must be given a broad and unrestricted interpretation and that the case law calls for a flexible, contextual approach to ensure that this provision is applied in accordance with the objectives set forth in paragraphs 3(1)(*h*) and (*i)* of the IRPA, namely, to maintain the security of Canadians, promote justice and security and deny access to Canadian territory to persons who are criminals or security risks (*Sittampalam* at paras 36-39 and *R v Venneri*, 2012 SCC 33 at paras 28-29, [2012] 2 SCR 211 [*Venneri*])

[187] The respondent does argue that the organization at issue is made up of, among others, the applicant; President DSN; the administrators of Socotram; ASG and the companies he set up on the respondent's behalf, including Matsip, TS, International Shipping S.A., St-Philibert and Canaan; and he submits that the applicant is the beneficiary of this organization. The respondent suggests that the composition of the criminal organization appears from the decision itself, even though the officer did not spell it out explicitly.

[188] In *Sittampalam*, the Federal Court of Appeal did adopt a flexible approach to the interpretation of "criminal organization", which is not defined in the IRPA:

> 37 Paragraph 37(1)(a) appears to be an attempt to tackle organized crime, in recognition of the fact that non-citizen

> members of criminal organizations are as grave a threat as individuals who are convicted of serious criminal offences. It enables deportation of members of criminal organizations who avoid convictions as individuals but may nevertheless be dangerous.
>
> 38 Recent jurisprudence supports this interpretation. In *Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, [2004] 3 F.C.R. 301 (T.D.), reversed on other grounds, [2006] 1 F.C.R. 474 (C.A.), O'Reilly J. took into account various factors when he concluded that two Tamil gangs (one of which was the A.K. Kannan gang at issue here) were "organizations" within the meaning of paragraph 37(1)(a) of the IRPA. In his opinion, the two Tamil groups had "some characteristics of an organization", namely "identity, leadership, a loose hierarchy and a basic organizational structure" (para. 30). The factors listed in *Thanaratnam*, as well as other factors, such as an occupied territory or regular meeting locations, both factors considered by the Board, are helpful when making a determination under paragraph 37(1)(a), but no one of them is essential.
>
> 39 These criminal organizations do not usually have formal structures like corporations or associations that have charters, bylaws or constitutions. They are usually rather loosely and informally structured, which structures vary dramatically. Looseness and informality in the structure of a group should not thwart the purpose of IRPA. It is, therefore, necessary to adopt a rather flexible approach in assessing whether the attributes of a particular group meet the requirements of the IRPA given their varied, changing and clandestine character. It is, therefore, important to evaluate the various factors applied by O'Reilly J. and other similar factors that may assist to determine whether the essential attributes of an organization are present in the circumstances. Such an interpretation of "organization" allows the Board some flexibility in determining whether, in light of the evidence and facts before it, a group may be properly characterized as such for the purposes of paragraph 37(1)(a).

[189] In *Venneri*, at paras 28-29, the Supreme Court also confirmed the need for flexibility in the legal definition of a criminal organization within the meaning of the *Criminal Code*.

[190] I therefore agree without hesitation that a liberal interpretation of "criminal organization" is needed to help achieve the objectives of the provisions enabling the declaration of certain persons as inadmissible.

[191] However, I am of the view that the organization in question must at least be identified in the decision declaring a person inadmissible on grounds of organized criminality. The existence of a criminal organization constitutes an essential element of inadmissibility under paragraph 37(1)(*a*) of the IRPA. In all of the examples submitted by the parties, the organization at issue was identified.

[192] I am of the view that the difficulty of precisely identifying a nameless organization does not relieve the officer handling the file and declaring a person inadmissible from identifying the criminal organization at issue.

[193] In this case, the officer merely indicated that she had reasonable grounds to believe that the applicant was a member of a criminal group [TRANSLATION] "through his family connections". In her decision, she does address President DSN and his alleged influence over the transaction between TS and GGSC, just as she mentions the Nguesso family's sphere of influence, but without specifying who makes up the criminal organization in question. The officer also refers to ASG, but it is unclear whether she believes that he belongs to the criminal organization at issue or whether his involvement in the corporate structure is instead the demonstration of the criminal and organized nature of the applicant's alleged activities.

[194] I therefore find that it was insufficient to state that the applicant was a member of a criminal organization on the basis of his family connections without further identifying or describing the composition of the organization. Is the group limited to DSN and the applicant, or does it include the administrators of Socotram, ASG and certain companies in which the applicant holds shares? A reading of the officer's decision does not allow me to answer that question.

[195] The respondent submits that the organization in question was difficult to identify, but he proposes a relatively precise composition. The problem with the respondent's proposal is that it represents a non-negligible addition to what can be found in the officer's decision.

[196] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15, [2011] 3 SCR 708, the Supreme Court recognized that a reviewing court may look to the administrative tribunal's record for the purpose of assessing the reasonableness of the outcome, with the caveat that courts should not substitute their own reasons for those of the decision-maker (see also *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 54, [2011] 3 SCR 654). I am of the view that this is what the respondent is asking this Court to do. Justice Rennie's remarks in *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11, [2013] FCJ No 449, strike me as being applicable to this case:

> 11 *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of

> review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn. Here, there were no dots on the page.

[197] I therefore find that by not specifying the criminal organization in question and by not providing sufficient indications of its composition, the officer erred in law, which makes her decision unreasonable, because an essential element is missing in the application of s. 37(1)(*a*) of the IRPA. I am of the view that ratifying such an omission would give the concept of criminal organization an overly broad interpretation that would allow for people to be declared inadmissible without any certainty about the criminal organization to which they are accused of belonging or the activities in which they are accused of participating.

(c) *Failure to identify the alleged Canadian criminal offences*

[198] The applicant alleges that the officer committed another error of law in failing to associate the alleged activities with Canadian criminal offences. He also submits that the officer had a duty to perform an equivalence exercise between the alleged offences under Congolese law and their Canadian-law equivalents. The applicant alleges that in performing such an exercise, the officer should have identified the relevant criminal legislation or provisions corresponding to the offences she alleged he had committed and then identified the corresponding offences in Canadian law.

[199] Furthermore, the applicant argues that the offences of misappropriation of company property in French law do not exist in Canada and are not equivalent to the offence of fraud. He also adds that if fraud may be considered a *malum in se* offence (an offence that by its very nature may be considered an offence in all civilized nations), this was not raised by the officer. Moreover, paragraph 37(1)(*a*) of the IRPA and the case law require the demonstration of the essential elements of the offence at issue. The applicant relies on *Lai FC* and *Lai FCA*.

[200] The respondent admits that the officer did not clearly identify the Canadian-law equivalents of the alleged offences. However, he submits that while there is no particular equivalence in Canada for embezzlement of funds and misappropriation of company property, these offences are covered by the offence of fraud set out in subsection 380(1) of the *Criminal Code*. He adds that there was no need for the officer to address these crimes in more detail because they are *mala in se* offences.

[201] As for the money laundering, the respondent alleges that it constitutes laundering the proceeds of crime within the meaning of section 462.31 of the *Criminal Code* in addition to being prohibited by international law at section 23 of the *United Nations Convention against Corruption*, UN Doc A/RES/58/4.

[202] The respondent finally submits that tax evasion is also covered by subsection 380(1) of the *Criminal Code* in addition to being sanctioned by several provisions, including subsection 239(1) of the *Income Tax Act*, RSC 1985, c 1(5th Supp). Moreover, when the offence

of fraud involves subject-matter whose value exceeds $5,000, it is an indictable offence, which is required for the application of paragraph 37(1)(*a*) of the IRPA.

[203] I do not feel that it was necessary in this case to identify and analyze the equivalent offences in foreign law. However, the officer made an error of law warranting the Court's intervention by failing to identify the relevant offences under Canadian law, identify the essential elements of these offences and explain how the evidence resulted in reasonable grounds to believe that the essential elements of these offences were committed.

[204] The concept of equivalent offences was developed mainly in the context of inadmissibility on grounds of criminality under section 36 of the IRPA, when a person was declared guilty of an offence by a foreign jurisdiction. In that context, the decision-maker must ensure that the offence of which the individual has been found guilty is equivalent to an offence under a Canadian law, either by comparing the text of the foreign legislation to that of the Canadian legislation, by examining the evidence that was before the foreign jurisdiction to verify whether it matches the essential elements of the corresponding offence under Canadian law (*Hill v Canada (Minister of Citizenship and Immigration)*, 73 NR 315 at p 350, [1987] FCJ No 47, *Brannson v Canada (Minister of Employment and Immigration)*, [1981] 2 FC 141 at paras 4-6, 1980 CarswellNat 161F).

[205] In *Park v Canada (Minister of Citizenship and Immigration)*, 2010 FC 782 at paras 14-15, [2010] FCJ No 958, Justice Mosley summarized the state of the law as follows, also

in a context in which the person in question was found guilty of offences in a country other than Canada:

> 14 According to *Hill v. Canada (Minister of Employment and Immigration)*, (1987), 1 Imm. L.R. (2d) 1, [1987] F.C.J. No. 47, to determine that the offence at issue committed abroad would be an offence under an Act of Parliament if it had been committed in Canada, it must be established that the essential elements of both offences are equivalent. Equivalency can be verified in three ways, one of which is by comparing the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law and determining therefrom the essential ingredients of the respective offences: *Kharchi*, above, at para, 32.
>
> 15 As was found by Justice de Montigny in *Qi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 195, [2009] F.C.J. No. 264, at para. 24, "it is now well-settled that foreign criminal law may be proved without expert evidence in determining criminal inadmissibility in the immigration context. The decision-maker may rely on expert evidence if it is available, but may also rely on the foreign and domestic statutory provisions and the totality of the evidence, both oral and documentary: see, e.g., *Hill v. Canada (Minister of Employment and Immigration)* (1987), 73 N.R. 315, 1 Imm. L.R. (2d) 1 (F.C.A.); *Li v. Canada (Minister of Citizenship and Immigration)*, [1997] 1 F.C. 235 (F.C.A.)."

[206] This exercise ensures that a person's acts are always evaluated in accordance with Canada's standard for criminal law, in particular to protect those coming from countries where the criminal law is harsher:

> 35 On the other side of the coin, as we well know, some countries severely, even savagely, punish offences which we regard as relatively minor. Yet Parliament has made clear that it is the Canadian, not the foreign, standard of the seriousness of crimes, as measured in terms of potential length of sentence, that governs admissibility to Canada. The policy basis for exclusion under paragraph 19(1)(*c*) must surely be the perceived gravity, from a Canadian point of view, of the offence the person has been found to have committed and not the actual consequence of that finding as determined under foreign domestic law. If that is the

> policy basis, there seems to me no reason why the Canadian standard ought not to apply uniformly to all persons seeking admission regardless of where an offence was committed.
>
> [*Canada (Minister of Employment and Immigration) v Burgon*, [1991] 3 FC 44 at p 50, [1991] FCJ No 149 (CA) (J. Mahoney)]

[207] When a person is found guilty of a crime abroad whose scope is wider than the crime sanctioned by Canadian law, the decision-maker must review the evidence of the acts committed in order to verify whether the essential elements of the Canadian offence are truly present. For example, in *Steward v Canada (Minister of Employment and Immigration)*, [1988] 3 FC 487 at para 9, [1988] FCJ No 321 (CA), the applicant had been found guilty of arson in the State of Oklahoma. However, the American offence at issue included fires caused by negligence, while the offence under Canadian law required an element of intentionality. The Court held that the decision-maker had to examine the evidence of the acts committed in order to ensure that the intentional element required under Canadian law was present. In this way, the Canadian standard remains the standard of reference for inadmissibility.

[208] However, in a context where there is no finding of guilt in the foreign country and the inadmissibility is merely founded on acts committed abroad, I am of the view that it is unnecessary to identify the potential foreign-law offences and compare them with the Canadian law. Paragraph 37(1)(*a*) of the IRPA simply states that the organized activities must be in furtherance of the commission of "an offence outside Canada that, if committed in Canada, would constitute such an offence". In my view, this paragraph does not require a determination of whether the acts at issue are prohibited by foreign law. The important thing is to assess whether the acts committed would be punishable by indictment in accordance with a Canadian

Act of Parliament. The foreign law is only relevant to the extent that it enables one to assess the probative value of a conviction by a foreign jurisdiction as evidence that the acts committed correspond to an offence under Canadian law. Otherwise, it suffices to assess directly whether the evidence establishes reasonable grounds to believe that the person committed acts that, if committed in Canada, would be punishable by indictment in accordance with federal legislation. This exercise requires that the offences under Canadian law and their essential elements be identified.

[209] This is what the Supreme Court did in *Mugesera*; it provided a detailed analysis of the essential elements of the alleged offences under Canadian law and the evidence that supported them, simply presuming that Rwandan law would produce the same result. Moreover, the case law on paragraph 36(1)(*c*) of the IRPA, which covers inadmissibility on grounds of serious criminality in cases where there has been no conviction in the foreign jurisdiction, does not lend itself to an equivalence exercise. It does, however, require that the acts committed raise reasonable grounds to believe that an offence under Canadian law has been committed (see e.g. *Bankole v Canada (Minister of Citizenship and Immigration)*, 2011 FC 373, [2011] FCJ No 481; *Magtibay v Canada (Minister of Citizenship and Immigration)*, 2005 FC 397, [2005] FCJ No 498).

[210] I agree that in *Lai FC*, Justice Hughes found that an equivalence exercise was necessary, despite the fact that there do not seem to have been any foreign declarations of guilt in that case. However, Justice Hughes held that, regardless, detailed evidence of equivalence was not necessary in that case because the alleged crimes were *mala in se*, or crimes condemned

throughout the world. In *Lai FCA*, the Federal Court of Appeal affirmed this finding that the certified question on the need to perform an equivalence exercise was therefore not dispositive of the appeal. Therefore, I find that the judgments in *Lai* have not resolved the issue about the need to perform an equivalence exercise when inadmissibility is not based on a finding of guilt by a foreign jurisdiction.

[211] However, I find that it is critical for the officer to identify the offences under Canadian law at issue, as well as their essential elements, and to assess the evidence before her with respect to the essential elements of these offences. According to section 33 and paragraph 37(1)(*a*) of the IRPA, the officer declaring inadmissibility must have reasonable grounds to believe that the organization engages in or has engaged in activities in furtherance of the commission of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament. Without such an indication of the offence at issue and its essential elements, the decision is unintelligible because it is silent on an essential criterion of inadmissibility under paragraph 37(1)(*a*) of the IRPA.

[212] While the case law on organized criminality generally deals with organizations whose criminal nature is not in doubt, this Court has overturned decisions in analogous circumstances where the tribunal had not precisely identified the alleged offences or how the acts committed corresponded to the essential elements of those offences. For example, in *Andeel v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1085, [2003] FCJ No 1399, Justice Noël overturned a decision in which a visa officer had failed to specify which war crime the applicant had allegedly committed, resulting in an unintelligible decision:

> 19 To determine the second issue, whether the Visa Officer failed to consider the specific sections of the *War Crimes Act*, the applicant submits that, in rendering his decision, the Visa Officer did not establish which specific provision of section 4 to 7, Ms. Haddad is supposed to have breached. I must agree with the applicant. The decision provides no explanation as to which section or sections apply and I am of the opinion that this lack of explanation constitutes a legal error. A reader must be able to understand a Visa Officer's decision and in this case I do not understand how Sections 4 to 7 of the *War Crimes Act* apply to Ms. Haddad's admission. If not for substantive reasons, for the mere sake of clarity, an explanation and a specific reference to the applicable section is essential. General reference to sections which are mutually exclusive does not give the reader such clarity nor does it allow for proper understanding of the decision.

[213] Similarly, in *Karakachian v Canada (Minister of Citizenship and Immigration)*, 2009 FC 948 at para 39, [2009] FCJ No 1463, the Court overturned a decision in which the visa officer failed to identify the essential elements of the concept of terrorism and explain how the acts committed by the applicant corresponded to the definition of terrorism within the meaning of paragraph 34(1)(*f*) of the IRPA:

> 39 A close reading of the reasons given by the officer for concluding that the ARF is a terrorist organization and that the applicant was a member of that organization reveals several flaws. First, nowhere in her decision does she specify what she means by the word "terrorism". Yet this is a concept which is at the very heart of paragraph 34(1)(*f*) and of which several definitions can be found in international instruments and Canadian caselaw: see, among others, *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3. Although the term as such is not defined in the *Criminal Code*, R.S.C. 1985, c. C-46, the expressions "terrorist activity" and "terrorist group" are defined in subsection 83.01(1). This Court has stated on more than one occasion that an immigration officer must indicate in clear terms what constitutes terrorism and how the concept applies in the specific case of the applicant who is denied a visa: *Jalil v. Canada (Minister of Citizenship and Immigration)*, [2006] 4 F.C.R. 471; *Naeem v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 123; *Mekonen v. Canada (Minister of Citizenship and*

> *Immigration)*, 2007 FC 1133; *Beraki v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1360.

[214] I am of the view that these principles are transferrable to organized criminality, in the sense that an officer who declares one inadmissible on this ground must indicate which offences under Canadian law have allegedly been committed by the organization or the applicant, as well as their essential elements, then explain how the evidence provides reasonable grounds to believe that the offences have been committed.

[215] In this case, the officer concluded that she had reasonable grounds to believe that the applicant had contributed to a system of embezzlement, money laundering and misappropriation of company property. Although the officer also refers on the last page of her decision to the fact that the financial arrangements in which the applicant allegedly participated constituted an asset concealment system to evade taxes, she reiterated in the following paragraph that the criminal activities at issue were limited to embezzlement, misappropriation of company property and money laundering.

[216] However, the officer did not identify the precise offences under Canadian law to which the acts alleged to have been committed by the applicant corresponded, and so she necessarily failed to identify their constituent elements or assess the evidence in light of those elements. Counsel for the respondent attempted to perform this exercise themselves by pointing to provisions of the *Criminal Code* and case law relating to fraud, but as with the issue of the identity of the criminal organization at issue, I find that this goes above and beyond the reasons for the decision and cannot [TRANSLATION] "save" it.

[217] I therefore find that the errors of law committed by the officer are determinative and affect the intelligibility of the decision, so that it cannot be considered reasonable.

[218] Because the officer neither identified the alleged offences under Canadian law nor assessed the evidence in light of the essential elements of those offences, I find it impossible to address the reasonableness of the officer's assessment of the evidence.

[219] I also find that it would be inappropriate in this case for the Court to grant the applicant's requested remedy and dictate the outcome of the new review by ordering the officer to accept the applicant's permanent residence application (*Kahlon v Canada (Minister of Employment and Immigration)*, [1986] 3 FC 386, [1986] FCJ No 930).

VIII. Certification

[220] The applicant submits that no question should be certified. The respondent also submits that no question should be certified, but he proposes that because there is an application for leave to appeal the judgment rendered in *Lai FCA* to the Supreme Court of Canada (Docket #36361), I could consider certifying the question that Justice Hughes certified in *Lai FC*, which reads as follows:

> In section 37(1)(*a*) of the *Immigration and Refugee Protection Act*, does the phrase "in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence" require evidence of the elements of a specific foreign offence and an equivalency analysis and finding of dual criminality between the foreign offence and an offence punishable under an Act of Parliament by way of indictment.

[221] Paragraph 74(*d*) of the IRPA prescribes the criterion for having a question certified, namely that the case involves a serious question of general importance. It is well established that a question should only be certified if it is a serious question of general interest that transcends the interests of the parties to the litigation and would be dispositive of the appeal (*Canada (Minister of Citizenship and Immigration) v Liyanagamage* (1994), 176 NR 4 at para 4, [1994] FCJ No 1637; *Zazai v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89 at para 11, [2004] FCJ No 368; *Lai FCA*, at para 4).

[222] I find that the question, as proposed, would not necessarily be dispositive of the appeal. However, I am of the view that my conclusions raise questions that transcend the interests of the parties and that would be dispositive of the appeal, in particular my finding that the officer erred in law by failing to identify the criminal organization at issue and the precise offences under Canadian law along with their essential elements. I will therefore certify the following questions:

1. In the context of a declaration of inadmissibility under paragraph 37(1)(*a*) if the IRPA, is it necessary to identify the applicable criminal organization?

2. At paragraph 37(1)(*a*) of the *Immigration and Refugee Protection Act*, does the expression "or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence" require the identification of the provisions of a federal law that are related to an offence punishable by indictment, the identification of the constituent elements of the offence under Canadian law and the proof of the constituent elements of the offence?

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is allowed;

2. the decision rendered on December 20, 2013, refusing the applicant's permanent residence application and declaring him inadmissible, is set aside;

3. the application is returned to the officer for a new analysis of the file involving the identification of the Canadian offences at issue and their essential elements and an assessment of the evidence in light of these elements to determine whether she has reasonable grounds to believe that the applicant should be declared inadmissible on grounds of organized criminality.

4. The following questions are certified:

   (a) In the context of a declaration of inadmissibility under paragraph 37(1)(*a*) of the IRPA, is it necessary to identify the applicable criminal organization?

   (b) At paragraph 37(1)(*a*) of the IRPA, does the expression "or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence" require the identification of the provisions of a federal law that are related to an offence punishable by indictment, the identification of the constituent elements of the offence under Canadian law and the proof of the constituent elements of the offence?

"Marie-Josée Bédard"

Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1144-14
STYLE OF CAUSE:	WILFRID NGUESSO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 11 AND 12, 2015
JUDGMENT AND REASONS:	BÉDARD J.
DATED:	JULY 17, 2015

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