

Federal Court



Cour fédérale

Date: 20180606

Docket: IMM-3372-17

Citation: 2018 FC 583

Ottawa, Ontario, June 6, 2018

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

HABEEB UTHMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Habeeb Uthman [the Applicant] applies for judicial review of an inadmissibility finding made by the Immigration Division [ID] of the Immigration Refugee Board [IRB] on July 27, 2017.

[2] The ID member Christopher Marcinkiewicz found that the Applicant was inadmissible under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]

(organized criminality) and issued a deportation order against the Applicant [the Decision]. The ID Decision was rendered orally and as such the transcript of July 27, 2017 contains the decision and reasons.

[3] I am dismissing Mr. Uthman's application for reasons that follow.

II. **Facts**

A. *Applicant's Background*

[4] The Applicant is a 36 year old male who was born in Nigeria and is a citizen there. The Applicant came to Canada along with his mother and siblings and received permanent residency on December 14, 2006. The Applicant has not received Canadian citizenship.

[5] The Applicant has stated that he has worked as tour manager with Davido Music Worldwide and travelled through North America and Africa (Nigeria).

[6] In 2008 the Applicant came to the attention of the RCMP when they were investigating a telemarketing fraud scheme. Since first coming to the RCMP's attention, the Applicant has also been a subject of investigation in other crimes (2008 through 2015), including frauds, assaults, threats, impaired driving, and drug possession.

[7] On October 9, 2016, an Inland Enforcement Officer filed a report under subsection 44(1) (inadmissibility report) as they were of the opinion that the Applicant was inadmissible since there were reasonable grounds to believe the Applicant was a member of a criminal organization (Neo Black Movement [NBM] or Black Axe [BA]). This report was then considered by the Minister's Delegate and referred for an admissibility hearing on October 18, 2016.

[8] On November 15, 2016, the Applicant was advised of this report and was informed he could provide submissions on why his matter should not be referred to the ID for an admissibility hearing. The submissions from the Applicant were received on December 2, 2016 by the Canada Border Services Agency [CBSA]. The Minister's Delegate reviewed the Applicant's submissions and decided to maintain the referral for an admissibility hearing.

III. **The ID Hearing and Decision**

[9] The ID admissibility hearing was held over a number of days between April and June 2017. On July 27, 2017 the ID rendered its decision orally. As the decision was issued orally, it is summarized below.

[10] The ID noted that the Applicant has said he has been a member of the NBM since 2010, although not a recently active member. The ID also noted that the Applicant denied that the NBM is tied in any way to the BA and that the NBM is a charitable not-for-profit organization that pursues social justice and equality. The ID further noted the Applicant stated the NBM does not condone criminality and will remove members if they are discovered to participate in criminal behaviour and the organization is permitted by a decision in the Nigerian courts to operate within Nigeria. Finally the ID noted that the Applicant argues the evidence of law enforcement agencies in Canada is not reliable and those agencies are involved in a conspiracy against him.

[11] The ID found the Applicant is inadmissible under paragraph 37(1)(a) of the *IRPA* on three separate grounds and concluded that each of these grounds is sufficient, on its own, to establish the Applicant's inadmissibility:

- 1) the Applicant is a member of the NBM and the NBM is the same as the BA meaning that the Applicant is a member of the BA which is a criminal organization,
- 2) in the alternative the NBM, of which the Applicant is a member, is a criminal organization, and
- 3) in the further alternative the Applicant's involvement with at least two other individuals in a fraud scheme is enough to find that he is a member of a criminal organization.

[12] The ID stated the term "organization" is not defined in paragraph 37(1)(a) of the *IRPA* and it is to be interpreted according to the *Criminal Code*, RSC 1985, c C-46, s 467.1(1) definition of "criminal organization" and subsequent jurisprudence interpreting it (a group of three or more people that is at least loosely structured and has as one of its main purposes the commission or facilitation of certain indictable offences for the group's direct or indirect material benefit, and that has not randomly been formed to commit an offence immediately). For this point the ID referenced *Saif v Canada (Citizenship and Immigration)*, 2016 FC 437 at paras 15-18. The ID also points out that there need not be criminal charges or convictions to find membership in a criminal organization, nor does a person need to engage in criminal activities so long as there is knowledge (or knowledge implied through wilful blindness) about the criminal activities of the organization. For these points the ID referenced: *Castelly v Canada (Citizenship and Immigration)*, 2008 FC 788 see paras 18, 25-26; *Amaya v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 549 see paras 26-31; *Chung v Canada (Citizenship and Immigration)*, 2014 FC 16 see paras 14-17, 59, 65-66, 68-70, 73-78.

[13] The ID then sets out the reasons behind each of its three findings.

A. *Black Axe and the Neo Black Movement are the same*

[14] The ID stated, based on all the evidence before it (academic and media articles, opinions of law enforcement, documentary evidence, and testimony), that BA and NBM are the same organization. The ID noted the two organizations initially were distinct confraternities at Nigerian universities that started as student social groups with specific interests and agendas (for BA it was Black consciousness and justice, and for the NBM it was reviving African culture). As these groups developed, they became involved in violent clashes with other groups.

[15] The ID noted that in more current times a number of publications and reports would refer to BA and NBM interchangeably or as being interrelated. The ID also referred to academic sources for proposition that they are the same organization or that they have some association with each other. Finally the ID noted that, although one article is mentioned that calls BA a splinter group of the NBM, the media and law enforcement tend to consider them the same organization.

[16] The ID accepted the explanation by law enforcement organizations that BA was amalgamated into the NBM because of the similar characteristics of the two organizations and because past BA members have become NBM members.

[17] The ID had examined the characteristics of each organization (customs, symbols, etc.) and noted that many of the characteristics of BA and NBM are similar:

- i) both have the goal of Black empowerment;
- ii) both have secretive elements;
- iii) the NBM magazine was at one point called Black Axe Magazine;

- iv) the symbol of the BA, an axe, is also similar to the NBM symbol, which features an axe;
- v) the clothing of BA and NBM is similar (axe logo, black beret with yellow, black clothes);
- vi) their terminology is similar (Aye is used as a salute, dismissed members are de-axed); and
- vii) the initiations includes similar steps (the 'jolly', a gathering and ceremony by members).

[18] The ID found that all these similarities “are not simply a coincident [sic] but rather point to a clear lineage or link between the Black Axe and Neo Black Movement.”

[19] The ID also noted the Applicant’s correspondence references Black Axe and that he “be Black Axe Lord” as well as a Facebook profile alleged to be the Applicant’s, but under a different name, containing Black Axe related posts. The ID specifically rejected the Applicant’s arguments that: the correspondence was not his; that police fabricated the electronic evidence; and that others, possibly his ex-girlfriend, created the Facebook account and posts to sabotage him. The ID noted that law enforcement agencies explained how they retrieved the evidence and that the Facebook profile in question had personal pictures of the Applicant as well as his daughter.

[20] Based on this evidence, the ID concluded that the NBM and BA are the same organization. The ID then continues on to find that the NBM/BA is a criminal organization as:

- i) it is highly structured;
- ii) has numerous members;

- iii) members have generally engaged in criminal activity (including past violence that resulted in deaths, and other activities such as attempted kidnappings, assault, and drug trafficking) which would constitute serious offences; and
- iv) the activity was for gain, whether of power (intimidation) or financial (drug trafficking and prostitution).

[21] The ID did not accept the Applicant's argument that the documentary evidence was untrustworthy or flawed. The ID also found that although a court in Nigeria legally sanctioned the NBM, and although the NBM may participate in charitable activities, this does not mean organized criminality cannot exist underneath.

[22] For these reasons the ID concluded that the Applicant is a member of the NBM, which is the same as the BA, and that there were reasonable grounds to believe it engages in organized criminality such that the Applicant is inadmissible under paragraph 37(1)(a) of the *IRPA*.

B. *The Neo Black Movement in Canada is a criminal organization*

[23] The ID also found that the NBM in Canada, of which the Applicant is an admitted member, is a criminal organization.

[24] In support of the position that the NBM in Canada engages in criminality the ID referenced the following considerations and analyses:

- i) there is evidence of questionable financial transactions of NBM's members;
- ii) there is evidence of NBM members involved in the criminal justice system;

- iii) even though the Applicant claimed the NBM is a charitable and social justice organization, the Applicant could only point to two events which he participated in and one event from before he became involved;
- iv) law enforcement agencies were of the opinion that the NBM in Canada is trying to legitimize itself through inexpensive and high visibility charitable/public initiatives;
- v) the ID stated it was reasonable to expect that financial transactions for a legitimate charitable organization ought to occur with a financial institution given an expectation for transparency and accountability; yet the NBM did not have a bank account notwithstanding it collected funds;
- vi) 65% of NBM members in Toronto identified by the Police in 2014 had criminal records relating to fraud or other serious offences, and 75% of those identified had also been mentioned in records of suspicious transactions;
- vii) one of the first directors of the NBM in Canada was charged and convicted due to “involvement in a large scale fraud in Canada”; the ID did not accept the Applicant’s claim this member was de-axed given the evidence from law enforcement and the media;
- viii) the ID found it concerning that the NBM would have as a founding director and bookkeeper a person who was found to have committed fraud;
- ix) another NBM member, who the Applicant introduced and supported joining, admitted to having problems with the law;

- x) in a photo of Toronto NBM members doing charitable work at Sick Kids, eight of the people in the photo had criminal justice system interactions even though most had charges withdrawn or had been acquitted;
- xi) there have been reported incidents involving NBM members that ranged from intimidation to physical injury; the ID acknowledged in trying to pursue these reported incidents, the investigations were challenged by witnesses being reluctant to come forward and not being willing to talk with police;
- xii) although the Applicant takes issue with police information being put in as written documents (statutory declarations and reports) instead of sworn testimony, the ID found such reports reliable as they are “detailed and reliable as [they] often cite police reports and mainly emanate from events that were reported by the few victims and witnesses that were willing to come forward”;
- xiii) the ID noted the police had not been targeting the NBM but stumbled across it in 2013 when investigating a fraud where a photo showed people wearing “unusual clothing” and learned another police force were also investigating a person in the photo;
- xiv) the reported violent acts would constitute serious criminal offences, as would the frauds over \$5000.

[25] The ID found the NBM’s “main purpose is to engage in criminality, mostly of a fraudulent nature but also involving violence and intimidation.” The ID gave considerable weight to the law enforcement reports and concluded the main purpose of the NBM is criminal in

nature and not altruistic as claimed by the Applicant. The ID concluded that the main purpose of this organized criminality of the NBM members was for financial gain of the members.

C. *Applicant's personal conduct, without considering NBM or BA, results in him being a member of a criminal organization*

[26] The ID also finds the Applicant is inadmissible under paragraph 37(1)(a) as his involvement in frauds with others meet the organized crime criteria notwithstanding the Applicant having no convictions.

[27] The ID makes this finding after reviewing the evidence before it and referencing the following considerations and analyses:

- i) two individuals who have a history with the Applicant have both provided statements to law enforcement that implicated the Applicant in criminality involving fraud over \$5000.
 - these individuals stated that the Applicant caused people to send money to them, and the Applicant was then given this money by the two individuals at his request;
 - although the Applicant argued that one of these two individuals has an animus against him, an ex-girlfriend, the ID found that the information provided by these two individuals was more credible than the Applicant's assertion that these statements were lies;
- ii) during a traffic stop, the vehicle the Applicant was driving was found to contain contact information and credit card details of a woman who reported to police that she was a victim of a lottery bait letter and her credit card had been charged with

around \$10,000 of unauthorized purchases; further, in conducting a search of the Applicant's residence an electronic device labeled with the Applicant's name showed numerous calls to the defrauded woman;

- iii) during a different investigation police found a counterfeit citizenship card bearing the likeness of the Applicant, but with a different name that was related to other reported frauds; the ID states that it has "little doubt" that the Applicant used the name contained in the fraudulent citizenship card as an alias;
- iv) the Applicant's brother acknowledged the Applicant lived in a residence which included what the police termed a "boiler room" for committing fraud (multiple computers, multiple printers, electronics in the closets, and multiple cell phones); other residences connected to the Applicant also had similar setups and, in one instance, shredded paper on site partially matched a lottery bait letter;
- v) the ID states that it is reasonable to expect the Applicant to have known what was in his residence and, even if not his property, he would have known and permitted people to bring these items into his residence;
- vi) the ID finds the Applicant has engaged in a pattern of organized fraud based on significant weight of the evidence before it including the evidence previously mentioned as well as:
 - a) a statement by a woman that she worked at residences reported to have been lived in by the Applicant and his brother and she received calls from elderly people in the USA answering the phone as Publishing Clearing House and

then congratulated them on winning the lottery and tried to solicit information from them;

- b) correspondence between the Applicant and a person who received money on the Applicant's behalf asking if she can start work on Monday, and correspondence to others by the Applicant asking for names of elderly seniors to contact by letters and phone calls;
- c) the Applicant's changing stories as the hearing progressed about where he lived, for how long, and where he worked;
- d) large movements of money in the Applicant's financial records which did not accord with the Applicant's claimed employment as one just starting out in entertainment; rather the movements of money were instead more consistent with illegal activities;

[28] The Applicant submitted that his mental health problems have affected his ability to remember things; however, the ID gave little weight to this claim because no professional medical evidence was provided to support the Applicant's claim.

[29] The ID found the police evidence fair and objective while recognising the limitations in the police evidence. The ID did not accept the Applicant's contention that it is a conspiracy against him given the number of people involved in providing reports and the quantity of information uncovered through investigation.

[30] Although the Applicant states that he has never been charged with fraud for these alleged offences the ID states that a conviction is not necessary for the purpose of paragraph 37(1)(a) of the *IRPA*.

[31] On the above outlined evidence and its analysis, the ID concluded that the Applicant with at least the two people who received money on his behalf engaged in a planned and organized criminal activity, being the serious offence of fraud over \$5000 (as well as lesser frauds) to gain financial benefit.

[32] The ID concluded that the Applicant is inadmissible under paragraph 37(1)(a) of the *IRPA* and issued a deportation order against him.

IV. **Issues**

[33] The Applicant submits the issues are that the ID unreasonably found the NBM and the BA were the same organization; that the ID erred in law in finding the NBM is a criminal organization because some of its members have engaged in in criminal activities, and that the ID erred in law in finding the Applicant engaged in organized crime because the inadmissibility report was limited to questions involving the NBM and the BA.

[34] The Respondent submits the standard of proof for facts establishing organized criminality is the low threshold of “reasonable grounds to believe”. The Respondent further, implicitly, submits the issue is whether the ID’s Decision was reasonable having regard to the evidence before it.

[35] I am satisfied the issue is whether the ID’s Decision was reasonable or not.

V. Standard of Review

[36] The standard of review of an inadmissibility decision of the ID for organized criminality is reasonableness: *Toor v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 68 at paras 10-11. As such, deference is owed to the ID in its factual determinations and its interpretation and application of the law to the facts before it. In conducting a reasonableness review the Court should concern itself with whether the decision was justified, transparent, intelligible and within the range of possible acceptable outcomes defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

VI. Legislation

[37] *Immigration and Refugee Protection Act*, SC 2001, c 27.

Rules of interpretation

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

...

Organized criminality

37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

(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

Interprétation

33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

...

Activités de criminalité organisée

37 (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :

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

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

(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.

[emphasis added]

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;

b) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.

[Je souligne]

[38] *Criminal Code*, RSC 1985, c C-46.

Definitions

467.1 (1) The following definitions apply in this Act.

criminal organization means a group, however organized, that

(a) is composed of three or more persons in or outside Canada; and

(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

It does not include a group of

Définitions

467.1 (1) Les définitions qui suivent s'appliquent à la présente loi.

...

organisation criminelle
Groupe, quel qu'en soit le mode d'organisation :

a) composé d'au moins trois personnes se trouvant au Canada ou à l'étranger;

b) dont un des objets principaux ou une des activités principales est de commettre ou de faciliter une ou plusieurs infractions graves qui, si elles étaient commises, pourraient lui procurer — ou procurer à une personne qui en fait partie —, directement ou

persons that forms randomly
for the immediate commission
of a single offence.

[emphasis added]

indirectement, un avantage
matériel, notamment financier.

La présente définition ne vise
pas le groupe d'individus
formé au hasard pour la
perpétration immédiate d'une
seule infraction.

[Je souligne]

VII. Parties' Submissions

A. The Applicant

[39] The Applicant concedes the test for what amounts to a criminal organization is that set out in the *Criminal Code* and that a criminal organization must be structured, however such structure may vary to some degree so long as it is organized and ongoing.

- 1) *Was it unreasonable for the ID to find that the Neo Black Movement and the Black Axe are one and the same organization?*

[40] The Applicant asserts that it was unreasonable for the ID to find that NBM and BA were the same as there was evidence on both sides (some stating they were the same and others that they were different) and the ID failed to reconcile this evidence and say what evidence it accepted or rejected and why.

[41] The Applicant also notes that some of the evidence, cited as supporting that NBM and BA are the same (academic articles etc.), also contains other statements that the groups are hard to tell apart or that they are only linked. The Applicant asserts that there was a need for the ID to acknowledge and address these inconsistencies.

[42] The Applicant further submits that the ID's finding that NBM and BA are the same was based on unreliable sources: the media and the police. The Applicant states these statements speak to the public misperception of the organizations being the same when they are not actually the same.

[43] The Applicant alleges that photo of a NBM banner (that appears to include "Black Axe") was pulled off Wikipedia and that for this reason it is unreasonable for the ID to have given it any weight. Likewise the Applicant takes issue with the source that states the NBM magazine was previously called Black Axe Magazine as this fact is only mentioned in the source one time and the specifics of when the name changed was not provided. The Applicant states that since both organizations use an image of an axe little weight should be given to any of this evidence.

[44] In regard to the Applicant's electronic correspondence the Applicant states that both organizations use similar language and therefore anything that seemed to relate to "Black Axe" was a mere coincidence and actually only pertained to NBM.

[45] In attempting to explain all these similarities the Applicant points to the statement that the organizations have a similar origin and states that this sufficiently explains the similarities between NBM and BA instead of the suggestion that the similarities are a result of them being the same organization.

[46] The Applicant submits that it was unreasonable for the ID to find that NBM and BA were the same and as a result it was also unreasonable for the ID to find that the BA's past criminal acts also were past acts of the NBM.

2) *Was it unreasonable for the ID to find that the Neo Black Movement in Canada was a criminal organization?*

[47] The Applicant asserts this finding was unreasonable as the ID did not state how the criminal activities of numerous NBM members in Canada relate to the NBM.

[48] The Applicant submits the ID did not find a nexus between the NBM and the criminal activities of its members and, as such, the NBM was not a criminal organization. The Applicant highlights it was only two thirds of members linked to the NBM, which the police were aware of, who had prior history of criminal involvement and this does not say anything about all those members who are not known to police. The Applicant focuses on the fact that the ID does not include this qualification.

[49] The Applicant states that the ID's finding on this ground was wrong in law and fact, as it did not link the NBM in Canada to criminal acts as the evidence only showed that some individuals who are linked to the NBM have a history of prior criminal involvement.

3) *Was it reasonable for the ID to find that the Applicant engaged in organized crime?*

[50] The Applicant states this finding was in error. First, the Applicant submits that, as the subsection 44(1) report sent to the Minister only mentions inadmissibility due to involvement in the NBM or the BA, the ID had no jurisdiction to find the Applicant inadmissible based on his alleged criminal organization activity separate from his involvement in the NBM or the BA.

[51] In support of this the Applicant refers to a policy manual of the Respondent that sets out the requirement of natural justice to make sure that the Applicant knows the case against him and the subsection 44(1) report did not reflect additional allegations.

[52] The Applicant's second argument is that the ID did not identify a criminal organization. The Applicant states that what the ID considered to be an organization was, at best, merely a conspiracy to commit crimes.

[53] The Applicant submits that paragraph 37(1)(a) explicitly requires organized criminality. The Applicant asserts that if the ID is permitted to use what amounts to a conspiracy to commit crime as being organized criminality it will allow a finding of inadmissibility that is not supported by statute (for inadmissibility on ground of serious criminality under paragraph 36(1)(a) of the *IRPA* there must be a conviction, which requires a higher standard of proof).

B. The Respondent

[54] The Respondent begins by noting that based on section 33 of the *IRPA* the standard of proof for paragraph 37(1)(a) is reasonable grounds to believe, not proof beyond a reasonable doubt. As such, the Respondent submits that all that is needed is sufficient evidence to show that there are reasonable grounds to believe a person is a member of a criminal organization.

[55] The Respondent asserts that based on the multitude of evidence there is definitely more than reasonable grounds to believe that the Applicant is a member of the NBM, that NBM is a criminal organization, and that the Applicant has engaged in the NBM's pattern of criminal activity.

[56] The Respondent states that it was reasonable to find the BA and NBM were the same as there was reliable evidence to support this finding. The Respondent then notes that the ID, in addition to considering these statements that supported NBM and BA were the same organization, also analysed the characteristics of both the NBM and BA, and the correspondence

of the Applicant. As such the Respondent submits that the ID justified why it accepted the evidence that favoured BA being the same as the NBM.

[57] The Respondent also submits it was for the ID to weigh this conflicting evidence and choose what to accept.

[58] Finally, the Respondent states the ID found the similar characteristics of the groups was more than just a coincidence due to having similar roots but rather was an indication that they are the same organization.

[59] The Respondent submits that, given all the evidence, it was open for the ID to find the NBM and the BA were the same organization especially as the ID only needed meet the standard of reasonable grounds to believe they were the same organization.

[60] The Respondent also asserts that the ID found the NBM in Canada was a criminal organization based on more than just its members being involved in criminal activity. The ID also justified this finding for reasons including that:

- i) the NBM in Canada had scant evidence of charity work and was incongruously without a bank account;
- ii) the first director, who incorporated the Canadian NBM, was convicted of large scale fraud and communications between this convicted fraudster and others (including members) utilized NBM language;
- iii) a book with NBM logo contained information about the flow of funds of persons who complained of being fraud victims;

- iv) although the Applicant stated NBM members are removed for criminality, a 2013 photo of NBM members showed a member who had been convicted in 2009;
- v) a significant number of members in the NBM photo at charitable event had involvement with the criminal justice system;
- vi) the NBM appeared to be involved in criminal incidents in Toronto and information surrounding a reported kidnapping appeared to show involvement of the NBM.

[61] On the issue of 2/3 of NBM members having a history of criminal involvement the Respondent states that whether it is two thirds of the approximately 100 members known to police, or two thirds of all Toronto members, the ID finding of a criminal organization did not rely only on this one (perhaps misstated) statistic.

[62] The Respondent states it is clear that there was sufficient evidentiary support for the ID's finding that NBM is a criminal organization.

[63] The Respondent submits the ID had jurisdiction to consider this the Applicant's own involvement in fraud schemes as the record of past investigations, and these concerns, was a clearly part of what was used to arrive at the subsection 44(1) report and was contained in the evidence before the ID.

[64] In response to the Applicant's second argument the Respondent submits a specific organization need not be named so long as the Applicant is found to be part of a criminal organization that meets the *Criminal Code* definition. The Respondent submits that the ID undertook such an analysis and reasonably found that the structure of the fraud scheme

perpetrated by the Applicant was of sufficient size, organized, business like, and was for the purpose of financial benefit of those involved.

[65] In conclusion the Respondent asserts that each of the ID's three overall findings were reasonable, being thorough and well supported, and should not be disturbed.

VIII. Analysis

[66] I agree with the Respondent that the standard of proof for the facts necessary to make out inadmissibility under paragraph 37(1)(a) is reasonable grounds to believe, not proof beyond a reasonable doubt. All that is needed is sufficient evidence to show that there are reasonable grounds to believe a person is a member of a criminal organization: *IRPA*, s 33; *Chen v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 13 at para 63.

[67] Reasonable grounds to believe is not just lower than proof beyond a reasonable doubt, the criminal standard, but also lower than proof on a balance of probabilities, the civil standard. This is clearly outlined by the Supreme Court of Canada in the case below:

114 The first issue raised by s. 19(1)(j) of the *Immigration Act* is the meaning of the evidentiary standard that there be "reasonable grounds to believe" that a person has committed a crime against humanity. The FCA has found, and we agree, 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 [citations omitted]

Mugesera v Canada (Minister of Citizenship and Immigration),
2005 SCC 40 at para 114.

[68] I also agree with the Respondent that it was for the ID to weigh the conflicting evidence and choose which evidence to accept.

[69] I do not agree with the Applicant that the ID was without jurisdiction simply because the Inadmissibility Report specifies his being a member of the BA or NBM. Before this specification the Report is stated to be based on “there are reasonable grounds to believe that he is inadmissible ... for being a member of and participating in the activity of an organization that is believed on reasonable ground to be or have been engaged in activity that is part of 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 ...”. This general description is sufficient to give the ID jurisdiction to consider the Applicant’s own conduct. If there was an issue arising, it would be a question of procedural fairness; however, the accompanying Case Review and Recommendation includes the allegations of the Applicant’s own criminal activity and thus puts the Applicant on notice of this issue.

[70] I am satisfied the ID had evidence before it to conclude the NBM and BA are the same organization. Notwithstanding there was evidence pointing both ways, the preponderance of the evidence indicated the two entities were connected. The ID adequately explained its reasoning for accepting the evidence supporting its finding. The ID also had good reason for not accepting the Applicant’s contrary evidence, being the latter’s own shifting testimony and his unsupported claim of having memory problems. In addition, the ID satisfactorily explained that the similar characteristics between the NBA and the BA amounted to more than could be attributed to coincidence because of similar origins.

[71] The ID’s finding on the criminal nature of the NBM in Canada was not solely based on its members having criminal history. An incorporated entity acts through the actions of the people involved in the organization, especially those who are in positions of authority in the

organization. Keeping in mind the standard of proof is reason to believe, there was sufficient evidence to support the ID's finding that the NBM was a criminal organization. That evidence included the founding director's conviction for criminal fraud, the high incidence of members associated with criminal activities and credible police reports about NBM members being involved in criminal activity.

[72] The ID considered multiple pieces of evidence about the Applicant's own illicit activities and reasonably found the Applicant's involvement with at least two other individuals amounted to involvement in an organization of at least three individuals facilitating or committing serious fraudulent criminal offences which continued for some time and was for the financial benefit of those involved. As such this meets the *Criminal Code* definition of a criminal organization as opposed to a criminal conspiracy or alliance formed surreptitiously for the commission of an offence.

[73] Finally The Applicant's assertion that he has never been convicted for any of these alleged fraud activities does not succeed in negating the ID finding in that both statute and jurisprudence clearly establish the standard of proof of facts giving rise to inadmissibility under paragraph 37(1)(a) is reason to believe and not conviction on the criminal standard of proof beyond a reasonable doubt.

IX. **Conclusion**

[74] The application for judicial review of the ID's decision is dismissed.

[75] The Parties have not proposed a serious question of general importance for certification and I do not certify any question.

JUDGMENT IN IMM-3372-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No serious question of general importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3372-17

STYLE OF CAUSE: HABEEB UTHMAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 1, 2018

JUDGMENT AND REASONS: MANDAMIN J.

DATED: JUNE 6, 2018

APPEARANCES:

Jared Will FOR THE APPLICANT

Alison Engel-Yan FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Will & Associates FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario