Federal Court  Cour fédérale

Date: 20200128

Docket: IMM-2413-19

Citation: 2020 FC 32

Ottawa, Ontario, January 28, 2020

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

JOHN ACHONA NATHANIEL

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. John Achona Nathaniel seeks the judicial review of the decision rendered by the Immigration Division (ID) on March 27, 2019, which declared him inadmissible under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], and ordered his deportation under paragraph 229(1)(b) of the *Immigration and Refugee Protection Regulations* SOR/2002-227.

[2] The ID concluded there were reasonable grounds to believe that Mr. Nathaniel was complicit in crimes against humanity committed by the Nigerian Police Force (NPF), by voluntary and knowingly making a significant contribution to the NPF crimes or criminal purpose. The ID also concluded there were reasonable grounds to believe that Mr. Nathaniel knowingly and personally committed such crimes.

[3] For the reasons set out below, the judicial review will be dismissed.

II. Context

[4] Mr. Nathaniel is a citizen of Nigeria. On August 18, 2017, he entered Canada and claimed refugee protection.

[5] On August 25, 2017, Mr. Nathaniel signed the Schedule "A" form whereby indicating having worked for the SIB (State Intelligence Bureau) as a police officer from March 2000 to January 2017.

[6] On September 6, 2017, Mr. Nathaniel signed his Basis of Claim form. In the narrative annexed to said form, he indicated, *inter alia*, having worked with the NPF as a "Police Officer in the State Intelligence Bureau Department of Lagos State Police Command, Ikeja", and that he feared for his and his wife's safety in Nigeria essentially because criminals against whom he fought as a police officer sought revenge.

[7] On January 12, 2018, Mr. Nathaniel completed a form outlining the details of his police service. He then confirmed, *inter alia*, having served as (1) cell guard, holding the rank of constable, for about 4 years, participating in arrests and interrogations; (2) orderly in the MOPOL unit, holding the rank of corporal, for about 7 years, involved in the peace keeping in the Osun State; (3) commander in the scorpion special anti robbery squad (SARS) for 5 years, holding the rank of sergeant, bringing the arrested individuals to the office for interrogation under cautionary statements; and (4) coordinator SIB for 5 months, holding the rank of inspector, coordinating SIB in the Ajao Estate whereby arresting kidnappers and interrogating them under cautionary statement.

[8] On February 7, 2018, an officer of the Canada Border Service Agency (CBSA) interviewed Mr. Nathaniel who provided details, namely, on his work in the NPF, on the locations where he worked, and who confirmed having been promoted based on merit.

[9] On February 24, 2018, an Inland Enforcement Officer prepared an inadmissibility report under subsection 44(1) of the Act. The Officer noted the information Mr. Nathaniel confirmed in his Basis of Claim force and in the January 12, 2018 document detailing his work in the NPF. The Officer also noted that the documentary evidence showed that police in Nigeria commits crimes against humanity, such as extrajudicial killings, torture, rape and extortion with relative impunity. The Officer concluded that there was reasonable grounds to believe that Mr. Nathaniel was inadmissible under the article 35(1) of the Act for committing and act outside Canada that constitutes and offence referred to in sections 4 to 7 of the *Crimes against Humanity and War Crimes Act* SC 2000, c 24.

[10] On October 2, 2018, a Minister's Delegate, having reviewed the Officer's report, deferred the file to the ID for an inadmissibility hearing, pursuant to subsection 44(2) of the Act.

[11] On October 3, 2018 and on November 27, 2018, the ID heard the case, where Mr. Nathaniel testified, and on March 27, 2019, the ID rendered the decision challenged in these proceedings.

III. Impugned decision

[12] In its decision, the ID introduced the subject by noting the allegation under paragraph 35(1)(a) of the Act and the standard of proof found at section 33 of the Act.

[13] The ID subsequently examined the facts, outlining the ones that are undisputed, and stated each parties' position. The Minister argued that the documentary evidence demonstrated that the NPF has committed crimes against humanity as defined internationally and in Canada. He added that Mr. Nathaniel should be declared inadmissible under paragraph 35(1)(a) of the Act because there are reasonable grounds to believe he was not only complicit to those crimes as a police officer in Nigeria, but because he also personally and directly committed extrajudicial assassination and torture, considered crimes against humanity internationally and in Canada.

[14] The ID indicated that the Minister emphasized that (1) Police Order 237, *i.e.* the *Rules for guidance in use of firearms by the police* allows police in Nigeria to shoot suspects and detainees who attempt to escape or avoid arrest, and to shoot at rioters, and is a blanket provision for abuse and a sign of the institutionalisation of police violence; (2) the SARS is a limited brutal

organization within the NPF; and (3) Mr. Nathaniel's credibility is greatly affected as it is unlikely that he would be unaware of the systematic and widespread violations and crimes against humanity perpetrated by the NPF.

[15] The ID outlined Mr. Nathaniel's position that there is only one test to apply to determine inadmissibility for crimes against humanity, and it is the one set out in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*], not the one used by the Minister to impeach his credibility. In regards to the contribution test, Mr. Nathaniel argued that (1) the Minister overgeneralized and exaggerated the human rights violations in the documentary evidence, referring to the Minister's exhibit C-14 (Human Rights Watch, page 411, para 2) pointing out that there are many good Nigerian police officer; (2) a finding of inadmissibility was reached only by *mere association or passive acquiescence*, which is insufficient.
Mr. Nathaniel added that (1) his testimony, both before the ID and during the interview with the CBSA officer, was fluid and without contradictions; (2) he, like his father and uncle, was a good cop, which caused him not to receive on-time promotions, to live in poverty and to be unable to afford to pay rent or provide for his wife's medical care; (3) the Minister excluded important details of his testimony in that he only shot at civilians in self-defence and that no torture was ever committed while he was guarding cells, in that interrogating suspects does not mean he tortured them, and in that participating in anti-riot operations does not mean he shot the protestors; (4) widespread corruption is irrelevant in assessing inadmissibility; (5) he did not know about the "abattoir"; (6) the fact that the SARS is *widely believed* to be responsible for extrajudicial executions is not based on evidence; (7) executions by the SARS occurred in Abuja state where he did not work; (8) the assertions that NPF is a brutal purpose organization and that

all positions occupied by Mr. Nathaniel are problematic overgeneralizations; (9) the fact that he had been in the organization for seventeen years does not mean he knew the death penalty was a possible sentence for robbery nor that the Police Order 237 existed; and (10) the fact that some police officers may have committed crimes in a widespread and systematic manner does not mean that he should be responsible for them.

[16] The ID found that there was no doubt Mr. Nathaniel was employed by the NPF, joined voluntarily, worked as a police officer from March 1st 2000 to January 2017, and was promoted a few times.

[17] The ID also found there was reasonable grounds to believe that the NPF committed acts that fall under the definition of crimes against humanity, and that credible and trustworthy documentary sources attributed many crimes against humanity to the NPF in general and to specific units in which Mr. Nathaniel worked, namely the MOPOL, SARS, and SIB units, such as torture, rape, extrajudicial executions, death in police custody and other inhumane acts. The ID found inconceivable that Mr. Nathaniel was unaware of the crimes committed by those three units, and it specifically noted that Mr. Nathaniel testified having killed civilians after they opened fire at him and having personally interrogated many suspects of crime. The ID held that Mr. Nathaniel knew what was going on and that he tried to diminish his involvement, participation and knowledge of the atrocities during his testimony.

[18] The ID essentially agreed with the Minister's assessment of the *Ezokola* factors. Hence, regarding the size and nature of the organization, the ID noted that the NPF was a policing

organization with approximately 325,000 officers committing systematic, institutionalized, and widespread crimes against humanity with almost total impunity. Regarding the method of recruitment, the ID noted that Mr. Nathaniel joined the NPF voluntarily to follow his father and his uncles' footsteps, at the suggestion of a friend. Regarding Mr. Nathaniel's position or rank in the organization, the ID noted the contradiction between his testimony at the hearing and the declaration during the CBSA interview, gave more weight to the latter, and found that he had been promoted on merit. The ID concluded that Mr. Nathaniel made significant contribution to the NPF.

[19] Regarding Mr. Nathaniel's duties and activities, the ID found that: (1) MOPOL is known as a kill and go unit; (2) Mr. Nathaniel worked for MOPOL for seven years; (3) Mr. Nathaniel was posted in Ikeja for the SARS and conducted highway arrests, mass arrests and brought suspects into offices for interrogation; (4) Ikeja is one of the police facilities where atrocities occurred according to documentary evidence; (5) Mr. Nathaniel worked in the SIB; (6) systematic torture, inhumane acts by the SIB, and deaths in custody are commonplace; and (7) 80% of inmates in Nigeria claim to have been beaten by police, threatened with weapons and tortured in police cells. The ID outlined Mr. Nathaniel's roles in stopping people at roadblocks, shooting civilians during police operations, interrogating detainees and guarding cells, and concluded that these actions, duties and responsibilities were a significant contribution in the crimes against humanity attributed to the NPF and its criminal purpose.

[20] Regarding knowledge of the organization's atrocities, the ID agreed with the Minister that the NPF committed widespread and systematic crimes against humanity, and that it is

inconceivable that Mr. Nathaniel was unaware of the crimes committed daily by his colleagues or of the PO237, concluding to the contrary that Mr. Nathaniel knew what was going on. The ID therefore concluded that Mr. Nathaniel lacked credibility and was attempting to conceal his knowledge of what was happening at that time around him.

[21] Regarding the length of time in the organization, the ID noted that Mr. Nathaniel was a member of the NPF for a long period of 17 years, was promoted a few times on merit, and there was thus an increased chance that he knew of the NPF's crimes or criminal purpose as well as the significance of his contribution. Regarding the opportunity to leave the organization, the ID concluded that Mr. Nathaniel voluntarily remained in the NPF. Ultimately, the ID concluded, based on these factors, that Mr. Nathaniel voluntary and knowingly made a significant contribution to the NPF crimes and criminal purposes and was thus inadmissible.

[22] The ID then examined whether Mr. Nathaniel personally committed crimes against humanity. The ID gave more weight to the details Mr. Nathaniel provided to the CBSA officer than to his testimony before the ID, and concluded there were reasonable grounds to believe that Mr. Nathaniel had personally executed actions that constitute crimes against humanity while working for the MOPOL, the SARS or the SIB.

IV. Position of the parties

A. *Mr. Nathaniel*

[23] Mr. Nathaniel submits that in applying the *Ezokola* contribution-based approach to the facts of the case at bar, the ID made erroneous findings of fact that the Applicant was complicit in crimes against humanity committed by the NPF and knowingly and personally committed such crimes, and therefore, erroneously applied the test reaching the wrong conclusion.

[24] Mr. Nathaniel first addresses the nature of the NPF. He essentially submits that, contrary to the ID's conclusion, the NPF is before everything, a police organization that investigates, fights crimes, makes arrests, and interrogates suspects in a very violent and criminalized country. He namely points to exhibit 14 where it is outlined that many Nigerian police officers conduct themselves in an exemplary manner, and that there exists control mechanisms, and to exhibit 9, where it outlines police reform in Nigeria in 2000. He further submits the ID erred in concluding that the NPF had a limited brutal purpose, save for the SARS.

[25] Mr. Nathaniel then addresses his contribution to the NPF. He first argues that the ID's conclusion on his credibility stems from its error to treat the NPF as an organisation with limited brutal purpose, excerpt SARS, and that it should have concluded that Mr. Nathaniel only engaged in ethical work.

[26] He submits that the test for complicity requires a voluntary, knowing and significant contribution to the crime or criminal purpose of a group, which is not fulfilled in his case. He

adds that he had not committed a criminal act, nor did he have the criminal knowledge or intent of committing one. He also argues that even if he did have knowledge of the crimes, the requirement of his significant contribution to the crime or criminal purpose of a group was not demonstrated.

[27] Mr. Nathaniel submits that the ID failed to properly apply the *Ezokola* factors and to make proper findings based on the evidence. He adds essentially that (1) the ID failed to consider there were good police officers, and to explain why it excluded Mr. Nathaniel from the good officers in the NPF; (2) the ID failed to properly analyze his duties and activities within the organization, and whether there is a link between his duties and activities with the crimes and the criminal purposes of the organization; (3) the ID erred in challenging his testimony based on information in external sources; (4) having knowledge of the organization by being member for a substantial period of time does not mean he made a significant contribution to the crimes or to the criminal purposes.

B. *The Minister*

[28] The Minister submits that the ID properly applied the test enunciated in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40: complicity rests on a "voluntary, knowing and significant contribution to the crime or criminal purpose of the group alleged to have committed the crime" (at paras 36, 92). The Minister reviews the *Ezokola* factors and responds namely that (1) the ID did not conclude that the entirety of the national police had a limited, brutal purpose, and specifically outlined a lack of evidence to show the SARS had such a purpose, there is substantial evidence that the MOPOL, SARS and SIB committed crimes against

humanity at the time when Mr. Nathaniel served in these organizations, and the passage cited by Mr. Nathaniel arguing there were good cops is engulfed in a paragraph highly critical of the NPF; (2) Mr. Nathaniel did join voluntary; (3) Mr. Nathaniel did confirm he had been promoted on the basis of merit (applicant's record page 172, line 19 and page 192, line 3), although he subsequently embellished his statement; (4) Mr. Nathaniel admitted working for three specialised units that committed crimes; (5) the ID conclusion regarding Mr. Nathaniel's knowledge is reasonable; (6) a 17 years association does increase the chances Mr. Nathaniel had knowledge, and since he asserts having known nothing, the ID did not found passive acquiescence; and (7) Mr. Nathaniel remained with the NPF and his service cannot be equated to legitimate duties pursued in times of conflict or instability.

[29] The Minister argues the decision is reasonable and must stand.

V. Discussion

[30] As the parties have confirmed to the Court, the applicable standard of review in this case is presumed to be that of reasonableness, and nothing rebuts that presumption (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Hadhiri v Canada (Citizenship and Immigration)*, 2016 FC 1284). Hence, as the Federal Court of Appeal confirmed recently in *Stojanoviv v Canada (Attorney General of Canada)* 2020 FCA 6, para 34, the Court must see if the ID's determination is reasonable in terms of both the outcome and the process. This approach requires this Court to assess whether the ID's determination is justified, transparent and intelligible and whether the decision falls within a range of possible, acceptable outcomes that are defensible on the facts and law: *Vavilov* at para 86; *Dunsmuir v New*

Brunswick, 2008 SCC 9 at para 47, [2008] 1 SCR 190. This Court should not pre-empt the ID by making its own determination of the merits of the decision and then assess the ID's determination against its own view of the matter.

[31] Before the ID, the burden lied with the Minister to demonstrate there existed reasonable grounds to believe (section 33 of the Act) that Mr. Nathaniel committed "an act outside Canada that constitutes an offence referred to sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*" (paragraph 35(1)(a) of the Act). Reasonable grounds to believe is less than the balance of probabilities, but more than mere suspicion (*Ramirez v Canada (Minister of Employment & Immigration)*, 1992 FCA 8540; *Ezokola* at paras 29, 101. "Reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information" (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114).

[32] I am satisfied that the record supports the ID's conclusions, and that the process leading to the decision is reasonable. Mr. Nathaniel has not convinced me that the decision is unreasonable.

[33] First, in light of contradictions between Mr. Nathaniel's statements to the CBSA officer and his testimony before the ID, it was open to the ID to impeach Mr. Nathaniel's credibility and give more weight to the first statements, which were those made to the CBSA officer (*Athie v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 425 at para 49). The role of the Court is not to reweigh the evidence (*Vavilov* at para 125). This credibility finding led the ID to

find that Mr. Nathaniel was promoted based on merit, rather than not promoted because he was a good cop, and to find that it was inconceivable he had no knowledge of the atrocities being committed. These conclusions are reasonable given the facts, and are supported by the Court's case law (*Torres Rubianes v Canada (Minister of Citizenship and Immigration*) 2006 FC 1140; *Hadhiri c Canada (Citizenship and Immigration)* 2016 FC 1284).

[34] There is substantial documentary evidence suggesting that the three special units committed crimes against humanity at the time Mr. Nathaniel served, and complicity can be found notwithstanding the fact that the individual is not present at the location at the time of a specific crime. In addition, the evidence adduced before the ID demonstrates Mr. Nathaniel personally participated in the operations and committed such crimes. Finally Mr. Nathaniel's argument regarding passive acquiescence must fail, as argued by the Minister, since Mr. Nathaniel denies knowledge.

[35] More particularly, the ID weighted the documentary evidence and reasonably found that the NPF, and more particularly the three special units, committed crimes against humanity; the conclusion is amply supported by the credible documentary evidence adduced before the ID. The fact that there are one or two mentions in the whole document indicating some cops in the NPF are good does not render the decision unreasonable. Again, the role of the Court is not to reweigh the evidence. Although a selective reading of the documentary evidence may be ground to quash a decision, the administrative decision maker is entitled to prefer one evidence over the other after considering them (*Liang v Canada (Citizenship and Immigration)*, 2013 FC 765 at para 67; *Camacho Garcia v Canada (Minister of Citizenship and Immigration)*, 2006 FC 611 at paras 14-

18; *Huang v Canada (Citizenship and Immigration)*, 2011 FC 288 at para 26) or by taking into account the individual's specific circumstances (*Gonzalez Martinez v Canada (Citizenship and Immigration)*, 2012 FC 5; *Wilson v Canada (Citizenship and Immigration)*, 2015 FC 711). Finally, the ID did not find the NPF to have a limited and brutal purpose and in fact specifically indicated that the SARS was not shown to be such an organisation.

[36] I find no error in the ID's analysis of the *Ezokola* factors, given my conclusions on the aforementioned arguments raised by Mr. Nathaniel.

JUDGMENT in IMM-2413-19

THIS COURT'S JUDGMENT is that:

1) The Application for judicial review is dismissed;

2) No question is certified.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Me Gjergji Hasa	FOR THE APPLICANT
Me Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ferdoussi Hasa Attorneys Barristers and Solicitor Montréal, Québec	FOR THE APPLICANT
Attorney General of Canada Montréal, Québec	FOR THE RESPONDENT