Federal Court  Cour fédérale

Date: 20211012

Docket: IMM-2361-21

Citation: 2021 FC 1047

Ottawa, Ontario, October 12, 2021

PRESENT: THE CHIEF JUSTICE

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

MALYVAN KORASAK

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This application for judicial review concerns a decision by the Immigration Appeal Division [**IAD**] of the Immigration and Refugee Board of Canada. In its decision, the IAD found that the Minister of Public Safety and Emergency Preparedness had not established that the respondent, Malyvan Korasak, is inadmissible to Canada pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [**IRPA**].

[2] The Minister submits that the IAD unreasonably concluded that Ms. Korasak was not a member of a criminal organization contemplated by paragraph 37(1)(a) and that she was not engaged in activities that were part of the pattern of criminal activities of her spouse's drug trafficking organization [the **Organization**].

[3] For the reasons set forth below I disagree. Accordingly, this application will be dismissed.

II. **Background**

[4] Ms. Korasak is a citizen of Laos. She has been a permanent resident in Canada since the 1980s, when she arrived as a young adult.

[5] In 2002, she was arrested, together with her common law spouse, her brother and six other individuals of Laotian descent in connection with an investigation into a cocaine drug trafficking ring. That investigation was termed "Operation Faisan." The charges were based largely on wiretaps of over 28,000 telephone conversations in Laotian.

[6] In 2007, the charges against Ms. Korasak and most of her co-accused were stayed, in part because the complexity of the wiretap evidence, in addition to language and interpretation problems, led to an inordinate delay in the proceedings.

[7] Nevertheless, several years later, and in separate proceedings, the Immigration Division [**ID**] found her spouse and another member of the Organization, Mr. Chay Chansy, to be

inadmissible to Canada under paragraph 37(1)(a). In both of its decisions, the ID identified Ms. Korasak's spouse as the head of a cocaine trafficking ring that moved cocaine from Vancouver to stash houses in Regina, where it was then sold at street level.

[8] Several years later, the Minister brought a proceeding before the ID to have Ms. Korasak declared inadmissible under paragraph 37(1)(a). During that proceeding, Ms. Korasak conceded that the Organization existed and had been led by her spouse. However, she maintained that she had not been a member of the Organization and had not engaged in activity that was part of the Organization's pattern of criminal activity, as contemplated by paragraph 37(1)(a).

[9] In the course of reaching its decision, the ID found that Ms. Korasak's denial of participation in the key telephone calls that were at issue was not credible. It also found that she knew a lot about the Organization. However, it proceeded to conclude that the Minister had failed to establish that Ms. Korasak had been a member of the Organization or was otherwise inadmissible under paragraph 37(1)(a).

[10] Among other things, the ID found that the limited wiretap information relied upon by the Minister was not sufficient, nor was it credible or trustworthy enough, to establish the allegations against her. In particular, it found that such evidence was not reliable due to "interpreter and language" problems, as well as the unavailability of the original wiretap recordings.

[11] In any event, the ID found that alleged instructions Ms. Korasak gave to her brother in relation to his activities with the Organization may have been no more than "sisterly advice." It

also found that there were alternate plausible explanations for other instructions that she allegedly gave to Mr. Chansy. In addition, it found that if she had been involved in packaging cocaine, as she appeared to suggest in the transcription of one wiretap, this would likely have been corroborated elsewhere in the extensive evidentiary record. The ID further noted that the police had not indicated what role, if any, she played in the Organization.

III. **The Decision Under Review**

[12] As in the ID's proceeding, Ms. Korasak conceded before the IAD that her spouse's cocaine trafficking ring was an organization contemplated by paragraph 37(1)(a). In addition, the Minister's case continued to be based primarily on English summaries of translated transcripts of a very small number of Laotian telephone conversations held between Ms. Korasak and other individuals prior to their arrest. However, this time, the Minister was able to produce some of the original wiretap recordings.

[13] Once again, the IAD concluded that important aspects of Ms. Korasak's testimony were not credible. This included her statement that she did not know that her spouse was involved in the drug business until after he was arrested. The IAD also concluded that Ms. Korasak had extensive and detailed knowledge about her spouse's business. In addition, it found that there were reasonable grounds to believe that she was in possession of proceeds of crime and had, at the very least, acquiesced to her spouse's continued criminal activity and her nephew's involvement in the Organization so that she and her children could benefit financially. It also found that there was "reason to suspect that she became involved in some of the activities of the [O]rganization."

[14] Nevertheless, as with the ID, the IAD concluded that there was not sufficient credible and compelling evidence to sustain an objective belief that she was a member of the Organization or had engaged in activities that were a part of the pattern of organized criminal activities of the Organization.

[15] In reaching this conclusion, the IAD expressed significant concerns regarding the reliability of the transcripts, which it acknowledged had "some probative value." Those concerns were based on the methodology that had been employed by the Minister, problems with indexing and cross-referencing to the applicable audio recordings, the fact that most of the 27 transcripts before the IAD were only partial transcripts, and its view that the exchanges in some of the most relevant transcripts were somewhat ambiguous.

[16] In addition, the IAD made findings similar to those made by the ID with respect to the transcripts of Ms. Korasak's conversations with Mr. Chansy and her brother. The IAD also held that the transcripts of Ms. Korasak's conversations with her spouse simply reflected that she had some input into his decision as to when to retire from the drug business, much like the input that any spouse may have in this regard. For another transcript, in which she suggested that someone other than her spouse transport the money, the IAD found that she was worried about her spouse getting caught with proceeds of crime. The IAD added that she was most concerned about how she would manage to support herself and her children if he was incarcerated and unable to access his assets.

[17] Regarding the evidence of her alleged involvement in packaging cocaine, the IAD reached the same conclusion as the ID, finding that the single sentence in one of over 28,000 recordings was insufficient to establish a reasonable, objective belief that she packaged cocaine for the Organization. The IAD was also concerned that the original audio recording in question had not been produced, so that its accuracy could be verified and potentially challenged by Ms. Korasak or anyone else.

[18] In summary, after reviewing the evidence adduced, the IAD concluded that the Minister had not established that Ms. Korasak is inadmissible under paragraph 37(1)(a), namely, on the grounds of being a member of the Organization or having engaged in activities that were a part of the pattern of criminal activities of that Organization.

IV. **Relevant Legislation**

[19] Paragraph 37(1)(a) of the IRPA states as follows:

Organized criminality	**Activités de criminalité organisée**
37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	**37 (1)** Emportent interdiction de territoire pour criminalité organisée les faits suivants :
(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission	**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

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;	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;

[20] A second provision of the IRPA that is relevant to this application is section 33, which states as follows :

Rules of interpretation	**Interprétation**
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	**33** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

V. **Issues**

[21] The Minister submits that the IAD's decision was unreasonable for two separate reasons. Specifically, the Minister maintains that the IAD unreasonably concluded that Ms. Korasak had not been a member of the Organization and that she had not engaged in activity that was part of the Organization's pattern of criminal activity.

[22] However, the Minister's written and oral submissions regarding those two matters were intermingled. This is because most of the activities in which Ms. Korasak is alleged to have

engaged in relation to the Organization are also relied upon to support the Minister's position that she had been a member of the Organization.

[23] Given the foregoing, and to avoid duplication, I consider that it is appropriate to assess the parties' submissions in relation to those issues together. Accordingly, it is convenient to articulate a single broad issue raised in this application, as follows:

1. Did the IAD unreasonably conclude that Ms. Korasak had not been a member of the Organization and that she had not engaged in activity that was part of the Organization's pattern of criminal activity?

VI. **Standard of Review**

[24] The IAD's assessment of Ms. Korasak's alleged activities and membership in the Organization involves questions of mixed fact and law. As recognized by the parties and reflected in the articulation of the single issue identified above, those questions are reviewable on a standard of reasonableness in the present context.

[25] When reviewing a decision on a standard of reasonableness, the Court must approach the decision with "respectful attention" and consider the decision "as a whole": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 84–85 [***Vavilov***].

[26] In assessing whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. To meet these requirements, the decision

must reflect “an internally coherent and rational chain of analysis” and be “justified in relation to the facts and law that constrain the decision maker”: *Vavilov*, above, at paras 85 and 99.

[27] Stated differently, an appropriately justified, transparent and intelligible decision is one that enables the Court to understand the basis upon which it was made and then determine whether it “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Vavilov*, above, at para 86. It is not the role of the reviewing court to make its own determinations of fact, substitute its view of the evidence or the appropriate outcome, or reweigh the evidence. It is solely to assess whether the tribunal’s determinations and reasoning are reasonable: *Vavilov*, above, at paras 125–126; *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 at para 7 [***Pascal***].

VII. **Assessment**

A. *Did the IAD unreasonably conclude that Ms. Korasak had not been a member of the Organization and that she had not engaged in activity that was part of the Organization’s pattern of criminal activity?*

(1) General legal principles

[28] The phrase “being a member of an organization” is common to both paragraph 37(1)(a) and paragraph 34(1)(f) of the IRPA. I consider that the jurisprudence that has developed in relation to this aspect of the latter provision is equally applicable to the former provision: see also *Castelly v Canada (Citizenship and Immigration)*, 2008 FC 788 at para 32 [***Castelly***]. Pursuant to that jurisprudence, the term “member” must be given a broad meaning: *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paras 27–28; *Kanapathy v*

Canada (Public Safety and Emergency Preparedness), 2012 FC 459 at para 33; *B074 v Canada (Citizenship and Immigration)*, 2013 FC 1146 at para 27 [***B074***]; *Pascal*, above at para 13. In this regard, actual or formal membership in the organization in question is not required, and it is not necessary to establish a link to a specific crime. Informal participation or support for a group may suffice, depending on the nature of that participation or support: *B074*, above, at para 28; *Chong v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1335 at para 9; *Chiau v Canada (Minister of Citizenship and Immigration)*, [1998] 2 FC 642 at para 34, aff'd [2001] 2 FC 297 (CA) at para 57, application for leave dismissed [2001] SCCA No 71 (QL).

[29] The "reasonable grounds to believe" standard enshrined in section 33 of the IRPA contemplates a lower evidentiary threshold than what is contemplated by the standards of "balance of probabilities" and "serious reasons for considering": *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 at para 101. Stated differently, the standard of proof lies somewhere between mere suspicion and the latter standards. In brief, 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 [***Mugesera***].

(2) Analysis

[30] As noted above, Ms. Korasak conceded before both the ID and the IAD that her spouse's cocaine trafficking ring was an organization contemplated by paragraph 37(1)(a). Accordingly, the sole issues before the IAD were whether she had been a member of the

Organization and whether she had engaged in activity that was part of the Organization's pattern of criminal activity.

[31] The Minister submits that the conclusions reached by the IAD in respect of these issues are not intelligible or appropriately justified.

[32] Concerning the issue of membership in an organization contemplated by paragraph 37(1)(a) of the IRPA, the Minister maintains that a person in respect of whom inadmissibility is alleged only needs to have knowledge of the criminal nature of the organization in question.

[33] I disagree. The jurisprudence relied upon by the Minister in this regard does not stand for that proposition. Specifically, the Minister cites to *Chung v Canada (Citizenship and Immigration)*, 2014 FC 16 at para 84 [***Chung***]; *Bruzzese v Canada (Public Safety and Emergency Preparedness*, 2014 FC 230 at para 53 [***Bruzzese***]; *Castelly*, above; and *Amaya v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 549 [***Amaya***].

[34] However, in each of those cases, there was additional evidence that provided reasonable grounds to believe that the applicant was a member of the criminal organization in question: *Chung*, above, at para 65; *Bruzzese*, above, at para 62; *Castelly*, above, at para 39; and *Amaya*, above, at para 19.

[35] Moreover, the full text of the relevant sentence in *Chung*, reproduced in *Bruzzese*, states: "Under subsection 37(1)(a), the person concerned, as well as being a member in the criminal

organization, only needs to have knowledge of the criminal nature of the organization." (Emphasis added): *Chung*, above, at para 84; *Bruzzese*, above, at para 53. In both of these cases, the issue being addressed by the Court at that point in its decision concerned whether the applicant also satisfied the appropriate *mens rea* requirement. This was also the only issue in relation to membership that was at issue in *Amaya*, as the applicant admitted that he was otherwise a member of the organization in question: *Amaya*, above, at para 19. Therefore, the Court's subsequent comments regarding the sufficiency of the applicant's knowledge of the organization's criminal activities must be understood as being confined to the *mens rea* requirement. Consequently, I disagree with the Minister's position that the IAD unreasonably distinguished *Amaya* in rejecting the Minister's position that knowledge of the Organization's activities was sufficient to establish Ms. Korasak's membership in the Organization.

[36] Considering the foregoing, it was not unreasonable for the IAD to conclude that Ms. Korasak had not been a member of the Organization, despite having previously found that she had extensive knowledge of the Organization's activities. Put differently, this aspect of its decision was not unintelligible or insufficiently justified, particularly given the various findings that the IAD made in relation to the evidence relied upon by the Minister regarding the membership issue. Those findings are discussed below.

[37] The Minister also maintains that the IAD's treatment of the wiretap evidence adduced was unreasonable for multiple reasons. First, the Minister states that it was unreasonable to have been dismissive of that evidence on the ground that originals of every recording were not available. This is particularly so given that the IAD relied on the same evidence to conclude that

(i) the voice recorded on some of the key wiretaps was indeed Ms. Korasak's, and (ii) she had "extensive and detailed knowledge about her husband's business." The Minister adds that the IAD also found that she had not made an honest effort to review the audio files. The Minister further submits that the IAD unreasonably questioned the accuracy of the 27 wiretaps that were selected and relied upon, based on the fact that they represented only a very small fraction of the extensive wiretap evidence that was available.

[38] Notwithstanding the findings made by the IAD in relation to Ms. Korasak, I consider that it was reasonably open to the IAD to conclude that the wiretap evidence in question did not provide a sufficient basis to establish her membership in the Organization, for the reasons it articulated: see paragraph 15 above. The following passages of the IAD's decision demonstrate that there were several legitimate reasons why the IAD was not willing to reach that conclusion:

> [25] Beyond not being able to assess the context of the handful of calls represented by the transcripts before me in the scope of the 28,000 intercepted calls, most of the intercepted calls before me are only partial transcripts. Most of the calls begin with summarized information in point form, and some information is dismissed as "gossip", "general talk", or "chitchat" about topics not relevant to the investigation. The methodology in what was considered relevant and what was not and who made such determinations is not clear …
>
> [26] … The files were not properly indexed. Minister's counsel took some steps to help cross-reference the audio files to the transcripts in the record, but these text files then were indexed by different file names than what was provided. Ultimately, I find that the wiretap transcripts cannot be given full weight as completely trustworthy representations of conversations involving the Respondent, and I find that the Respondent's ability to meaningfully challenge the Minister's evidence was also significantly diminished.

[39] I accept that, in some cases, it can be unreasonable to reject good evidence on the basis that it only represents a small portion of the overall evidentiary record. There are times when a very targeted and limited selection of the evidence is all that is required to establish a particular fact or question of mixed fact and law.

[40] However, on the particular facts of this case, it was reasonably open to the IAD to conclude that the evidence tendered by the Minister was not sufficiently robust to provide reasonable grounds to believe Ms. Korasak was a member of the Organization.

[41] The Minister takes particular issue with the findings reached by the IAD in respect of the transcripts of Ms. Korasak's conversations with her brother, Mr. Chansy and the person to whom she allegedly disclosed her involvement in packaging cocaine.

[42] In my view, the IAD's assessment of that evidence, individually and in aggregate, was not unreasonable.

[43] With respect to Ms. Korasak's brother, the Minister relied on transcripts of two separate telephone conversations. In the first, Ms. Korasak tells her brother that if he goes to Regina, he should stay at one of the Organization's stash houses and wait. She then stated that he should not sell to anyone but Mr. Chansy. She added that once Mr. Chansy and a person named Xieng arrive, he should simply exchange the "stuff" for the money, jot it down and stay there until they go home. In the second conversation, Ms. Korasak appeared to be telling him what to do if

people ask for him. She stated: “If you are going … tell them [you’ve] gone to Laos.” She added: “… we don’t want them to know” that he would be at one of the stash houses in Regina.

[44] The IAD concluded that the specific words used in the first of the two foregoing exchanges suggested Ms. Korasak had no say in whether her brother went to Regina and had assumed that he would not do so. In any event, it determined that her motivation in the two conversations was to help protect her brother and prevent further damage to her family’s reputation in the Laotian community. The IAD added that while the two conversations between Ms. Korasak and her brother were “somewhat troubling” they did not provide an objective basis to believe that she was giving directions to him on behalf of the Organization. I consider that these conclusions were reasonably available to the IAD and were appropriately justified.

[45] Regarding the transcript of Ms. Korasak’s conversation with Mr. Chansy, the exchange in question concerned a telephone call from the latter in which he informed Ms. Korasak that he was on his way to her home. Ms. Korasak was apparently alarmed and replied: “Don’t come here yet. We are going back there soon.” She then consulted her spouse and relayed his instructions to Mr. Chansy not to come. In the course of doing so, she used the term “flowers,” which the IAD accepted was jargon used by the Organization to represent cocaine. The IAD observed that this exchange reflected “an element of furthering the interests of the organization.” However, it proceeded to conclude that the relay of messages between Mr. Chansy and her spouse in this particular context did not support a finding that Ms. Korasak actively provided information or instructions to members of the Organization. In my view, that conclusion was not unreasonable in the circumstances.

[46] I will turn now to the single transcript that constituted the sole evidence concerning Ms. Korasak's involvement in packaging cocaine. The statements in question consisted of the following: "Helping him parckage [*sic*] them I get paid two … like when he's about to go back there, he would package them. I was going to get Somphone to help out, but worried she might tell."

[47] The IAD characterized this evidence as being "of greatest concern." It added that if Ms. Korasak had packaged cocaine with her husband, even occasionally, she would be inadmissible under paragraph 37(1)(a) of the IRPA. However, it proceeded to state that this single exchange was not sufficient to establish a reasonable objective belief that Ms. Korasak packaged cocaine for the Organization. This was particularly so given that the extensive "Will Say" statement of the lead investigator for Operation Faisan provided a detailed description of all of the other targets of the investigation, yet simply referred to Ms. Korasak as having had knowledge about her spouse's activities and having been a source of valuable information. Moreover, the excerpt of the "KGB statement" that was adduced before the IAD and was provided by one of the Organization members who was convicted, provided "no indication" that Ms. Korasak had been involved in packaging cocaine or had otherwise held any role in the Organization. Given the likely motivation of the member in question to provide information regarding Ms. Korasak, as he did with respect to her co-accused, the IAD concluded that he would likely have disclosed any activities in which she engaged in relation to the Organization, had he known about them. I consider that this finding was reasonably open to the IAD.

[48] The IAD added as follows:

> [43] As set out earlier, the conversation in which the Respondent speaks of "packaging them" is the one transcribed wiretap for which the Minister has not been able to provide an audio recording. Moreover, the transcript is riddled with the same issues which I have already set out. There are arbitrary decisions made on which parts of the conversation are worth transcribing and omitted as "chitchat" or summarized in point form. In order to find that the Respondent packaged cocaine with her husband, I have to make significant inferences about her single vague statement and accept a partial and incomplete transcript of a recorded call neither the Respondent nor anyone else can verify or challenge as verbatim and accurate. While the Respondent's alleged statement about packaging certainly raises a suspicion that she packaged cocaine for the organization, I find that it is a starting point for investigating and establishing that she did so, rather than establishing an objective belief that she did so.

[49] I consider that the foregoing assessment of the single transcript in question was not unreasonable in the circumstances. For greater certainty, it was neither unintelligible nor insufficiently justified.

[50] The Minister also maintains that the IAD's apparent acceptance of Ms. Korasak's position that she travelled from Vancouver to Regina for a wedding on one occasion was not intelligible or justified, particularly given the overwhelming evidence that the Organization was involved in transporting cocaine between those two cities.

[51] The evidence in question consisted of a single statement in Ms. Korasak's testimony, in which she conceded that she had travelled to Regina once – in the IAD's words, "ostensibly for a wedding." However, given the absence of any evidence that Ms. Korasak had travelled to Regina more than once, the IAD concluded that the single statement in question was not sufficient to establish the Minister's allegation that she "was 'prepared to transport the cocaine to Regina,

make the delivery and return to the lower mainland'; much less that she ever actually did so." In my view, this conclusion was neither unintelligible nor insufficiently justified. Nor was it unreasonable.

[52] I acknowledge that another transcript tendered by the Minister referred to the possibility that Ms. Korasak and her spouse might go to Regina "and bring the stuff to them … and get the money and come right back." However, the IAD noted that this statement was made in the context of a discussion of possible courses of action that her spouse might take if a middleman in the Organization were to leave the Organization. It was reasonably open to the IAD to conclude that this exchange "fails to establish even a fixed intention, let alone the act of transporting drugs."

[53] The Minister also maintains that the IAD inappropriately focused on Ms. Korasak's position in the Organization's hierarchy, her inability to influence or direct the Organization's activities, and her lack of a defined role in the Organization. In support of this position, the Minister asserts that it is not necessary to establish a position of influence or direction, or a defined role, within an organization to demonstrate membership in that organization.

[54] I agree with the latter statement. However, I disagree with the position that the IAD inappropriately focused on any of these matters.

[55] I recognize that the IAD referred to Ms. Korasak's inability to influence how her spouse ran the Organization, or to influence the Organization's activities more generally. However, in

concluding that she had not been a member of the Organization, it did not rely solely on these findings. As discussed above, the IAD also identified significant shortcomings with the wiretap evidence in general. In addition, it made adverse findings in respect of all of the evidence relied upon by the Minister to establish Ms. Korasak's membership in the Organization. This included the transcripts of her conversations with her brother and with Mr. Chansy, the evidence regarding her alleged involvement in packaging cocaine, and the evidence regarding her alleged travels to Regina. Most critically, to use the IAD's own words, the IAD appeared to place significant weight on the fact that the "Will Say" statement of the lead officer in the Project Faisan investigation provided detailed descriptions of the roles of each of the other targets in the Organization, but merely referred to Ms. Korasak as having knowledge of her spouse's activities. The IAD also attributed significance to the fact that the "KGB statement" of her co-accused did not provide any indication that Ms. Korasak held any role in the Organization.

[56] Having made the various findings discussed above, it was not unreasonable for the IAD to conclude that the evidence relied upon by the Minister fell short of establishing Ms. Korasak's membership in the Organization. Stated differently, it cannot be said that the evidentiary record was such that the only reasonable conclusion available to the IAD was that Ms. Korasak had been a member of the Organization. In my view, that evidentiary record supported more than one reasonable conclusion, including the one reached by the IAD. In such circumstances, it is not unreasonable for a decision-maker to prefer one of those available reasonable conclusions over the other(s), so long as the process and outcome fit comfortably within the principles of justification, transparency and intelligibility: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59.

[57] As I have noted, the IAD recognized that the wiretap evidence adduced by the Minister had "some probative value." However, it ultimately decided that it simply provided "reason to suspect that she became personally involved in some of the activities of the [O]rganization." The IAD reasonably (and correctly) concluded that this did not provide a sufficient basis for concluding that there were reasonable grounds to believe that Ms. Korasak had been a member of the Organization. In disputing this finding, the Minister is essentially requesting that the Court reassess and reweigh this evidence in its favour. That is not the function of the Court on judicial review: *Vavilov*, above, at para 125.

[58] The Minister further maintains that the IAD inappropriately focused on Ms. Korasak's gender in making its findings regarding her alleged membership in the Organization.

[59] I disagree. The IAD made a single reference to Ms. Korasak's gender at the outset of its decision, when it observed that she stood in stark contrast to the other eight individuals with whom she was arrested, all of whom were Laotian males. This was simply the first of several factors noted by the IAD. It immediately proceeded to observe that, "[m]ore critically," neither the lead investigator in Project Faisan nor the Minister's counsel had attributed any role in the Organization to Ms. Korasak. It then continued with the balance of its assessment, as discussed above.

[60] The Minister also submits that Ms. Korasak's possession of proceeds of crime, her plans to spend those proceeds and her involvement in ensuring the continuation of the criminal

activities that generate those proceeds collectively point toward a lengthy and ongoing engagement in the Organization's pattern of criminal activities.

[61] I disagree. The fact that a person may possess proceeds of crime and plan to spend those proceeds is not, in and of itself, sufficient to establish that the person is or was a member of the criminal organization that may have generated those proceeds. As to Ms. Korasak's alleged involvement in ensuring the continuation of the Organization's criminal activities, it is unnecessary to revisit the IAD's treatment of the Minister's evidence, discussed above. I will simply add that the IAD specifically found that the evidence did not establish more than the fact that Ms. Korasak had acquiesced to her husband's criminal activity and her nephew's involvement in the Organization so that she and her children could benefit financially. In another passage of its decision, the IAD observed that she knew what her husband was doing and didn't want him to stop until it resulted in a sufficient financial reward, despite the risk of arrest and prosecution. It was not unreasonable for the IAD to conclude that these findings did not provide reasonable grounds to believe that Ms. Korasak had been a member of the Organization or had engaged in activities in furtherance of the Organization's pattern of criminal activities.

[62] In summary, for the reasons that I have provided, the IAD's decision was not unreasonable. Stated differently, it was reasonably open to the IAD to conclude that the evidence adduced by the Minister fell short of providing reasonable grounds to believe that Ms. Korasak (i) had been a member of the Organization, or (ii) had engaged in activity that was part of the Organization's pattern of criminal activity. In other words, it was reasonably open to the IAD to

conclude that the Minister had not provided a sufficient objective basis to establish these allegations, based on compelling and credible information: *Mugesera*, above, at para 114.

[63] Given the evidence that was before the IAD, and that was specifically assessed by it, these conclusions were appropriately transparent, intelligible and justified. They also fell well "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Vavilov*, above at para 86.

VIII. **Conclusion**

[64] I can understand why the Minister has invested so much time in seeking to have Ms. Korasak declared inadmissible. During the period in question, she did not conduct herself in a manner that corresponds to the expectations most Canadians likely have of those who are granted permanent residence. Instead of vindicating Canadians' faith in her, she became knowingly entangled in a life of crime. She then lied and attempted to deceive Canadian officials. On the evidentiary record, it would have been reasonably open to the IAD to find that there were reasonable grounds to believe that she had engaged in activities that were part of the pattern of criminal activities of the Organization. However, it was also reasonably open to the IAD to reach the opposite conclusion. The factual matrix falls very much in the grey zone that permits more than one reasonable conclusion.

[65] In such cases, it is not the Court's role on judicial and review to choose the conclusion that it prefers. So long as the IAD's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, the Court must stay its hand. For

the reasons set forth above, the IAD's decision does indeed fall within that range. It has a rational foundation and is appropriately justified, transparent and intelligible. Accordingly, the Minister's application will be dismissed.

[66] I agree with the parties' position that the legal and factual matrix of this application does not give rise to a serious question of general importance for certification.

JUDGMENT in IMM-2361-21

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. The legal and factual matrix of this application does not give rise to a serious question of general importance for certification.

"Paul S. Crampton"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2361-21
STYLE OF CAUSE:	THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS v MALYVAN KORASAK
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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APPEARANCES:

Ashana Lalani	FOR THE APPLICANT
Robert J. Kincaid	FOR THE RESPONDENT

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