Federal Court  Cour fédérale

**Date: 20230315**

**Docket: IMM-4174-20**

**Citation: 2023 FC 337**

**Ottawa, Ontario, March 15, 2023**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**RAMAZ AZARIASHVILI**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

## REASONS AND JUDGMENT

[1] Mr. Ramaz Azariashvili (the "Applicant") seeks judicial review of the issuance of a deportation order made by the Immigration and Refugee Board, Immigration Division (the "ID").

[2] The Applicant incorrectly named the Minister of Citizenship and Immigration as the Respondent. That issue was raised at the beginning of the hearing and the style of cause will be

corrected to show the Minister of Public Safety and Emergency Preparedness as the Respondent (the "Respondent").

[3] The ID found that there were serious reasons to believe that the Applicant had been complicit in crimes against humanity and war crimes, and was inadmissible to Canada, pursuant to paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2021, c. 27 (the "Act").

[4] The Applicant is a citizen of Georgia and became a permanent resident of Canada in November 2018. Prior to his entry to Canada, he was employed with the Georgian Ministry of Internal Affairs from December 2005 until August 2008. He worked with the Constitutional Security Department ("CSD"). In the affidavit filed in support of this application, the Applicant deposed that he was employed as a part-time physical fitness trainer for the CSD Special Forces Unit and did not provide combat training.

[5] In June 2016, an Inland Enforcement Officer with the Canada Border Services Agency interviewed the Applicant. A report was subsequently prepared pursuant to subsection 44(1) of the Act and the Applicant was referred to the ID for an admissibility hearing. Following a hearing before the ID over several days in November 2019, a deportation order was issued.

[6] In its decision, the ID found that the Applicant had knowledge of the CSD's crimes against humanity, had made a significant contribution to their criminal purpose, and acted voluntarily.

[7] The Applicant now argues that the issue of whether paragraph 35(1)(a) requires the commission of an act is a question of statutory interpretation, reviewable on the standard of correctness.

[8] The Respondent disagrees and submits that there is no basis to depart from the presumptive standard of reasonableness.

[9] The Applicant argues that the ID erred in finding that paragraph 35(1)(a) includes complicity for crimes against humanity. He also submits that the Respondent failed to show that he committed any act that would constitute an offence under the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24.

[10] The Applicant further argues that if paragraph 35(1)(a) includes complicity, then the ID unreasonably applied the test in *Ezokola v. Canada (Citizenship and Immigration)*, [2013] 2 S.C.R. 678 (S.C.C.). He submits that the evidence shows no more than complicity by association.

[11] The Respondent argues that the Applicant is improperly asking the Court to reweigh the evidence and that the decision is reasonable.

[12] I agree with the submissions of the Respondent about the applicable standard of review. There is no basis to depart from the directions in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), that reasonableness is the presumptive standard of review.

[13] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra* at paragraph 99.

[14] In *Ezokola, supra,* at paragraph 68, the Supreme Court found that “complicity under international criminal law requires an individual to knowingly (or, at the very least, recklessly) contribute in a significant way to the crime or criminal purpose of a group.”

[15] In *Talpur v. Canada (Minister of Citizenship and Immigration),* 2016 FC 822, Justice Manson confirmed that the test for complicity set out in *Ezokola, supra* applies to a finding of inadmissibility made under paragraph 35(1)(a) of the Act.

[16] The problem with the decision of the ID is not with its choice of the test, but with the reasons given for the decision.

[17] The ID’s treatment of the Applicant’s duties and activities with the CSD are not “justified, intelligible and transparent”, as required by *Vavilov, supra*.

[18] In my opinion, the ID did not explain why and how the Applicant’s activities significantly contributed to the criminal purpose of the CSD. This makes the decision unreasonable.

[19] Assessing the reasoning process and reasons of the ID is not equivalent to “reweighing” the evidence.

[20] In the result, the application for judicial review will be allowed, the decision of the ID will be set aside and the matter remitted to a differently constituted panel of the ID for redetermination. There is no question for certification.

**JUDGMENT in IMM-4174-20**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause will be and is hereby amended to show the Minister of Public Safety and Emergency Preparedness as the Respondent.
2. The application for judicial review is allowed, the decision of the Immigration and Refugee Board, Immigration Division is set aside and the matter remitted to a differently constituted panel for redetermination.
3. There is no question for certification.

"E. Heneghan"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4174-20 |
| **STYLE OF CAUSE:** | RAMAZ AZARIASHVILI v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | HELD BY WAY OF VIDEOCONFERENCE |
| **DATE OF HEARING:** | SEPTEMBER 29, 2022 |
| **REASONS AND JUDGMENT:** | HENEGHAN J. |
| **DATED:** | MARCH 15, 2023 |

**APPEARANCES:**

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|---|---|
| Mark Rosenblatt | FOR THE APPLICANT |
| Michael Butterfield | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |