

Federal Court



Cour fédérale

**Date: 20240212**

**Docket: IMM-8836-22**

**Citation: 2024 FC 234**

**Ottawa, Ontario, February 12, 2024**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**RAVI TUSHAR SHAH**

**Applicant**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision of a delegate of the Minister of Public Safety and Emergency Preparedness [Delegate] dated August 12, 2022, made under subsection 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. That decision referred a report of an officer of the Canada Border Services Agency [CBSA], made on August 10, 2022, under subsection 44(1) of the IRPA [Report], to the Immigration Division [ID]

for an admissibility hearing to determine if the Applicant is a person described in paragraph 37(1)(a) of IRPA, which relates to inadmissibility on grounds of organized criminality [Decision].

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not demonstrate a breach of procedural fairness in arriving at the Decision or undermine the reasonableness of the Decision.

## II. Background

[3] The Applicant is a citizen of India who presently resides in London, Ontario and holds a work permit. For purposes of the IRPA, he is a foreign national, not a permanent resident.

[4] In support of the procedural fairness arguments the Applicant raises in this application for judicial review, he swore an affidavit dated April 12, 2023, and a further affidavit dated December 8, 2023 [Further Affidavit]. In the Further Affidavit, the Applicant provides his evidence as to events leading to the Decision under review in this application, including the following:

- A. At some time during 2019, the Applicant received a parcel in the mail at his address in London, Ontario. Based on information received from a friend in India, the Applicant believed this package included applications for a job fair. He added his own documentation and then mailed the package to a person named Gurinderpreet Dhaliwal, whose name and contact information the Applicant received from his friend;

- B. The Royal Canadian Mounted Police [RCMP] subsequently questioned the Applicant about this parcel and advised the Applicant that he was a witness to a case concerning Mr. Dhaliwal and that he would be contacted in the future if the RCMP needed more information. While the Applicant was later subpoenaed as a witness, he subsequently received a call from the RCMP, advising that the hearing was postponed. The RCMP advised him that he was a victim and was not in trouble. He received no subsequent contact from the RCMP and was not charged with any offence;
- C. Three years later, a CBSA officer telephoned the Applicant and advised him that he was inadmissible to Canada. When the Applicant asked for the reason for his inadmissibility, the officer stated that he would not provide the reason on the telephone but that the Applicant would receive a letter and would need to attend an interview;
- D. The Applicant received a Call In Notice dated August 9, 2022, which is included in the Certified Tribunal Record [CTR] in this application and stated that the next step of the process is to conduct a complete review of the circumstances surrounding the Applicant's case. The Call In Notice required him to attend an interview at CBSA's offices on August 24, 2022; and
- E. When he attended the CBSA office in London, Ontario, the Applicant was not interviewed, but his passport was seized and he was informed by a CBSA officer that he was inadmissible for being a money mule. The Applicant asked for an explanation, and the officer advised that they thought the Applicant had already been called in for an interview in Toronto. This officer served the Report upon the Applicant and

told the Applicant he would contact him after he checked with CBSA in Toronto. The Applicant did not hear further from the CBSA officer in London.

[5] On August 12, 2022, the Delegate issued the Decision, referring the Report to the ID for an admissibility hearing. The Report and the subsequent Decision allege that the Applicant is inadmissible under paragraph 37(1)(a) of the IRPA for “being a money mule for a Microsoft tech scam that fraudulently obtains funds from Canadians”.

[6] Subsection 37(1)(a) of the IRPA provides as follows:

**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 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

**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 personnes agissant de concert en vue de la perpétration d’une infraction prévue sous le régime d’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;

[7] The CTR includes a document prepared by the RCMP, entitled Project Octavia - Case Summary [RCMP Case Summary], which relates to the Applicant, along with accompanying documents related to the RCMP’s investigation of certain telephone and cyber scams.

III. Issues and Standard of Review

[8] The Applicant's submissions raise the following issues for consideration by the Court:

A. Was the Applicant deprived of procedural fairness?

B. Is the Decision reasonable?

[9] The Applicant also raises what he refers to as a preliminary issue, being his position that nothing in the CTR identifies the evidence on the basis of which the Report and Decision were prepared. At the hearing of this application, the Applicant's counsel confirmed that this issue relates to his arguments surrounding the reasonableness of the Decision. I will address this issue in that portion of my analysis.

[10] The merits of the Decision are reviewable on the reasonableness standard, and the procedural fairness issue is subject to the standard of correctness.

IV. Analysis

A. *Was the Applicant deprived of procedural fairness?*

[11] In response to the Applicant's procedural fairness arguments, the Respondent relies on authorities to support the position that the degree of procedural fairness, required to be afforded to a foreign national under the processes pursuant to section 44 of IRPA, is less than that to which a permanent resident is entitled. The Respondent argues that the Applicant was not entitled to disclosure (although he did receive a copy of the Report) or an opportunity to respond

to the allegation against him prior to the Decision being made. The Respondent takes the position that the procedural fairness to which the Applicant is entitled in connection with the inadmissibility allegation is provided in the stage of the process that occurs before the ID, when the Applicant will have an opportunity to respond to the allegation with the benefit of full advance disclosure of the basis of the allegation.

[12] At the hearing of this application, the Applicant's counsel recognized the procedural fairness opportunities that will be afforded by future stages of the process and explained that the Applicant was not taking the position that the law imposes upon CSBA an obligation to afford the subject of an admissibility allegation an interview or other opportunity to respond to the allegation before a decision is made to make a referral to the ID for an admissibility hearing. Rather, the Applicant asserts that there are particular features of the record underlying the allegation against him, and the events leading to the Decision, that gave rise to such an obligation in this particular case. As such, it is not necessary for the Court to engage with general jurisprudential principles related to the procedural fairness required in the context of section 44 proceedings, but I will address the Applicant's arguments specific to the facts of this case.

[13] I understand the Applicant to be arguing principally that documentary and verbal references to him being interviewed gave rise to legitimate expectations that he would receive information about the allegations against him and an opportunity to speak to them before the Decision was made. When he was first contacted by CBSA by telephone, he was told he would need to attend an interview. The subsequent Call In Notice stated that the next step in the process was to conduct a complete review of the circumstances surrounding his case and that he was

required to present himself for an interview at CBSA's offices on August 24, 2022. When he presented at those offices, the officer with whom he met stated that he thought the Applicant had already been called in for an interview in Toronto. The officer stated that he would check with Toronto and then contact him, but the Applicant did not hear back from the officer.

[14] As the Applicant correctly submits, a legitimate expectation based on a government representation about procedure may enhance or refine the level of procedural fairness to which an individual is entitled (*Thavakularatnam v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 1245 at para 50), provided that representation meets the requirements for the doctrine of legitimate expectations to apply, as explained in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 360 [*Agraira*]. For the doctrine to apply, a representation or other conduct of the decision-maker must be clear, unambiguous and unqualified (*Agraira* at para 95).

[15] I agree with the Respondent's position that the events upon which the Applicant relies do not amount to a clear, unambiguous and unqualified representation that the Applicant would be afforded any particular level of disclosure, or an opportunity to respond to the allegation against him, before a decision was made to make a referral to the ID for an admissibility hearing. The officer with whom the Applicant met on August 24, 2022 provided him a copy of the Report and, as the Respondent submits, the disclosure he has received in the course of this application for judicial review includes the RCMP Case Summary, of which he will have the benefit in preparing for the hearing before the ID.

[16] The Applicant also relies on the details of the RCMP Case Summary in support of his position that the circumstances of this case are unusual and triggered procedural fairness obligations. He takes issue with some of the statements attributed to him and resulting inferences by the RCMP, and he argues that, as the facts supporting the allegation were far from clear, an obligation existed to perform further investigation, by obtaining input from the Applicant or otherwise, before advancing the allegation to the stage of the Decision.

[17] I find no merit to this argument. While inadequate factual support for the allegation could represent a basis for challenging the reasonableness of the Decision (an argument that I address below), I find no basis for such circumstances to give rise to procedural fairness obligations.

B. *Is the Decision reasonable?*

[18] In advancing his position that the Decision is unreasonable, the Applicant refers the Court to the meaning of the term “organized criminality” as used in paragraph 37(1)(a) of IRPA and interpreted by the Supreme Court of Canada in *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at paragraphs 37 to 46. The Applicant emphasizes the requirements that: (a) there must be a group of three or more persons; (b) one of the group’s main purposes or activities must be the facilitation or commission of one or more serious offences; (c) material or financial benefit must result; and (d) the group is not formed randomly for the commission of a single offence.

[19] The Applicant also relies on authority that there is a requirement to identify the particular criminal organization in question (*Nguesso v Canada (Citizenship and Immigration)*, 2015 FC



879 at para 191). Also, third parties who individually transact with a criminal organization cannot be seen to be members or considered to be engaged in activity that is part of a pattern of criminal activity (*Saif v Canada (Citizenship and Immigration)*, 2016 FC 437 at para 17).

[20] Relying on this jurisprudence, the Applicant submits that neither the Report nor the Decision identifies the organization with which he was alleged to have been involved or the alleged size of the group. He also argues that neither the Report nor the Decision identifies the Applicant having been involved in more than one transaction. While the Applicant notes that he was not criminally charged by the RCMP, suggesting that his involvement was innocent or at least very limited, he also takes the position that he was at most a third party involved in a single transaction with a criminal organization.

[21] Before addressing those submissions, I note the preliminary issue raised by the Applicant. He argues that the CTR is deficient in that it does not indicate what constitutes the file or supporting evidence relied upon by those who prepared the Report and Decision. In my view, this is simply an argument going to the reasonableness of the Decision, i.e., whether the record demonstrates a foundation for the Decision sufficient to withstand reasonableness review.

[22] Turning to that review, I note the Respondent's reliance on *Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 [*Obazughanmwun*] and other authorities to the effect that the referral process under section 44 of IRPA is only meant to look into readily and objectively ascertainable facts concerning admissibility and is not intended to adjudicate controversial and complex issues of law and evidence. It is a screening exercise, not

an adjudicative process of the kind performed by the ID. Neither the officer issuing the report nor the Minister's delegate is authorized or required to make findings of fact or law. It is at the adjudicative stage before the ID that such issues can be assessed.

[23] While I appreciate that the Report and Decision contain very little information as to the reasons underlying the inadmissibility allegation, the RCMP Case Summary and other information in the CTR represent the background to the Decision and inform the Court's examination of the Decision in judicial review. Taking into account that information and the limited role of the Delegate as explained in *Obazughanmwun*, the Decision easily withstands reasonableness review. The Applicant's arguments, to the effect that the evidence does not support a finding of inadmissibility within the meaning of paragraph 37(1)(a) of IRPA as interpreted by the jurisprudence, are arguments that should be adjudicated by the ID.

[24] Having considered the Applicant's arguments and finding no reviewable error in the Decision or the Delegate's decision-making process, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-8836-22**

**THIS COURT'S JUDGMENT is that**

1. This application for judicial review is dismissed.
2. No question is certified for appeal.

"Richard F. Southcott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8836-22

**STYLE OF CAUSE:** RAVI TUSHAR SHAH v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 8, 2024

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** FEBRUARY 12, 2024

**APPEARANCES:**

Mario D. Bellissimo, C.S. FOR THE APPLICANT

James Todd FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Bellissimo Law Group PC FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario