

Federal Court



Cour fédérale

**Date: March 25, 2024**

**Docket: IMM-8703-22**

**Citation: 2024 FC 459**

**Ottawa, Ontario, March 25, 2024**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**MOHAMMAD SHAH JAHAN  
MOLLA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The applicant, Mohammad Shah Jahan Molla, seeks judicial review of a visa officer's decision that refused his application for permanent residence. The officer found Mr. Molla is inadmissible to Canada under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for committing an act outside Canada that constitutes an offence under

sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24.

Specifically, the officer found there were reasonable grounds to believe Mr. Molla was complicit in war crimes and crimes against humanity that were perpetrated by the Bangladesh army in the Chittagong Hill Tracts (CHT) region during his service as an active member of the army deployed to the CHT region.

[2] Mr. Molla submits the officer's reasons fail to justify the decision in light of the relevant factual and legal constraints. He states the officer failed to properly apply the framework for assessing complicity set out in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*] and unreasonably found he had made a knowing, voluntary, and significant contribution to the army's crimes in the CHT. Rather than conducting an evidence-based and contextual assessment of relevant factors enumerated in *Ezokola*, Mr. Molla contends the officer adopted a "guilt-by-association" approach that inferred complicity solely based on his position and military rank in the Bangladesh army.

## II. Issue and Standard of Review

[3] The sole issue on this application is whether Mr. Molla has established that the officer's decision was unjustified and therefore unreasonable. The guiding principles for reasonableness review are set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reasonableness standard of review is a deferential but robust form of review that considers whether the decision is transparent, intelligible, and justified: *Vavilov* at paras 13, 99.

### III. **Background**

#### A. *CHT Conflict*

[4] The CHT is a region in southeastern Bangladesh that is home to several Indigenous groups. In the early 1970s, the Indigenous peoples' political party fought a guerrilla war against the Bangladesh government in an effort to achieve greater recognition and political autonomy. After the armed wing of the party attacked military and paramilitary personnel and non-tribal settlers in the CHT, the Bangladesh government deployed police, paramilitary, and military personnel to the region. Reports of human rights abuses over the course of the conflict included accounts of torture, rape, extrajudicial killing, forced eviction, and destruction of property.

[5] Mr. Molla served in the Bangladesh army for 28 years. During that time, he was deployed to five field assignments in the CHT region:

- February 1980 to January 1981 (316 days) as a Lieutenant with the 26 East Bengal Battalion;
- August 1988 to August 1989 (347 days) as a Major with the 27 East Bengal Battalion;
- February 1992 to April 1992 (40 days) as a Major with the 34 East Bengal Battalion;
- December 1993 to March 1994 (76 days) as a Lieutenant Colonel with the 12 East Bengal Battalion; and
- February 1997 to August 1997 (161 days) as a Lieutenant Colonel with the 33 East Bengal Battalion.

B. *Procedural History*

[6] Mr. Molla submitted an application to become a permanent resident of Canada in May 2013. There were delays in processing the application and Mr. Molla was called for an interview in December 2019 to assess admissibility.

[7] The interviewing officer made notes summarizing Mr. Molla's interview in the Global Case Management System (GCMS). The interviewing officer asked questions about Mr. Molla's military service and his deployment to the CHT region in the 1980s and 1990s. The officer raised concerns about country reports of widespread human rights abuses in the CHT region during those periods. Mr. Molla stated his battalion prepared the ground for peace talks and provided security to the population. He also stated he was never involved in human rights abuses and was not aware of human rights abuses in his area of operation. He did not recall any occasions when troops under his command took prisoners and stated he was unaware of incidents of torture, sexual assault, or extrajudicial killings.

[8] Following the interview, the officer sent Mr. Molla a procedural fairness letter inviting him to respond in writing to the inadmissibility concerns that had been explained at the interview. Mr. Molla's counsel requested clarification of the officer's specific allegations under paragraph 35(1)(a) of the *IRPA*. A further letter was sent with additional information, stating in part:

Specifically, there are reasonable grounds to believe that while you were an active member of the Bangladesh military posted in the Chittagong Hills Track (CHT) you were complicit in a war crime, genocide or a crime against humanity. You were found to be

complicit in Crimes Against Humanity and War Crimes for having a voluntary, significant, and knowing contribution to the human rights abuses at the Chittagong Hill Tracts including the period in which you were stationed there as a battalion commander in charge of 900 personnel while holding the rank of Lieutenant Colonel.

These concerns were presented to you during your interview on 11 December 2019. As discussed with you during the interview there is significant public information from NGOs, commissions, and journalists alleging widespread human rights abuses during the period in which you served and the areas to which you were posted. Your high rank, voluntary enlistment and years of service, and command over a significant number of soldiers was confirmed during the interview. The abuses by the Bangladesh military in the CHT were widespread and systematic according to open source information.

[9] The letter set out information about human rights abuses in the CHT as documented in reports by Amnesty International, the Chittagong Hill Tracts Commission, the International Work Group for Indigenous Affairs, and the United Nations. The letter also provided links to these reports.

[10] Mr. Molla responded on December 11, 2021. Mr. Molla's response comprised a letter from his counsel, a statutory declaration that, among other things, explained his deployments to the CHT, and an official record of his service with the Bangladesh army.

[11] Mr. Molla's permanent residence application was refused by letter dated July 25, 2022. Reasons for the refusal recorded in the GCMS notes state the officer was not satisfied Mr. Molla's response had addressed the concerns that were outlined in the procedural fairness letter, including because:

- Mr. Molla's response provided an overview of his five deployments to the CHT and details of the positive activities he conducted within the communities during his approximately 2.5 years there, holding various ranks including the senior rank of Lieutenant Colonel during his final deployment; he stated that during his time in the CHT he heard about incidents through the local media, but these were presented as propaganda from separatist groups to serve their purpose and therefore given no credibility; it was only near his retirement that he came to realize that horrible things did happen in the CHT and he no longer believed the reports were propaganda; if he had been personally aware that soldiers under his command were subjecting members of indigenous minorities to abuses such as forced eviction, destruction of property, arbitrary arrests, kidnapping, torture, and murder, he would have intervened immediately;
- the officer did not find Mr. Molla's explanation satisfactory given the various positions of command he held during his deployments to the CHT;
- additionally, given the severity of the accusations against members of the Bangladesh army, the officer questioned why Mr. Molla did not investigate accusations he heard during his time in command, as by his own statements he had the power to refer individuals involved to his commander for discipline;
- the officer rejected Mr. Molla's argument that a finding of complicity would require a finding that the Bangladesh army is a group with a criminal purpose, and that Mr. Molla made a voluntary, significant, and knowing contribution to the army's criminal purpose; in this regard, the officer noted that *Ezokola* refers to the crime or criminal purpose of a group, that Mr. Molla's contribution did not have

to be directed to specific identifiable crimes, and that credible open source information identified the Bangladesh army as having committed crimes against humanity in the CHT, which Mr. Molla did not dispute.

[12] The reasons recorded in the GCMS conclude:

As previously assessed, and presented to the applicant, it was determined that there are reasonable grounds to believe that the applicant provided a significant contribution to these crimes. It was determined that his contributions were knowing, voluntary, and significant. This determination was based on factors that have not been adequately addressed in the procedural fairness response submitted by the applicant. Therefore, in reviewing the information provided by the applicant in his application, during his interview, and in response to the procedural fairness letter, I am satisfied that there are reasonable grounds to believe that the applicant has provided a voluntary, knowing, and significant contribution to the Crimes Against Humanity and War Crimes, committed in the CHT, and therefore there are reasonable grounds to believe that the applicant is inadmissible under A35(1)(a).  
Application Refused

#### IV. Analysis

##### A. *The Ezokola Framework*

[13] Paragraph 35(1)(a) of the *IRPA* provides:

**Human or international rights violations**

**35 (1)** A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

**Atteinte aux droits humains ou internationaux**

**35 (1)** Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :

<p>(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the <i>Crimes Against Humanity and War Crimes Act</i>;</p>	<p>a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la <i>Loi sur les crimes contre l'humanité et les crimes de guerre</i>;</p>
--	---

[14] Inadmissibility under paragraph 35(1)(a) is not confined to direct perpetrators. A permanent resident or foreign national may be found inadmissible for being complicit in war crimes or crimes against humanity.

[15] In *Ezokola*, the Supreme Court of Canada clarified the line between mere association and culpable complicity that would render an individual inadmissible. While *Ezokola* involved a consideration of section 98 of the *IRPA* and Article 1F of the United Nations *Convention Relating to the Status of Refugees*, the *Ezokola* framework also applies to determinations of inadmissibility under paragraph 35(1)(a) of the *IRPA*: *Talpur v Canada (Citizenship and Immigration)*, 2016 FC 822 at para 20 [*Talpur*], citing *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 21.

[16] To assess complicity, the decision maker must decide whether the individual made a voluntary, knowing, and significant contribution to a group's crime or criminal purpose: *Ezokola* at para 36. Rank-based complicity by association or passive acquiescence will not suffice: *Ezokola* at para 83; *Canada (Citizenship and Immigration) v Kurt*, 2022 FC 1347 at para 25 [*Kurt*].



[17] Voluntariness considers the method of recruitment and opportunity to leave an organization; it captures the defence of duress: *Ezokola* at para 86. Knowing contribution means a person must be aware of a group's crime or criminal purpose, and aware that his or her conduct will assist in the furtherance of the crime or criminal purpose: *Ezokola* at para 89. Association becomes culpable complicity when an individual makes a significant contribution to the crime or criminal purpose of a group: *Ezokola* at para 87. The contribution does not have to be directed to specific identifiable crimes; it can be directed to wider concepts of common design and the recognition of collective and indirect participation in crimes: *Ezokola* at paras 87-88.

[18] *Ezokola* sets out factors that serve as a guide in assessing whether an individual has voluntarily made a significant and knowing contribution to a crime or criminal purpose. The factors include: i) the size and nature of the organization; ii) the part of the organization with which the individual was most directly concerned; iii) the individual's duties and activities within the organization; iv) the individual's rank or position in the organization; v) the length of time the individual was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and, vi) the method by which the individual was recruited and the opportunity to leave the organization: *Ezokola* at para 91.

B. *Was the officer's decision unreasonable?*

[19] As noted above, Mr. Molla submits the officer's finding that he was complicit in crimes against humanity by the Bangladesh army was not justified in light of the factual and legal constraints.

[20] Mr. Molla states the officer failed to apply the *Ezokola* framework for assessing complicity and instead adopted a “guilt-by-association” approach, when *Ezokola* eschewed concepts of rank-based complicity by association or passive acquiescence. Mr. Molla states the essence of the officer’s reasoning was an inference that he had made a voluntary, significant, and knowing contribution to war crimes and crimes against humanity because the Bangladesh army “writ large” perpetrated human rights abuses over the course of the CHT conflict, and he was posted to the CHT for periods of his career that included deployments in 1994 and 1997 when he was a lieutenant colonel in charge of a battalion of 900 soldiers.

[21] Mr. Molla also submits the officer failed to grapple with and engage with the evidence to conduct a personal assessment of whether he had made a voluntary, significant, and knowing contribution to a group’s crime or criminal purpose based on the six *Ezokola* factors. By failing to engage with the evidence, Mr. Molla submits the officer does not reasonably link him to the crimes committed by the Bangladesh army.

[22] According to Mr. Molla, the officer failed to engage with the first three *Ezokola* factors—the size and nature of the army, the part of the army with which Mr. Molla was most directly concerned, and Mr. Molla’s duties and activities in the army—and failed to grapple with evidence that was relevant to these factors. This included evidence that the Bangladesh army is a large and multi-faceted military organization, and that an estimated 20,000 to 40,000 military personnel were deployed to the CHT region. Mr. Molla also states the events described in the four country reports disclosed by the officer pertain to different military units and different locations in the CHT, and the battalions in which he served were not implicated in abuses. He

contends his evidence that he was engaged in non-combat activities while deployed to the CHT region is consistent with the country evidence that the army partook in activities directed to Indigenous communities, such as food distribution, construction of religious institutions or schools, and small-scale income-generating projects.

[23] Mr. Molla alleges the officer failed to properly engage with the fourth and fifth *Ezokola* factors—position or rank within the army and length of time in the army (particularly length of time after acquiring knowledge of abuses in the CHT region). Mr. Molla states the officer repeatedly emphasized his rank of lieutenant colonel, a rank he held during the last two CHT deployments, but did not engage with evidence regarding the nature and duration of his service in the CHT or the events in the CHT during these deployments. The late-1993/early-1994 deployment was cut short after 2.5 months. The 1997 deployment was for 5 months and occurred during a time when the peace process was underway and there were fewer reports of human rights violations. Mr. Molla contends the officer failed to engage with his evidence that he had no knowledge of specific abuses when he was deployed to the CHT region, and the officer did not make a clear finding as to whether Mr. Molla's evidence that he only came to learn about abuses in the CHT region near the end of his military career was believed. Rather, the officer faulted Mr. Molla for failing to inquire into reports of incidents that he had understood to be propaganda at the time.

[24] The respondent submits the officer reasonably concluded that Mr. Molla made a voluntary, knowing, and significant contribution to the crimes against humanity and war crimes committed by the Bangladesh army in the CHT. The respondent submits it is plain from reading

the reasons as a whole that the officer considered all relevant facts and factors in reaching their decision, and Mr. Molla's arguments amount to criticisms of form rather than substance.

[25] The respondent submits there is no dispute that Mr. Molla joined the military voluntarily and did not attempt to leave during the periods he was deployed in the CHT, while human rights abuses were being committed by the army. Furthermore, the officer reasonably found it unlikely that Mr. Molla was unaware the army was committing war crimes while he was stationed in the CHT, as he claimed. In support of this finding, the officer pointed to Mr. Molla's numerous years of service, his high rank, and his position of authority during deployments to the CHT. Even if Mr. Molla did not have specific knowledge of the human rights abuses, the officer questioned why he did not investigate reports of abuses during his time in command. The respondent states it is implicit in the reasons that the officer found Mr. Molla knowingly contributed to the abuses because his decision to ignore allegations of abuses in the media, despite being in a position to take action, was reckless or wilfully blind. Finally, the respondent submits the officer reasonably found Mr. Molla's contribution to be significant because he likely directed, ordered, or supervised soldiers in operations that resulted in human rights violations by the Bangladesh army during the CHT conflict. Mr. Molla held leadership positions and ranks in each of his deployments to the CHT, supervising battalions of up to 900 soldiers. The respondent submits the significance the officer attributed to Mr. Molla's rank was not an exercise of "rank-based complicity".

[26] In any event, the respondent submits that each *Ezokola* factor weighs in favour of a finding of complicity. Mr. Molla counters that it is not the Court's role to step into the shoes of

the officer or decide whether the officer's complicity determination is *justifiable* based on the *Ezokola* factors.

[27] For the reasons below, I find Mr. Molla has not established that the officer's decision was unreasonable.

[28] I will begin by stating I agree with Mr. Molla that some of the respondent's arguments supply reasons the officer did not give. I agree that the officer made no clear finding that Mr. Molla's inaction following media reports of abuses constituted wilful blindness or recklessness. Mr. Molla is also correct that it is not the Court's role to reweigh and reassess the evidence in order to decide whether he should be found complicit in the army's crimes based on an independent *Ezokola* analysis. Rather, the Court must review the decision the officer actually made, and consider both the outcome and the rationale that led to the outcome: *Vavilov* at paras 83, 125.

[29] However, I am not persuaded that the officer failed to conduct a proper *Ezokola* analysis and I agree with the respondent that Mr. Molla's arguments to the contrary relate to the structure of the decision rather than its substance.

[30] Mr. Molla contends the officer's reasons consist of conclusory statements based only on high rank and deployment to an area with human rights abuses, with no granular analysis. While Mr. Molla acknowledges that some of the arguments he raises on judicial review were not raised in response to the officer's procedural fairness letter, he states his procedural fairness response

provided the specifics of his deployment together with evidence that he did not consider reports of abuses at the time to be credible, and the officer also had the benefit of country condition evidence. Mr. Molla states the officer did not do what they were tasked to do—namely, to carry out an assessment of the evidence and assign weight in accordance with the *Ezokola* framework.

[31] I disagree. The officer was tasked with determining whether Mr. Molla made a voluntary, knowing, and significant contribution to crimes committed by the Bangladesh army. Such an assessment is contextual and the *Ezokola* factors serve only as a guide: *Ezokola* at paras 92, 100; *Al-Fahham v Canada (Citizenship and Immigration)*, 2022 FC 322 at paras 10-12; *Talpur* at para 34. An officer has discretion to determine which factors are the most influential on a case-by-case basis, some factors may “go a long way” in establishing the requisite elements for complicity, and there is no requirement to outline precisely how the factors were applied to the facts of a case: *Talpur* at para 34; *Ezokola* at para 92; *Canada (Citizenship and Immigration) v Badriyah*, 2016 FC 1002 at para 27.

[32] Furthermore, the officer’s decision must be understood in context, which includes the evidence and Mr. Molla’s submissions: *Vavilov* at para 94. In this case, the officer raised specific concerns regarding inadmissibility during Mr. Molla’s interview and in the procedural fairness letters. Mr. Molla was afforded an opportunity to respond to the officer’s concerns at the interview and he was afforded an opportunity to provide a further response after the interview.

[33] The officer's decision specifically noted that Mr. Molla had been presented with the factors that led the officer to consider he had provided a voluntary, knowing, and significant contribution to the crimes, and found that these factors were not adequately addressed in Mr. Molla's submissions in response to the procedural fairness letter. Consequently, in my view, part of the context for reviewing the officer's decision must recognize that the officer had informed Mr. Molla of their concerns—including Mr. Molla's high rank, voluntary enlistment and years of service, and command over a significant number of soldiers, all as described in the procedural fairness letter.

[34] Mr. Molla argues the officer failed to link him to the crimes committed. However, an individual's contribution does not have to be directed to specific identifiable crimes: *Ezokola* at para 87. Culpable conduct can take many forms, and personal participation or personal proximity is not necessary for complicity: *Kurt* at paras 24, 29; *Canada (Citizenship and Immigration) v Alamri*, 2023 FC 203 at paras 28, 29.

[35] The officer focussed on Mr. Molla's service in the CHT region because there were reports of widespread human rights abuses in the region during the time he was deployed there. This was made clear in the procedural fairness letter, which specifically referred to accounts of human rights violations by military personnel in four reports, and stated that abuses by the Bangladesh military in the CHT "were widespread and systematic according to open source information". The letter also pointed out that Mr. Molla's "high rank, voluntary enlistment and years of service, and command over a significant number of soldiers was confirmed during the interview".

[36] In response to the procedural fairness letter, Mr. Molla did not dispute that “horrible things” had happened and he acknowledged hearing about abuses during his time in the CHT region. Ultimately, the officer was not satisfied with Mr. Molla’s explanation of his own knowledge of the human rights abuses, given the various positions of command that he held.

[37] I disagree with Mr. Molla that this represents a “guilt-by-association” or “rank-based complicity” approach that is contrary to *Ezokola*. Mr. Molla points to *Eriator v Canada (Citizenship and Immigration)*, 2022 FC 1154 at paragraph 31 [*Eriator*], where this Court found that a decision maker’s finding of complicity with no indication of how the individual made a significant contribution to the crime or criminal purpose of a group came “dangerously close” to guilt by association. In *Eriator*, the Court faulted the decision maker for relying on nothing more than suspicion to link an individual who was employed for a month as a low-ranking clerical worker and did not carry a weapon to crimes committed by the police force.

[38] The officer did not commit a similar error in Mr. Molla’s case. The link between Mr. Molla and the specific crimes perpetrated by the Bangladesh army were not based on mere suspicion or tenuous logic. Rank and length of time in service were two very relevant factors in Mr. Molla’s case. As the Supreme Court of Canada noted in *Ezokola*, a high-ranking individual in an organization may be more likely to have knowledge of that organization’s crime or criminal purpose, and the length of time an individual is involved with an organization can be relevant as it increases the likelihood that the individual had knowledge of the organization’s crime or criminal purpose: *Ezokola* at paras 97-98.



[39] For these reasons, I am not persuaded that the officer failed to apply the *Ezokola* framework or failed to engage with the evidence. The officer made a reasonable finding of complicity after considering the evidence and Mr. Molla's response to the procedural fairness letter.

V. **Conclusion**

[40] Mr. Molla has not established a reviewable error that warrants this Court's intervention, and this application must be dismissed.

[41] Neither party proposed a question of general importance for certification. I find there is no question to certify.

**JUDGMENT in IMM-8703-22**

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

1. This application is dismissed.
2. There is no question for certification.

"Christine M. Pallotta"

---

Judge

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

**DOCKET:** IMM-8703-22

**STYLE OF CAUSE:** MOHAMMAD SHAH JAHAN MOLLA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 24, 2023

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** MARCH 25, 2024

**APPEARANCES:**

Steven Blakey FOR THE APPLICANT

Giancarlo Volpe FOR THE RESPONDENT  
Daniel Engel

**SOLICITORS OF RECORD:**

Waldman & Associates FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario