

5

IMMIGRATION AND REFUGEE BOARD

10

-IMMIGRATION DIVISION-

15

Record of an Admissibility Hearing
under the *Immigration and Refugee Protection Act*, concerning

20

SHIYUAN HAN

HEARING: PUBLIC

25

HELD AT: Immigration Holding Centre
Etobicoke, Ontario

30

DATE: February 26, 2020

35

BEFORE: Valerie Currie - Member

APPEARANCES:

40

Shiyuan Han - Person concerned
A. Wong - Minister's counsel
Ms. Liu - Interpreter

45

50

5

MEMBER: Good morning. We are on the record.

MINISTER'S COUNSEL: Good morning.

10

MEMBER: Today is Wednesday the 26th of February 2020. This is the resumption of an admissibility hearing concerning Shiyuan Han.

Now, I recognize you, Mr. Han. Once again your mother is here. She's seated at the side of the room.

15

The Minister is represented today by Mr. Wong. Good morning.

MINISTER'S COUNSEL: Good morning.

20

MEMBER: Also in attendance is an interpreter, Ms. Liu. And I note for the record, Ms. Liu, that you were the interpreter at the previous sitting.

INTERPRETER: Yes, I was.

25

MEMBER: And I note that you did take a solemn affirmation at that time. I will simply remind you that you are still under the same affirmation.

INTERPRETER: I will. Thank you.

30

MEMBER: And I'll just confirm you do understand each other?

INTERPRETER: Yes, we do. Thank you.

35

MEMBER: Now, this matter originally opened on the 13th of January 2020. The matter was adjourned for written submissions by Minister's counsel on that date after a three hour hearing. On the 18th of February 2020 the matter resumed. Mr. Han provided his submissions on that date and the matter was adjourned for the oral decision, which I am about to render. I will begin now with my decision.

40

My name is Valerie Currie. I'm a Member of the Immigration Division.

This is an oral decision concerning Shiyuan Han following an admissibility hearing that was conducted on the 13th of January 2020 and the 18th of February 2020.

45

You, Mr. Han, were reported on the 23rd of May 2019 as inadmissible to Canada pursuant to paragraph 37(1)(a).

50

The facts concerning your case reveal that your name is Shiyuan Han; that you are a citizen of China by birth on the 9th of July 1997; that you are not a Canadian citizen or permanent resident of Canada; that you first arrived in Canada 2013 to study, and that you have remained in Canada continuously since that time.

5 The Minister's counsel alleges that you are a foreign national who's inadmissible on grounds
of organized criminality pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection
Act* for being a member of an organization that engages in organized criminal activities, namely
possession and trafficking and importation of controlled substances, and specifically the controlled
10 substances at issue are ketamine, methamphetamine, and cannabis. The Minister also maintains that
you engage in criminal activity.

15 As I stated earlier, this admissibility hearing was conducted over a two day period. The
evidence consisted of disclosure provided by Minister's counsel in Exhibit AH-1 as well as your
sworn testimony. I note that you chose to be unrepresented by legal counsel.

20 With respect to the law, I note that under Section 2 of the *Immigration and Refugee
Protection Act* a foreign national is a person who is neither a Canadian citizen nor a permanent
resident of Canada and includes a stateless person.

25 Paragraphs 3(1)(h) and 3(2)(g) of the *Immigration and Refugee Protection Act* state that an
objective of the Act is to protect the public health and safety and to maintain the security of Canadian
society.

30 Paragraphs 3(1)(i) and 3(2)(h) of the *Immigration and Refugee Protection Act* provide that it
is the objective of the Act to promote international justice and security by denying access to Canadian
territory to persons, including refugee claimants, who are security risks or serious criminals.

35 Paragraphs 173(c) and (d) of the *Immigration and Refugee Protection Act* state that the
Immigration Division in any proceeding before it is not bound by any legal or technical rules of
evidence and may receive in base of decision on evidence adduced in the proceedings that it considers
to be credible and trustworthy in the circumstances.

40 With respect to the standard of proof, Section 33 of the *Immigration and Refugee Protection
Act* provides 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. This stipulates that reasonable grounds
to believe is the standard of proof by which the panel must evaluate the evidence and establish the
allegation under paragraph 37(1)(a).

45 In *Chau v. Canada* the Federal Court stated the standard of proof required to establish
reasonable grounds is more than a flimsy suspicion but less than the civil test of balance of
probabilities and of course a much lower threshold than the criminal standard of beyond a reasonable
doubt. Simply put, it is a bona fide belief in a serious possibility based on credible evidence. This
standard requires an objective basis for the belief, something transcending mere suspicion,
speculation, or conjecture. It is a bona fide belief and a serious possibility based on compelling and
credible evidence. This was confirmed by the Supreme Court of Canada in *Mugesera*.

50 In *Canada v. U.S.A.* Justice Annis explained that the standard is a threshold which represents
the middle ground between the two extremes of mere suspicion and balance of probabilities and
represents a minimum threshold that must be overcome. He concluded that any factual conclusions
drawn would be supported so long as they exceed the threshold by any degree. What this does is to
aid the easy identification of inadmissible persons and deny them access to Canada.

5 It's worth noting that the standard does not require proof that you, Mr. Han, are actually a member of a criminal organization, the criminal organization in question, or that you personally engaged in organized crime. It only requires the existence of reasonable grounds for believing the facts alleged.

10 Now, with respect to the burden of proof, it is the Minister of Public Safety who initiates an admissibility hearing before the Immigration Division. Primarily, therefore, it falls on him, the proponent or proposer of the inadmissibility, to establish a prima facie case against or the case to be met by the subject of the proceedings. In other words, in bringing forward the case the Minister must demonstrate that there is a well-founded basis for the allegations.

15 Now, the main issue to be determined is whether or not you, Mr. Han, are inadmissible under paragraphs 37(1)(a) of the *Immigration and Refugee Protection Act*. Paragraph 37(1)(a) states a permanent resident or a foreign national is inadmissible on grounds of organized criminality for 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 the furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in the furtherance of the commission of an offence outside of Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern.

25 In *Thanaratnam* the Federal Court of Appeal stated the structure of paragraph 37(1)(a) makes it clear that membership in a gang and engaging in gang related activities are discreet but overlapping grounds on which a person may be inadmissible for organized criminality. Be engaging in gang related activities, ground of organized criminality, was added to IRPA and did not appear in its predecessor paragraph 19(1)(c) of the *Immigration Act*. In order to give meaning to the amendment to the previous provision made by the *Immigration and Refugee Protection Act* parliament should be taken to have intended it to extend to types of involvement with gangs that are not included or not clearly included within membership. Inadmissibility under paragraph 37(1)(a) could therefore be based on a permanent resident or foreign national being a member of a criminal organization or secondly engaging in activity that is part of a criminal pattern or in the case where there is an overlap on the basis of the permanent resident or foreign national falling within both.

35 In this case, it is the Minister's position that you, Mr. Han, are described both for your membership in a criminal organization as well as for engaging in organized crime related activities.

40 Having considered the evidence and the applicable law the panel is satisfied that you, Mr. Han, are described as alleged by the Minister for being a member of an organized crime group and for engaging in organized criminal related activities.

45 With respect to organization, the word organization is not defined in the *Immigration and Refugee Protection Act*. Canadian courts have found that the term should be given a broad and unrestricted interpretation. In *Sittampalam* the Federal Court stated that these criminal organizations do not usually have formal structures like corporations or associations that have charters by laws or constitutions. They are usually rather loosely and informally structured which structures vary dramatically. Looseness and informality in the structure of a group should not thwart the purpose of the *Immigration and Refugee Protection Act*. It is therefore necessary to adopt a rather flexible approach in assessing whether the attributes of a particular group meet the requirements of the *Immigration and Refugee Protection Act* given their varied, changing, and clandestine character.

5

It was noted by Minister's counsel in his written submissions that a more recent case, that is *Nigeso v. Canada* (phonetic), the Federal Court basically reiterated this position with respect to unrestricted and broad interpretation to be afforded the term organization. At paragraph 61 it is noted, first, case law favours a flexible interpretation of the term organization found in paragraph 37(1)(a) of the *Immigration and Refugee Protection Act* to include a wide variety of organizations. It is therefore sufficient that the group have been somewhat organized and have been coordinating its activities for some time. It's further noted that an organization can be characterized as criminal regardless of whether the group also has legitimate purposes or activities.

10

15

That there must be some kind of organization was addressed in *Syed v. Canada* where Justice Barnes reviewed the existing jurisprudence in light of the Supreme Court of Canada in *Tan v. Canada*. He concluded that there must be a clear consideration of the structural features of the organization in question and a pragmatic assessment of who gets caught as a member of that organization.

20

Although an unrestricted and broad interpretation should be given to the word organization as it is used in subsection 37(1) the provision still requires the existence of common organizational characteristics such as identity, leadership, a loose hierarchy, and a basic organizational structure. It's noted that third parties who individually transact with a criminal organization cannot reasonably be seen to be members nor can they be considered to be engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in the furtherance of the commission of an indictable offence. By way of an analogy, no one would consider a purchaser of narcotics without further involvement to be either a member of or acting in concert with a criminal organization established to sell the narcotics even though both are engaged in common in a criminal transaction.

25

30

In the case of *Tur v. Canada* (phonetic) the Federal Court has indicated that in Mr. Tur's case the evidence indicated that a number of the participants, including one of those in contact with him, were involved in the commission of several of the identified incidents of trafficking. This was sufficient to support the Board's belief that there was a cohesive and repetitive pattern of common behaviour behind the conspiracy to traffic among those involved. It is further stated in paragraph 14 "I also do not accept that there is a requirement to establish with precision the size of the organization or all of the points of intersection among the participants. Such a burden would be impossible to meet."

35

40

The panel is satisfied that there are reasonable grounds to believe that the group under consideration possesses enough structural features that conceived broadly and flexibly would qualify it as an organization.

45

While the Minister's evidence does not explicitly identify the group or organization by name the group is still discernable by reference to its activities. Law enforcement agencies engaged in an ongoing investigation called Project Runner. You, Mr. Han, were investigated as a part of a group responsible for the trafficking of narcotics in York Region and the Toronto area.

50

You've confirmed that you were arrested on the 23rd of August 2018 with six other individuals, your co-accused. These six co-accused were either former classmates, housemates, or both, who had resided with you at your residence at 71 Brigadoon Crescent. It is noted that your mother is the owner of that home.

5

It is noted that you, Mr. Han, and your co-accused, were charged with a number of criminal offences on the 23rd of August 2018. You were charged with the following offences, trafficking ketamine contrary to Section 5(1) of the *Controlled Drugs and Substances Act*, trafficking methamphetamine contrary to Section 5(1) of the *Controlled Drugs and Substances Act*, conspiracy to traffic ketamine contrary to Section 465(1)(c) of the Criminal Code of Canada, conspiracy to traffic methamphetamine contrary to Section 465(1)(c) of the Criminal Code of Canada, conspiracy to import cannabis contrary to Section 465(1)(c) of the Criminal Code of Canada, conspiracy to export cannabis contrary to Section 465(1)(c) of the Criminal Code of Canada, possession for the purpose of trafficking ketamine contrary to subsection 5(2) of the *Controlled Drugs and Substances Act*, and finally possession for the purpose of trafficking methamphetamine contrary to subsection 5(2) of the *Controlled Drugs and Substances Act*. It is noted that you were arrested and charged with your six co-accused individuals, and they are Weduwau Kong (phonetic), Suwhy Chang (phonetic), Zehow Lee (phonetic), Seepang Wang (phonetic), Tenatin Lua (phonetic), and Yenin Yang (phonetic).

10

15

20

You and the co-accused were the subjects of an ongoing investigation by York Regional Police that spanned a period of several months commencing approximately around the beginning of April 2018. Police reports revealed the investigation into this group spanned several months and suggest that this group was involved in organized coordinated criminal activity. The criminal operation relied on communication through social media, actually social media messaging application. It also relied on use of various individuals to conduct transactions and deliver purchased narcotics. And it is further noted that the residence you lived in, Mr. Han, at 71 Brigadoon Crescent was the center of operations for this group. It's noted that several of the members of the group were found to be in possession of narcotics for the purpose of trafficking.

25

30

I give significant weight to the York Regional Police substantive event summary as well as the police occurrence reports, all of which have been provided in Exhibit AH-1. The reports indicate that you are a member of an organization which, including others, the co-accused who I have previously referred to, you were all charged as a result of Project Runner investigations. You and your co-accused are alleged to have engaged in the trafficking, possession, and conspiracy to traffic various narcotics. The organization made sales of narcotics to an undercover police officer by utilizing its various members in different roles.

35

40

According to the police reports, on the 9th of August 2018 -- I'm going to just go through a number of transactions that you were allegedly involved in. Police reports reveal that on the 9th of August 2018 you used WeChat social media messaging application. That WeChat was linked to you, Mr. Han, and you allegedly used it to arrange the sale of nine ounces of methamphetamine to an undercover police officer for \$4,600. It's noted that these narcotics were delivered by two individuals in a grey BMW which had been located at your primary residence in Toronto associated with this group. That was your residence at 71 Brigadoon Crescent. Following this transaction, an additional transaction for two more ounces of methamphetamine was organized. It is further alleged that on August 22nd you coordinated and participated in the sale of three kilograms of methamphetamine to undercover police.

45

50

York Regional occurrence reports and substantive events summary chronicling the investigation into you and your co-accused reveal your alleged contact with the undercover officer on the social media site WeChat. Allegedly arrangements were made with you to sell narcotics, including ketamine and methamphetamine, between April of 2018 and August of 2018.

5 It's further alleged that on April 7th of 2018 arrangements were again made by you with an undercover police officer via WeChat to purchase ketamine totalling \$200. After those arrangements were made the drugs were allegedly delivered to the undercover police officer by an unidentified male in a Toyota with a marker BXBF316.

10 Approximately a week later on the 13th of April 2018 the car and the unidentified driver later were observed by way of surveillance at your residence at 71 Brigadoon Crescent. On the same day the undercover officer again arranged a drug transaction through the same account on WeChat. Arrangements were again made to purchase \$200 worth of ketamine and on this occasion the undercover police officer met with Suwhy Chang who arrived in the same vehicle with marker
15 BXBF316. Suwhy Chang sold the drugs as arranged and it was observed later that he drove back to the address, your address at 71 Brigadoon Crescent.

 On the 2nd of May 2018 the undercover police officer again arranged to purchase this time 3.5 grams of ketamine on WeChat. Police who were surveilling your address at 71 Brigadoon Crescent
20 observed two men leave your residence in an SUV with marker CAYP153. It was arranged and agreed to go to the restaurant at 4186 Finch Avenue. That is the address the undercover officer was directed by phone to go to. You and apparently Zehow Lee were at that restaurant. It's noted that the WeChat account used to make these arrangements regarding this transaction was linked to you Mr. Han. Bo Lee (phonetic) attended the restaurant to provide an item to you who in turn gave the item to
25 Zehow Lee who handed it to the undercover officer. The item contained ketamine and was exchanged for \$200.

 Instances of further alleged transactions can be found in Exhibit AH-1. Instances of transaction involving the arrangement of providing narcotics to an undercover officer for which you received various amounts of money can be found in Exhibit AH-1. The instances noted in the police reports indicate there were further transactions June 1st of 2018 involving you and the undercover officer, as well as the 6th of July of 2018, the 18th of July 2018, and the 9th of August 2018.

 One of the last transactions, and that is between August 17th and the 22nd, 2018, alleges that
35 the undercover police officer communicated with you via WeChat and that you confirmed that you could be the undercover officer's long-term meth supplier and that you could sell the undercover police officer a total of five kilos of meth for \$70,000. This incident resulted in the arrest of all those involved, including you, Mr. Han.

 Media articles following your arrest and the arrest of the co-accused reveal that York
40 Regional Police's investigation spanned more than half a year, resulted in arrests of seven people and the seizure of \$500,000 of synthetic drugs. Police investigators describe the trafficking ring allegedly operated by you as well as your co-accused as well organized and involving a number of additional suspects who were acting as runners.

 With respect to the modus operandi, it is alleged that perspective buyers arrange to purchase
45 narcotics with you via social media, WeChat, and that your co-accused acted as runners to deliver the narcotics. The evidence indicates that you, Mr. Han, were the contact person as well as the organizer of the procurement and dissemination of the narcotics. It is further noted that your residence, the
50 residence you live in, which is owned by your mother, at 71 Brigadoon Crescent was the organization's central hub for conducting business.

5 The documentary evidence satisfies me that there was reasonable grounds to believe that you
conducted this criminal activity from your residence and that you were engaged in numerous
transactions involving the trafficking of narcotics over approximately a six month period. The York
Regional Police occurrence reports, as well as the substantive event summary outlining your activities
and those of your co-accused, I find provide credible and trustworthy evidence to support a finding of
10 reasonable grounds to believe that you are 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 the furtherance of the
commission of an offence punishable under an Act of Parliament by way of indictment as, in this
case, the offence of trafficking in a Schedule 1 substance is punishable by way of indictment under
15 the *Controlled Drugs and Substances Act*.

 Although you deny you are a member of this organization, and further deny any knowledge
of this group or their activities, I am satisfied that the evidence strongly suggests otherwise. I am
persuaded by the police occurrence reports, as well as the York Regional Police substantive events
20 summary, that there are reasonable grounds to believe that you are a member of an organized crime
group and have engaged in organized criminal activities. I find the evidence of your criminal activity
in concert with others to be persuasive. I am also satisfied that your association with these persons is
not random. These individuals, your co-accused, are past classmates and/or roommates. Under these
circumstances it is highly unlikely that their activities or involvement in drug trafficking in your home
25 were completely unknown to you.

 I find on the basis of the evidence, evidence I believe to be credible and trustworthy, that you
were a member of an organized crime group involved in criminal activities and that you acted in
concert with a number of people who engage in criminal activity. I further find that the criminal
30 activities you engaged in resulted in financial gain for you and your group and that this was the likely
motivation for your criminal activity.

 I do find that the organization falls within the definition of criminal organizations set forth in
Section 467.1(1) of the Criminal Code of Canada and consequently paragraphs 37(1)(a) of the
35 *Immigration and Refugee Protection Act*. This group, however loosely organized, is comprised of a
core group of six or seven individuals with several more persons participating in the group's
activities. Its main purpose or activity is the trafficking of narcotics.

 You failed to adduce any evidence that would cause me to doubt the credibility or
40 trustworthiness of the Minister's evidence which I find establishes reasonable grounds to believe you
are a member of an organization described in paragraph 37(1)(a).

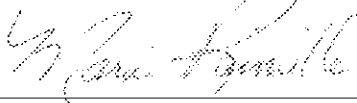
 Based on the totality of the evidence before me, I find you to be inadmissible pursuant to
45 paragraph 37(1)(a). I am therefore required to render a deportation order pursuant to subsection 45(b)
of the *Immigration and Refugee Protection Act* and paragraph 229(1)(e) of the Immigration and
Refugee Protection Regulations.

 You have no right of appeal to the Immigration Appeal Division. You may, however,
50 challenge my decision at the Federal Court within 15 days.

 This admissibility hearing is now completed.

- - - HEARING CONCLUDED - - -

5 I HEREBY SWEAR THAT THIS IS A TRUE
TRANSCRIPT OF THE RECORDING



10 MARIE RAINVILLE, TRANSCRIPTIONIST
SECURITY NO.: 95329740
INTERNATIONAL REPORTING INC

MARCH 6, 2020