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Public Hearing – Audience publique

Reasons and Decision – Motifs et décision

Between	The Minister of Public Safety and Emergency Preparedness Le ministre de la Sécurité publique et de la Protection civile	Entre
And		et
Person(s) Concerned	Anantha Rupini NEERANJAN	Intéressé(e)(s)
Date(s) of Hearing	February 25, 2019 March 18, 2019 April 10, 2019	Date(s) de l'audience
Place of Hearing	Toronto	Lieu de l'audience
Date of Decision	December 11, 2019	Date de la décision
Panel	Karen Greenwood	Tribunal
Counsel for the Minister	K. Smyth	Conseil du ministre
Counsel for the Person(s) Concerned	L. Salsberg	Conseil(s) pour l'intéressé(e) / les intéressé(e)(s)
Designated Representative for the Person(s) Concerned	G. Sadoway	Représentant désigné pour l'intéressé(e) / les intéressé(e)(s)

This is a record of reasons for a decision made under the provisions of the *Immigration and Refugee Protection Act (IRPA)* concerning Anatha Rupini Neeranjana following an admissibility hearing conducted pursuant to subsection 44(2) of the *IRPA*.

REASONS FOR DECISION

[1] Having reviewed the testimony, documentary evidence and submissions, I find that the Minister has discharged its burden of establishing that Anatha Rupini Neeranjana is inadmissible on grounds of organized criminality under paragraph 37(1)(a) and serious criminality under paragraph 36(1)(a) of the *IRPA*.

ALLEGATIONS

[2] Anatha Rupini Neeranjana was reported on July 24, 2014¹ as inadmissible on grounds of organized criminality pursuant to paragraph 37(1)(a)² of the *IRPA*. Ms. Neeranjana was also reported on July 24, 2014³ as inadmissible to Canada pursuant to paragraph 36(1)(a)⁴ for serious criminality. Both reports were referred to the Immigration Division on September 8, 2017. Ms. Neeranjana made an application to the Minister to re-open the Minister's Delegate Review of the reports on or about May 23, 2018. The application was allowed and the Minister made an application to the Immigration Division to withdraw the referrals. The Minister's application was granted by the Division. The Minister's Delegate Review was re-opened. The Minister sent new referrals to the Immigration Division for both reports on September 12, 2018.

ACCOMMODATIONS

[3] Prior to the commencement of the hearing, counsel for Ms. Neeranjana made an application requesting that Ms. Neeranjana be designated a vulnerable person and that a Designated Representative be appointed. Counsel also requested an adjournment of six months based on the recommendations of psychiatrist Dr. Ravi Kakar. Dr. Kakar indicated in his report

of January 20, 2018 that “this woman has had a complete melt down and breakdown emotionally, mentally physically and psychologically.” Dr. Kakar concluded that Ms. Neeranjan would recover “100%” in six months.

[4] The Minister did not object to counsel’s request for a Designated Representative, but objected to a six-month adjournment and the designation of Ms. Neeranjan as a vulnerable person. I allowed Ms. Neeranjan’s application in part, appointing a Designated Representative to assist her in the presentation of her case. I declined to designate her as a vulnerable person based on inconsistencies and irregularities in the psychiatric report of Dr. Kakar. As counsel was newly retained, a one-month adjournment was granted.

[5] A number of procedural accommodations were put in place to alleviate some of the stress that Ms. Neeranjan was experiencing, including limiting the times Ms. Neeranjan had to appear in person before the Division; providing the Minister’s questions in writing to her in advance, and having her Designated Representative testify on her behalf; permitting Ms. Neeranjan to provide her testimony by video conference to limit her exposure to the ID offices; and allowing for frequent breaks, as required.

ANALYSIS

The Evidence

[6] The evidence before me consisted of the documentary evidence produced by the parties as well as the oral testimony of Ms. Neeranjan. Ms. Neeranjan provided her testimony both through her Designated Representative and also personally, by video-conference. Counsel for the Minister and Counsel for Ms. Neeranjan provided written submissions.

[7] Ms. Neeranjan’s submissions dealt extensively with Ms. Neeranjan’s psychiatric diagnoses and the various reports from medical professionals. The Minister addressed Ms. Neeranjan’s submissions in reply. Ms. Neeranjan submits that several matters in relation to her

psychiatric diagnoses in the reply submissions provided by the Minister were improperly raised for the first time in reply. Ms. Neeranjan submits that the Minister's submissions were not properly made as they did not give Ms. Neeranjan the opportunity to respond. Ms. Neeranjan provided lengthy submissions with respect to the medical reports provided in her submissions. The Minister responded to Ms. Neeranjan's submissions in reply. I do not find that the Minister's reply submissions were inappropriately made.

The Position of the Parties

[8] It is the Minister's position that Ms. Neeranjan 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 furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment ... or engaging in activity that is part of such a pattern. Specifically, the Minister alleges that Ms. Neeranjan is a member of an organization engaged in "bust out" credit card frauds.

[9] It is Ms. Neeranjan's position that she had no knowledge of or involvement in the criminal activities of her husband Kuhen Neshan. She argues that she is an innocent person who has been found guilty because she lived with a man who supported his family through criminal activities. She submits that she was isolated in a traditional and abusive marriage, battling severe mental health issues that remained untreated until recently due to stigma and shame. Ms. Neeranjan submits that she had no idea that her husband was making a living from fraud and nor could she reasonably have been expected to know this.

[10] Ms. Neeranjan concedes the following:

- She was convicted in January 2013 of two counts of possession of property obtained by crime and one count of membership in a criminal organization;

- There was a criminal organization consisting of her spouse Mr. Neshan, and other relatives, for which he and the other members were found guilty;
- There is no dispute generally about the meaning of “membership”;
- She takes no issue with the findings of fact made by the trial judge except those based on inferences about her knowledge of her husband’s criminal activities.

[11] Paragraph 37(1)(a) of the IRPA requires that the following three elements be established on a reasonable grounds standard: first, that Ms. Neerajan is a permanent resident or a foreign national; second, that there exists an organized crime group; and third, that she is a member of that organized crime group.

Is Ms. Neerajan a Permanent Resident or a Foreign National?

[12] Ms. Neerajan is not a Canadian citizen. She is a permanent resident of Canada, having been granted that status on September 24, 2001 in Scarborough, Ontario.⁵ Therefore, the first element of the allegation is established.

Does an Organized Crime Group Exist?

Criminal Organization

[13] Ms. Neerajan concedes the existence of a criminal organization.

[14] The term “organization” is not defined in the IRPA. However, the Federal Court of Appeal (FCA) provided the following guidance in *Sittampalam*:

[36] In my view, the same “unrestricted and broad” interpretation should be given to the word “organization” as it is used in paragraph 37(1)(a). The IRPA signifies an intention, above all, to prioritize the security of Canadians. This was confirmed by the Supreme Court of Canada in the decision of *Medovarski v. Canada* (Minister of Citizenship and Immigration); *Esteban v. Canada* (Minister

of Citizenship and Immigration), 2005 SCC 51 (CanLII), [2005] 2 S.C.R. 539, at paragraph 10.

....

[38] ... In *Thanaratnam v. Canada* (Minister of Citizenship and Immigration), 2004 FC 349 (CanLII), [2004] 3 F.C.R. 301 (F.C.), reversed on other grounds, [2006] 1 F.C.R. 474 (F.C.A.), O'Reilly J. took into account various factors when he concluded that two Tamil gangs (one of which was the A.K. Kannan gang at issue here) were “organizations” within the meaning of paragraph 37(1)(a) of the IRPA. In his opinion, the two Tamil groups had “some characteristics of an organization”, namely “identity, leadership, a loose hierarchy and a basic organizational structure” (at paragraph 31). The factors listed in *Thanaratnam*, as well as other factors, such as an occupied territory or regular meeting locations, both factors considered by the Board, are helpful when making a determination under paragraph 37(1)(a), but no one of them is essential.

[15] The Federal Court (FC) in *Saif*, in interpreting the Supreme Court of Canada’s (SCC) decision in B010, provided that “... The Court’s views about the meaning and range of “organized criminality” apply equally to paragraphs 37(1)(a) and 37(1)(b), including its interpretive importation of the Criminal Code definition of “criminal organization” requiring a group of three or more persons.” The Court went on to note that the Criminal Code’s numerical requirement for a criminal organization of at least three persons is more consistent with the language of paragraph 37(1)(a) which requires “a number of persons”.

[16] Section 467.1(1) of the Criminal Code of Canada (CCC) defines “criminal organization” as a group, however organized, that (a) is composed of three or more persons in or outside of Canada; and (b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit including a financial benefit by the group or by any of the persons who constitute the group. It does not include a group of persons that forms randomly for the immediate commission of a single offence.

[17] There may be varying degrees of organizational structure, leadership, and hierarchy in organizations, depending on the kind of formation under consideration. In *Toor*, the FC noted that for some criminal organizations, there may be less definitive features. In *R. v. Venneri*, the

Supreme Court of Canada considered the notion that a criminal organization under the CCC must be a group, “however organized”, and emphasized that care must be taken not to transform the attributes of one criminal organization into a checklist that needs to be satisfied in every case.

[18] Ms. Neerajan concedes to the existence of a criminal organization run by her husband Kuhen Neshan, his cousin Ramanan Kenegarajah and other family members. However, she denies that she had any involvement in this organization or its activities.

[19] The documentary evidence presented by the Minister concerning the activities of the group consisted of news releases prepared by the Durham Regional Police Services, news articles, police reports, the Crown’s written submissions and court documents. I find that the police reports are reliable as they were produced by the police agency that conducted a lengthy investigation into the organization and laid criminal charges against the group’s members which resulted in convictions which were upheld on appeal. For the same reason, I find the court documents as well as the Crown’s written submissions to be reliable and trustworthy. Accordingly, I assign considerable weight to the police reports, court documents and the Crown’s written submissions.

[20] The evidence supports a finding that that Ms. Neerajan carried out criminal activities in Canada working in concert with a core group of five individuals including herself, her husband Kuhen Neshan; Rajitha Kanagarajah, Jeya Prakash Balan, and Ramanan Kenegarajah.

[21] The documentary evidence provided by the Minister includes various documents prepared by the Durham Regional Police Service in connection with Project Morgan which outlines the investigation and prosecution of several members of an organization engaged in a “bust out” fraud scheme in the Greater Toronto Area. According to a Durham Regional Police Services media release, their investigation began when several financial institutions reported that an organized crime group targeting financial institutions and victims of identity theft had moved from British Columbia to the Toronto area.

[22] The group's members would either steal the identity of a real victim or create a fictitious identity. They would then acquire fraudulently obtained credit cards in these names. The group would maintain the cards by making small purchases and payments over a period of months or years. Once the credit limits were sufficiently high enough, the credit on the card would be drained by cash advances at ATMs. A fraudulent cheque would then be used to replenish the credit card account and it would be immediately drained again by cash advances.

[23] The investigation in Ontario began in 2001 when suspicions were raised by American Express fraud operations regarding compromised accounts. A report was initiated internally within American Express into two employees, one of whom was Ms. Neerajan's husband, Mr. Neshan. It was determined that Mr. Neshan had accessed all of the compromised accounts using his identification and password and the identification and password he had stolen from another employee. One of the compromised accounts was used to purchase airline tickets for Mr. Neshan, Ms. Neerajan and their infant child for a flight departing Toronto on November 6, 2001.⁶ A number of addresses were identified as being connected to the compromised accounts including 21 Rockport Drive and 219-2671A Eglinton Avenue East. These are addresses that Ms. Neerajan listed as her residences between 1999 and 2002 according to the Ministry of Transportation Driver's Information address history.⁷

[24] A search warrant was executed at 21 Rockport Drive, Scarborough, where Mr. Neshan resided with Ms. Neerajan. The search was conducted on December 21, 2001. Police seized cash and banking documents, jewellery, identification, CIBC money cables to an HBSC bank in Malaysia; as well as safe deposit box keys.⁸

[25] The investigation "went cold" in 2002 and the investigation did not resume for at least three years. An arrest warrant that had been issued for Mr. Neshan was purged from the police files in either 2006 or 2008.

[26] The investigation resumed in 2005 in response to complaints raised by fraud investigator at TD Canada Trust about incidents of identity theft in Ontario relating to lines of credit and

mortgages. The bank and police received information about multiple addresses and persons believed to be responsible for the offences, including Mr. Kuhen Neshan. Commencing in 2005, police conducted surveillance in an attempt to locate Mr. Neshan, but were unsuccessful. The investigation went cold again in early 2006.⁹

[27] Commencing in 2007, RCMP in Burnaby British Columbia began an investigation into an alleged financial impropriety at a Hindu temple by two individuals known only as “Kugen” and “Ramanan.” Investigations by the RCMP revealed that there was also an ongoing fraud investigation into “Kugen Neshan and “Kanagaramanan Kanagarajah.” There were reports on the provincial police query system that Mr. Neshan and Mr. Kanagarajah had been investigated by Canada Post inspectors and Vancouver police in April 2004 for thefts and diversion of mail. In 2005, Mr. Neshan had been investigated by CBSA corporate security for alleged “account takeovers.”

[28] Surveillance was conducted on Mr. Neshan and Mr. Kanagarajah in British Columbia in 2008. The two men were observed making an ATM withdrawal and visiting a store at a strip mall. It appeared to surveilling officers that the two men became suspicious of the officers because they began driving erratically and police conducted a traffic stop on the vehicle occupied by Mr. Neshan and Mr. Kanagarajah. Officers observed cash and ATM receipts in Mr. Kanagarajah’s pocket and Mr. Kanagarajah was arrested and charged with fraud and possession of counterfeit cards. Ultimately, the Crown in British Columbia elected not to prosecute Mr. Kanagarajah for the alleged offences.

[29] Back in Ontario in 2008, various banks experienced “bust-out” fraud activity on VISA accounts in the fall. Corporate security had been alerted to the fact that account takeovers and synthetic credit card applications were processed, accounts were maintained for short periods of time and then “busted out” with large unpaid balances.

[30] In 2009, Durham Regional Police commenced surveillance on vehicles connected to Rajitha Kanagarajah as a result of a complaint regarding the use of fraudulent credit cards from British Columbia.

[31] Kuhen Neshan and Ramanan Kenegarajah were observed engaging in a pattern of activity wherein they would leave a residence at Bissland Drive in Ajax, Ontario and travel throughout the Greater Toronto Area, conducting various bank transactions, visiting retail stores and post office boxes, and using credit cards in other people's names. Throughout the day, they would stop off at Bissland Drive and other residences. The police formed the opinion that these activities were consistent with a pattern of "bust out" frauds.

[32] On March 3, 2010, Kuhen Neshan and Ramanan Kenegarajah were stopped by police while driving one of the vehicles connected to Rajitha Kanagarajah and arrested. Cash, credit cards in the names of other people, gift cards, cheques in the names of other people, bank receipts, ledger books containing handwritten names, addresses and other data were seized.¹⁰

[33] Search warrants were executed at the residences of the accused, at Bissland Drive in Ajax as well as at 311-11753 Sheppard Avenue East in Scarborough, Ontario. Items seized included over 50 credit cards in the names of people other than the accused, data for several individuals and financial institutions, over \$100,000 in cash, multiple mobile phones, electronics and other luxury goods.

[34] Multiple charges were laid against all co-accused. The Crown alleged that over 10-year period, Kuhen Neshan and Ramanan Kenegarajah primarily carried out the "bust-out" frauds, assisted by the remaining co-accused, including Ms. Neerajan.

[35] Exhibit AH-03 contains a copy of a Durham Regional Police Service media release¹¹ entitled "Six Arrested in Joint Forces Investigation into Identity Theft" dated March 9, 2010. The news release outlines the over 200 criminal charges that were laid on the six individuals arrested relating to an organized crime group using fraudulent credit cards to purchase vehicles and other

property. The six individuals charged included Ms. Neerajan and her husband Kuhen Neshan; Rajitha Kanagarajah, Jeya Prakash Balan, Ramanan Kenegarajah and Hariharan Nesarajah.

[36] On March 3, 2010, these six individuals were arrested and charged with a variety of criminal offences including multiple counts of fraud over \$5000, conspiracy to commit an indictable offence, participation in a criminal organization, possession of property obtained by crime exceeding \$5000, laundering the proceeds of crime and attempt to obstruct justice, obtain identity information for a fraudulent purpose, unlawful possession of credit card data, personation to gain advantage and possess identity information knowing it is for a fraudulent purpose.

[37] Five of the members of the organization were convicted of serious criminal offences including fraud over, money laundering, participating in a criminal organization, possession of property over and obstruct justice. Hariharan Nesarajah was acquitted of all charges. Kuhen Neshan and Ramanan Kenegarajah were found guilty of the global charges of fraud, money laundering and participating in a criminal organization as well as most of the other substantive counts.¹²

[38] On May 14, 2013, Ms. Neerajan was found guilty of two counts of possession of property obtained by crime over \$5,000, pursuant to section 354(1) of the CCC; and participation in activities of criminal organization pursuant to section 467.11(1) of the CCC.¹³ These convictions were upheld by the Ontario Court of Appeal (OCA) on February 8, 2018.

Serious Offence

[39] The CCC defines a “serious offence” as an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more.

[40] Members of the group, including Ms. Neerajan, have been convicted with participation in activities of criminal organization pursuant to section 467.11(1) of the Criminal Code of

Canada (CCC). This offence is an indictable offence and punishable by a maximum term of imprisonment of 5 years.

[41] Group members were convicted of multiple counts of fraud over \$5,000 in contravention of section 380(1)(a) of the CCC. Fraud over \$5,000 is an indictable offence, punishable by a maximum term of imprisonment of 14 years. Members of the group were also convicted of laundering the proceeds of crime, pursuant to section 462.31(1)(a). This is an indictable offence and carries a maximum penalty of 10 years' imprisonment.

[42] Group members have also been convicted of numerous counts of possession of property obtained by crime over \$5,000. According to section 355(a) of the CCC, this is also an indictable offence and is punishable by a maximum term of imprisonment of 14 years.

[43] Accordingly, I find that many of the criminal offences committed by this organization fall within the description of a serious offence pursuant to the CCC. They are also indictable offences that satisfy the requirement of paragraph 37(1)(a).

Material or Financial Benefit

[44] It is reasonable to conclude that the acquisition of stolen property resulted in a material benefit to members of the group, and that this was the main purpose or anticipated result of the group's criminal activities.

[45] Furthermore, the evidence clearly establishes a long history of ongoing criminal activities perpetrated by the members of this group. Accordingly, I find that they had not formed randomly for the immediate commission of a single offence.

[46] Having reviewed the available evidence, I find on reasonable grounds that the group falls within the definition of "criminal organization", as contemplated in s. 37(1)(a) of the IRPA, the jurisprudence and as defined in the CCC. This group, however loosely organized, is comprised

of five individuals participating in the group's activities. Its main purpose or activity is the commission of bust out frauds which would result in a material or financial benefit for its members. Accordingly, the second element of the allegation has been established.

Is Ms. Neerajan a Member of the Organized Crime Group?

[47] The Minister submits that Ms. Neerajan is a member of a family based organized criminal group engaging in "bust out" credit card frauds.

[48] Ms. Neerajan submits that she had no idea that her husband was making a living from fraud, nor could she reasonably have been expected to know this. Ms. Neerajan provided voluminous psychiatric reports indicating that she suffers from various mental health issues, including depression and OCD. The reports indicate that Ms. Neerajan had a difficult childhood and suffered a controlling and verbally abusive relationship with Mr. Neshan and his family. Ms. Neerajan is currently separated from Mr. Neshan.¹⁴

[49] Ms. Neerajan testified through her Designated Representative that she lived in a shell and did not know what was outside.¹⁵ She testified she had not prepared her own tax returns until she started doing them herself in 2010, and before that her husband would prepare her returns. She denied knowledge of the income declared in her tax returns from her previous returns filed in Canada.¹⁶ Ms. Neerajan testified via her Designated Representative that her husband paid for everything and she had nothing to do with his business.¹⁷

[50] In their affidavits, Ms. Neerajan and her husband Mr. Neshan both state that Ms. Neerajan had no knowledge or involvement in the activities of the group.

[51] Ms. Neerajan's submissions and evidence in this regard are not supported by the preponderance of the documentary evidence before me which supports a finding that Ms. Neerajan was intrinsically and knowingly involved in the group's activities.

[52] For example, when the search was conducted in 2001 at the 21 Rockport Drive address where Ms. Neeranjan had been residing with her husband Mr. Neshan, police seized jewellery boxes that contained \$860 in cash and banking documents in Ms. Neeranjan's name amounting to \$84,472.07; a further \$305 in cash; a ladies' Rolex watch; a Malaysia passport in the name of Anantha Rupini Neeranjan; CIBC money cables to an HBSC bank in Malaysia; a bank card in Ms. Neeranjan's name; CIBC bank draft in Ms. Neeranjan's name; OHIP application and temporary drivers' licence for Ms. Neeranjan; as well as safe deposit box keys.¹⁸ The police contacted the bank associated to the safe deposit box and were advised that Ms. Neeranjan accessed the box once a month, with her last entry being at the end of October 2001.

[53] During the course of their investigations into the "bust-out" frauds, Durham Regional Police found properties linked to the co-defendants including Ms. Neeranjan: 47 Portelli Crescent in Ajax, which was purchased in 2007 by Ms. Neeranjan at a price of \$425,185.93 and a mortgage of \$392,616.27. As part of her mortgage application, Ms. Neeranjan provided a letter from an employer named "Appropriate Inc." stating that she earned \$68,000.00 per year. Part of her down payment was in the form of a \$15,000 gift from her "brother" Kugan Neeranjan.¹⁹ It is noted by the Crown in written submissions that the 47 Portelli Crescent address in Ajax was one of the addresses used by the organization to receive credit cards, credit card statements and significant quantities of mail in the names of other individuals.²⁰

[54] Ms. Neeranjan testified that she was never employed at Appropriate Inc., and while she learned that her name was on properties, she did not find that out until the criminal trial.²¹ Ms. Neeranjan also denies that it is her signature on the Declaration of Gift,²² despite its almost identical similarity to the signatures on her drivers' licences.²³ I do not find Ms. Neeranjan's testimony in this regard to be credible, particularly given that during the trial, the lawyer who facilitated the real estate transaction specifically identified Ms. Neeranjan as the individual he dealt with as the purchaser of the property. These contradictions significantly impact Ms. Neeranjan's position that she had no knowledge or involvement in the activities of the group.

[55] On February 22, Mr. Neshan and Mr. Kenegarajah were observed by police leaving the residence at Bissland Drive and dropping off a child at a Montessori school. The two men returned at the end of the day to pick up the child. Between dropping off and picking up the child at the Montessori school, the two men were followed to several locations, including residences and were seen in the company of Ms. Neerajan. As with previous instances of surveillance of the two men, they were not seen to go anywhere at which they were employed or carrying out a business.²⁴

[56] Search warrants were executed by police at Bissland Drive in Ajax, the property where Ms. Neerajan resided with her husband Kuhen Neshan and Ramanan Kenegarajah. The items seized from the bedroom occupied by Ms. Neerajan and Mr. Neshan are set forth in the trial Court's decision at paragraphs 64 to 66 and include banking documents in various names (not those of any of the occupants of the house or other co-defendants); handwritten sheets of paper containing biographical, financial, and banking information for various identities; electronics; ladies' jewellery, an envelope labelled "to My Loving Wife Rupini – Kuhen"; designer sunglasses; photocopies of identity documents in the name of Ms. Neerajan; banking documents in the name of Ms. Neerajan; bundles of Canadian currency in various denominations totaling several thousand dollars; identity documents for Ms. Neerajan including her Sears Card MasterCard, health card, Citibank card, VanCity card, BMO card, BNS Scotia card; and a bag of banking documents and cash in various denominations and currencies totaling \$7,620 CAD, \$1,100 USD, €700, £820 GBP, and 900 francs CHF.²⁵

[57] In the walk-in closet, police seized a purchase agreement in Ms. Neerajan's name in respect of a property at 671A Eglinton Avenue in Scarborough.²⁶

[58] From the common areas of the residence at Bissland Drive, police seized a CIBC chequebook in the name of A. Anthonypillai, 1100 Ellesmere Road, Scarborough²⁷; cash in various denominations and currencies; an Agreement of Purchase and Sale in the name of Vicky Vigneswaran for a property at 19 Alai Circle in Markham in the amount of \$1.65 million; bottles of cognac, scotch and brandy in a box; office equipment new in its box; garbage disposal units in

their boxes; a visa application; a Montessori school enrollment form for one of Ms. Neeranjana's children; SIM cards; cameras and cell phones.

[59] In total, the police seized approximately \$110,000 in cash from the various rooms at Bissland Drive. The Crown in submissions described the cash seized at Bissland as "massive stacks" (i.e., bricks) of cash, located in almost every area of the residence.²⁸

[60] Among the banking documents found at the Bissland address, police seized a TD debit card. TD bank confirmed to police that the TD bank account was registered to a company named Vaishnevi Enterprise Inc. and the names associated to the account were Anantha Neeranjana and Selvananthan Premkumar. Premkumar was a known alias used by Ms. Neeranjana's husband.

[61] Ms. Neeranjana testified that she only visited the house on Bissland very seldom,²⁹ and when she was at the residence she would stay primarily in the master bedroom with her children. Despite this, at the time of her arrest, Ms. Neeranjana was in residence at the house on Bissland, indeed, she answered the door. Ms. Neeranjana indicated to arresting officers that she needed to turn off the stove in the kitchen as she had been cooking.³⁰ In his affidavit, Mr. Neshan attests that Ms. Neeranjana "did not enter the rooms in which the incriminating evidence was seized by the police as she was prohibited from doing so."³¹

[62] Ms. Neeranjana testified that she did not remember some of the items described to her that were seized from the Bissland residence. She denied that the jewellery in the bedside table was hers despite it being co-located with a purse and wallet containing her identity documents, \$1,000 in Canadian currency and €300 euros. In addition to Ms. Neeranjana's identity documents and the currency in the purse, there was also approximately \$1,890 in the top drawer of the same bedside table. When asked why she would have had that much cash in her home, Ms. Neeranjana responded that she only lived there part of the time. When asked if she had ever seen large denominations of cash over a couple of hundred dollars lying around the house or in her husband's drawers, she responded "No."³² When asked how she could have not noticed, Ms. Neeranjana stated that she only lived in the master bedroom and did not go anywhere else. When

counsel for the Minister noted that there was money, documents and credit cards seized from the master bedroom, Ms. Neeranjan testified that she only visited the house very seldom. Ms. Neeranjan testified that the currency would have been in her wallet only if her husband had given it to her, he would fill her purse with money and that she had never asked for a cent.³³ She further testified that she did not find over \$1000 in cash in her wallet suspicious because she had never seen a real family.

[63] In light of the foregoing, find Ms. Neeranjan's evidence that she was completely unaware of what has been described as massive stacks or bricks of cash located in all areas of the Bissland residence to be completely lacking in credibility, particularly considering that some of the banking documents and currency were co-located with other documents such as her own personal identity documents and documents relating to her children. Whether she was residing at the address on Bissland on a full-time basis or only part time is largely irrelevant to my assessment given the personal items located in the master bedroom belonging to Ms. Neeranjan. Contrary to the evidence provided by both Ms. Neeranjan and Mr. Neshan in his affidavit it is clear, on the preponderance of the evidence before me that Ms. Neeranjan had access to all areas of the house on Bissland, regardless of whether she spent a large amount of time in the master bedroom. Given the luxury items, financial documents and sheer volume of currency seized from the residence, including from her bedside table and wallet, it is utterly preposterous that Ms. Neeranjan was unaware of their existence. Based on this evidence, I conclude that it is more likely the case that Ms. Neeranjan was a knowing and willing participant in the group's activities.

[64] Evidence submitted by the Crown in their written submissions document a transfer of a property valued at \$960,000 from Ms. Neeranjan to Ms. Kanagarajah in 2009 as a gift.³⁴ However, Ms. Kanagarajah borrowed \$517,500 on a line of credit from the TD Bank to finance the purchase of the property,³⁵ despite its being "gifted" to her by Ms. Neeranjan. Ms. Kanagarajah later defaulted on the TD line of credit. Ms. Neeranjan also transferred another property in British Columbia valued at \$467,000 to a numbered company in a cash sale. Ms. Neeranjan denies³⁶ that the signature on the statutory declaration is hers. She testified that she

did not remember signing the document.³⁷ While I do not possess any expertise in the field of handwriting analysis I have considered that the signature located at the bottom of the statutory declaration appears identical to the signatures of Ms. Neeranjana on her Drivers' Licences provided by the Ontario Ministry of Transportation.³⁸ Ms. Neeranjana was unable to offer an explanation for the statutory declaration gifting the property to Rajitha Kanagarajah with her signature other than to state that she would not have wanted to give Ms. Kanagarajah anything.

[65] In the decision of the Ontario Court of Justice in Ms. Neeranjana's criminal trial, Counsel for Ms. Neeranjana asserted that there was no proof that Ms. Neeranjana had knowledge of the activities of her co-accused, including her husband.³⁹ This submission was rejected by the trial judge. Justice De Filippis noted the following:

[158] Kenegarajah, Neshan, and the latter's wife, Anantha Neeranjana are charged with possession of property by crime, namely furniture, electronics, and appliances (count 55) and money (count 57) on March 3, 2010. Counsel for Neeranjana submits there is no proof that she knew about her husband's activities. The uncontradicted evidence belies this submission. The most important relevant paragraphs are 60, 62, 64, 67, and 70 with respect to the search warrant at Bissland Drive. The home was filled with the proceeds of crime, including furnishings, credit cards, cell phones and money stashed in various places. All items would be in plain view or accessible to the woman of the household. There is nothing to suggest Neeranjana could reasonably believe the two men were lawfully employed. There is nothing to suggest she could reasonable believe the property was legitimately purchased or that there was some plausible explanation for why over \$100,000 was strewn about, rather than deposited in a bank. Indeed, the evidence points to her knowledge of the criminal conduct of Neshan and Kenegarajah. At best, she was willfully blind. In any event, I have no doubt all are guilty.⁴⁰

...

[170] Different considerations apply with respect to the criminal organization count. Having regard to all my conclusions, I have no doubt that a criminal organization existed between 2005 and 2010. Neshan and Kenegarajah were the leaders of this group. Neshan's wife Neeranjana, and Kenegarajah's sister Kanagarajah, participated in the group and contributed to its activities as set out above. All four individuals knew the group had as its criminal purpose the facilitation of credit card fraud and identity theft and each one benefitted to a

greater or lesser extent. This meets the criteria provided for in s.467.1 of the *Code*.⁴¹

[66] The Ontario Court of Appeal made the following findings specific to Ms. Neeranjana in its decision:

[15] The issues raised in these appeals and my conclusions on each issue may be summarized as follows:

...

(iii) Did the trial judge provide insufficient reasons and err in finding beyond a reasonable doubt that Ms. Neeranjana had knowledge and control of property obtained by crime?

No. The trial judge provided sufficiently detailed reasons in convicting Ms. Neeranjana on the counts of possession of property, including currency, obtained by crime over \$5,000. The convictions were well rooted in the evidence and free of legal error.

...

(v) Did the trial judge err in finding that Ms. Kanagarajah and Ms. Neeranjana knowingly participated in a criminal organization?

No. The trial judge did not err in his application of the test for a criminal organization or otherwise err in law. There was ample evidence that demonstrated they were members of a criminal organization and knowingly participated in its activities to facilitate or commit indictable offences.

...

[43] This appellant submits that there was no evidence that she ever entered Mr. Kanagarajah's room in which much of the cash and credit cards were kept, and as such, knowledge has not been established. Further, she argues that there was no evidence of control, as mere indifference or passive acquiescence to the presence of stolen goods does not amount to control for the purpose of establishing illegal possession.

[44] In submitting that there was insufficient evidentiary basis for the findings of guilt, this appellant is essentially making an unreasonable verdict argument. The test for appellate intervention is whether the finding is one that a trier of fact,

acting judicially, could reasonably have rendered: *R. v. Jackson*, 2007 SCC 52, [2007] 3 SCR 514, at para. 2.

[45] In my view, the trial judge's findings of guilt are well grounded in the evidence and were open to him to make. Count 55 relates to the "furniture, electronics, appliances and household articles" at Bissland Drive where she lived with her husband Mr. Neshan and Mr. Kenegarajah. It is clear on the evidence that the house was full of furniture, electronics, appliances and household goods and that these items were in plain view. In these circumstances, it was an available inference to the trial judge that this appellant had custody access and exercised control over the property.

[46] Count 57 relates to the currency found in the appellant's home at Bissland Drive. The police found over \$100,000 in cash in different currencies and denominations in various places in the home, which were either in plain view or accessible to Ms. Neerajan. As such, there was an available inference on the evidence that this appellant had possession and control over the currency. Therefore, the finding of guilt on this charge was not unreasonable.

...

[63] Despite the submissions of Ms. Kanagarajah and Ms. Neerajan, there was ample evidence that demonstrated they were members of a criminal organization and knowingly participated in its activities to facilitate or commit indictable offences.⁴²

[67] While it is the position of Ms. Neerajan that she is an innocent person who has been found guilty, I give significant weight to the findings of the trial judge and the OCA. I have considered that the burden of proof required to establish a guilt in a criminal matter is much higher than the "reasonable grounds" standard before me. Further, Ms. Neerajan was represented by her own Counsel at both her criminal trial and during her appeal. Her position that she was unaware of and did not participate in the group's criminal activities was considered and rejected by the trial judge and the appellate court.

[68] Ms. Neerajan argues that I must go behind the findings of the Criminal Courts and find that she was innocent, that she did not knowingly possess items obtained by fraud and she was not a member of the criminal organization run by her husband. She argues that her convictions rested entirely on items found in the house with the bulk of the items being found in the bedroom associated with Mr. Kenegarajah. Ms. Neerajan submits that her trial lawyer did not prepare her

for trial or review disclosure with her; did not meet her in his office, only during breaks in Court; and was paid by her husband and took instructions from him. He failed to raise the issue of Ms. Neeranján's mental disability at trial. Further, Ms. Neeranján argues, her appeal lawyer failed to raise these issues with the trial lawyer and further failed to bring a fresh evidence application even once Ms. Neeranján advised him about the issues. Ms. Neeranján's spouse also alleges inadequate representation by both Ms. Neeranján's former counsel in his Affidavit.

[69] I have considered the steps outlined in the IRB's Practice Notice – Allegations Against Former Counsel. The Practice Notice sets forth various steps to be taken by an individual alleging inadequate representation on the part of former counsel. While the Practice Notice specifically deals with former counsel at an IRB proceeding, I find the steps laid out therein to be helpful in the case before me. The steps an individual should take when alleging inadequate representation are as follows:

Where the person alleges that they have been inadequately represented by their former counsel, the person must first provide former counsel with:

- a written statement containing the allegations, or in the case of an appeal to the RAD, a copy of the Appellant's Memorandum or other document in the RAD proceedings that contain the allegations;
- a written notice that former counsel has ten days after receiving the allegations to provide a written response to the person, to the applicable Division, and to the Minister (if the Minister is a party to the proceeding);
- a signed authorization releasing any privilege, including solicitor-client privilege, to the extent necessary to allow former counsel to respond to the allegations; and
- a copy of this Practice Notice or information describing where this Practice Notice can be found on the IRB website

The person must then provide to the Division a copy of documents (a) to (c) above, as well as proof that the documents (a) to (d) above have been provided to the person's former counsel.

Former counsel who intends to respond to the allegations must provide a written response to the person, to the Division, and to the Minister (if the Minister is a party to the proceeding), no later than ten days after receiving the allegations.

The person may provide a written reply to the Division, accompanied by proof that this reply was first provided to former counsel and to the Minister (if the Minister is a party to the proceeding). The written reply must be provided no later than five days after the person received former counsel's response.

[70] No evidence was submitted to indicate that Ms. Neerajan provided either of her former counsel with a written statement containing her allegations; nor does it appear that she made any complaint to the Law Society of Ontario about their conduct. I have considered that both Ms. Neerajan's former counsel did make submissions on her behalf at her criminal trial and during her appeal as the reasons of both Courts specifically address those submissions.

[71] Ms. Neerajan's argument that I must ignore the effect of her criminal convictions was not supported by any legal analysis or by citing any jurisprudence. Absent compelling reasons, which have not been provided, the argument represents an attempt to relitigate the convictions and the facts accepted by the Criminal courts which underlie them.

[72] The Supreme Court has found that where a party seeks to relitigate the findings of a criminal court that, in all but very narrow circumstances, the findings of the criminal Court must be given full effect by a tribunal considering a related factual issue. In the *CUPE* decision, the Supreme Court found that a labour arbitrator was not permitted to rely on the testimony of a person convicted of a criminal offence that they had not committed the acts determined by the Criminal Court to underlie the person's conviction. The Court found that the tribunal was required to give full effect to the findings:

What is improper is to attempt to impeach a judicial finding by the impermissible route of relitigation in a different forum. A proper focus on the process, rather than on the interests of a party, will reveal why relitigation should not be permitted. From the system's point of view, relitigation carries serious detrimental effects and should be avoided unless the circumstances dictate that relitigation is necessary to enhance the credibility and the effectiveness of the adjudicative process as a whole. Casting doubt over the validity of a criminal conviction is a very serious matter. Collateral attacks and relitigation are not appropriate methods of redress since they inordinately tax the adjudicative process while doing nothing

to ensure a more trustworthy result. The common law doctrines of issue estoppel, collateral attack and abuse of process adequately capture the concerns that arise when finality in litigation must be balanced against fairness to a particular litigant.⁴³

[73] Ms. Neerajan was found guilty of two counts of possession of property obtained by crime over \$5000, pursuant to section 354(1) of the CCC; and participation in activities of criminal organization pursuant to section 467.11(1) of the CCC.⁴⁴ These convictions were upheld on appeal on or about February 8, 2018. While inadmissibility on grounds of organized criminality does not necessarily require the existence of criminal charges or a conviction,⁴⁵ where criminal charges and convictions signal the presence of organized crime, the law does not preclude their examination. The courts have also pointed out that, where a conviction is registered, it is the true statement of the facts and the conclusions underlying the conviction that may support the assertion that a person is a member of a criminal organization.⁴⁶ Accordingly, I accept that I must give considerable weight to the findings of both the Ontario Court of Justice and the Ontario Court of Appeal.

[74] I find that there exists sufficient credible and trustworthy evidence before me that forms the reasonable grounds on which I conclude that Ms. Neerajan was a member of a criminal organization engaged in the activity of committing “bust-out” frauds. Therefore, the final element of the allegation has been met.

[75] I find that there are reasonable grounds to believe that the organization referred to in the documentary evidence is a criminal organization that was 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.

[76] I also find that there is sufficient credible evidence to find that Ms. Neerajan is a person described under 37(1)(a) of the *IRPA* as there are reasonable grounds to believe that she engaged in activity that is part of 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.

SECTION 36(1)(a) ANALYSIS

[77] Section 36(1)(a) of the IRPA reads as follows:

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

[78] Ms. Neerajan is a permanent resident. She was convicted on May 14, 2013 of two counts of possession of property obtained by crime over \$5,000 in relation to an occurrence on March 3, 2010, pursuant to section 354(1) of the CCC.⁴⁷ These are indictable offences and are punishable by maximum terms of imprisonment of 14 years. Ms. Neerajan concedes that she was convicted of these offences.

[79] Ms. Neerajan was given a conditional sentence order of 6 months consecutive for the first count of possession of property obtained by crime over \$5,000, and a conditional sentence of 6 months concurrent for the second.⁴⁸ The appeal of her conviction was dismissed. While the Supreme Court of Canada (SCC) in *Tran*⁴⁹ found that conditional sentences are not captured in the meaning of the phrase “term of imprisonment” in s. 36(1)(a) of the IRPA, given that the offence of possession of property obtained by crime over \$5,000 is punishable by a maximum term of imprisonment of 14 years, I find that all of the elements of s.36(1)(a) are met and Ms. Neerajan is inadmissible as alleged.

CONCLUSION AND ORDER

[80] Ms. Neerajan is inadmissible to Canada pursuant to paragraphs 36(1)(a) and 37(1)(a) of the IRPA, for serious criminality and also for organized criminality.

[81] According to paragraph 45(d) of the IRPA and paragraphs 229(1)(c) & (e) of the Immigration and Refugee Protection Regulations (IRPR), the Immigration Division must issue a Deportation Order against her. The Deportation Order is attached to this decision.

(signed)

“Karen Greenwood”

Karen Greenwood

December 11, 2019

Date

¹ Exhibit AH-01, pp. 6-7.

² 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;

³ Exhibit AH-01, pp. 4-5.

⁴ 36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for (a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

⁵ Exhibit AH-01, page 13, Immigrant Visa and Record of Landing.

⁶ Exhibit AH-13, Project Morgan Crown’s Written Submissions.

⁷ Exhibit AH-11, Ministry of Transportation, Driver’s Licence History, p. 25.

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- ⁸ Exhibit AH-13, Project Morgan Crown Written Submissions, p. 9 of 170.
- ⁹ Exhibit AH-13, Project Morgan Crown Written Submissions, p. 12 of 170.
- ¹⁰ Exhibit AH-05, Ontario Court of Appeal judgment, p. 5.
- ¹¹ Exhibit AH-03, pages 46 -49, Durham Regional Police Services media release.
- ¹² Exhibit AH-05, Ontario Court of Appeal judgment, p. 7
- ¹³ Exhibit AH-03, page 4, Ontario Court of Justice sentencing document.
- ¹⁴ Exhibit AH-09, Affidavit of Ms. Neeranjan.
- ¹⁵ Transcript of proceedings, February 25, 2019, p. 17.
- ¹⁶ Transcript of proceedings, February 25, 2019, p. 23.
- ¹⁷ Transcript of proceedings, February 25, 2019, p. 24.
- ¹⁸ Exhibit AH-13, Project Morgan Crown Written Submissions, p. 9 of 170.
- ¹⁹ Exhibit AH-02, *R. v. Kanagarajah et al.*, 2012 ONCJ 636 (CanLII), at paragraph 32.
- ²⁰ Exhibit AH-13, Project Morgan Crown Written Submissions, p. 168 of 170.
- ²¹ Transcript of proceedings, April 10, 2019, p. 13.
- ²² Exhibit AH-13, Project Morgan Crown Written Submissions, p. 82 of 170.
- ²³ Exhibit AH-11, Documents provided by the Ministry of Transportation, pp. 33-36.
- ²⁴ Exhibit AH-02, *R. v. Kanagarajah et al.*, 2012 ONCJ 636 (CanLII), at paragraph 41.
- ²⁵ Exhibit AH-02, *R. v. Kanagarajah et al.*, 2012 ONCJ 636 (CanLII), at paragraphs 64-66.
- ²⁶ Exhibit AH-02, *R. v. Kanagarajah et al.*, 2012 ONCJ 636 (CanLII), at paragraphs 67.
- ²⁷ Exhibit AH-02, *R. v. Kanagarajah et al.*, 2012 ONCJ 636 (CanLII), at paragraphs 69.
- ²⁸ Exhibit AH-13, Project “Morgan” Crown Written Submissions, p. 169 of 170.
- ²⁹ Transcript of proceedings, April 10, 2019, p. 25.
- ³⁰ Exhibit AH-11, Durham Regional Police Service General Occurrence Hardcopy, p. 20.
- ³¹ Exhibit AH-10, Affidavit of Kuhen Neshan, p. 49.
- ³² Transcript of proceedings, April 10, 2019, p. 25.
- ³³ Transcript of proceedings, April 10, 2019, p. 26.
- ³⁴ Exhibit AH-13, Project “Morgan” Crown Written Submissions, p. 14 of 170.
- ³⁵ Exhibit AH-13, Project “Morgan” Crown Written Submissions, p. 13 of 170.
- ³⁶ Transcript of proceedings, April 10, 2019, p. 11.
- ³⁷ Transcript of proceedings, April 10, 2019, p. 16.
- ³⁸ Exhibit AH-11, Documents provided by the Ministry of Transportation, pages 33-36.
- ³⁹ Exhibit AH-02, *R. v. Kanagarajah et al.*, 2012 ONCJ 636 (CanLII), at paragraph 8.
- ⁴⁰ Exhibit AH-02, *R. v. Kanagarajah et al.*, 2012 ONCJ 636 (CanLII), at paragraph 158.
- ⁴¹ Exhibit AH-02, *R. v. Kanagarajah et al.*, 2012 ONCJ 636 (CanLII), at paragraph 170.
- ⁴² Exhibit AH-05, *R. v. Kenegarajah*, 2018 ONCA 121
- ⁴³ *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 SCR 77, 2003 SCC 63 (CanLII).
- ⁴⁴ Exhibit AH-03, page 4, Ontario Court of Justice sentencing document.
- ⁴⁵ *Castelly v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 788 (CanLII), 2008 FC 788, [2009] 2 F.C.R. 327 at paragraphs 25-26.
- ⁴⁶ See *Tang v. Canada (Citizenship and Immigration)*, 2009 FC 292 (CanLII), paragraph 19; also *Burton v. Canada (Public Safety and Emergency Preparedness)*, 2012 FC 727 (CanLII), where Near, J. considered these matters at paragraphs 37-43.
- ⁴⁷ Exhibit AH-03, page 4, Ontario Court of Justice sentencing document.
- ⁴⁸ Exhibit AH-03, page 4, Ontario Court of Justice sentencing document.
- ⁴⁹ *Tran v. Canada*, 2017 SCC 50.