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## Reasons and Decision – Motifs et décision

<b>Between</b>	The Minister of Public Safety and Emergency Preparedness Le ministre de la Sécurité publique et de la Protection civile	<b>Entre</b>
<b>And</b>		<b>et</b>
<b>Person(s) Concerned</b>	Guillermo OSORNIO CARLIN	<b>Intéressé(e)(s)</b>
<b>Date(s) of Hearing</b>	September 7, 2018 May 1, 2, 3, 16, 2019	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Vancouver, BC	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	June 7, 2019	<b>Date de la décision</b>
<b>Panel</b>	L. Ko	<b>Tribunal</b>
<b>Counsel for the Minister</b>	D. Gunadi J. O'Connell	<b>Conseil du ministre</b>
<b>Counsel for the Person(s) Concerned</b>	F. Yachoua A. Aziz	<b>Conseil(s) pour l'intéressé(e) / les intéressé(e)(s)</b>

## Reasons for Decision

### INTRODUCTION

[1] Immigration authorities (the Minister) allege that Guillermo Osornio Carlin is a foreign national who is inadmissible under paragraph 37(1)(b) of the *Immigration and Refugee Protection Act* (the IRPA). Paragraph 37(1)(b) of the IRPA states:

A permanent resident or foreign national is inadmissible on grounds of organized criminality for engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

[2] The Minister alleges that Mr. Osornio Carlin engaged in organized criminality in the context of transnational crime by engaging in money laundering from the US into Mexico. The Minister alleges that these funds were the proceeds of drug trafficking offences and that the money was being laundered for an unspecified Mexican cartel.

### BACKGROUND

[3] Mr. Osornio Carlin is a citizen of Mexico. He is neither a Canadian citizen nor a permanent resident of Canada. He is, therefore, a foreign national. This fact was not in dispute by the parties.

[4] According to the Subsection 44(1) highlights document<sup>1</sup>, Mr. Osornio Carlin has travelled to Canada many times as a temporary resident. At one point he made a refugee claim in Canada but later withdrew that claim. He held work permits in Canada consistently from 2005 to 2012. In January 2015, he was issued a temporary resident visa for Canada and visited briefly in February 2015. In March 2015 he attempted to enter Canada but was refused entry and issued an exclusion order due to a lack of proper documentation regarding work in Canada. He applied for a new visa, work permit, and authorization to return to Canada, which were all granted by the Canadian embassy in Mexico City in July 2015. The work permit was approved for a period ending September 12, 2017.

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<sup>1</sup> Exhibit C-1, Tab 3

[5] On December 6, 2016, Mr. Osornio Carlin sought re-entry to Canada on his work permit, accompanied by his spouse, Fabiola Luna Montano, and his infant child who is a Canadian citizen. By this time, the Canada Border Services Agency (CBSA) had received information from US authorities that they believed Mr. Osornio Carlin to have been involved in money laundering activities in the United States in 2014. The US had also revoked Mr. Osornio Carlin's visa to that country. The CBSA flagged Mr. Osornio Carlin for further examination upon his attempted re-entry to Canada at the Vancouver International Airport on December 6, 2016 in order to gather further information and assess his admissibility to Canada.

[6] Mr. Osornio Carlin was interviewed by a Border Services Officer in the late hours of December 6, 2016. He was detained overnight and was interviewed by the same officer the next day. He remained in immigration detention until a 48-hour detention review on December 9, 2016. He was released from detention by the Immigration Division on a bond and other conditions.

[7] Mr. Osornio Carlin was next interviewed by two CBSA Intelligence Officers at the Pacific Region Intelligence and Enforcement Section on December 14, 2016, when he reported in accordance with his conditions.

[8] He was interviewed one more time by a CBSA Inland Enforcement Officer at the Pacific Region Intelligence and Enforcement Section on January 10, 2017 at a pre-arranged time.

[9] On February 27, 2017, the Inland Enforcement Officer prepared a report under subsection 44(1) of the IRPA, alleging that Mr. Osornio Carlin was inadmissible under paragraphs 37(1)(a) and 37(1)(b) of the IRPA. The report states that it was based on the following information:

- That the above-named individual is not a Canadian Citizen or Permanent Resident of Canada
- Arrived at Vancouver International Airport on 6 December 2016 seeking entry to Canada as a visitor
- The subject did engage in a pattern of criminal activity, to wit: money laundering
- The subject did engage in international money laundering<sup>2</sup>

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<sup>2</sup> Exhibit C-1, Tab 2

[10] The report was reviewed by a Minister's Delegate and referred to the Immigration Division for an admissibility hearing in respect of both allegations on March 9, 2017. The request for admissibility hearing and a package of documents (later entered as Exhibit C-1) were received by the ID on April 3, 2017.

[11] Several conferences and written applications followed over the next two years. Mr. Osornio Carlin raised on a number of occasions a lack of specificity and disclosure from the Minister regarding the allegation of inadmissibility. Although some further specificity and disclosure was made by the Minister, a number of concerns remained for Mr. Osornio Carlin. The Division provided direction to the Minister, ordering further specificity on certain elements of the allegation and directing the parties regarding the order of proceedings.

[12] The admissibility hearing commenced on September 7, 2018. On September 25, 2018, counsel for Mr. Osornio Carlin wrote to the Division making an application to dismiss the referral for an admissibility hearing on the basis of an abuse of process relating to lack of specificity and disclosure or alternatively that the Minister had failed to plead facts to satisfy the legal elements of the 37(1)(b) allegation. On December 6, 2018, the Division provided an interlocutory decision dismissing the application for dismissal of proceedings. The hearing resumed on May 1, 2, 3, and 16, 2019.

[13] This is now the decision and reasons of the Division on the allegation of inadmissibility under paragraph 37(1)(b) of the IRPA raised against Mr. Osornio Carlin.

## **THE LAW**

[14] Section 33 of the IRPA, provides the following rules of interpretation:

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.

[15] The "reasonable grounds to believe" standard has been confirmed by the Supreme Court of Canada<sup>3</sup> as requiring something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities. Reasonable grounds will exist

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<sup>3</sup> *Mugesera v. Canada* (Minister of Citizenship and Immigration), [2005] 2 S.C.R. 100, 2005 SCC 40

where there is an objective basis for the belief which is based on compelling and credible information. This standard applies to questions of fact.

[16] Paragraph 173(d) of the IRPA states that the Immigration Division may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.

[17] In order to establish that Mr. Osornio Carlin is described in paragraph 37(1)(b) of the IRPA, the Minister must establish that there are reasonable grounds to believe that:

- a) Mr. Osornio Carlin is a permanent resident or foreign national;
- b) Mr. Osornio Carlin engaged in money laundering; and
- c) Mr. Osornio Carlin's engagement in money laundering occurred in the context of transnational organized crime.

[18] The term "money laundering" is not defined in the IRPA. In submissions, the Minister relied on the offence of "laundering proceeds of crime", as set out in subsection 462.31(1) of the *Criminal Code of Canada* which describes the offence as follows:

Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

- (a) the commission in Canada of a designated offence; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

[19] The *Criminal Code of Canada* defines "proceeds of crime" at subsection 462.3(1) as:

any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of

- (a) the commission in Canada of a designated offence, or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

[20] The *Criminal Code of Canada* defines "designated offence" at subsection 462.3(1) as:

- a) any offence that may be prosecuted as an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation, or
- b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a).

[21] I find that the term “laundering proceeds of crime” encompasses “money-laundering”. Money derived or obtained as a result of the commission of an offence constitutes a form of property derived or obtained as a result of the commission of an offence. I find that the *Criminal Code of Canada* offence of “laundering proceeds of crime” as described in Subsection 462.31(1) is an appropriate guiding interpretative aid in establishing the definition of “money laundering” for the purposes of paragraph 37(1)(b) of the IRPA.

[22] In *R. v. Tan Tien Nguyen*, 2013 ONSC 605, that Court found that the offence of money laundering under s. 462.31(1) has three essential elements:

- a. dealing with property or proceeds of crime in almost any manner or any means imaginable, including sending, delivering, transferring, altering, disposing, using, etc...;
- b. having an intent to conceal or convert the property or proceeds; and
- c. knowing or believing that all or part of the property or proceeds was obtained directly or indirectly, as a result of the commission of a designated offence.<sup>4</sup>

[23] In *Nguyen*, the Court also set out the *mens rea* requirement for the offence:

[316] The *mens rea* for the laundering of proceeds of crime involves *belief or knowledge* that the proceeds were derived from the commission of a crime. See *R. v. Tejani*, 1999 CanLII 3765 (Ont. C.A.).

[317] The Crown must prove that the accused knew the derivation of the proceeds laundered by reference to the *type* of crime, but not the specifics of their origin. In other words, the Crown need not prove the accused knew the precise details of the designated offence from which the proceeds are derived. [emphasis in original]

[24] In order to establish that Mr. Osornio Carlin engaged in money laundering, it must be established on reasonable grounds that a “designated offence” in Canada or an “act or omission that would constitute a designated offence in Canada” was committed, that proceeds from such an offence were dealt with by Mr. Osornio Carlin, that he had intent to conceal or convert that

<sup>4</sup> *R. v. Tan Tien Nguyen*, 2013 ONSC 605, para. 315

property or proceeds, and that Mr. Osornio Carlin knew or believed that these proceeds were obtained or derived from the type of designated offence alleged by the Minister.

[25] Although during earlier conferences the Minister suggested that he might argue that the designated offence in question was anti-money laundering laws or tax evasion laws, the Minister clarified on May 3, 2019 that he was submitting only that the designated offence was drug trafficking.

## **THE EVIDENCE**

### **Overview**

[26] The Minister alleges that Mr. Osornio Carlin laundered the proceeds of drug trafficking activities carried out by an unspecified Mexican cartel when, on three occasions in the United States in September and October 2014, Mr. Osornio Carlin received large sums of US cash, opened bank accounts in his own name at various banks in the United States, deposited these funds, and later transferred these funds to an individual named Jonathan Espinosa in Mexico.

[27] The Minister alleges that Mr. Osornio Carlin laundered money on three occasions between September and October 2014:

- In Houston, Texas – approximately \$50,000 US dollars
- In San Diego and Los Angeles, California – approximately \$100,000 US dollars
- In Chicago, Illinois – approximately \$200,000 US dollars

[28] In order to support his position that the funds deposited by Mr. Osornio Carlin were the proceeds of drug trafficking, the Minister relies on the following evidence:

- 2 reports from the United States Department of Homeland Security, Homeland Security Investigations<sup>5</sup>;
- 1 Cook County Sheriff's Police Department offense/incident report<sup>6</sup>;
- 3 interviews that occurred between Mr. Osornio Carlin and officers of the Canada Border Services Agency<sup>7</sup>;

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<sup>5</sup> Exhibit C-1, Tab 4

<sup>6</sup> Exhibit C-1, Tab 5

<sup>7</sup> Exhibit C-1, Tab 6, 7, 8

[29] The Minister also relies on open source documents in Exhibit C-1 and C-3 regarding money laundering activities and methods utilized by Mexican drug organizations, or cartels, in respect of drug trafficking activities carried out by those cartels.

[30] Mr. Osornio Carlin submits that the Minister has not established on reasonable grounds that the money that he deposited and transferred was the proceeds of drug trafficking activities involving a Mexican cartel. He disputes the credibility and trustworthiness of the Minister's evidence that suggests that he stated that the money was the proceeds of drug trafficking or was related to a cartel.

[31] I conclude that Mr. Osornio Carlin has provided credible and trustworthy evidence and that the Minister's evidence does not establish reasonable grounds to believe that the money dealt with by Mr. Osornio Carlin was the proceeds of drug trafficking or was related to a cartel. The Minister relies primarily on statements that were purportedly made by Mr. Osornio Carlin to US law enforcement officials and to CBSA officials on December 6, 7, and 14, 2016. However, for the reasons that follow, I find that this evidence is not credible or trustworthy and give more weight to the content of Mr. Osornio Carlin's last interview with the CBSA on January 7, 2017 and to his testimony at the admissibility hearing.

#### **Mr. Osornio Carlin's testimony and interview with Inland Enforcement**

[32] I find that the testimony provided by Mr. Osornio Carlin in the course of the admissibility hearing is credible and compelling. He testified in a confident and comprehensive manner on a wide variety of topics for over six hours. His responses on key issues were internally consistent and his recollection of key events was detailed and plausible. His testimony was also supported by the testimony of his spouse, Fabiola Luna Montana, who was a credible and compelling witness. She testified to her personal history, her relationship with Mr. Osornio Carlin, and to her presence at or knowledge of a number of key events. Her testimony was internally consistent and consistent with the testimony of Mr. Osornio Carlin.

[33] Mr. Osornio Carlin testified regarding his upbringing in Mexico and the circumstances that led to him engaging with Jonathan Espinosa in pursuing a new business venture in the area of fast food franchising. Mr. Osornio Carlin characterized his upbringing as "privileged" and



described benefiting from a private school education, involvement in sports, family vacation homes in Acapulco, Lake Tahoe, and Whistler, and post-secondary education in the United States and England. His family owned an established business with several offices in Mexico, and he pursued a career in business management consulting in both Mexico and Canada.

[34] Mr. Osornio Carlin described in detail how he met Jonathan Espinosa and what he came to learn and observe about Jonathan's family and their business. He described the family as affluent, living in the best area of Puebla, and holding strong religious beliefs, engaging in social work and charitable activities. He described Jonathan's father, Miguel Espinosa, as a hard-working guy, who was more low-key than his children, and who travelled daily about 120 kilometres each way between their home in Puebla and the company's factory in Mexico City.

[35] Mr. Osornio Carlin testified that Jonathan's father owned a large food company in Mexico called "Alimentos EFA". His testimony was supported by a number of documents in Exhibit P-1 from various independent sources which support Mr. Osornio Carlin's testimony that Miguel Espinosa owned and operated Alimentos EFA, a well-established business in Mexico in operation for over 35 years with six brands of products within the sausages, cold meats and prepared food sector. Mr. Osornio Carlin testified to having visited the Alimentos EFA factory in Mexico City, which he described as "very high-end". He described how the company had an existing factory but were expanding their operations to accommodate offices, facilities for employees, and facilities and technology for the handling and storage of their food products.

[36] Mr. Osornio Carlin testified that Jonathan Espinosa was looking to develop a new business venture within his father's company. The new venture was to involve the sale of prepared Mexican foods within a store-front, fast-food franchise model. Miguel Espinosa had agreed to provide a million dollars in funding for the research, investment, and expenses in developing this new business venture.

[37] Mr. Osornio Carlin described Jonathan Espinosa as eager and motivated, both on the business side but also to keep up with his father's expectations. He explained that Jonathan had attended top schools in Mexico and had a bachelor's degree in administration so saw this business venture as his time to prove himself to his father.

[38] Mr. Osornio Carlin testified that within the context of this new business venture, he and Jonathan planned a number of trips to the United States to conduct research into the market they hoped to enter. The first trip was to Houston, Texas in September 2014. Jonathan was supposed to accompany Mr. Osornio Carlin, but at the last minute told him that he would not be going. Mr. Osornio Carlin testified that Jonathan told him that a personal matter had arisen with his girlfriend and that he asked Mr. Osornio Carlin to make the trip on his own. In doing so, he also asked Mr. Osornio Carlin to pick up a sum of money, which he said he was supposed to do himself, as it was money owed to his father for a business purpose. Similar occurrences took place with respect to the trips to San Diego and Los Angeles and later to Chicago.

[39] Mr. Osornio Carlin testified that the request to deal with the money was an inconvenience and outside the intended purpose of his business trip. He did not feel comfortable handling the large sums of cash and told Jonathan that he would not transport it personally back to Mexico. Jonathan then asked that he open bank accounts in the United States and transfer the funds to his bank account in Mexico.

[40] Mr. Osornio Carlin did this on each of the three business trips to the United States in 2014. He opened bank accounts in his own name and transferred the funds to Jonathan, in his own name. He testified that, on the advice of Jonathan as well as the bank representatives, he made several transactions in order to keep the amounts below the threshold of \$50,000 that would require the banks to place a hold on the funds. On some occasions, he kept some cash to give to Jonathan directly, but always an amount under \$10,000 so that he did not have to declare the export from the United States. It was during the last trip, to Chicago, where he came to the attention of US authorities and they attended his hotel room and seized approximately \$68,000 that he had not yet deposited.

[41] Mr. Osornio Carlin testified that at no time were there signs that the Espinosas were involved in criminal activity or with drug cartels. While he expressed hesitation in dealing with the money and felt inconvenienced and bothered at the repeated requests to deposit and transfer money and the fact that he was misled on a couple of occasions regarding the sum of money that he was dealing with, it does not appear that there was any evidence that the money was from

illicit sources or specifically that it was money from drug trafficking or a cartel. Mr. Osornio Carlin also testified that he was never paid for his role in transferring the money.

[42] Mr. Osornio Carlin testified and provided supporting documentary evidence that after the money was seized by US authorities, he consulted with a lawyer in Chicago and took steps to gain further information regarding the authority under which the money was seized and recourse for the recovery of the money. He testified that his own father, as well as Jonathan Espinosa and his father, returned to Chicago to meet further with the lawyer and that a package of information was later obtained from US authorities and forwarded on to Jonathan and his father should they wish to take further steps to dispute the seizure. Mr. Osornio Carlin was unable to accompany the group back to Chicago as the US authorities had revoked his visa. The Minister has not filed any evidence in respect of the basis for the visa revocation and has not filed any evidence regarding the outcome of any further investigation conducted by US authorities after the October 2014 seizure.

[43] Mr. Osornio Carlin's explanations in testimony regarding his own personal history, his relationship to Jonathan Espinosa, how he came to handle the money, and his testimony that he had no reason to know or believe that the money he was handling was drug or cartel money are credible and plausible. It is also consistent with the information that he provided in his interview with the CBSA on January 7, 2017 when he was interviewed by Inland Enforcement Officer Ward Hindson.<sup>8</sup> In that interview, he was similarly detailed in his explanations and consistent on key points. The interview was audio recorded and a solemn declaration entered into evidence regarding the content of the interview was prepared by an Enforcement Assistant who created a transcription based on the audio recording. I find that it is an accurate reflection of all of the questions asked and answers provided during the interview.

[44] In contrast, I find that the declarations regarding the CBSA interviews that took place on December 6 and 7, 2016 and December 14, 2016 are not credible and trustworthy evidence. The Minister submits that the initial statements made by a person should be taken as the most reliable, referencing case law including *Navaratnam v. Canada*, 2011 FC 856, which states:

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<sup>8</sup> Exhibit C-1, Tab 6

[15] It is trite law that statements to immigration authorities at the POE may be considered by the Board in order to evaluate a claimant's credibility and that a person's first story is usually the most genuine, and therefore the one to be believed (*Mongu v Canada (Minister of Citizenship and Immigration)* (1994), 86 FTR 59, 52 ACWS (3d) 391 (TD)). [emphasis in original]

[45] In *Navaratnam*, the Court does however reference the fact that a person can challenge the accuracy of port of entry documents by requesting a subpoena for the Immigration Officer.

[46] The Minister also references *Lubana v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, which references the principle regarding first statements, but expands on the principle stating that, when assessing credibility, the circumstances as a whole should be considered before making a credibility determination:

[13] A person's first story is usually the most genuine and, therefore, the one to be most believed. That being said, although the failure to report a fact can be a cause for concern, it should not always be so. That, again depends on all the circumstances. [citations omitted]

[14] Finally, the applicant's credibility and the plausibility of testimony should be assessed in the context of her country's conditions and other documentary evidence available to the Board. Minor or peripheral inconsistencies in the applicant's evidence should not lead to a finding of general lack of credibility where documentary evidence supports the plausibility of the applicant's story. [citations omitted]

[47] The Minister also references *Mohacsi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429 for the principle regarding first statements, but in reviewing *Mohacsi*, it is evident that the Court followed *Lubana* and found, at paragraph 27, that alleged discrepancies in information between statements at the port of entry and later testimony should be considered in light of the particular situation and special characteristics of a claimant. The Court in *Mohacsi* also at paragraph 27, referenced the Court in *Singh v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 963 (T.D.) (QL), and stated "the Court cautioned that it is 'poor practice' for the Board to find the notes to be accurate on 'pure faith'. The Court added that the Board should inquire into such matters as the context of the interview and the degree to which the claimant understood the questions."

[48] While these cases were decided in the context of refugee determinations, I find that they do stand for the general principle that when making a finding regarding the credibility of a

person's testimony and assessing the reliability of statements made at a port of entry, it is important to take into consideration the particular circumstances of the interview and the individual.

[49] In the circumstances before me, I find that the testimony of Mr. Osornio Carlin and the declaration regarding the January 7, 2017 interview are more reliable than the declarations regarding the port of entry interviews and the interview on December 14, 2016.

### **The Port of Entry interviews**

[50] The declaration at Tab 8 of Exhibit C-1 states that on December 6, 2016, Officer Patrick Ridgley was on duty at the Vancouver International Airport when he examined a national of Mexico who identified himself as Guillermo Osornio Carlin. The declaration states: "During my secondary examination, I asked Osornio Carlin a number of questions. I recorded the questions asked and answers provided in my notebook as follows...". The declaration then lists 15 questions and responses. The declaration does not state the time that the interview began.

[51] The declaration then indicates that as a result of Officer Ridgley's concerns regarding Mr. Osornio Carlin's admissibility to Canada, he asked Mr. Osornio Carlin further questions. It states that what follows is a transcript of the interview examination conducted and is followed by five and a half pages of questions and answers. On page 7 of the declaration, it states that the examination ended at 01:30 am and that approximately 10:40 am on December 7, the examination continued. Several time entries are included to document provision of *Charter* and *Vienna Convention* rights. A question and answer formatted interview of 12 questions and responses follows. No end time is provided. The total declaration is 9 pages plus one page that contains a response to the final question and concluding attestations and signatures. There is a one page map of Mexico appended to the declaration.

[52] According to the declaration, the first question that Mr. Osornio Carlin was asked at the opening of the interview was whether he ever had any problems with immigration before. According to the declaration, Mr. Osornio Carlin immediately details the events that occurred in Chicago in 2014 that later led to him being denied boarding to the USA on a subsequent trip.

Questions regarding the money transfers ensued and are documented as follows in the declaration:

Q: Do you think that \$200,000 USD in a duffle bag is legitimate money?<sup>9</sup>

A: No

Q: When you were questioned in the US what did you say?

A: First I said that it was from the sale of a truck. Then I said that it could be drug money.

Q: Is it drug money?

A: Yes.

Q: Where is Jonathan from?

A: Puebla.

Later in the interview,<sup>10</sup> he is asked:

Q: So you would have known that this was money laundering.

A: Yes.

Q: Is it fair to say that this money was drug money?

A: Yes.

Q: Is it fair to say that this money would have gone to the cartel?

A: Yes.

Still later,<sup>11</sup> he is asked:

Q: Is it fair to say that all of this \$328,000 USD is drug money?

A: Yes but I never knew what he did with the money. I never got paid from it. I got a wage to do my consulting job. I never got paid to do any of this.

[53] According to the declaration, the following day, Mr. Osornio Carlin stated that he was suspicious that the money he was dealing with was drug money but that he had never seen drugs and never been part of buying or selling drugs.<sup>12</sup>

[54] Having considered the testimony of Mr. Osornio Carlin, the testimony of Officer Ridgley and other evidence before me and the submissions of the parties, I conclude that the declaration

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<sup>9</sup> Exhibit C-1, Tab 8, p. 76

<sup>10</sup> Exhibit C-1, Tab 8, page 79

<sup>11</sup> Exhibit C-1, Tab 8, page 80

<sup>12</sup> Exhibit C-1, Tab 8, p. 83

of Officer Ridgley is not a complete and accurate account of interview conducted with Mr. Osornio Carlin on December 6 and 7, 2016.

[55] I find that the purported statements made by Mr. Osornio Carlin as reflected in the declaration are not credible and trustworthy evidence that the money he received, deposited and transferred in 2014 was the proceeds of drug trafficking by a Mexican cartel.

[56] Mr. Osornio Carlin testified regarding the details of his arrival in Canada on December 6, 2016 and the interviews and events that followed. He testified that he recalled arriving in Vancouver between 11:00 pm and midnight. He got off the plane last, as he was travelling with his spouse and infant child and they had a lot of gear. As they were coming off the plane, three officers stopped them right at the gate and asked for their passports. He provided their documents and the officers said to go ahead. They were interviewed at the primary inspection line, picked up their luggage and as they were walking out from the luggage area, were sent for secondary inspection. He testified that he was asked some questions while the officer inspected his luggage and was asked if he had any problems in any other country in the past, at which point he volunteered the information regarding being denied boarding and that he believed it was due to the money seizure that occurred in Chicago.

[57] Mr. Osornio Carlin testified that he was moved to another room and was interviewed by one of the officers whom he recognized as being present when he came off the plane. He stated that the officer's name was "Ridgley". He described the interview as very aggressive and that when the officer asked questions, if the officer did not hear something that he was expecting, he would interrupt and make statements to the effect of "No, no no no no stop there. You need to think this through and remember, I have your wife and kid in the next room and I can do with them whatever I please. I can send them back to Mexico right now."<sup>13</sup> Mr. Osornio Carlin testified that he cannot say how many times that was said, but it was several times. Specifically regarding whether he had answered the questions regarding the source of the money being cartel or drug money as detailed in Officer Ridgley's declaration, Mr. Osornio Carlin testified: "There is absolutely no way I responded to that."<sup>14</sup>

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<sup>13</sup> Transcript of proceedings, May 1, 2019, p. 77, line 8-14

<sup>14</sup> Ibid., p. 81, line 36-37

[58] Mr. Osornio Carlin goes on state that he first reviewed the declaration of Officer Ridgley two days after his interviews at the airport and that he told his legal counsel at that time he did not agree with the statement. He testified that he expressed this as well in his detention review hearing. He says that in his subsequent interviews with the CBSA he also mentioned that he did not agree that the answers stated in the declaration were his answers. Mr. Osornio Carlin testified that, in respect of the questions asking if he knew that the money was drug money, that there was nothing that he had seen during that time that gave him that impression at all.

[59] Officer Ridgley provided testimony at the admissibility hearing on May 2, 2019 regarding his declaration and his interviews with Mr. Osornio Carlin. Officer Ridgley had brought his officer's notebook and a copy of the declaration to the hearing. Counsel for Mr. Osornio Carlin noted that Officer Ridgley had brought his officer's notebook but that a copy of it had not been previously provided to Mr. Osornio Carlin or the Division and had not been entered as evidence. Officer Ridgley testified that he had provided a copy of his notebook to the Minister's Representative and that he did not know why it was not disclosure as part of the Minister's disclosure. As it was not in evidence, Officer Ridgley's testimony was based on his own recollection of events and reference to the declaration, but not his notebook. After his testimony concluded, counsel for Mr. Osornio Carlin requested a copy of the relevant pages from Officer Ridgley's notebook, which was then provided by the Minister's representative and entered in to the record as Exhibit C-5.

[60] Officer Ridgley testified that he does not exhibit pressure when he interviews. He testifies that he investigatively interviews. He testified that he does not threaten people or coerce them and that he never threatened Mr. Osornio Carlin that his wife and children could be removed if he does not cooperate. He testified that he lays out options and interviews people and explains to people their options.

[61] Officer Ridgley was asked by counsel for Mr. Osornio Carlin if his declaration captures every word that was said during your interview. His response was:



A: Most – I would say – I would say yes. I'd – and my training is to capture every – every word, yes.<sup>15</sup>

[62] When asked if he used the exact words Mr. Osornio Carlin used in his report, he said:

A: That's –I don't make stuff up. If he said it, it's there.<sup>16</sup>

[63] Officer Ridgley testified that he would have included all of the questions he asked and answers given in the way in which they were given. He testified that if he asked any clarifying questions between sentences, he would have included them in his declaration. He testified that questions from his handwritten notes were copied into his declaration. To the question “you've copied every single word in your notes into your report?” he answered, “yes”.<sup>17</sup>

[64] However, in further questions it became evident that there was information from Officer Ridgley's notebook and more generally his dealings with Mr. Osornio Carlin that were not documented in his declaration. These include:

- The start time of the interview is not notated in the declaration. In the copy of his notebook entered as Exhibit C-5, it indicates “2240” next to the first entry pertaining to Mr. Osornio Carlin on December 6, 2016. Officer Ridgley acknowledged in testimony that it was an oversight in his declaration to not include the start time of the interview.
- The first page of notes in the officer's notebook include a number of entries relating to Mr. Osornio Carlin including his name, date of birth, passport number, current employment details, address, information regarding past travel to Canada, previous travel back to Mexico, his salary, and his rent, all of which are not documented in the declaration.
- Pages 1 and 2 of the notebook also indicates the following question and answer that were not documented in the declaration: “Q: What is this guys name A: Jonathan Espinosa.” This is particularly relevant as this is the person to whom Mr. Osornio Carlin was transferring the funds.
- In the notebook it states “He told me to open two accounts in my name and make two separate transfers to one account” [my emphasis]. The declaration states “He told me to open two accounts in my name and make separate transfers to one account,” without reference to the number of separate transfers.

<sup>15</sup> Transcript of proceedings, May 2, 2019, p. 48, lines 18-22

<sup>16</sup> Transcript of proceedings, May 2, 2019, p. 48, lines 32

<sup>17</sup> Ibid., p. 52

- The end time of the interview on December 7 is not documented in the declaration. The officer's notebook does not indicate an exact time that the interview ended but does include entries of events occurring between 12:30 and 14:00 (when the officer's shift ended), which suggest that the interview conclude at or shortly after 12:30.
- Officer Ridgley testified that in the course of his examination of Mr. Osornio Carlin, he asked Mr. Osornio Carlin about whether or not he needed an interpreter and also testified that he explained to Mr. Osornio Carlin what the examination was about and his options or the possible outcomes of the examination. This content is not documented in the declaration.
- Officer Ridgley also testified that he first became aware of Mr. Osornio Carlin when he received information from US authorities prior to Mr. Osornio Carlin's arrival in Canada. He testified that he was aware Mr. Osornio Carlin was going to be arriving on a flight from Mexico and that he was waiting at the plane when it arrived so that he could identify Mr. Osornio Carlin. He testified that it was his intention to interview Mr. Osornio Carlin. The declaration does not include this information about how Mr. Osornio Carlin came to be interviewed by Officer Ridgley. It gives the impression that the first interaction was during the "secondary examination" and commenced with the question regarding any previous problems with Immigration.
- Despite the lack of a start time for the first interview and lack of end time for the second interview in the declaration and despite a lack of estimate of any sort during testimony from Officer Ridgley regarding how long the examinations went, following multiple attempts from Counsel to elicit an estimate from him, it appears from Officer Ridgley's notebook that his examination of Mr. Osornio Carlin commenced at 22:40 hours on December 6 and ended at 01:30 hours on December 7<sup>th</sup>. It then reconvened at 10:40 with provision of rights and at 11:19 with questions on December 7 and ended at approximately 12:30. In total, it appears that Mr. Osornio Carlin was under examination by Officer Ridgley for approximately 3 hours on December 6 and approximately one hour on December 7. Yet the declaration regarding the questions asked and answers provided only encompasses about 9 pages. This is compared to the 58 pages it took to transcribe the 2 hour audio-recorded interview conducted by Officer Hindson in January 2017.

[65] In consideration of this observation as well as the discrepancies between the officer's notebook and the solemn declaration, and considering the testimony of Mr. Osornio Carlin and Officer Ridgley, the end result is an impression that there were additional questions and answers that are not reflected in the declaration of Officer Ridgley. I find that little weight can be placed on the statements purported in the declaration to have been made by Mr. Osornio Carlin regarding the source of the money that he received and transferred while in the United States without the declaration reflecting the full context or content of the interview. I find that the

statements purportedly answering in the affirmative that the money was drug money or that it was cartel money do not constitute credible and trustworthy evidence.

[66] In the context of the other evidence before me including the internally consistent and detailed testimony given by Mr. Osornio Carlin during the admissibility hearing and the information he provided in the audio-recorded interview with Officer Hindson in January 2017, I find, at most, that during his interview with Officer Ridgley in December 2016, Mr. Osornio Carlin speculated two years after the fact that the money he dealt with in 2014 was drug money and/or cartel money. It does not appear that there was an objective factual basis for such statements. The declaration by Officer Ridgley does not provide the fulsome context of Mr. Osornio Carlin's circumstances that did emerge in the interview with Officer Hindson and in the testimony provided in the admissibility hearing. The evidence in the declaration of Officer Ridgley does not withstand scrutiny when tested through the testimony of Officer Ridgley and weighed against the credible testimony of Mr. Osornio Carlin.

#### **The Interview with an Intelligence Officer**

[67] I find that the declaration of Officer Sarv Kang regarding the interview he held with Mr. Osornio Carlin on December 14, 2016 is not credible and trustworthy evidence that the money that Mr. Osornio Carlin deposited was the proceeds of drug trafficking or involved a Mexican cartel. Firstly, the declaration does not suggest that Mr. Osornio Carlin made any sort of positive statements or admissions that the money was from drug trafficking or a cartel. It does state that Mr. Osornio Carlin was not aware of any ties between the cartels and Jonathan and that he did not find it unusual when he was asked to transfer large sums of money because Jonathan's family "indulged" in large sums of funds on a regular basis due to their wealth and successful business. This is consistent with statements Mr. Osornio Carlin made during his interview with Inland Enforcement and in his testimony at the admissibility hearing.

[68] The declaration states that Mr. Osornio Carlin conceded that he may have unknowingly assisted in the laundering of money but he was not aware of where or how the money was gathered. I do not find this statement to be evidence that the money was from drug trafficking or a Mexican cartel. Furthermore, the trustworthiness of the content of the declaration is questionable. Officer Kang testified that he interviewed Mr. Osornio Carlin in his capacity as an

intelligence officer at the time. He testified that the purpose of the interview was to determine if there was any Canadian connection to Mr. Osornio Carlin in respect of money laundering activities and that the purpose was not for the assessment of Mr. Osornio Carlin's admissibility to Canada. He testified that no Canadian connection to money laundering was found. He testified that a colleague later suggested that it might be a good idea to prepare a declaration regarding the interview and so about 20 days after the interview he prepared the declaration.

[69] Officer Kang testified that he prepared the declaration from his written notes and that he recorded key notes or key words but did not write down the exact statements made by Mr. Osornio Carlin. He confirmed that the declaration was written in the third person. When specifically asked if the statement that Mr. Osornio Carlin had conceded that he may have unknowingly assisted in the laundering of money was a paraphrase, he confirmed that he could not say the exact words that Mr. Osornio Carlin used.

[70] Officer Kang also could not recall from memory if the interview was audio recorded and could not recall having listened to the audio recording before making his declaration. He testified that if it was recorded that he would have listened to it. Officer Kang also testified that he deleted a number of audio files at some point and if the interview with Mr. Osornio Carlin was recorded that it had been accidentally deleted. Officer Kang testified that he did not provide a copy of his handwritten notes to the Minister's Representative. Officer Kang also admitted to some discrepancies or omissions in his declaration including not documenting the time that the interview commenced, an incorrect date regarding Mr. Osornio Carlin's interactions with Jonathan Espinosa, and a reference to 1200 USD/CND without being able to clarify which of the two currencies was being discussed.

[71] Overall, I find that the declaration of Officer Kang does not support the Minister's assertion that the money dealt with by Mr. Osornio Carlin was derived from drug trafficking or was related to a Mexican cartel.

### **Reports from US authorities**

[72] The Minister's investigation into Mr. Osornio Carlin commenced as a result of information obtained from US authorities. At some point, the CBSA obtained from the US

Department of Homeland Security – Homeland Security Investigations (HSI) and the Cook County Sheriff’s Department some documents regarding their investigation into and interaction with Mr. Osornio Carlin.

[73] The first HSI report<sup>18</sup> states that HSI believed Mr. Osornio Carlin and associates to be significant members of a money laundering organization operating in the Chicago metro area and smuggling narcotics proceeds out of the US to Mexico. The report states that the purpose of investigation was to identify members of the organization, smuggling methods utilized, and to prevent and intercept shipments of narcotics and the proceeds associated with the organization.

[74] The report states that Mr. Osornio Carlin told officers that he and his associate would receive “contracts” from an individual in Mexico to launder the money from the United States to Mexico utilizing multiple banks. The reports states that Mr. Osornio Carlin said he would be paid a percentage based on the amount of money he laundered out of the United States to Mexico. The report contains statements that Mr. Osornio Carlin allegedly made to officers regarding how he received the money to deposit and the dates and amounts of wire transfers. The report states that Mr. Osornio Carlin was reluctant to provide any additional information regarding individual(s) in Mexico.

[75] Another interview conducted by HSI of Mr. Osornio Carlin’s father<sup>19</sup> contains slightly different information regarding the deposits and did identify Mr. Osornio Carlin’s partner as Jonathan Espinosa. Both reports stated that the HSI O’Hare investigation continues.

[76] The Cook County report<sup>20</sup> says a joint investigation was conducted by the North Area Gang Crimes/Narcotics Team and HSI based on information that HSI received from US Customs and Border Protection. The specific information received from US Customs and Border Protection has been redacted from the report in evidence.

[77] The report states that investigators set up surveillance, conducted a “knock and talk”, and that Mr. Osornio Carlin invited investigators in and gave verbal consent to search the room. The report states that Mr. Osornio Carlin also gave investigators the combination to the room safe

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<sup>18</sup> Exhibit C-1, Tab 4, pages 6-8

<sup>19</sup> Exhibit C-1, Tab 4, pages 9-11

<sup>20</sup> Exhibit C-1, Tab 5

where approximately \$65,000 was located. It is stated that the investigators found numerous bank statements for deposits and large wire transfers from multiple banks in Chicago and California. The report states that the \$65,000 was believed to be proceeds from narcotics sales and was being administratively seized by the Department of Homeland Security and would be subject to bank verification. The report ends with the notation: "This case is cleared and closed by US currency seizure".

[78] It is noted that there is no other documentation filed by the Minister relating to the events in California or Chicago. No documentation has been provided regarding the deposits and wire transfers made by Mr. Osornio Carlin, despite the Cook County report referencing such documentation. There is no video evidence regarding the presence of HSI or Cook County Sheriff's Department's presence at the Hard Rock Hotel in Chicago. There is no evidence regarding any follow up bank verification or further investigation by HSI, despite the statements in the HSI reports that the investigation continues. As noted at the outset of these reasons, the Minister indicated that he attempted to secure a witness from the US law enforcement agencies involved in the investigation but was unsuccessful in doing so.

[79] In testimony at the admissibility hearing, Mr. Osornio Carlin challenged the contents of the HSI and Cook County reports. He provided detailed, plausible explanations regarding the circumstances of his interactions with the law enforcement officials and his activities before and after the encounter. He testified that when the investigators attended his hotel room, they did not initially identify themselves as law enforcement and presented to be hotel security investigating a noise complaint. It was under these pretences that he allowed them into his hotel room. He testified in detail that he had paperwork establishing the nature and number of financial transactions he performed. The US reports similarly state that documentation regarding bank transactions was observed in the hotel room. However there is no mention in the reports as to the specific information contained in that documentation.

[80] The reports are sparse on details in terms of how the entry to the hotel room was gained and the basis for the belief that Mr. Osornio Carlin was involved in a money laundering operation. The report does not indicate the source of the writer's belief that Mr. Osornio Carlin was involved in a money laundering operation. While there is reference to information received

from US Customs and Border Protection, the specifics have been redacted. The reports are in summary form. The authors of the reports have not been produced for cross-examination. It is not known in what fashion, if any, the officers recorded Mr. Osornio Carlin's statements at the time when they spoke to him. The interviews do not appear to have been audio or video recorded. Mr. Osornio Carlin testified that the officers initially presented themselves as hotel security and not as HSI or Cook County Sheriff's Department.

[81] The reports indicate that the investigation continues. There is no indication of whether additional steps in the investigation were taken and, if so, what those steps were. Although the Cook County report states that the seized money would be subject to bank verification, there is no evidence as to the outcome of that verification or if it took place.

[82] In submissions, the Minister alluded to evidence existing as to the number and nature of the financial transactions performed but stated that he was unable to produce it for disclosure in this proceeding. The Minister has not provided evidence to substantiate the HSI officers' belief that the money transacted was proceeds of crime.

[83] Mr. Osornio Carlin testified that after the seizure in Chicago, he approached a lawyer for advice on the legality of the search and seizure and regarding steps to challenge the seizure. Mr. Osornio Carlin has provided a written letter from this lawyer corroborating this.<sup>21</sup> The letter states that in her opinion and experience, the seizure was unlawful as the seizing authority did not have a warrant of any kind or probable cause. The letter stated that to her knowledge, Mr. Osornio Carlin was not ticketed, arrested or even indicted as a result of possessing the \$65,000 that was seized. The lawyer stated that based on her education, training and experience (which is detailed in the letter), the fact that Mr. Osornio Carlin has not been arrested is an indication that he was not involved in any criminal activity. The Minister did not challenge the contents of this letter.

[84] Overall, I give little weight to the HSI and Cook County reports as credible or trustworthy evidence that the money that Mr. Osornio Carlin dealt with in the United States was drug money or associated to a Mexican cartel.

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<sup>21</sup> Exhibit P-2, pages 1-2

**Evidence regarding Mexican cartels**

[85] To support his position that the money dealt with by Mr. Osornio Carlin is the proceeds from drug trafficking, the Minister provided open source documents regarding Mexican drug trafficking organizations, or cartels, and their money laundering practices. The Minister submits that the method by which Mr. Osornio Carlin received the US cash and the way in which he transferred the funds to Mexico is consistent with the methods used by Mexican drug organizations to launder money.

[86] The Minister noted that Mr. Osornio Carlin received large amounts of cash from unknown individuals at various locations in the United States such as parking lots, businesses, a diner, or the side of a highway. The Minister submits that this is not a normal business practice. The Minister also submits that the fact that Mr. Osornio Carlin felt uncomfortable and later angry about dealing with the money suggests that Mr. Osornio was aware that what he was being asked to engage in was not legitimate. The Minister submits that the depositing of funds into a bank account, albeit one in his own name, was an attempt to conceal the true source of the funds given that the money did not belong to him.

[87] Mr. Osornio Carlin explained in his interview with CBSA in January 2017 and in his testimony at the admissibility hearing that initially he felt inconvenienced by the request to deposit the cash but that it did not raise a lot of concern given the lifestyle, wealth and established business presence that he observed in respect of the Espinosa family. It was only upon the repeated requests, increased amounts of the funds, and being misled regarding the amounts, that his feelings escalated and he told Jonathan that he no longer wanted to participate. Mr. Osornio Carlin submits that his actions may have been irresponsible or even reckless but they are not consistent with the notion of wilful blindness and are not consistent with having knowledge of any underlying circumstances of the offence of drug trafficking.

[88] The method by which Mr. Osornio Carlin received, deposited and transferred the funds may raise suspicion regarding the source of the funds. It is possible, though not established in the evidence before me, that the Espinosas engaged in unorthodox money transfers that are not standard business practice in Canada or the United States. However, even if true, it does not establish a factual basis to conclude that the money was derived from the sale of drugs and does



not establish a factual basis to believe that Jonathan Espinosa, Miguel Espinosa, or Mr. Osornio Carlin had some link to a Mexican criminal organization involved in the trafficking of drugs.

[89] The Minister's evidence does not establish that only Mexican drug cartels transact in cash and wire transfers. In speaking about his family's own business experience, Mr. Osornio Carlin provided a lengthy explanation in his testimony about the changes that have occurred socially and economically in Mexico over the years with respect reliance on cash amongst the majority of the Mexican population, the mistrust regarding formal banking institutions, and the gradual shift towards electronic banking and credit practices.<sup>22</sup> In this context, it is plausible that there is another explanation for the source of the funds Mr. Osornio Carlin was asked to deposit, other than to find that it was the proceeds of drug trafficking.

## CONCLUSION

[90] I find that the Minister has not provided compelling and credible evidence to establish an objective basis to believe that the money dealt with by Mr. Osornio Carlin in September and October 2014 in the United States was the proceeds of drug trafficking. I find that the Minister has not therefore established that Mr. Osornio Carlin engaged in an act that would constitute money laundering as defined in the *Criminal Code of Canada* and applied in the context of paragraph 37(1)(b) of the IRPA.

[91] The parties have made extensive submissions regarding other aspects of the allegation of inadmissibility including the knowledge or belief element of money laundering, elements regarding criminal organizations, and whether there needs to be an exercise in equivalency of criminal offences in establishing transnational organized criminality. Given that my findings that the Minister has not established an essential element of the act of money laundering, I do not find it necessary to address these other submissions of the parties.

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<sup>22</sup> Transcript of proceedings, May 1, 2019, p. 14-16

## NOTICE OF DECISION

[92] I find that Mr. Osornio Carlin is not inadmissible under paragraph 37(1)(b) of the IRPA. A favourable decision form is attached.

**“L. Ko”**

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**L. Ko**

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**June 7, 2019**

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Appeal Rights – Under section 63(5) of the *Immigration and Refugee Protection Act*, the Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing.