

Immigration and
Refugee Board of Canada
Immigration Division



Commission de l'immigration
et du statut de réfugié du Canada
Section de l'immigration

Reasons and Decision – Motifs et décision

Between	The Minister of Public Safety Le ministre de la Sécurité publique	Entre
And		et
Person(s) Concerned	Perry OMORUYI	Intéressé(e)(s)
Date(s) of Hearing	September 25, 2018	Date(s) de l'audience
Place of Hearing	Vancouver, B.C.	Lieu de l'audience
Date of Decision	June 27, 2019	Date de la décision
Panel	M. McPhalen	Tribunal
Counsel for the Minister	J. Wicharuk	Conseil du ministre
Counsel for the Person(s) Concerned	R. Gill Barrister and Solicitor J. McInnis Articling Student	Conseil(s) pour l'intéressé(e) / les intéressé(e)(s)

REASONS FOR DECISION

INTRODUCTION

[1] Immigration officials (the Minister) have alleged that Mr. Omoruyi is a permanent resident who is inadmissible to Canada for organized criminality under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act* (IRPA). That paragraph reads as follows:

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

BACKGROUND

[2] Mr. Omoruyi is a citizen of Nigeria and a permanent resident of Canada. He has never become a Canadian citizen.

[3] The Minister submits that Mr. Omoruyi, Mr. Ahmadi, Mr. Obiseki and a person known as Ese¹ were involved in a fraudulent Publisher's Clearing House Lottery scheme to work in concert to defraud people.

[4] The Minister submits that these people were creating fake Publisher's Clearing House ("PCH") letters and mailing the letters to people telling them that they had won a lottery. There was a contact phone number on the letter. When people contacted that number they would be told that they needed to send money to cover taxes on the lottery winnings before the money would be sent to them. The people sending the letters were not associated with Publisher's Clearing House, the people receiving the letters had not won a lottery and it was simply a scheme to defraud them.

¹ I do not believe that Mr. Omoruyi ever provided Ese's last name, but police documents refer to him as Ese Ewhubare.

The Minister submits that the letters were being created at an address on McGillivray Place in New Westminster (the “Residence”).

Standard of Proof

[5] According to section 33 of the IRPA the standard of proof with respect to this allegation is “reasonable grounds to believe”. This is a significantly lower standard than the criminal standard of “beyond a reasonable doubt” and even a lower standard than that in civil matters, the “balance of probabilities”.

[6] The “reasonable grounds to believe” standard has been confirmed by the Supreme Court of Canada² 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 where there is an objective basis for the belief which is based on compelling and credible information. This standard applies to questions of fact.

Mr. Omoruyi’s Evidence

[7] The Minister entered his case through documentary evidence and then Mr. Omoruyi testified at the admissibility hearing before the Minister made submissions.

[8] Mr. Omoruyi testified that when he first came to Canada from Africa he lived with his parents, but in 2005 he moved out. After that he supported himself by working for restaurants and in construction.

[9] In 2008 he went back to Nigeria for his grandfather’s funeral. While there some people suggested to him that he might be able to make money by selling cars. The way his business worked was that a person would tell him what kind of car they wanted, he would find that type of car, they would send him the money for the car, he would buy the car and ship it to the purchaser in Nigeria.

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

[10] His evidence was that he invested the money from car sales into another business that he started called Pepe Records. He said that after a time the car business was not doing so well and Pepe Records as his second business was taking up more of his time.

[11] In the fall of 2011 a person that he knew as the General, offered him money if he would pick up a parcel for him. The General said that the parcel was shipped to a person with a different name and gave him a passport in that name so that Mr. Omoruyi would be able to pick up the parcel. The General drove Mr. Omoruyi to a FedEx office and waited for him in the car while he picked up the parcel. After Mr. Omoruyi picked up the parcel the General asked him to drive the car. While driving away from the office Mr. Omoruyi was stopped by police. He says that he was never told what was in the parcel. As a result of this incident Mr. Omoruyi received a conditional discharge.

[12] Mr. Omoruyi testified that when he went to Nigeria in 2015, he gave up his residential lease because he did not want to pay rent when he was not there. When he returned to Canada in February of 2016 he arranged to stay with a friend whom he had met through the Nigerian soccer community called Ese. Ese told Mr. Omoruyi that he lived at the Residence. Only two people were living there before Mr. Omoruyi moved in: Ese and the owner of the house, Mr. Amadi.³

[13] Counsel asked Mr. Omoruyi if when he was staying at the Residence he recalled someone called Edison. He said he was never told that Edison was there and that he and Edison hated each other because of a previous dealing in which Edison cheated him.

[14] Counsel asked Mr. Omoruyi if he had ever owned or registered a Magic Jack device. He said he had never used a Magic Jack device and that he only knew of such devices from seeing internet promotions. He said that when police came to the Residence in June of 2016 he found out from the search warrant that the name Perry was given as the registration name on the Magic Jack. He said that Ese told him that Edison owned the Magic Jack, but that he had registered the Magic Jack in Mr. Omoruyi's name. Mr. Omoruyi said that Edison would have known his personal information because of their business dealings together.

³ Transcript p. 16, l. 31

[15] Mr. Omoruyi was asked by Counsel if he attended at a Money Mart in March of 2016. Mr. Omoruyi said that a friend of his from Germany sent him money by Western Union but Western Union would not let him have the money saying that his name was blocked. Mr. Omoruyi testified that he went to Money Mart and was told that he needed to call Western Union to sort out the problem and he was given a Western Union number to call. He called that number and was told that someone must have sent money to him in his name regularly and that if he called their security department he could find out more about it. He said that he did not follow up with that because he was not interested in using Western Union because he barely ever went there. He generally used Money Mart when he wished to cash cheques. I do not find it believable that a friend would send Mr. Omoruyi money and that he would not try harder to recover that money because he was not interested in using Western Union. I find that this answer detracts from Mr. Omoruyi's general credibility.

[16] In response to a question from Counsel about whether he recalled someone living at the residence with the last name Amadi, he said that Michael Amadi, whom he knew as Mike, lived at the Residence. He said that Mike had a dispensary where he sold marihuana and that he would go regularly to Mike's dispensary to buy marihuana.

[17] Mr. Omoruyi recalled going to a Staples store around March of 2016 to buy supplies. He explained that he was living rent free at the Residence. According to Mr. Omoruyi the Residence was owned by Ese, (although previously he had said Mike was the owner).⁴ Since he was getting to live rent free, Mike wanted Mr. Omoruyi to do something to help with the dispensary and Mike told Ese that if Mr. Omoruyi would not help out he should leave the house. Mr. Omoruyi said that he did not drive a car so they drove him to Staples, he went in and bought paper and envelopes and brought the supplies and gave the supplies to them in the car. Mr. Omoruyi testified that he thought that the paper and envelopes were to be used to send letters to people to advise that the dispensary was relocating.

[18] Mr. Omoruyi was asked if he ever went anywhere with a person called Edison Obaseki while he was living at the Residence. He said that when he went out he would go with Ese, but

⁴ Transcript p. 22, l. 9.

Mr. Obaseki would come along. Usually Ese would drive, but the car he was driving belonged to Mr. Obaseki.⁵

[19] Mr. Omoruyi was asked if he recalled mailing some envelopes after having gone to the Staples store. He said that he remembered Ese taking him to a couple of different places in one day and being directed to mail envelopes.⁶ Mr. Amadi had told Ese to drive Mr. Omoruyi to do his dispensary stuff for him and to tell Mr. Omoruyi what to do. He said he did not ask what was in the envelopes because he knew it was for the dispensary. They had put the envelopes in a bag and after he did the mailings, he gave them the bag back and they were satisfied.

[20] He said that he did this for them once or twice and then thought it seemed fishy and he said he was not going to do that anymore. He said that he told them if they wanted to kick him out of the house, do that and he started looking for his own place. He was not able to find a place easily and they saw that he was angry about it, so they said that he could stay at the Residence without doing anything with them. He testified that after that sometimes they would ask him to leave the house and come back later in the day and so he would go to a casino to gamble. He reiterated that he thought this all had to do with letting the customers of the dispensary know that they were relocating.

[21] Asked by Counsel if in May or June of 2016 he ever used the name Jackson Edwards, he said that he had not. He said that ever since he got in trouble for using someone else's passport when picking up a package in 2011 he was careful about using other identities.

[22] Counsel showed Mr. Omoruyi Exhibit C-5. A social insurance card and a Quebec driver's licence, both in the name Tyson Starr, appear at the bottom of the page. Mr. Omoruyi denied having applied for that social insurance card, he said that he had his own social insurance card and he provided the number. Regarding the driver's licence he said "I have never lived in Quebec, how am I going to have a Quebec ID? So that is not me and that picture is not even me." He said that he had not used fake ID since 2011 and that he did not use fake ID anymore.

⁵ Transcript p. 29, l.15

⁶ Transcript p. 33, l. 11

[23] His evidence was that he used his own name when receiving or wiring money because Western Union or Moneygram would require identification. Further to his knowledge he had never been involved in a lottery scam.

Cross-examination

[24] Minister's counsel asked Mr. Omoruyi if Edison Obaseki lived at the Residence. He said that Mr. Obaseki did not live there but after Mr. Omoruyi started living at the Residence he noticed that Mr. Obaseki came by the Residence regularly. Mr. Omoruyi thought that Mr. Obaseki was coming by to purchase marihuana from Mr. Amadi. He said that he would leave the house when Mr. Obaseki came by because he could not stand Mr. Obaseki. The Minister asked Mr. Omoruyi why he did not just move out of the Residence. He replied that when he first came back from Nigeria he was short of money so he stayed at the Residence for four months. He said that when he was living at the Residence when he went out with Ese, Mr. Obaseki would come along, Ese would do most of the driving, although the car appeared to belong to Mr. Obaseki. He said that the only times he would go out in a car with Mr. Obaseki were when he, Ese and Mr. Obaseki went to buy marihuana from a seller at Kingsway and Gilley and when Mr. Amadi, the owner of the Residence, wanted Mr. Omoruyi to help them to buy something at Staples.

[25] In response to one of my questions, Mr. Omoruyi said that when he went to purchase supplies at Staples, Ese drove and Mr. Obaseki went along as well. He said that apparently Mr. Obaseki was buying some items at Staples as well.

[26] Mr. Omoruyi testified that when he did the mail-drops of large numbers of letters that Ese was driving him. He said that Mr. Amadi told Ese to drive Mr. Omoruyi and go do Mr. Amadi's dispensary stuff for him.⁷

[27] The RCMP had the Residence under surveillance while Mr. Omoruyi was living there. Minister's counsel referred Mr. Omoruyi to some RCMP surveillance notes (Exhibit C-1, p. 234) which mention that on March 15, 2016, Mr. Omoruyi and Mr. Obaseki left the Residence in a grey Camry, but make no mention of observing Ese. Mr. Omoruyi said that the grey Camry was Mr. Amadi's car, that Mr. Amadi would not let Mr. Obaseki drive his car and that Ese would have been

⁷ Transcript p. 33, l. 3

driving. He said that Ese usually went to the car first and that the police may not have seen Ese when he went to the car.

[28] Minister's counsel pointed Mr. Omoruyi to another surveillance note from March 17, 2016 (Ex. C-1, p. 235) which again mentions Mr. Omoruyi and Mr. Obaseki leaving the Residence in a grey Camry and makes no mention of Ese. Mr. Omoruyi gave the same explanation as before that Ese would go to the car first and that he would come to the car later.

[29] Minister's counsel showed Mr. Omoruyi the picture found at page 171 of Exhibit C-1. Mr. Omoruyi said that this was his photograph taken by a Delta police officer in 2015. In the photograph he is wearing a tee shirt with the word "Vansterdam" written on the front. Then Minister's counsel showed Mr. Omoruyi the picture found at page 170 of Exhibit C-1 and put it to him that this was a picture of Mr. Omoruyi wearing a similar shirt. Mr. Omoruyi replied that the shirts might be similar, but that he was not the person in the photograph.

[30] Asked by Minister's counsel if he used an HP laptop at any time while living at the Residence, Mr. Omoruyi said that he did not. He also said that he did not Skype while he was there and that he did not have a Skype account. Minister's counsel put it to Mr. Omoruyi that when police executed a search warrant at the Residence they examined an HP laptop. They found a Skype profile that was associated with two e-mails addresses, one of which was perryj49@gmail.com, an e-mail address that Mr. Omoruyi admits is his.

[31] Asked why his e-mail address would be in that Skype account, Mr. Omoruyi replied:

I want to know why because my e-mail is what they all know. So somebody could have put my e-mail on Skype. But I have never gotten an e-mail -- the reason -- when my lawyer told me about that Skype account, the reason it was so shocking to me, I never get e-mail from Skype that I have Skype. I don't get e-mail from them. If I had Skype, they would send me e-mail.

[32] With respect to this particular computer the RCMP concluded among other things "the ITCU examiner reported the computer was used by more than one individual, contained 8 separate

Skype user profiles and used MagicJack devices with a match to exhibit item 28(1). A review of the supporting data confirmed this computer was used in mass marketing fraud.”⁸

[33] Minister’s counsel showed Mr. Omoruyi two photographs found at page 9 of Exhibit C-3. Mr. Omoruyi admitted that those were two of four passport photographs that he had taken for a citizenship application. He had those two photographs in his effects when he was arrested at the Residence. He said he did not know what had happened to the other two photographs. Minister’s counsel put it to him that the photos looked like the picture on the Edward Jackson identification found at page 20 of Exhibit C-3. He replied “yes, that picture looks like the picture on my passport. So, I am assuming someone who took my passport may have used it to make an identification. When my two passport was missing, because I took four from London Drugs”. When Mr. Omoruyi says “my two passport was missing”, I am satisfied that he means “two passport photos”; originally he had four passport photos, two were missing.

The Minister’s Documentary Evidence

[34] As explained before, the Minister submits that Mr. Omoruyi, Mr. Ahmadi, Mr. Obaseki and a person known as Ese were involved in a fraudulent Publisher’s Clearing House Lottery scam to work in concert to defraud people.

[35] The Minister provided An Application for an Information to Obtain Search Warrant written by RCMP Officer James Laton. Since November 2013 Officer Laton’s duties have involved investigating advanced financial crimes. He writes regarding the application and Publisher’s Clearing House frauds:

This application relates to an investigation into the mailing of Publisher’s Clearing House letters to deprive victims of money through deception. The letters inform the recipient that they have won a lottery, and when people contact the number on the letter they are asked to send money to cover taxes before receiving their lottery winnings. There is no lottery, there are no winnings and the people sending these letters are not affiliated with Publisher’s Clearing House.⁹

[36] In September of 2015 RCMP began investigating an alleged PHC scam. The RCMP believed that people were running a PHC scam out of the Residence. They obtained a search

⁸ Ex. C-3, p. 35

⁹ Ex. C-1, p. 10

warrant and raided the Residence on June 29, 2016. They seized numerous cell phones, computers and devices. They arrested Edison Obaseki, Michael Amadi, Perry Omoruyi and Ese Ewhubare.¹⁰

[37] While the RCMP had Mr. Obaseki under surveillance, he was seen with another male making a purchase on March 10, 2016 at the Staples store at 5821 Marine Way, Burnaby.¹¹ The two men purchased two packages of grey professional paper and two boxes of #10 envelopes. The RCMP went to Staples and obtained a sample of the grey professional paper and #10 envelopes. They compared the envelope and paper with a fraudulent PCH letter which was seized from the mail for being related to mail fraud. The RCMP believed that the paper and envelope were a match for a PCH letter addressed to a potential victim from Mesa, Arizona.

[38] On March 20, 2016 the manager of the Staples store called RCMP to say that the two men had returned to the store on March 18, 2016.¹² The RCMP obtained details of the purchase and video surveillance of the two males. They had purchased canary professional paper, salmon professional paper, blue professional paper and three packages of #10 envelopes. On May 11, 2016, Cst Lee received samples of the professional paper and #10 envelopes purchased on March 18, 2016. Those samples were compared with a fraudulent PCH letter seized by Canada Post on April 21, 2016 for being related to mail fraud. Cst Lee believe that the paper and envelopes were a match for three PCH letters mailed to potential victims.

[39] RCMP Cst Lee viewed the surveillance footage from March 18 and identified one of the males as Mr. Omoruyi.

[40] The RCMP conducted surveillance on Mr. Omoruyi on April 13, 2016. The documents do not make this as clear as they could, but RCMP must have observed Mr. Omoruyi making a purchase at Staples because they obtained video footage and a purchase receipt from the manager of the Staples store.¹³ The video shows Mr. Omoruyi making a purchase at Staples on April 13, 2016. The purchase receipt shows that he bought two packages of grey professional paper and two

¹⁰ Ex. C-3, p. 3

¹¹ Ex. C-1, p. 38

¹² Ex. C-1, p.39

¹³ Ex. C-1, p. 40

boxes of #10 envelopes. Comparison of the envelopes and paper show that it is similar to the paper and envelopes seized by Canada Post on April 21, 2016 as being related to mail fraud.

[41] In testimony Mr. Omoruyi admitted to being driven to Staples by other people from the Residence and buying envelopes and paper while they waited for him in the car. He said the supplies were to do with the marihuana dispensary store.

[42] On April 6, 2016 police had Mr. Omoruyi under surveillance, they saw him departing the Residence.¹⁴ He was seen being driven to various mailboxes throughout Burnaby and putting large amounts of envelopes into the mailboxes. In direct examination Mr. Omoruyi admitted that he mailed the envelopes. He said that the envelopes were to do with Mr. Amadi's dispensary and that Ese drove him to the various mailboxes at Mr. Amadi's direction.

[43] On the following day Canada Post seized the envelopes believed to have been put in the mailboxes by Mr. Omoruyi. The 477 envelopes were seized because they displayed false postage. The envelopes were turned over to the police who found that the envelopes contained fraudulent PCH letters addressed to potential victims. Police opened more than 300 of the letters. The letters were all similar in that they told the potential victims that they had won \$1.15 million and instructed them to contact Rev. Joe Church at 347-606-4509 and 1-718-701-9389¹⁵ to claim their prize. The letters were printed on professional coloured paper.¹⁶ A police officer conducted an open source check on the phone number 1-718-701-9389 and learned that the phone number is registered to MagicJack.

[44] Between February 9, 2016 and May 30, 2016, on ten different occasions police seized garbage that had been picked up curbside at the Residence. Among the things found in the garbage was Shaw Communications letterhead with numerous handwritten notes. One of the notes was "Church 347-606-4509"¹⁷. That is the same last name and phone number as appears on some of the PCH letters. This provides further evidence linking the PCH letters to the Residence.

¹⁴ Ex. C-1, p. 31

¹⁵ Ex. C-1, p. 35

¹⁶ Ex. C-1, p. 13

¹⁷ Ex. C-1, p. 44

[45] Also found in the garbage at the Residence was a piece of paper with Nerty Fabian 561-4137 July 17, 1939 76 years handwritten on it.¹⁸ Police were informed by USPIS Inspector Rocio Gonzalez that USPIS interviewed Nerty Fabian. She said that she received a PCH letter dated November 17, 2015 telling her that she had won \$1.15million in the Publisher's Clearing House Lottery. The letter told her to call 347-606-4509 and speak to Reverend Joe Church. She called that number and spoke with a man who told her that she would have to pay 50% of the winnings in tax and that she would receive a call in the future about the tax money. She did not receive any further calls. She stated that she believed that this was a fraud and she did not contact the phone number again. This is the same contact name and phone number as on some of the PCH letters originating from the Residence. This suggests that people operating out of the Residence were engaged in PCH fraud.

[46] On May 25, 2016 CM Murphy conducted a search on Consumer Sentinel (an online fraud reporting platform hosted by the US government) for phone number 718-701-9389 and 347-606-4509. The search revealed one fraud complaint for 718-701-9389 where the victim received a fraudulent PCH letter instructing her to call 718-701-9389. She called that number and was asked for personal banking information. The search also showed seven fraud complaints for 347-606-4509.¹⁹

[47] The RCMP conducted open source checks on the phone number 347-606-4509 and found that it was registered to MagicJack based in Florida.²⁰

[48] RCMP Officer Laton proved an explanation about MagicJack:

From my experience, I am aware that MagicJack is a Voice over Internet (VoIP) phone provider based out of Florida. A customer of MagicJack is required to purchase the MagicJack device which connects via a USB connection to a home computer or directly to a high speed internet modem. MagicJack allows the customer to place unlimited phone calls to Canada and the United States for a nominal monthly subscription fee.²¹

¹⁸ Ex. C-1, p. 43

¹⁹ Ex. C-1, p. 36

²⁰ Ex C-1, p.48

²¹ Ex. C-1, p. 48

[49] On March 16, 2016 US authorities provided RCMP with a list of the phone numbers from MagicJack for phones that had called the phone number 347-606-4509²². The RCMP found out who the phone numbers on the list were registered to and followed up with potential PCH victims.

[50] On April 26, 2016 the RCMP contacted Eduardo and Felicita Parayaon.²³ They had received a PCH letter telling them that Eduardo had won \$1.15 million. The letter instructed them to contact Reverend Joe Church at 347-606-4509. This is the same phone number indicated on the PCH letters mailed by Mr. Omoruyi. They were told to send \$780 via money order for the processing and completion of the prize money into their bank account. As they had no money they provided a CIBC Visa bank card number and a three digit security code. On February 26, 2016 five withdrawals were made from their bank account via internet banking for a total of \$13,400. RCMP obtained a copy of the letter from Winnipeg RCMP and compared it with fraudulent letters seized by the RCMP disruption team. The letter was very similar and the contact name, Joe Church and contact phone number were the same.

[51] Another phone number that had called the MagicJack number eight times was registered to Art Abrams. The RCMP contacted Mr. Abrams. He stated that he had received a PCH letter. Stating that he had won \$1 million. He contacted the phone number on the letter and was transferred to a male named Rev Joe Church. He was told that he would have to pay \$4000 in insurance before the money could be released. He did not pay the money or incur any loss. He provided the RCMP with a copy of the PCH letter that he had received. It referred to winning a Publisher's Clearing House lottery and directed the recipient to contact Rev Joe Church at 347-606-4509.²⁴

[52] The RCMP obtained a search warrant and raided the Residence on June 29, 2016. They seized numerous cell phones, computers and devices. They arrested Edison Obaseki, Michael Amadi, Perry Omoruyi and Ese Ewhubare.²⁵

²² Ex. C-1, p.48

²³ Ex. C-1, p. 50 and 250

²⁴ Ex. C-, p. 51

²⁵ Ex. C-3, p. 3

[53] When RCMP raided the Residence they found a notebook with the name Ingrid Guldenmann of Green Valley, Az. written on one of the pages.²⁶ Also at the Residence police found an invoice showing Ms. Guldenmann sending five laptops to Edward Guldenmann at Unit 637, 807 Carnarvon Street, New Westminster.²⁷

[54] Exhibit C-3 p.84 is an interview conducted over the telephone on August 9, 2016 by a US postal inspector with Ingrid Gundelmann. In spite of the difference in the spelling of the name (Guldenmann as opposed to Gundelmann) I am satisfied from the context of the interview that the person interviewed was Ingrid Guldenmann. She explained that about six months before the interview she received a PCH letter telling her that she had won a prize in the millions of dollars (she could not recall the exact amount). The letter directed her to contact Carlos Woodman at a phone number given on the letter. She phoned Mr. Woodman and he told her to do certain things in order to collect her winnings. Among the things he said to do was to purchase five laptop computers and send them to him. She said that she purchased five laptops on two occasions and mailed them to Edward Guldenmann, 807 Carnarvon Street Unit 637 New Westminster. She said that she speaks with Mr. Woodman regularly, he has had various phone numbers and that his most recent one was 587-723-1349. On various occasions she was told that she would be sent her winnings. She received a cheque in the mail for \$280,120.10 but when she tried to cash it at the bank, she was told that it was counterfeit. At about the end of June 2016, Mr. Woodman contacted her and told her to gather all of her receipts and send them to him. He said that she might be contacted by someone and she needed to get rid of the evidence. In about July of 2016 she mailed all of her receipts to him at the New Westminster address. She told the postal inspector that she was willing to cooperate in their investigation, but she no longer had any receipts since she had mailed them to Mr. Woodman as per his instructions.

[55] The package of receipts sent by Ms. Guldenmann was interdicted and included in the package was the PCH letter that Ms. Guldenmann had received. Copies of that letter are found at Exhibit C-3, p. 13 and 93. The letter confirms much of what Ms. Guldenmann told the postal inspector. The letter informs her that she has won a \$1,200,000 prize and that she should contact Carlos Woodman at 1-587-723-1433 to collect her winnings.

²⁶ Ex. C-3, p.10 and p. 125

²⁷ Ex. C-3, p. 10 and 88

[56] The RCMP checked into the address to which Ms. Guldenmann had sent the laptop computers, Box 637-807 Carnarvon Street, New Westminster.²⁸ They discovered that the post office box was opened with fake Ontario driver's licence in the name Jackson Edward. A copy of the licence appears at Ex. C-1, p. 12. RCMP believe that the person in the photo on the licence is Mr. Omoruyi. They say that the photo is similar to the passport photos seized from Mr. Omoruyi when he was arrested. Mr. Omoruyi admits that the photo on the licence seems to be the same as the passport photos which were seized from him when he was arrested. He says that he is not the person who opened that post office box. He says he had four passport photos taken. Two of them disappeared. He believes that someone created the fake Ontario driver's licence using one of his missing passport photos.

[57] Exhibit C-3, page 21 is a copy of the PO Box Rental Information Report for Box 48135. The mailbox was rented by Jackson Edward. The phone number given is 587-723-1433. That is the same phone number that appeared on Ms. Guldenmann's PCH letter as the number to call to collect her lottery winnings.

[58] On page 20 of Ex. C-1 is a copy of the Jackson Edward driver's licence used to rent mailbox 637. Below the driver's licence four phone numbers appear: 506-721-7923, 1-587-723-1433, 778-707-2823 and 604-396-4144. The number 1-587-723-1433 is the same phone number as on Ms. Guldenmann's PCH letter.

[59] I am satisfied that there are reasonable grounds to believe that the Post Office Boxes 48135 and 637 were opened to be used for fraudulent purposes. They were opened by someone using a fraudulent driver's licence and that person provided the same phone number as was used on the PCH letter received by Ms. Guldenmann.

[60] Mr. Omoruyi did not provide a convincing explanation as to why someone would create the Jackson Edward driver's licence and put his picture on it. Minister's counsel asked Mr. Omoruyi why someone would make an ID for him. He replied "I want to know just like how someone put my name on the MagicJack that I didn't know nothing about. People are evil. Because they know I'm not part of what they are doing, they could actually make my picture on there."

²⁸ Ex. C-3, p. 10

[61] I am satisfied after looking at the photograph and after hearing Mr. Omoruyi's testimony, that the photo on the Edward Jackson identification is a photo of Mr. Omoruyi. Mr. Omoruyi's explanation for why this might have happened makes no sense. He seems to imply that because he was not part of what "they" were doing (whoever "they" are) that "they" put his picture on the identification. The point of putting one person's picture on another person's identification or on a totally fabricated piece of identification, is so that the first person can use the second person's identity. The more likely explanation is that the Edward Jackson identification was created to be used by Mr. Omoruyi; that is why it bears his photograph.

[62] Exhibit C-3 page 27 is an RCMP Task Details which sets out that a search warrant was executed at the Residence on June 29, 2016. An analysis of the exhibits revealed that there was material which required further analysis. A review of a laptop device seized at the Residence showed things such as bait letters templates. One of the templates was identical to the bait letter used in the incepted Canada Post bulk mailing dropped off by Mr. Omoruyi. The template on the laptop used the name Joe Church and the phone number 347-606-4509. This is the same contact name and phone number as on the letters seized after Mr. Omoruyi did his bulk mail drop.²⁹

Analysis

[63] I am satisfied on the standard reasonable grounds to believe that there was a criminal organization operating out of the Residence that was involved in PCH fraud.

- Mr. Obaseki bought large amounts of coloured paper and envelopes from Staples on at least two occasions.
- In March 2016, Mr. Omoruyi and Mr. Obasecki were driven by Ese to Staples where Mr. Omoruyi bought a large amount of coloured paper and envelopes and gave the purchase to Ese who waited for him in the car. This was done at Mr. Amadi's direction.
- On April 6, 2016 Ese drove Mr. Omoruyi to a number of different mailboxes in Burnaby, so that Mr. Omoruyi could mail large numbers of envelopes. Again this was done at Mr. Amadi's direction.

²⁹ C-3, p. 29

- On April 6, 2016, Canada Post seized hundreds of letters because the envelopes bore false postage.
- Inside the envelopes were PCH letters instructing the recipient to call Rev. Joe Church at 347-606-4509 and 1-718-9389. The letters were on paper that was very similar to the paper purchased at Staples by Mr. Obaseki and Mr. Omoruyi. The envelopes were also the same type of envelope as the envelopes purchased at Staples by Mr. Obaseki and Mr. Omoruyi.
- A laptop seized on June 29, 2016 when police executed a search warrant at the Residence contained PCH bait letters, including one that was identical to the letters seized from the mail the day after Mr. Omoruyi's mail drop.
- People who had phoned phone numbers 347-606-4509 or 1-718-9389 (the phone numbers on the letters mailed by Mr. Omoruyi) had received PCH bait letters and reported being asked to send money or other items before they could collect their PCH winnings.
- A search of garbage left outside the residence located a piece of paper with Church 347-606-4509 handwritten on it.
- Nerty Fabian's name was found on a scrap of paper found in garbage seized from the Residence. She had received a PCH letter directing her to call Rev. Joe Church at 347-606-4509 which is the same contact information as on the PCH letters mailed by Mr. Omoruyi.
- Ingrid Guldenmann's name was found in a notebook seized at the Residence. She was tricked into sending five laptop computers to Post Office box 637, a mailbox rented by someone using a fake driver's licence bearing a picture of Mr. Omoruyi. One of the contact numbers for that mailbox, 587-723-1433, is the number that Ms. Guldenmann's PCH letter told her to call.
- I am satisfied on the standard reasonable grounds to believe that an organized group operating out of the Residence was creating and mailing fraudulent PCH letters to hundreds of people with the intention of tricking them into sending money or merchandise to the fraudsters. Mr. Amadi directed Ese to take Mr. Omoruyi to Staples where he bought envelopes and paper. Mr. Amadi directed Ese to drive Mr. Omoruyi to various mailboxes

in Burnaby where he mailed hundreds of letters. Mr. Omoruyi testified that he thought he was mailing letters to do with Mr. Amadi's marihuana dispensary. I am satisfied that what Mr. Omoruyi actually mailed were PCH bait letters. I do not know much about Mr. Obaseki's role in the operation, but at the very least he purchased supplies for the group at Staples on at least two occasions.

- The group tricked Mrs. Guldenmann into sending them laptop computers worth more than \$5000. This constitutes fraud over \$5000 contrary to section 380(1)(a) of the Criminal Code, an indictable offence punishable by a maximum penalty of not exceeding fourteen years.
- I am satisfied that the letter that Nerty Fabian received in November 2015 was sent to her by the group. It was a PCH type letter and she was directed to contact Reverend Joe Church at 347-606-4509. In addition her name and phone number were found in garbage retrieved from the Residence. Therefore the group was operating in November of 2015.
- At the very least the group was still operating in June of 2016 when someone from the group or acting on behalf of the group and calling himself Mr. Woodman, contacted Ms. Guldenmann and directed her to send all of her receipts to him.

[64] In *B010 v Canada (MCI)*, 2015SCC 58 the Supreme Court made it clear that for activities to amount to organized criminality pursuant to the IRPA, those activities must be ones that would be caught by the definition of organized criminality in the Criminal Code.

[65] Section 467.1(1) of the Criminal Code reads as follows:

[66] **467.1 (1)** The following definitions apply in this Act.

criminal organization means a group, however organized, that

- (a) is composed of three or more persons in or outside 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. (*organisation criminelle*)

serious offence means an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, or another offence that is prescribed by regulation. (*infraction grave*)

[67] In addition the group must have at least some form of structure and degree of continuity, *R v Venneri*, 2012 SCC 33. In *Venneri*, the Supreme Court explained why it is necessary for there to be continuity and structure in order to the group in order to make a finding that it is a criminal organization:

The structured nature of targeted criminal organizations also sets them apart from criminal conspiracies: see *Sharifi*, at para. 39. Stripped of the features of continuity and structure, “organized crime” simply becomes all serious crime committed by a group of three or more persons for a material benefit. Parliament has already criminalized that activity through the offences of conspiracy, aiding and abetting, and the “common intention” provisions of the *Code* (see, e.g., ss. 21 and 465(1)). The increased penalties and stigma associated with the organized crime regime distinguish it from these offences.

[68] The group had at least three members, Mr. Amadi, Mr. Obaseki and Ese. It is clear from the letters that they sent out that the group was engaged in mail fraud. They were able to dupe Mrs. Guldenmann into sending them computer laptops worth more than \$5000. That amounts to fraud over \$5000. The penalty for fraud over \$5000 is a term of imprisonment of up to fourteen years. Accordingly fraud over \$5000 is a serious offence as defined in s. 467.1(1) of the *Criminal Code* because it is an indictable offence under an Act of Parliament for which the maximum penalty is five years or more. The group was doing these activities to result in a financial benefit to the group, they were trying to trick people into sending them money or other valuable items, such as computers. The group had a loose structure or organization. At times Mr. Amadi directed Ese to drive Mr. Omoruyi to Staples to purchase supplies and to drop off the PCH letters in Burnaby. Mr. Obaseki also made purchases of the envelopes and professional paper that the group used in their mailings. The group did not form randomly for the immediate commission of a single offence. They mailed out letters to hundreds of potential victims. The group was trying to deceive Nerty Fabian in November of 2015 and it was still operating when Mr. Omoruyi mailed PCH letters in April of 2016 and when a person calling himself Mr. Woodman directed Ms. Guldenmann to mail

her receipts to him in June of 2016. The group had continuity and structure. The evidence regarding the group meets all of the requirements for a criminal organization as set out in the jurisprudence regarding section 37(1)(a) of the *IRPA*.

Was Mr. Omoruyi a member of the criminal organization?

[69] The term “member” is not defined in the *IRPA*. The jurisprudence is to the effect that the term should be given an unrestricted and broad interpretation. “Being a member of a criminal organization” can be equated to “belonging to a criminal organization.”³⁰

[70] Mr. Omoruyi admits that he picked up paper and envelopes at Staples at Mr. Amadi’s request. The evidence shows that he did this on March 10 and 18 of 2016. I am satisfied that the paper and envelopes were used in the creation and mailing of PCH letters. He also admitted to mailing hundreds of letters at various mailboxes in Burnaby in April 2016. I am satisfied that the letters that he mailed were PCH letters. Mr. Omoruyi says that he thought that the letters that he mailed were letters informing clients of Mr. Amadi’s marihuana dispensary that the business was moving. He thought that the envelopes and professional paper that he bought were to be used for mailings in connection with the marihuana dispensary.

[71] I do not accept Mr. Omoruyi’s explanation. What Mr. Omoruyi was doing in both cases was not an ordinary errand. When he bought supplies at Staples and when he mailed the envelopes in Burnaby, Ese drove him and was waiting for him in the car. For some reason Ese must not have wanted to be seen going in to Staples or mailing envelopes. Otherwise he was there in the car, he could have simply gone into Staples or mailed the envelopes himself. Perhaps he had already been in Staples buying supplies and wanted to avoid arousing the suspicion of the staff at the store by going in too frequently to buy the same type of supplies. Whatever the reason why Ese did not just do these tasks himself, Mr. Omoruyi already knew that it is a bad idea to do tasks for someone that they are fully capable of doing themselves because they are sitting right there in the car. This is similar to the sort of thing that resulted in him getting a conditional discharge back in 2011. The General drove him to a Money Mart, Mr. Omoruyi went inside, picked up a parcel, brought it to the car and gave it to the General who was waiting outside. Mr. Omoruyi testified that he did not use other people’s identification anymore because of this incident. One would have thought the

³⁰ *Chiau v. Canada (M.C.I.)*, [2001] 2 F.C. 297 (C.A.)

incident would also have taught him that he should not buy items in a store for someone when they are waiting in a car outside and could easily just buy the items themselves. Mr. Omoruyi would have known that if buying supplies at Staples or mailing hundreds of letters were completely innocent tasks, then Ese who was waiting in the car, could simply have done these tasks himself.

[72] In addition I do not accept Mr. Omoruyi's explanation about why the Jackson Edward identification bears his photograph. Mr. Omoruyi admits that he had four passport photos taken and that he only had two of them when he was arrested by the police in June of 2016. He agreed that the photo on the copy of the Jackson Edward licence found at Exhibit C-3, p. 20 is likely him. He said he thought someone took one of the missing photos and used it to make the fraudulent Jackson Edward driver's licence. A person using that licence as identification opened the account for Post Office Box 637. That is very significant because someone in the group tricked Ms. Guldenmann into sending laptop computers to that post office box. Mr. Omoruyi said that he did not open the mailbox account. The point of creating the fake driver's licence was so that a person using that licence could do things like opening a mail box account without there being a record of the person's real name and particulars. If a person was going to the trouble of creating a fake licence with fake particulars it would make sense to put a photo on the licence that is a photo of the person who would be using the licence. If someone other than Mr. Omoruyi was intending to use the fake licence with Mr. Omoruyi's picture on it, he ran the risk of someone not accepting the licence as identification on the basis that he did not look like the picture on the licence. I am satisfied that the Jackson Edward licence was created to be used by Mr. Omoruyi and that he opened mail box account number 637.

[73] I am satisfied that Mr. Omoruyi was involved with the group from March 10, 2016 when he was seen buying items at Staples to be used in the PCH mailings and that he was still involved with the group on June 29, 2016 when he was arrested at the Residence. I am satisfied that in addition to buying supplies for the group, he mailed PCH letters to potential victims and he opened the account for mailbox number 637. Because I reject his explanation that he was an innocent dupe, I am satisfied that he did these things knowing that it would assist the group in their scheme to defraud the recipients of the PCH letters. Accordingly I find that he was a member of the group.

CONCLUSION

[74] I am satisfied that Mr. Omoruyi is a permanent resident of Canada who was a member of an organized crime group.

[75] The Minister has established that Mr. Omoruyi is inadmissible under paragraph 37(1)(a) of the IRPA. Regulation 229(1)(e) requires that I issue a deportation order against Mr. Omoruyi and I so order. A deportation order is attached to these reasons.

“M McPhalen”
Michael McPhalen

June 27, 2019

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.