IMMIGRATION AND REFUGEE BOARD

- IMMIGRATION DIVISION -

Record of an Admissibility Hearing held under the

Immigration and Refugee Protection Act, concerning

[redacted]

---- PRIVATE ----

HELD AT: Immigration Holding Centre

DATE: November 19, 2018

BEFORE: Valerie Currie - Member

APPEARANCES:

[redacted]	- Person Concerned
Mr. Wallace	- Counsel
Mr. Ekwandja	- Minister's Counsel
Tomas Vykoukal	- Interpreter

MEMBER: Good morning.

We are on record.

Today is Monday November 19, 2018.

And this is the resumption of an admissibility hearing concerning [redacted]

I recognize you Ms. [redacted] but just for the record I will confirm.

Is that you?

PERSON CONCERNED: Yes.

MEMBER: Thank you.

Today is Monday November 19, 2018.

My name is Valerie Currie. I am a Member of the Immigration Division and I continue to preside over this matter.

In attendance today is the Minister's counsel Mr. Ekwandja. He continues to represent the Minister.

Also in attendance is your counsel Mr. Wallace and also in attendance is an interpreter.

The interpreter is known to me Mr. Vykoukal.

INTERPRETER: Good morning Madam Board Member.

MEMBER: Now for the record this admissibility hearing was opened on September 18, 2018.

It was adjourned on that day due to the time of day.

The matter resumed on October 18, 2018 at which time oral submissions were provided by both parties.

And the matter was adjourned to today's date for an oral decision.

For the record I note that Mr. Vykoukal you were the interpreter in attendance at the first two sittings of this admissibility hearing.

INTERPRETER: Yes Madam Board Member that is correct.

MEMBER: You did take a solemn affirmation at that first sitting...

INTERPRETER: That is correct.

MEMBER: ...and I will remind you that you are still bound by that solemn affirmation.

INTERPRETER: Yes.

I understand it.

DECISION

MEMBER: This is an oral decision in the matter of the Immigration and Refugee Protection Act in an admissibility hearing concerning Ms. [redacted]

These are the reasons for a decision rendered under paragraph 45(d) of the Immigration and Refugee Protection Act concerning [redacted] following an admissibility hearing that was conducted on authority of subsection 44(2) of the Immigration and Refugee Protection Act.

Ms. [redacted] was reported on September 22, 2017 as inadmissible to Canada pursuant to paragraph 37(1)(a) of the Immigration and Refugee Protection Act in that she is a permanent resident or a foreign national who is inadmissible on grounds of organized criminality for being a member of an organization that is believed on reasonable grounds to be or to have been engage in activity that is part of the pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offense punishable under an act of parliament by way of indictment or in furtherance of the commission of an offense outside of Canada that if committed in Canada would constitute such an offense or engaging in activity that is part of such a pattern.

The corresponding referral for an admissibility hearing was signed on October 4, 2017.

[redacted] is a citizen Czech Republic by birth on [redacted] 1979.

She is not a Canadian citizen or a permanent resident of Canada.

Ms. [redacted] entered Canada as a visitor on [redacted] 2016.

She made a refugee claim on September 1, 2016.

And that claim is currently suspended pending the outcome of this admissibility hearing.

The Minister of Public Safety alleges that Ms. [redacted] is a foreign national who is inadmissible on grounds of organized criminality pursuant to paragraph 37(1)(a) of the Immigration and Refugee Protection Act for being a member of an organization that engages in organized criminal activities namely distraction thefts.

The Minister has also taken the position that she engaged in organized criminal activity.

This admissibility hearing was conducted over a two day period, September 18, 2018 and October 18, 2018.

Minister's counsel filed Exhibit AH-1.

The panel also received sworn oral testimony of Ms. [redacted] the subject of these proceedings.

As I indicated earlier oral submissions were provided by both parties on October 18, 2018.

I note that under section 2 of the Immigration and Refugee Protection Act a foreign national is a person who is neither a Canadian nor a permanent resident of Canada and includes a stateless person.

Paragraphs 31(1) and 32(h) of the Immigration and Refugee Protection Act provide that it is the objective of the act to promote international justice and security by denying access to Canadian territory to persons including refugee claimants who are security risks or serious criminals.

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

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

Section 33 of the Immigration and Refugee Protection Act provides that the facts that constitute inadmissibility under section 34 to section 37 include facts arising from omissions.

And unless otherwise provided include facts for which there are reasonable grounds to believe that they have occurred or occurring or may occur.

This stipulates that reasonable grounds to believe is a standard of proof by which the panel must evaluate the evidence and establish the allegation under paragraph 37(1)(a).

In Chiau v. Canada the Federal Court stated that the standard of proof required to establish reasonable grounds is more than a flimsy suspicion but less than a civil test of balance of probabilities.

And of course a much lower threshold than a criminal standard of beyond reasonable doubt.

It is of bona fide belief in a serious possibility based on credible evidence.

The standard requires an objective basis for the belief something transcending mere suspicion, speculation or conjecture.

It is a bona fide belief in a serious possibility based on compelling and credible evidence.

This was affirmed by the Supreme Court of Canada in Mugusera v. Canada.

In Canada v. USA Justice Annes (ph) explained that the standard is a threshold which represents the middle ground between the two extremes of mere suspicion and balance of probabilities.

And represents a minimum threshold that must be overcome.

He concluded that any factual conclusions drawn would be supported so long as they exceed the threshold by any degree.

What this does is to aid the easy identification inadmissible persons and to deny them access to Canada.

The standard does not require proof that Ms. [redacted] is actually a member of the criminal organization in question or that she personally engage in organized crime.

It only requires the existence of reasonable grounds for believing the facts alleged.

To reach the standard then the final determination of the panel must reflect good decision making attribute like reasonableness, justification, intelligibility, transparency and commonsense.

Ms. [redacted] as a foreign national has been authorized to enter Canada.

Therefore the burden in this matter falls on the Minister as the Immigration Division shall make the applicable removal order against a foreign national if it is satisfied that the foreign national is inadmissible.

In the proposing the case or bringing the case forward the Minister must demonstrate that there is a well founded basis for the allegation.

The main issue to be determined is whether or not Ms. [redacted] is inadmissible under paragraph 37(1)(a).

Paragraph 37(1)(a) states a permanent resident or foreign national is inadmissible on grounds of organized criminality for being a member of an organization that is believed on reasonable grounds to be or to have 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 offense punishable under an act of parliament by way of indictment or in furtherance of the commission of an offense outside of Canada that if committed in Canada would constitute such an offense or engaging in activity that is part of such a pattern.

Judicial insights highlight the duality inherent in inadmissibility on grounds of organized crime under the Immigration and Refugee Protection Act.

Justice Evans with the concurrence of Justice Noel and Justice Sexton in Canada v. Thanaratnam states the structure of paragraph 37(1)(a) makes it clear that membership in a gang and engaging in gang related activities are discrete but overlapping grounds on which a person may be inadmissible for organized criminality.

The engaging in gang related activities ground of organized criminality was added by the Immigration and Refugee Protection Act and did not appear in its predecessor paragraph 19(1) of the Immigration Act.

In order to give meaning to the amendment to the previous provision made by the Immigration and Refugee Protection Act parliament should be taken to have intended it to extend to types of involvement with gangs that are not included or not clearly include within membership.

Inadmissible under paragraph 37(1)(a) could therefore be based on a permanent resident or a foreign national being a member of a criminal organization or secondly engaging activity that is part of a criminal pattern or in the case where there is an overlap on the basis of the permanent resident or foreign national falling within both.

In this case it is the Minister's position that Ms. [redacted] is described both for her membership in a criminal organization as well as for engaging in organized crime related activities.

The sub-issues for the panel under paragraph 37(1)(a) then are three fold, whether there are reasonable grounds to believe that there is an organization that is engaged in organized criminality, whether there are reasonable grounds to believe that Ms. [redacted] is a member of that organization.

And finally whether there are reasonable grounds to believe that she has engaged in activities that are part of a pattern of organized criminality.

Having carefully considered the evidence and the applicable law the pane is not satisfied that the Minister has discharged the burden of proving on reasonable grounds all the essential elements required to establish the allegation under paragraph 37(1)(a).

Regarding Ms. [redacted] status in Canada the panel is satisfied that she is neither a Canadian citizen nor a permanent resident of Canada.

But rather a citizen of Czech Republic.

She is a foreign national who has been authorized to enter Canada and has subsequently filed the refugee claim which has been suspended pending the outcome of these proceedings.

Section 37 of the Immigration and Refugee Protection Act is titled Organized Crime that engages titular or title related title Expectation that a discernible body with some degree of organization.

However organized must exist for a person to be caught there under.

Despite that the Immigration and Refugee Protection Act is conspicuously silent on the meaning of organization.

The courts however have provided guidance in Sittampalam v. Canada, Justice Linden discussing the notions of membership and organizations needed.

The word organization is not defined in the Immigration and Refugee Protection Act.

The appellant submits that the lack of a statutory definition creates the danger of the courts overreaching to cover the broadest range of criminal action that may appear to be taken in association with others.

According to the appellant a precise definition is required given the serious consequences of inadmissibility and the fact that membership alone constitutes inadmissibility.

In contrast with this submission in the case of Canada v. Singh Justice Rothstein as he then was held that the term member of an organization found in sub-paragraph 19(1)(f)(iii) of the former Immigration Act dealing with terrorism and espionage threats to Canadian security was to be given an unrestricted and broad interpretation.

He said at paragraph 52: "The context in immigration legislation is public safety and national security, the most serious concerns of government.

It is trite to say that terrorist organizations do not issue membership cards.

There is no formal test for membership and members are not easily identifiable.

I think it is obvious that parliament intended the term 'member' to be given an unrestricted and broad interpretation.

I find no support for the view that a person is not a member as contemplated by the provision if he or she became a member after the organization stopped engaging in terrorism.

In my view the same unrestricted broad interpretation should be given to the word organization as it is used in paragraph 37(1)(a).

The Immigration and Refugee Protection Act signifies an intention above all to prioritize the security of Canadians".

This was confirmed by the Supreme Court of Canada in the decision of Medovarski v. Canada and Esteban v. Canada.

Are you okay, one moment, are you okay Ms. [redacted]

PERSON CONCERNED: Okay.

MEMBER: Would you like to take a break to get some water.

PERSON CONCERNED: Yes please.

MEMBER: Okay.

We will go off the record for a moment.

PERSON CONCERNED: Thank you.

HEARING RECESSED

HEARING RESUMED

MEMBER: We are back on the record.

Ms. [redacted] was obviously experiencing a little bit of distress.

So we took a break for her to get a glass of water.

Please let us know Ms. [redacted] if you need any further breaks.

PERSON CONCERNED: Yes.

MEMBER: Thank you.

I am continuing with my decision.

The judicial direction has been for supplying a broad and unrestricted interpretation to the concept of organization.

Justice Linden also went further to consider the issue of attributes or indicators to establish that there is an organization and emphasized the need to apply a flexible approach.

He stated in Thanaratnam v. Canada reversed on other grounds Justice O'Reilly took into account various factors when he concluded that two Tamil gangs bore organizations within the meaning of paragraph 37(1) of the Immigration and Refugee Protection Act.

In his opinion the two Tamil gang groups had some characteristics of an organization namely identity, leadership, a loose hierarchy and a basic organizational structure.

The factors listed in Thanaratnam as well as other factors such as an occupied territory or a regular meeting locations both factors considered by the Board are helpful when making a determination under paragraph 37(1)(a) but no one of them is essential.

It is therefore necessary to adopt a rather flexible approach in assessing whether the attributes of a particular group meet there requirements of the Immigration and Refugee Protection Act given they are varied, changing and clandestine character.

It is therefore important to evaluate the various factors applied by Justice O'Reilly and other similar factors that may assist to determine whether the essential attributes of an organization are present in the circumstances.

Such an interpretation of organization allows the Board some flexibility in determining whether in light of the evidence and facts before it a group may be properly characterized as such for the purposes of paragraph 37(1)(a).

That there must be some kind of organization was addressed in Saif v. Canada where Justice Barnes reviewed the existing jurisprudence in light of the Supreme Court of Canada decision in B10 v. Canada.

He concluded that there must be a clear consideration of the structural features of the organization in question and a pragmatic assessment of who gets caught as a member of that organization.

He states: "Although an unrestricted and broad interpretation is to be given to the word organization as it is used in subsection 37(1), the provision still requires the existence of common organizational characteristics such as identity, leadership, a loose hierarchy and a basic organizational structure.

I can refer to Sittampalam, at paragraphs 38 and 39 above.

Third parties who individually transact with a criminal organization cannot reasonably be seen to be members nor can they be considered to be engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in the furtherance of the commission of an indictable offence.

By way of analogy, no one would consider a purchaser of narcotics, without further involvement, to be either a member of, or acting in concert with, a criminal organization established to sell the narcotics, even though both are engaged in common in a criminal transaction."

The panel reviewed the oral and documentary evidence in conjunction with the noted principles in order to determine whether or not an organization exists.

And I am not satisfied that there are reasonable grounds to believe that enough structural features qualify it as an organization.

As previously noted, although an unrestricted and broad interpretation is to be given to the word organization the provisions still require the existence of common organizational characteristics such as identity, leadership, a loose hierarchy and a basic organizational structure.

Evidence indicates the organization in question has none of these attributes.

I have no evidence before me to specifically identify the group.

No evidence concerning leadership, hierarchy or a basic organizational structure.

The Minister's disclosure does not explicitly identify the group or organization and while the Minister suggests that the group is still discernible by inference to its activities that being distraction theft, no such evidence was provided by the Minister with respect to distraction thefts.

In fact no such evidence was provided by either the Minister, by any law enforcement authorities, or indeed even the person concerned in her sworn testimony regarding the element of distraction thefts.

The evidence before the panel in Exhibit AH-1 regarding her criminal history consists of her testimony.

And solely the police occurrence reports which indicate that Ms. [redacted] has approximately six outstanding criminal charges for theft under.

That is evidence I have been provided within the occurrence reports and in Exhibit AH-1.

However Ms. [redacted] maintained when questioned during her oral testimony that all those charges have been withdrawn.

Notwithstanding her contention that these charges have been withdrawn, the occurrence reports indicate Ms. [redacted] acting with either one or two of her family members would steal purses from shopping carts, usually at the grocery store or at a Wal-Mart.

Two of those outstanding six criminal charges related to her alleged involvement in filling shopping carts on two occasions with several items and leaving the store without paying.

According to the occurrence reports on one occasion on [redacted] of 2016 Ms. [redacted] acted in concert with her sister [redacted] the co-accused.

[redacted] allegedly distracted the victim by blocking her path and Ms. [redacted] stole a purse from the shopping cart.

Of the alleged six outstanding charges of theft under only on this one occasion was any distraction noted in the police occurrence reports.

On the basis of the evidence in its totality I do not find that this is an organization that is discernible by reference to its activities involving distraction thefts.

As I previously noted Ms. [redacted] has approximately six outstanding charges for theft under in and around the Toronto area.

With there is no documentary evidence Ms. [redacted] did indicate in her testimony that she as well as other family members were also charged with an offense in Montreal not long after she came to Canada in [redacted] of 2016.

That was a charge involving the selling of perfume.

It appears to be quite possible that it may have related to lack of a vendor's license.

But that is not clear because she herself is not clear about that.

Other than that there is no evidence of previous criminal convictions, neither in Canada nor in any of the other countries she has lived in.

The occurrence reports indicate that on each occasion she has engaged in theft in concert with either one or two of her family members.

Primarily the thefts involve stealing purses from shopping carts.

Ms. [redacted] lives with most of her immediate family members.

The panel is satisfied on the basis of all the evidence I have before me that Ms. [redacted] likely engages in crimes of opportunity.

In other words she and one or two of her family members while shopping see someone's purse in their shopping cart and they steal it.

I see little if any evidence of planned or organized attempts to distract or steal goods by a number of persons.

Nor do I find that I have been provided with evidence to suggest on reasonable grounds that this is an organization discernible or defined by distraction theft.

I find on the basis of the evidence on reasonable grounds that this is not an organization as envisioned by paragraph 37(1)(a) of the Immigration and Refugee Protection Act.

But rather involves a number of family members who likely randomly get together, go shopping and snatch and grab purses and various merchandise when and if the opportunity presents itself.

The panel finds that this group is not organized and disregarding the requirement of organization would cast a net broader than that intended by parliament.

I have been provided with little if any information to satisfy me on reasonable grounds that this is a distraction theft ring, an organized crime group as alleged by Minister's counsel.

There are contextual slants to what constitutes a criminal organization.

In the international context the United Nations Convention against transnational organized crime provides definition of organized criminal group and structured group.

Article 2(a) states organized criminal group shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses established in accordance with this convention in order to obtain directly or indirectly a financial or other material benefits.

Article 2(c) states structured group shall mean a group that is not randomly formed for the immediate commission of an offense.

And that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

There is a comparable definition of criminal organization used in the criminal context.

467.1(1) of the Criminal Code of Canada defines a criminal organization as follows:

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.

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.

As such a criminal organization requires a group of three people or more.

Randomly formed groups who commit a single offense do not constitute a criminal organization.

One of its main purposes is the facilitation of commission of one or more serious offenses for the financial or material gain of any person in the group.

A serious offense as I have indicated is to find as an indictable offense punishable by five or more years of imprisonment.

The offenses in the case before us are outstanding criminal charges for theft under.

While Mr. Smith has indicated that all those offenses were withdrawn I am not so sure based on her evidence before me that she fully understood what she was saying.

Throughout questioning she appeared to have difficulty with terms like offense, charge.

So I am not able to at this point in time given that there is evidence in Exhibit AH-1 in the form of the occurrence reports indicating that there are approximately six outstanding charges for theft under.

I am not able to accept at this point in time that all those charges have been withdrawn and that evidence simply documentary evidence of that has not been verbalized.

So if I accept that there are outstanding charges for theft under these offenses are punishable under section 334 of the Criminal Code of Canada.

Theft under is an indictable offense and is liable to imprisonment for a tern not exceeding two years.

I am not satisfied that these offenses are serious offenses as defined within the definition of criminal organization.

In B10 v. Canada the Supreme Court of Canada advanced a fresh approach to the consideration of paragraph 37(1)(b) of the Immigration and Refugee Protection Act engaging in the context of transnational crime in activities such as people smuggling by exclusively importing the Criminal Code of Canada definition of criminal organization into its analysis.

The Chief Justice stated as follows:

"While organized criminality and criminal organization are not identical phrases they are logically and linguistically related and absent countervailing consideration should be given a consistent interpretation.

The legislative history of section 37(1) (b) of the Immigration and Refugee Protection Act and the Criminal Code's definition of criminal organization strongly support this conclusion.

Both provisions were enacted in anticipation of Canada's obligations under the United Nations Convention against transnational organized crime generally known as the Palermo Convention.

The Criminal Code definition of criminal organization was amended in 2001 by Bill C-24, an act to amend the Criminal Code and to make consequential amendments to other acts."

On the second reading of the Bill and the House of Commons the Minister of Justice at the time the Honorable Ann McLellen explained that the new definition reflected Canada's signature of the Palermo Convention.

Similarly paragraph 37(1)(b) of the Immigration and Refugee Protection Act was enacted in 2001 to deal with organized criminality in people smuggling and related activities pursuant to Canada's obligations under the Palermo Convention and the relate smuggling protocol.

As the Assistant Deputy Minister of Citizenship and Immigration Joan Atkinson put it at the time:

Section 37(1) introduced new inadmissibility provisions specifically directed at that form organized crime, thus the apparently similarity between the Immigration and Refugee Protection Act concept of criminality and the Criminal Code concept of criminal organization is no coincidence.

Both provisions were enacted to give effect to the same international regime (inaudible) suppression of the transnational crime such as people smuggling.

Section 37(1)(b) should be interpreted harmoniously with the Criminal Code's definition of criminal organization as involving a material including financial benefit.

In the past Justice Linden had acknowledged that international instruments and the Criminal Code of Canada definitions of criminal organization may have some value as interpretive aides but displaying their direct applicability to the immigration concepts.

In the Sittampalam decision he stated:

"With respect to the appellant's argument that criminal jurisprudence in international instruments should inform the meaning of criminal organization, I disagree.

Although these materials can be helpful as interpretive aides, they are not as interpretive aides, they are not directly applicable in the immigration context.

Parliament deliberately chose not to adopt the definition of criminal organization as it appears in subsection 467.1(1) of the Criminal Code, nor did it adopt the definition of "organized criminal group" in the United Nations Convention against transnational organized crime."

He maintained that the wording in paragraph 37(1)(a) is different because its purpose is different.

That position has now undergone a shift as Justice Barnes points in Saif v. Canada the Supreme Court of Canada decision in B10, now imports and incorporates the Criminal Code of Canada definition of criminal organization into the understanding of paragraph 37(1) of the Immigration and Refugee Protection Act as a whole.

In dismissing the Minister's contention that the interpretive analysis carried out in B10 should be confined to paragraph 37(1)(b) of the Immigration and Refugee Protection Act .

Because only that provision was in issue in that case.

Justice Barnes stressed the comprehensiveness of the analytical test and framework espoused by the Supreme Court of Canada stating as...

INTERPRETER: I am sorry.

Madam Member, I apologize, can I got to washroom quickly.

MEMBER: Oh! yes.

INTERPRETER: Thank you so much.

MEMBER: For a moment we will go off the record.

HEARING RECESSED

HEARING RESUMED

MEMBER: We are back on the record and the same parties are present.

As I indicated, I am just go to go over the last statement I made.

That position has now undergone shift.

Justice Barnes points out in Saif v. Canada the Supreme Court of Canada decision in B10 now imports and incorporates the Criminal Code definition of criminal organization into the understanding of paragraph 37(1) of the Immigration and Refugee Protection Act as a whole in dismissing the Minister's contention that the interpretive analysis carried out in B10 should be confined to paragraph 37(1)(b) of the Immigration and Refugee Protection Act .

Because only that provision was in issue in that case.

Justice Barnes stressed that the comprehensiveness of the analytical test and the framework espoused by the Supreme Court of Canada stating as follows:

The fundamental weakness in the Minister's position is that paragraphs 37(1)(a) and (b) are both subject to the opening language of subsection 37(1) which refers to inadmissibility on the grounds of organized criminality when read contextually and harmoniously organized criminality infuses all of the language that follows.

No plausible interpretation of subsection 37(1) would allow for a different meaning of organized criminality as between paragraphs (a) and (b).

Accordingly the Supreme Court's interpretation of those words in the context of paragraph 37(1)(b) must also apply to paragraph 37(1)(a).

The Supreme Court makes this point very clear at paragraph 37 indicating the first contextual consideration is the relationship between subsection 37(1)(b) and the rest of subsection 37(1).

Subsection (1) introduces the concept of inadmissibility on grounds of organized criminality.

Paragraphs (a) and (b) are instances of organized criminality.

Section 37(1)(a) makes membership in criminal organizations one ground of inadmissibility, while paragraph 37(1)(b) makes engaging in the context of transnational crime in activities such as people smuggling, trafficking in persons or money laundering another.

Read in the context of subsection 371(1) as a whole it is clear that the focus of paragraph 37(1)(b) like that of paragraph 37(1)(a) is organized criminal activity.

The same point is made by the Supreme Court where it frames one of the issues before it as what limits may be inferred from subsection 37(1) which provides that a person is declared inadmissible on the grounds of organized criminality.

The court's views on this issue are therefore decidedly not arbitered.

It necessarily follows that the court's views about the meaning and range of organized criminality apply equally to paragraph 37(1)(a) and 37(1)(b) including its interpretive importation of the Criminal Code definition of criminal organization requiring a group of three or more persons.

I would add to this that the Criminal Code numerical requirement for a criminal organization of at least three persons is more consistent with the language of paragraph 37(1)(a) which requires a number of persons.

If parliament intended that an organization made up of a number of persons could consist of a pair of persons presumably would have used that or similar language.

This unequivocally upholds the theme that the Criminal Code of Canada definition of criminal organization must inform any analysis and understanding of paragraph 37(1)(a).

Having reviewed the available evidence the panel is persuaded on reasonable grounds that this group in this instance cannot be labeled to criminal organization as defined in Criminal Code of Canada.

Based on the totality of the evidence oral and documentary the panel finds that I have not been provided reasonable grounds to believe that Ms. [redacted] was a member of distraction theft group.

And that she also engaged in its organized crime activities.

The panel is not satisfied that the Minister has discharged the burden on him to prove that the facts constituting inadmissibility under paragraph 37(1)(a) exists namely that Ms. [redacted] is a member of a distraction theft ring an organization that is believed on reasonable grounds to be or have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in the furtherance of the commission of an offense punishable under an act of parliament by way of indictment or in the furtherance of the commission offense outside of Canada that if committed in Canada would constitute such an offense.

The panel is also not satisfied that Ms. [redacted] is inadmissible for engaging in activity that is part of such a pattern.

A favorable decision is therefore issued to Ms. [redacted]

This admissibility hearing is now concluded.

PERSON CONCERNED: Thank you so much.

----------**REVIEW CONCLUDED**---------

I HEREBY DECLARE THAT THIS IS A TRUE
TRANSCRIPT OF THE RECORDING AND THAT I HAVE
SWORN THE OATH OF SECRECY

Heather Sutherland

Heather Sutherland – Transcriptionist
For DigitScribe Inc.
Security # [redacted]

November 27, 2018