Immigration and Refugee Board of Canada

Immigration Division

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

Section de l'immigration

s.19(1)

ID File No. / N° de dossier de la SI : 0003-B7-01303
Client ID No. / N° ID client :

Private Proceeding – Huis clos

Reasons and Decision – Motifs et décision

Between	The Minister of Public Safety and Emergency Preparedness Le ministre de la Sécurité publique et de la Protection civile	**Entre**
And		**et**
Person(s) Concerned		**Intéressé(e)(s)**
Date(s) of Hearing	**7 May 2018** **9 May 2018**	**Date(s) de l'audience**
Place of Hearing	**Toronto**	**Lieu de l'audience**
Date of Decision	**28 June 2018**	**Date de la décision**
Panel	**Karina Henrique**	**Tribunal**
Counsel for the Minister	**Parminder Singh**	**Conseil du ministre**
Counsel for the Person(s) Concerned	**Oluwakemi Oduwole** **Barrister and Solicitor**	**Conseil(s) pour l'intéressé(e) / les intéressé(e)(s)**

ID File No. / N° de dossier de la SI : 0003-B7-01303
Client ID No. / N° ID client :

IN THE MATTER OF the *Immigration and Refugee Protection Act* and an Admissibility Hearing concerning .

REASONS FOR DECISION

[1] These are the reasons for a decision rendered under paragraph 45 of the *Immigration and Refugee Protection Act (IRPA)* concerning Mr. , following a private admissibility hearing that was conducted on the authority of subsection 44(2) of the *IRPA*.

[2] Mr. was reported on September 27, 2016 as inadmissible to Canada pursuant to paragraph 37(1)(a) of the *IRPA*, in that he 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 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.[1] The corresponding referral for an admissibility hearing was signed on September 30, 2016.[2]

FACTS AND HISTORY

[3] Mr. was born on 1986. He is not a Canadian citizen or a permanent resident of Canada, he is a citizen of the Bahamas.

---

1 Exhibit MC-1, pp. 3-4.
2 Exhibit MC-1, p. 2.

[4] Mr. arrived in Canada on May 27, 2016 together with his wife and step-daughter and advanced a claim for refugee protection upon arrival.[3]

[5] On June 12, 2016, Mr. signed and submitted his Basis of Claim (BOC) Form alleging a fear for his life at the hands of the One Order gang in the Bahamas.

[6] Mr. claimed, among other things, that he had to perform a number of jobs for the One Order gang out of fear for his safety.[4]

[7] Based on his alleged involvement with the gang, the Canada Border Services Agency (CBSA) convoked an interview with Mr. on July 29, 2016.[5]

[8] Based on the information provided by Mr. at the interview, the CBSA prepared a report alleging that Mr. is inadmissible to Canada for organized criminality pursuant to paragraph 37(1)(a) of the *IRPA*. It is this report that is the subject of this proceeding.

THE LAW

[9] Under section 2 of the *IRPA*, a foreign national is a person who is not a Canadian citizen or a permanent resident, and includes a stateless person.

[10] Section 3(1)(h) of the *IRPA* states that an objective of the *Act* is to protect public health and safety and to maintain the security of Canadian society.

[11] Section 3(1)(i) of the *IRPA* provides that it is the objective of the *Act* to promote international justice and security by denying access to Canadian territory to persons who are security risks or serious criminals.

---

3 Exhibit MC-1, pp. 139-141.
4 Exhibit MC-1, pp. 114-120.
5 Exhibit MC-1, pp. 5-101.

[12] Paragraph 173(c) and (d) of the *IRPA* state that:

> The Immigration Division, in any proceeding before it, (c) is not bound by any legal or technical rules of evidence; and (d) may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.

THE STANDARD OF PROOF

[13] Section 33 of the *IRPA* provides that:

> 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.

[14] This prescribes the test of "reasonable grounds to believe" as a standard of proof by which the panel must evaluate the evidence and establish the allegations under paragraph 37(1)(a).

[15] In *Chiau* v. *Canada*,[6] the Federal Court stated that:

> The standard of proof required to establish reasonable grounds is more than a flimsy suspicion but less than the civil test of balance of probabilities. And of course, a much lower threshold than the criminal standard of beyond a reasonable doubt. It is a bona fide belief in a serious possibility based on credible evidence.[7]

[16] As clarified in the case law, this standard calls for an objective basis for the belief, something going beyond 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 *Mugesera* v. *Canada (M.C.I.)*.[8]

---

[6] [1998] 2 FC 642, F.C.J. No. 131.

[7] *Ramirez* v. *Canada* [1992] 2 FC 306 (C.A.) and *Sivakumar* v. *M.E.I.* [1994] 1 FC 433 (C.A.); *Canada (M.C.I.)* v. *Thanaratnam*, 2005 FCA 122, at paragraph 22.

[8] 2005 SCC 40, at paragraph 114.

[17] In *Canada (Citizenship and Immigration)* v. *U.S.A.*,[9] Justice Annis weighed in, explaining 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. In practical terms, this does ensure that inadmissible persons are easily identified and denied access to Canada.[10]

[18] The standard does not require proof that Mr. is actually a member of the criminal organization in question, or that he personally engaged in the acts of organized crime. All that has to be proven is the existence of reasonable grounds for believing the facts alleged.[11]

[19] To reach the standard then, the panel must be able to view the facts through the lenses of common sense, reasonableness, justification, intelligibility, transparency and practicality; this is what will determine if the threshold has been met or not.

THE BURDEN OF PROOF

[20] Paragraph 45 of the *IRPA* assigns the burden of proof. The allocation of the burden is premised on whether a person has been authorized to enter Canada or not.

[21] Mr. , as a foreign national, has been authorized to enter Canada. By assignment, 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*.

---

9 2014 FC 416 (CanLII), at paragraphs 20-21.

10 See *Ugbazghi* v. *Canada (M.C.I.)*, 2008 FC 694 (CanLII), at paragraph 47; See also *Sabour* v. *Canada (M.C.I.)*, (2000) 9 Imm.L.R. (3d) 61, [2000] F.C.J. No 1615, 195 F.T.R. 69 (Fed. T.D.). *Sinnaiah* v. *Canada (M.C.I.)*, 2004 FC 1576 (CanLII).

11 *Suresh (Re)*, 1997 CanLII 5797 (FC) paragraph 18; *Canada* v. *Jolly*, [1975] F.C. 216 (C.A.), at pages 225-226; *Ahani, Mansour* v. *Canada*, (FCA DES 4-93).

THE EVIDENCE

[22] The evidence in this matter consisted of documentary evidence from the Minister in Exhibit MC-1 as well as the documentary evidence from Mr. in Exhibits C-1 and C-2.

[23] The panel also received sworn oral testimony of Mr. the subject of the proceedings, as well as Mrs. , who is Mr. wife.

[24] Finally, the panel has considered the submissions made by both counsel.

ISSUE TO BE DECIDED

[25] The allegation of inadmissibility for organized criminality under paragraph 37(1)(a) of the *IRPA*, because of its structure, necessitates a rather methodical approach to its determination.

[26] Paragraph 37(1)(a) states:

> 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.

[27] Judicial insights plot a dual foundation for determining inadmissibility on grounds of organized crime under the *IRPA*. Evans, J. A., with the concurrence of Noel, J. A. and Sexton, J. A., in *Canada (M.C.I.)* v. *Thanaratnam*,[12] states:

[12] 2005 FCA 122 (CanLII), [2006] 1 F.C.R. 474.

> [30] … 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 *IRPA* and did not appear in its predecessor, paragraph 19(1)(*c*.2) of the *Immigration Act*. In order to give meaning to the amendment to the previous provision made by the *IRPA*, Parliament should be taken to have intended it to extend to types of involvement with gangs that are not included (or not clearly included) within "membership".

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

[29] In this case, it is the Minister's position that Mr. is described as a foreign national both for his membership in a criminal organization, as well as for engaging in organized crime related activities.

[30] 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 Mr. is a member of that organization, and whether there are reasonable grounds to believe that he has engaged in activities that are part of the pattern of organized criminality.[13] These are matters that need to be fully analyzed and established on reasonable grounds in light of the evidence.

DECISION

[31] Having carefully considered the evidence and the applicable law, the panel is <u>not</u> satisfied that the Minister has discharged the burden by proving, on reasonable grounds, all of essential elements required to establish the allegation under paragraph 37(1)(a).

---

[13] *Issam Al Yamani* v. *Canada (M.C.I.)*, [2006] F.C. 1457, paragraph 10.

[32] Mr. is not inadmissible for being a member of the One Order gang, the identified organized crime group, and has not engaged in gang-related activities.

[33] As such, a Favourable Decision is hereby issued to him. The analysis follows below.

INADMISSIBILITY FOR ORGANIZED CRIMINALITY

The Organization in Question

[34] Section 37 of the *IRPA* is titled "Organized Crime". There is, at a minimum, then, the titular expectation that a discernible organization with some degree of organization (however organized) must exist for a person to be caught thereunder. Despite that, the *IRPA* is conspicuously silent on the meaning of "organization". As could be expected, there has been active judicial discourse on it. In *Sittampalam* v. *Canada (Minister of Citizenship and Immigration)*, (2006)[14] Linden, J. A., discussing the notions of membership and organization, stated:

> [34] The word "organization" is not defined in the *IRPA*. The appellant submits that the lack of a statutory definition creates a danger of courts over-reaching 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. …
>
> [35] In contrast with this submission, in the case of *Canada (Minister of Citizenship and Immigration)* v. *Singh* 1998 CanLII 8281 (F.C.), (1998), 151 F.T.R. 101 (F.C.T.D.), Rothstein J., as he then was, held that the term "member" (of an organization), found in subparagraph 19(1)(*f*)(iii) [as am. by S.C. 1992, c. 49, s. 11] of the former 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

14 2006 FCA 326, [2007] 3 F.C.R. 198; see also paragraph 55.

> 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.
>
> [36] In my view, the same "unrestricted and broad" interpretation should be given to the word "organization" as it is used in paragraph 37(1)(*a*). The *IRPA* signifies an intention, above all, to prioritize the security of Canadians. This was confirmed by the Supreme Court of Canada in the decision of *Medovarski* v. *Canada (Minister of Citizenship and Immigration); Esteban* v. *Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 (CanLII), [2005] 2 S.C.R. 539, at paragraph 10: …

[35] Judicial direction, then, prompts the application of a broad and unrestricted interpretation to the concept of "organization"; Linden, J. A. also went further to consider the issue of attributes or indicators to establish that there is an organization. He stated:

> [38] … In Thanaratnam v. Canada (Minister of Citizenship and Immigration), 2004 FC 349 (CanLII), [2004] 3 F.C.R. 301 (F.C.), reversed on other grounds, [2006] 1 F.C.R. 474 (F.C.A.), O'Reilly J. took into account various factors when he concluded that two Tamil gangs (one of which was the A.K. Kannan gang at issue here) were "organizations" within the meaning of paragraph 37(1)(a) of the *IRPA*. In his opinion, the two Tamil groups had "some characteristics of an organization", namely "identity, leadership, a loose hierarchy and a basic organizational structure" (at paragraph 31). The factors listed in Thanaratnam, as well as other factors, such as an occupied territory or regular meeting locations, both factors considered by the Board, are helpful when making a determination under paragraph 37(1)(a), but no one of them is essential.
>
> [39] … It is, therefore, necessary to adopt a rather flexible approach in assessing whether the attributes of a particular group meet the requirements of the *IRPA* given their varied, changing and clandestine character. It is, therefore, important to evaluate the various factors applied by O'Reilly J. 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).

[36] That there must be some kind of organization was emphasized in *Saif* v. *Canada (Citizenship and Immigration)*[15] where Barnes, J. had the opportunity to review the existing jurisprudence in light of the landmark Supreme Court of Canada decision in *B010* v. *Canada (Citizenship and Immigration)*.[16] Finding 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, Barnes, J. states:

> [17] 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": see *Sittampalam*, at paras 38-39, 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 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.

[37] The fact that the One Order gang is in existence in the Bozine town of the Bahamas was not in dispute. At the outset of the hearing both parties conceded this to be the case. The Minister tendered credible evidence about the One Order gang including their activities as well as the list of their key members.[17]

[38] The One Order gang has been described as a "criminal enterprise" that is the "most organized".[18] The Minister of State for National Security of the Bahamas stated that One Order gang is the "most violent gang" that was responsible for more than 200 murders.[19]

---

15 2016 FC 437 (CanLII); see also, *He* v. *Canada (Public Safety and Emergency Preparedness)*, 2010 FC 391 (CanLII), at paragraphs 30-32.
16 2015 SCC 58 (CanLII); [2015] 3 SCR 704.
17 Exhibit MC-1, pp. 149-166.
18 Exhibit MC-1, p. 153.
19 Exhibit MC-1, p. 153.

[39] Given that the existence of the One Order gang was not in dispute, the panel finds, on reasonable grounds to believe, that the One Order gang is an organization that engages 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 indictable criminal offences.

Membership of Mr. in the One Order gang and / or Engaging in Gang-Related Activity

[40] The next determination to be made, having concluded that the One Order gang is a criminal organization, is whether or not there is credible evidence to establish that Mr. was a member of the One Order gang, and/or has engaged in activity that is part of such a pattern of organized criminality.

[41] The Minister's position was that Mr. is a member of the One Order gang and that he has engaged in activity that is part of a pattern of criminal activity of the gang. Mr. through his counsel, argued that he was never a member of the One Order gang and the alleged activities that he performed at the request of the gang should not render him inadmissible.

[42] The panel has determined, given Mr. complete and total lack of credibility, that he is not and has never been a member of the One Order gang. The panel has also determined that Mr. has not engaged in any activity at the request of the gang. The panel's analysis in this regard is as follows.

[43] Membership, as a concept, is not defined in the *IRPA*. Nonetheless, the case law clearly establishes that the notion of membership within the immigration context can be properly ascertained.

s.19(1)

[44] The foundational premise or legal test affirmed in the jurisprudence is that membership must be given a broad and unrestricted meaning.[20] Rothstein, J. A. invoked the overarching context of public safety and national security and the availability of ministerial relief to justify viewing membership in those terms. In *Poshteh* v. *Canada (Minister of Citizenship and Immigration)*,[21] he stated as follows:

> (27) There is no definition of the term "member" in the *Act*. The courts have not established a precise and exhaustive definition of the term. In interpreting the term "member" in the former *Immigration Act*, R.S.C., 1985, c. I-2, the Trial Division (as it then was) has said that the term is to be given an unrestricted and broad interpretation. The rationale for such an approach is set out in *Canada (Minister of Citizenship and Immigration)* v. *Singh* (1998), 151 F.T.R. 101 (F.C.T.D.), at paragraph 52:
>
>> The provisions deal with subversion and terrorism. 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 therefore easily identifiable. The Minister of Citizenship and Immigration may, if not detrimental to the national interest, exclude an individual from the operation of subparagraph 19(1) (*f*) (iii) (B). I think it is obvious that Parliament intended the term "member" to be given an unrestricted and broad interpretation. …
>
> (29) Based on the rationale in *Singh* and, in particular, on the availability of an exemption from the operation of paragraph 34(1) (*f*) in appropriate cases, I am satisfied that the term "member" under the *Act* should continue to be interpreted broadly.

[45] Conceivably, the application of that "broad and unrestricted interpretation" of membership could be overstretched. Thus, Mosley, J., in *Toronto Coalition to Stop the War* v. *Canada (Minister of Public Safety and Emergency Preparedness)*,[22] urges caution against stereotypical assessments of membership. He states:

---

20 See cases like *Ismeal* v. *Canada (Public Safety and Emergency Preparedness)*, 2010 FC 198 (CanLII); *Suresh (Re)*, 1997 CanLII 5797 (FC); *Ahani (Re)*, 1998 CanLII 7708 (FC), at paragraph 21; *Qureshi* v. *Canada (Minister of Citizenship and Immigration)*, 2009 FC 7 (CanLII), at paragraphs 19-25; *Kanendra* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FC 923 (CanLII), at paragraphs 21-26.

21 2005 FCA 85; [2005] F.C.J. No. 381 (C.A.).

22 2010 FC 957 (CANLII).

> [118] But an unrestricted and broad definition is not a license to classify anyone who has had any dealings with a terrorist organization as a member of the group. Consideration has to be given to the facts of each case including any evidence pointing away from a finding of membership: *Poshteh*, at para. 38.

[46] A wide spectrum of principles on membership have emerged from the case law on security (subversion, terrorism and espionage), international rights violations, and organized criminality. These principles are interconnected and transferrable for the simple reason that they all address the overarching objective of protecting the health and safety of Canadian society.[23]

[47] Some principles of membership are as follows: Membership, as a concept, is not unconstitutionally vague or overbroad.[24] In *Krishnamoorthy* v. *Canada (Citizenship and Immigration)*,[25] Mosley, J., drawing from the case law, outlined some criteria for membership as follows:

> [23] … The jurisprudence points to a number of criteria – involvement, length of time, degree of commitment – that defines what membership in a broad sense may be. Not every act of support for a group that there are reasonable grounds to believe is involved in terrorist activities will constitute membership.

[48] As well, being a registered or formally recognized member of, or active participant in, the organization is not a precondition for the responsibility for the organization's actions to be assigned; simply belonging to the organization may suffice as membership.[26]

---

[23] In *Stables* v. *Canada (Citizenship and Immigration)*, 2011 FC 1319 (CanLII), at paragraph 46, Justice de Montigny stated:
[46] It is true that most of the case law on this subject has evolved in the context of section 34. Contrary to the Applicant's submission, there is no reason to draw a distinction between s.34, 35 and 37 for the purposes of interpreting the notions of membership and participation in an organization. I agree with the Immigration Division that the rationale underlying the broad interpretation of these concepts is the same. The fact that the Government holds a list of terrorist organizations while there is no such list in relation to criminal organizations is of no consequence. Membership in both kinds of organizations attract criminal liability in Canada, both pose a threat to the national interest, and the prohibition to belong to both types of organization furthers the overriding objective of providing for the safety and security of Canadians.
See also *Sittampalam* v. *Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326, [2007] 3 F.C.R. 198, at paragraph 21.

[24] *Stables* v. *Canada*, 2011 FC 1319 (CanLII), at paragraphs 38-40.

[25] 2011 FC 1342 (CanLII).

[26] *Chiau* v. *Canada (M.C.I.)*, 2000 CanLII 16793 (F.C.A.), [2001] 2 F.C. 297 (F.C.A.), at paragraph 25. In *Chiau* v. *Canada (Minister of Citizenship and Immigration)*, F.C.T.D. (1998) 2 FC 642 IMM 441-96, it was held that membership should not be interpreted as meaning actual or formal membership coupled with active participation in unlawful acts; simply belonging may be sufficient.

[49] Discussing variations of membership, Mactavish, J., in *Kanapathy* v. *Canada (Public Safety and Emergency Preparedness)*,[27] explained that it can be either formal or "membership by association" or "informal participation" for the purposes of subsection 34(1).

[50] The weight of the jurisprudence also establishes that a finding of complicity is not a pre-requisite for a finding of membership.[28] In *Kanagendren* v. *Canada (Citizenship and Immigration)*,[29] the Federal Court of Appeal reinforced this. Dawson, J. A., pulling on considerations of security, ministerial relief and the availability of dedicated provisions to assess participation in terrorist activity (in paragraph 34(1)(c)), held that *Ezokola* v. *Canada (Citizenship and Immigration)*[30] does not modify the existing legal test for assessing membership in a terrorist organization.[31]

[51] In terms of integration, a connection with an organized crime group that is transient and/or superficial may be insufficient to establish membership. In *Sinnaiah* v. *Canada (M.C.I.)*,[32] O'Reilly, J. states:

> To establish "membership" in an organization, there must at least be evidence of an "institutional link" with, or "knowing participation" in, the group's activities: *Chiau*, above; *Thanaratnam*, above.

---

27 2012 FC 459 (CanLII), at paragraphs 34-38.

28 *Mohammed Kashif Omer* v. *Canada (Minister of Citizenship and Immigration)*, [2007] FC 478, at paragraph 11; *Miguel* v. *Canada (Minister of Citizenship and Immigration)*, 2012 FC 802 (CanLII), at paragraph 22. Also see *Bruzzese* v. *Canada (Public Safety and Emergency Preparedness)*, 2014 FC 230 (CanLII).

29 2015 FCA 86 (CanLII). The Federal Court of Appeal upheld the Federal Court decision in *Kanagendren* v. *MCI and MPSEP*, 2014 FC 384.

30 [2013] 2 SCR 678, 2013 SCC 40 (CanLII).

31 See also *Moussa* v. *Canada (Public Safety and Emergency Preparedness)*, 2015 FC 545 (CanLII); *Nassereddine* v. *Canada (Citizenship and Immigration)*, 2014 FC 85 (CanLII), at paragraph 77. In dicta in *Joseph* v. *Canada (Citizenship and Immigration)*, 2013 FC 1101 (CanLII), O'Reilly, J. embraced the *Ezokola* principles in the assessment of membership, but that is not authority for the proposition.

32 2004 FC 1576 (CanLII), paragraph 6.

[52] Similarly, Barnes, J. concluded in *Saif* v. *Canada (Citizenship and Immigration)*[33] that a peripheral involvement in the organized crime, such as a third party individually transacting with the criminal organization, would not constitute membership or engaging in organized crime. In other words, there must be either some concrete and meaningful connection or linkage with the organization, or a decisive participation or engagement in the organization's activities.

[53] These legal principles are useful in the determination of whether or not Mr. was a member of the One Order gang, and whether or not he engaged in gang-related activities. In its assessment, the panel takes the view that no single piece of evidence is determinative that a person is or is not a member of a criminal organization, and that the evidence must be looked at cumulatively.[34]

[54] To begin the analysis of Mr. alleged membership, it is well established in the case law that inadmissibility on grounds of organized criminality does not necessarily require the existence of criminal charges or a conviction.[35] In the case at bar, save and except for his interaction with the police in connection with the land dispute,[36] which has no relevance to the issue to be decided, the documentary evidence before the panel is that Mr. does not have a criminal record.[37]

[55] Of great concern to the panel were the numerous inconsistencies between the documentary evidence, Mr. interview with the CBSA and his testimony at the hearing.

33 2016 FC 437 (CanLII).
34 *Thaneswaran* v. *Canada (Minister of Citizenship and Immigration)*, 2007 FC 189; *Canada (Minister of Citizenship and Immigration)* v. *Thanaratnam*, 2005 FCA 122 (CanLII).
35 *Castelly* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FC 788 (CanLII), 2008 FC 788, [2009] 2 F.C.R. 327 at paragraphs 25 & 26.
36 Exhibit C-1, pp. 9-10.
37 Exhibit C-1, pp. 9-12.

Testimony of Mr.

[56] With respect to Mr. sworn oral testimony, the premise is that testimony given under oath is presumed to be true unless there is a valid reason to doubt its truthfulness.[38] The panel cannot however possibly conclude that Mr. testimony was credible.

[57] There appear to be at least three different versions of events. First, there is the story that Mr. came to Canada with.[39] More specifically, it is a story that was written by Mr. wife on 2016, four months prior to their arrival in Canada.

[58] The story discusses Mr. and Mrs. life in the Bahamas, the existence of the One Order gang operating in their home town, the alleged fear of the gang by Mrs. given the allegation that she is a snitch, and the Bahamian government's inability to offer protection. Nowhere in this story is there any evidence of Mr. involvement with the One Order gang.

[59] The second story is contained in Mr. BOC Form[40] which has been submitted to the Refugee Protection Division. Mrs. , who is the author of the story on Mr. behalf, talks about him being pressured to join the gang, his refusal to do so and the various jobs that he performed at the gang's request.

[60] More specifically, Mr. was allegedly asked to sell for the gang, which resulted in a financial loss for the buyer. Furthermore, on one occasion Mr. was allegedly asked to hold onto a gun, and on another occasion, he was allegedly asked to hold onto three guns. Finally, Mr. was allegedly asked to hold onto marijuana.

38 *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA), at 305,
39 Exhibit C-1, pp. 5-8.
40 Exhibit MC-1, pp. 114-120.

[61] The third story is Mr. version of events discussed in an interview with the CBSA on July 29, 2016.[41] During the interview, Mr. essentially corroborated the version of events outlined in his BOC.

[62] The documentary evidence adduced by Mr. for the admissibility hearing contained a sworn statement of Mr. wherein he admitted to lying on his BOC.[42] Mr. alleges that his original story dated , 2016 that he came to Canada with, was deemed to be weak by his then counsel who instructed him to come up with a better and stronger story.

[63] Mr. sworn statement indicates that the one and only thing that he ever did at the gang's request was that he held onto a gun. Mr. denied being a part of the One Order gang and submitted that any and all involvement with the gang, as presented in his BOC, was not true.

[64] The panel is concerned with the sworn statement, as in paragraph 13, Mr. submitted that he "started thinking of other things that could make his story strong".[43] Mr. goes on to say that the gang leader tried to recruit him to join the gang and on one occasion he was given a gun to keep. The panel is therefore of the view that this alleged one and only incident was simply made up by Mr. in an attempt to "make his story strong".

[65] At the admissibility hearing, Mr. testified that he did in fact lie on his BOC as well as at his interview with the CBSA.[44] Mr. testified that the only two things that he ever did at the gang's request was the sale of and holding onto a gun.[45]

41 Exhibit MC-1, pp. 5-101.
42 Exhibit C-1, pp. 1-4.
43 Exhibit C-1, para 13, p. 2.
44 Transcript, pp. 33-36.
45 Transcript, pp. 35-36.

[66] The panel is very much concerned with Mr. complete lack of credibility. Mr. has already admitted that he lied to both: CBSA during his interview, and the Refugee Protection Division by way of his BOC.

[67] The panel asked Mr. why his sworn oral testimony should be assigned any weight given that he had already lied to two other government bodies and the answer offered by Mr. is simply not acceptable to the panel.[46]

[68] Mr. testified that the story that he came to Canada with is the truth.[47] Yet, Mr. testified that there were now three things that he did at the gang's request: the sale, holding onto a gun, and giving one of the gang's leaders' nephew a ride.[48] Mr. further testified that these three things are all outlined in his original story.[49] That however is not the case. Mr. original story makes no mention whatsoever of anything that the One Order gang allegedly asked of him.[50]

[69] In his submissions, counsel for the Minister, touched upon Mr. credibility and took issue with the fact that Mr. together with his wife clearly lied on their BOC forms and to the CBSA during his interview. The panel is therefore puzzled as to why the Minister preferred to believe Mr. testimony at the hearing with respect to the tasks that he allegedly performed at the gang's request.

[70] The panel need not determine which of the stories presented by Mr. is true. The panel has a strong suspicion that the original story that Mr. came to Canada with, that was written prior to his arrival in Canada, is most likely the true version of events, which simply pointed to Mr. generalized fear of the gang by virtue of his proximity to the gang's

---

46 Transcript, pp. 37-39.
47 Transcript, p. 38.
48 Transcript, p. 39.
49 Transcript, p. 39.
50 Exhibit C-1, pp. 5-8.

operations in that he resided in Bozine town. The test, however, is reasonable grounds to believe, and as such, the panel will not speculate in this regard.

[71] The issue before the panel is with respect to Mr. alleged membership in the One Order gang and / or engagement in the gang's activities. In light of Mr. total lack of credibility, there is nothing before the panel that would suggest that Mr. is a member of the One Order gang or that he engaged in the gang's activities.

Testimony of Mrs.

[72] Mrs. the wife of the person concerned, testified at the hearing.[51] The panel is of the view that her testimony did not add much in terms of value to the issue to be determined.

[73] Mrs. testified about growing up in Bozine town together with the neighborhood kids that would go on to form the One Order gang.[52]

[74] Mrs. further testified that the reason why she and Mr. came to Canada was due to the fact that she feared for her life at the hands of the One Order gang because she was allegedly snitching on the gang's activities.[53] She testified that she even brought documents with her from the Bahamas supporting her claim of being a snitch.[54]

[75] Mrs. testified that after she and Mr. initiated their refugee claims, they retained a lawyer to assist them in this regard.[55] She further testified that the lawyer, upon reviewing their initial story, told them that the story was weak and would not hold up.[56]

---

[51] Transcript, pp. 120-182.
[52] Transcript, pp. 124-125.
[53] Transcript, pp. 125-126, 131-132.
[54] Transcript, p. 126.
[55] Transcript, p. 133.
[56] Transcript, p. 134.

[76] Mrs. went on to say that Mr. told the lawyer that the leader of the One Order gang tried to recruit him and asked him to hold onto a gun.[57] Mrs. indicated that the lawyer liked this story better and said that this is the story he will go with.[58]

[77] What is of concern to the panel is the fact that in his sworn statement adduced at the hearing, Mr. at paragraph 13, stated that he "started thinking of other things that could make our story strong" and that is how he came up with the story of alleged recruitment and holding onto a gun.[59] As already discussed, the panel is convinced that none of this ever happened and that it was simply made up by Mr. .

[78] Mrs. went on to testify that the one and only thing that was true, was that Mr. was asked to hold onto a gun.[60] Yet, later on, she testified that there was in fact another incident involving the sale of a that Mr. was asked by the gang to participate in.[61] Clearly, Mrs. contradicted herself when she testified that the holding of the gun was the one and only thing that was ever asked of Mr. .

[79] Upon cross-examination, counsel for the Minister confronted Mrs. with the fact that she previously lied on her BOC and, in addition, that Mr. also lied during his interview with the CBSA.[62] Mrs. was then asked by Minister's counsel as to why should her testimony at the hearing be found credible, to which, she replied "… every document I bring in and my original story that I came in…I can guarantee you, I can match word for word…".[63]

[80] This, therefore, confirms that panel's suspicion, that it is the original story that is most likely the true version of events, and any alleged involvement of Mr. with the One Order gang is pure fiction.

---

57 Transcript, pp. 134-135.
58 Transcript, p. 135.
59 Exhibit C-1, para 13, p. 2.
60 Transcript, p. 138.
61 Transcript, pp. 141-143.
62 Transcript, p. 163.
63 Transcript, pp. 163-164.

CONCLUSION

[81] 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) exist, namely, that Mr. is a member of the One Order gang, 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. The panel is also not satisfied that Mr. is inadmissible for engaging in activity that is part of such a pattern.

[82] A Favourable Decision is therefore issued to Mr. and is attached hereto.

(signed) **"Karina Henrique"**

Karina Henrique

28 June 2018

Date