



File No./Dossier: B7-00704

TRANSCRIPT OF DECISION AND REASONS/  
TRANSCRIPTION DE DÉCISION ET DE RAISONS

**Between/Entre:**

The Minister of Public Safety and Emergency Preparedness  
Le Ministre de la Sécurité publique et de la Protection civile

**And/Et**

**ANGELA CHIOMA A OBUSELI**

**Date  
of Hearing**

JANUARY 29, 2018

**Date de  
l'audience**

**Place of Hearing**

VANCOUVER, BRITISH COLUMBIA

**Lieu de l'audience**

**Date of Decision**

JULY 26, 2018

**Date de la Décision**

**Member**

T. COOK

**Commissaire**

**For the Person Concerned**

E. ROTH

**Pour L'intéressé**

**Minister's Counsel**

J. WICHARUK / J. ANAKA

**Conseil de L'intimé**

1 --- DECISION

2  
3 MEMBER COOK: Today is the 19th of July, 2018.

4  
5 My name is Trent Cook and I am a member of the Immigration Division of the  
6 Immigration and Refugee Board of Canada.

7  
8 This is an orally dictated decision and reasons pertaining to an admissibility hearing  
9 concerning Ms. Angela Obuseli. Ms. Obuseli is alleged to be inadmissible to Canada  
10 pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*. This  
11 section is entitled "Organized Criminality". I will read the section into the Record.

12  
13 "37 (1) A permanent resident or a foreign national is  
14 inadmissible on grounds of organized criminality for

15  
16 (a) being a member of an organization that is believed on  
17 reasonable grounds to be or to have been engaged in activity  
18 that is part of a pattern of criminal activity planned and  
19 organized by a number of persons acting in concert in  
20 furtherance of the commission of an offence punishable  
21 under an Act of Parliament by way of indictment, or in  
22 furtherance of the commission of an offence outside Canada  
23 that, if committed in Canada, would constitute such an  
24 offence, or engaging in activity that is part of such a pattern."

25  
26 Specifically, the Minister's 44 Report contends that Ms. Obuseli is a foreign national who  
27 engaged in a pattern of criminal activity due to her involvement with a group of people  
28 who engaged in an advanced fee lottery scheme that resulted in several Canadian victims  
29 being fraudulently convinced to send funds to her and her accomplices. Though the  
30 Minister's 44 Report did not assert membership in a criminal organization, the Minister's  
31 submissions touched on this aspect of the allegation as well.

32  
33 The admissibility hearing took place on the 29th of January, 2018. The Minister was  
34 represented by Hearings Officer Jeffrey Wicharuk and Hearings Officer Jennifer Anaka.  
35 Ms. Obuseli was represented by Ms. Erin Roth, barrister and solicitor. The parties  
36 submitted documentary evidence. Exhibits C-1 through C-4 were placed on the Record for  
37 the Minister and Exhibits P-1 through P-3 were placed onto the Record for Ms. Obuseli.

38  
39 Once all evidence was received, the hearing was adjourned for written submissions. I will  
40 also note that Ms. Obuseli provided *viva voce* evidence at the admissibility hearing and

1 was examined by both counsels. The Minister called as a witness Ms. Obuseli's ex-partner,  
2 Mr. Obi Michael Okoyai (phonetic). The couple are currently separated and are involved in  
3 Family Court proceedings. Mr. Okoyai was cross-examined by Ms. Obuseli's counsel.

4  
5 Having considered all of the evidence, submissions, and applicable jurisprudence, I am  
6 issuing a decision that is favourable to Ms. Obuseli. I am not satisfied that Ms. Obuseli is a  
7 person described in paragraph 37(1)(a) and, therefore, I will not be issuing her a  
8 deportation order.

9  
10 It is noted that the Minister does enjoy the right of appeal in this case. If they so choose,  
11 the Minister may take the matter to the Immigration Appeal Division where a *de novo*  
12 proceeding would occur with both parties having the option to advance new evidence.

13  
14 I will now advise the parties of the reasons that led me to reach this conclusion.

15  
16 Ms. Obuseli is a foreign national and a citizen of Nigeria. She is not a Canadian citizen or  
17 a permanent resident of Canada. Evidence of her status as a foreign national can be found  
18 on pages 305 through 306 of Exhibit C-1 where the Minister performed status checks on  
19 immigration data bases. Ms. Obuseli did not assert permanent residence or Canadian  
20 citizen status during this proceeding.

21  
22 The first issue for determination is whether the individuals perpetrating this advance fee  
23 lottery scheme constitute a criminal organization as contemplated by paragraph 37(1)(a) of  
24 the *Immigration and Refugee Protection Act*. I find that there are reasonable grounds to  
25 support this component of the allegation.

26  
27 Criminal organizations are to be given broad and unrestricted meaning when assessed  
28 pursuant to paragraph 37(1)(a). This comes from the cases of *Sittampalam* and  
29 *Thanaratnam*. The Courts have held on a number of occasions that criminal organizations  
30 can take up many forms and are not limited by any minimum or mandatory attributes. That  
31 said, the Court has routinely supported some common general indicia of criminal  
32 organizations as a loose guide for decision makers. Such characteristics typical of a  
33 criminal organization include an identity, leadership, a loose hierarchy, basic  
34 organizational structure, occupied territory, regular meeting locations, and a common  
35 modus operandi. It is notable that this list is non-exhaustive and that adjudicators should be  
36 afforded a good degree of deference in their analysis of criminal organizations based on a  
37 weighing of the facts that vary from case to case.

38  
39 The *Sittampalam* and *Thanaratnam* definitions of criminal organizations has been  
40 expanded by the Supreme Court of Canada in the case of *B10*, 2015 SCC 58 and by the

1 Federal Court in *Saif*, 2016 FC 437. These cases have found that it is appropriate for  
2 members to consider the definition of a criminal organization as set out in paragraph  
3 467.1(1) of the *Criminal Code of Canada* when considering admissibility issues pursuant  
4 to paragraph 37 of the IRPA. Section 467.1(1) of the *Criminal Code* reads as such:

5  
6  
7 “Criminal organization means a group, however organized,  
8 that

9  
10 (a) is composed of three or more persons in or outside  
11 Canada; and

12  
13 (b) has as one of its main purposes or main activities the  
14 facilitation or commission of one or more serious offences  
15 that, if committed, would likely result in the direct or indirect  
16 receipt of a material benefit, including a financial benefit, by  
17 the group or by any of the persons who constitute the group.

18  
19 It does not include a group of persons that forms randomly  
20 for the immediate commission of a single offence.

21  
22 The serious offence...

23  
24 According to this definition.

25  
26 ...means an indictable offence under this or any other Act of  
27 Parliament for which the maximum punishment is  
28 imprisonment for five years or more, or another offence that  
29 is prescribed by regulation.  
30

31 In applying the facts in evidence to these definitions, I am satisfied that there are  
32 reasonable grounds to believe that the advance fee lottery scheme, as described in the  
33 Minister’s evidence, that is central to this proceeding, is a criminal organization according  
34 to paragraph 37(1)(a) of the IRPA.

35  
36 Information pertaining to this lottery scheme came primarily from the Minister’s  
37 Exhibit C-1 on pages 32 through 304. Contained within these documents was a Report to  
38 Crown Counsel concerning a man named Mr. Habib Uthman (phonetic). This was  
39 Ms. Obuseli’s boyfriend for a time. The document also included a statement from  
40 Ms. Obuseli as provided to the RCMP investigators under what they described as Project

1 E-Nicotine, which was an investigation of Mr. Uthman's fraudulent activities. The content  
2 of these documents went unchallenged by Ms. Obuseli for the purpose of this proceeding.  
3 The documents are evidence of a meticulous and lengthy criminal investigation. I find  
4 them highly credible and trustworthy.

5  
6 Project E-Nicotine was an RCMP investigation focusing on Mr. Habib Uthman and any of  
7 his associates for their roles in perpetrating an advance fee lottery scheme. The Report to  
8 Crown Counsel was over 200 pages where the investigation and evidence obtained by the  
9 police was described in detail. Numerous witnesses were interviewed and an array of  
10 physical evidence was seized by way of search warrants executed on two addresses linked  
11 to the operation in Burnaby and Coquitlam. These residences were characterized by the  
12 investigation as boiler rooms, a term used to describe fraudulent telemarketing operations.  
13 According to the report, boiler rooms typically contain various computers,  
14 communications devices, printers, scanners, and shredders. In this investigation, the report  
15 asserts that these boiler rooms were likely the places where telephone calls were made to  
16 the victim targets of the lottery scheme. Ultimately, the report recommended that various  
17 criminal charges such as fraud, set out in paragraph 380(1)(a) and (b) of the *Criminal Code*  
18 *of Canada*, and identity theft, set out in section 402.1(1), be laid against Mr. Habib  
19 Uthman, 11 counts in total; Mr. Abdul Uthman, Habib's brother, two counts in total, and  
20 Kathleen Anderson (phonetic), two counts in total.

21  
22 Fraud and identity theft are both indictable offences in Canada. Fraud over \$5,000 carries  
23 with it a maximum term of imprisonment of 14 years. Identity theft carries with it a  
24 maximum term of imprisonment of five years.

25  
26 The report also details other associates involved in the operation and as witnesses to the  
27 operation. These people included Ms. Obuseli, a man named Adams Obakpee, and Janelle  
28 States. The roles played by these individuals, as understood by the police investigators,  
29 were detailed at length. It is notable that the investigation did not recommend that any  
30 charges be laid against Ms. Obuseli.

31  
32 A synopsis of the investigation can be found on pages 47 through 48 of Exhibit C-1. In  
33 summary, the investigation concluded that between May 2011 and September 2012, six  
34 Canadian victims received lottery letters in the mail advising that they had each won the  
35 lottery. In order to collect their winnings, the victims were told that they had to pay an  
36 advanced fee in order for their winnings to be released. To make payment of the advanced  
37 fee, the victims provided details of their personal banking and/or credit card information  
38 either over the phone or by way of completing lottery verification forms. Once the banking  
39 information was obtained by the perpetrators, the victims were not only defrauded of any  
40 money that they provided as the advanced fee but they also fell victim to unauthorized

1 credit purposes and withdrawals from their accounts. At no point did the winners ever  
2 receive any lottery awards. Typically, the victim targets were elderly individuals and/or  
3 individuals that were suffering from some type of illness.

4  
5 The report goes on to detail the operation and those occupying prominent roles as  
6 described by the investigators. The bulk of the report focuses on Mr. Habib Uthman, who  
7 the police consider the originator and unquestionable leader of the operation. His most  
8 prominent associates, as indicated in the report, are his brother, Abdul, and a woman  
9 named Kathleen Anderson. A data search of various electronic communication devices,  
10 such as BlackBerry mobile phones, Skype accounts, Hotmail accounts, Gmail accounts,  
11 and Twitter accounts clearly shows Habib Uthman as the director of the operation.  
12 Evidence seized revealed numerous electronic conversations having taken place between  
13 Mr. Habib Uthman and various associates in order to perpetrate the scam.

14  
15 On page 104 of Exhibit C-1, the investigators conclude that Mr. Uthman would discuss the  
16 details of money transfers, how to deal with victims, and how to provide guidance on how  
17 he wanted his associates to conduct his fraudulent telemarketing activity. A large portion  
18 of these conversations took place with his brother, Abdul, Kathleen Anderson, Adams  
19 Obakpee, Janelle States and, to a much lesser degree, Ms. Angela Obuseli.

20  
21 The report shows that Habib Uthman directed Kathleen Anderson on topics such as where  
22 to work, what time people would call, the logistics of moving money around, how to speak  
23 with victims, and how to compromise their data. The electronic communications between  
24 Mr. Uthman and Ms. Anderson were enumerable. She was a very prominent person within  
25 this operation. It was almost as if Habib Uthman was mentoring Ms. Anderson on the finer  
26 points of telemarketing scams.

27  
28 When interviewed by the police, Ms. Anderson conceded that she assisted Habib Uthman  
29 in this operation. She admitted to answering phone calls and how she discussed the inner  
30 workings of the operation with Mr. Uthman at length. She also described how she allowed  
31 Mr. Uthman to deposit money into her mother's account and said that at one time she lived  
32 with Mr. Uthman at the Burnaby apartment/boiler room.

33  
34 The report continues by detailing Mr. Abdul Uthman's role as extrapolated by way of a  
35 search of his electronic devices. Abdul Uthman was described as coaching Adams  
36 Obakpee on what to do and what numbers to call. A search of Abdul's electronic devices  
37 revealed the use of at least four different Skype handles with different identifiers, a phone  
38 number that was repeatedly linked to complaints made by the public as associated with a  
39 fake lotto scheme, and three Discover visa card statements belonging to a woman named  
40 Betty Priestriedje. This woman was later identified in the investigation as a victim of this

1 scheme. Abdul Uthman was also identified as having lived with Habib at both the Burnaby  
2 and Coquitlam addresses identified in this investigation as boiler rooms.

3  
4 It is clear from the evidence that Abdul Uthman was intimately familiar with the fraud  
5 operation. He lived with Habib at two addresses, was providing direction to Mr. Obakpee,  
6 and had fraudulently obtained financial data from a victim, which was retrieved from a  
7 search of his electronic devices.

8  
9 During his interview with police investigators, Mr. Adams Obakpee identifies Mr. Abdul  
10 Uthman as his friend and admitted to allowing him to use his own bank account to receive  
11 deposits of what would turn out to be the monies of the victims of the scam. Mr. Obakpee  
12 also admitted to knowing Abdul's brother Habib.

13  
14 The investigation identifies Mr. Obakpee as one who received victim's monies and as one  
15 who prepared and mailed lottery letters out to potential victims. An electronic conversation  
16 between Habib Uthman and Mr. Obakpee, found on page 115 of Exhibit C-1, clearly  
17 shows that he was involved in the operation beyond simply allowing his bank account to  
18 be used for deposits. The discussion in question revolves around the logistics of creating  
19 and printing envelopes with labels and the acquisition of stamps to be used for the mailing  
20 of bait letters about the lottery scam to potential victims. It is evident from the report that  
21 Mr. Obakpee was involved to a degree with the inner workings of the lottery fraud  
22 operation.

23  
24 Janelle States advised investigators that she met Habib Uthman at a club where he  
25 informed her of his scam. She stated that initially she did not want to participate but  
26 needed the money and decided to do it. She said that she was targeted by Habib Uthman  
27 because of her "Canadian accent" making her less suspicious on the phone than someone  
28 who spoke with a distinct African accent. She stated that she worked out of a shady  
29 apartment where she would call old or sick people, informing them that they had won the  
30 lottery. She attempted to obtain a rapport with these people in hopes of obtaining their  
31 personal information. Ms. States said that her training was provided by an unidentified  
32 female making similar phone calls from another bedroom in the apartment. Ms. States was  
33 clearly aware of the fraud operation and played a significant role in perpetrating the  
34 scheme by operating the telephone. She described herself as an employee of Habib  
35 Uthman.

36  
37 Angela Obuseli, the subject of this hearing, is also identified in the report to Crown  
38 Counsel. Ms. Obuseli definitely had a role in the victimization of one individual but her  
39 link to the functioning of the organization is non-existent. The report initially identified  
40 Ms. Obuseli as a person who answered phone for the operation and described her as having

1 received funds from a number of victims; however, these statements were later recanted as  
2 outlined in CBSA Officer Alvin Nath's declaration contained in Exhibit C-2. Officer Nath  
3 consulted with an RCMP intelligence analyst who confirmed that the recant was accurate.  
4 Officer Nath did declare the BlackBerry messages do suggest that Mr. Uthman shared the  
5 names of other victims with Ms. Obuseli but nothing beyond that.

6  
7 Given that Ms. Obuseli was Habib Uthman's girlfriend for a time during the operation, the  
8 two of them did communicate regularly. During one of the conversations, Habib Uthman  
9 did direct Ms. Obuseli to receive funds into her account from a woman named Anne  
10 (phonetic) Chalanchuck. Pages 117 through 120 of Exhibit C-1 detail the BlackBerry  
11 message exchange. It is clear that Mr. Uthman asks Ms. Obuseli to allow him to use her  
12 account to deposit the funds and that Ms. Obuseli agrees to this fairly easily. She asked  
13 Mr. Uthman very few questions. Even when the name Anne Chalanchuck is stated as the  
14 sender of the funds, Ms. Obuseli does not seem confused. Mr. Uthman further directs  
15 Ms. Obuseli on how to withdraw the money and a total of \$14,000 was deposited.  
16 Mr. Uthman wanted \$8,000 taken out on one day and \$5,000 taken out the next.  
17 Mr. Uthman told Ms. Obuseli that she could keep \$1,000 for doing this.

18  
19 It's clear from the messages that Ms. Obuseli had a suspicion that something untoward is  
20 happening here. The messages show her repeatedly expressing a concern that the banks  
21 might be watching her accounts and is very worried that she is doing all of this in her real  
22 name.

23  
24 A few days later, the bank closed Ms. Obuseli account on suspicion of fraudulent activity.  
25 She tells this to Mr. Uthman and he advises her to open another account. Ms. Obuseli is  
26 agreeable but states that "this is the last time in my real name". Mr. Uthman agrees. He  
27 says he will get her a fake ID. Ms. Obuseli opens the new account as instructed and gave  
28 the information to Mr. Uthman. Several months later, Ms. Obuseli is informed that her  
29 bank account has now been closed as the bank believed it was linked to fraudulent activity  
30 having something to do with a Reader's Digest scam. Ms. Obuseli, in her messages,  
31 expresses that this could bite her in the future.

32  
33 The texts or BlackBerry messages clearly indicate that Ms. Obuseli had a role in  
34 defrauding Anne Chalanchuck. She received direction and instructions from Mr. Uthman  
35 and she was given \$1,000 for her participation.

36  
37 During a search of both the Burnaby and Coquitlam apartments associated with the  
38 operation, investigators uncovered a wide range of evidence to suggest that these locations  
39 were, in fact, boiler rooms for the fraudulent lottery operations. Among the items  
40 discovered at the two residences were LaserJet printer toner boxes, computer modems,



1 routers, computer fans, and garbage bags full of shredded documents which when pieced  
2 together and analyzed indicated Publisher's Clearinghouse bait letters for several victims.  
3 Envelopes, paper, mailing labels, iPads, laptops, and BlackBerry phones were also seized.  
4 These items were clearly the remnants of a full-scale organized lottery fraud operation.

5  
6 I will now apply this evidence to the definition of criminal organization pursuant to  
7 paragraph 37(1)(a) of the IRPA.

8  
9 The credible and trustworthy evidence, as outlined in the Report to Crown Counsel,  
10 constitutes reasonable grounds to believe that the advanced fee lottery scheme perpetrated  
11 by Mr. Uthman and others is a criminal organization.

12  
13 In applying a broad and unrestricted analysis per *Sittampalam* and *Thanaratnam*, the  
14 lottery operation itself required communication, collaboration, and planning. These are all  
15 vital components of an organized endeavour. The acquisition of an office to work from  
16 was necessary, equipment and supplies had to be acquired and set up, victims needed to be  
17 identified, letters needed to be prepared and mailed, phone calls needed to be made, and  
18 monies needed to be deposited and moved around. The scheme took a good deal of  
19 coordination with various people adhering to specific roles of varying importance.

20  
21 Habib Uthman was clearly the leader providing direction and training to those beneath  
22 him. He was at the top of the hierarchy with his brother, Abdul, slight below and  
23 Ms. Anderson as a protégé. Mr. Obakpee and Ms. States had to find roles and had intimate  
24 knowledge of the operation.

25  
26 Ms. Obuseli was far off on the periphery. Ms. Obuseli played a role in one large fraud  
27 where \$14,000 was deposited into her account upon direction from Mr. Uthman but she  
28 did not have any linkages to the inner workings of the operation.

29  
30 The modus operandi of the scam was to repeat a pattern of fraud and identity theft over and  
31 over again in hopes that a fraction of people would be fooled into paying the advance fee  
32 or giving the fraudsters access to private banking and credit card information. Obtaining  
33 money by way of fraud and identity theft was the only reason that this operation existed. It  
34 served no legitimate purpose. The end goal was for Mr. Uthman and his associates to  
35 obtain as much money as they could before getting caught. The operation lasted for 17  
36 months and is reported to have defrauded six Canadian victims out of several thousands of  
37 dollars in total.

38  
39 Mr. Habib Uthman's advanced fee lottery scam also meets the definition of criminal  
40 organization as set out in the *Criminal Code*. It was a loosely organized faction of three or

1 more people working together inside Canada whose main activity was the repeated  
2 perpetration of fraud and identity theft that resulted in the material benefit by the group.  
3 Fraud and identity theft are indictable offences in Canada, which can both garner custodial  
4 sentences of five years or more.

5  
6 This was not a group that was randomly formed for the single commission of an offence.  
7 The group lasted for 17 months and its main players were recruited, trained, and guided by  
8 Mr. Habib Uthman for the entire duration of the operation's existence.

9  
10 Regardless of which definition is preferred, Habib Uthman's lottery scheme was a criminal  
11 organization as contemplated by paragraph 37(1)(a) of the IRPA.

12  
13 The next element for me to consider was whether Ms. Obuseli was a member of this  
14 criminal organization. Though the Minister did not allege membership in the narrative of  
15 its 44 Report, the hearings officer did make reference to membership in written  
16 submissions.

17  
18 I am not satisfied that Ms. Obuseli's link to the lottery scam rises to the level of  
19 membership in the organization. The term "membership" is to be given a broad and  
20 unrestricted meaning. In *Chiau v. Canada*, 2001 2 FC 297 CA, the Federal Court of  
21 Appeal found that:

22  
23 By equating a member with belonging to a criminal  
24 organization, the term should be broadly understood and that  
25 a flexible approach should be taken in determining whether  
26 membership in a criminal organization has been made out.

27  
28 The Court further held that:

29  
30 There is no requirement to prove actual or formal  
31 membership or active participation in unlawful acts. All that  
32 needs to be established is that there are reasonable grounds  
33 to believe that the person is or has been a member of the  
34 organization.

35  
36 Other legal principles from the line of cases pertaining to membership include that  
37 membership can be made out where a person associates with a criminal organization such  
38 as a triad. This can be found in the case of *Chong v. Minister of Citizenship and*  
39 *Immigration*, Federal Court Trial Division, December 2001.

40

1 The Court also has held that membership does not require the existence of criminal charges  
2 or convictions on the part of the person. The reference for this *Castlly v. Minister of*  
3 *Citizenship and Immigration*, 2009 2 FCR 327.

4  
5 According to the *Amaya* decision, September 2007 FC 934:

6  
7 Where someone admits to belonging to a criminal  
8 organization, even if the person does not engage in criminal  
9 activities, knowledge of the criminal activities of the group is  
10 sufficient to satisfy any *mens rea* requirements.

11  
12 Referencing *Stables*, 2014 FC 16:

13  
14 Even if someone denies any knowledge of the organization's  
15 criminal activity that knowledge may be imputed if the  
16 person was wilfully blind to it.

17  
18 Finally, in the *Suresh* decision, the Federal Court found that:

19  
20 A person can be considered a member of an organization if  
21 he or she devote him or herself significantly to the  
22 organization and to the furtherance of the aims and purposes  
23 of the organization or if he or she has associated with  
24 members of the organization for a substantial period of time.

25  
26 Pertaining to Ms. Obuseli, the Minister contends that her membership in Mr. Habib  
27 Uthman's organization is established by the following:

- 28  
29 (a) providing her bank account to Mr. Habib Uthman;  
30  
31 (b) receiving wire transfers of funds from the victim, Anne Chalanchuck;  
32  
33 (c) withdrawing the proceeds deposited by Ms. Chalanchuck and giving it to  
34 Mr. Uthman;  
35  
36 (d) receiving \$1,000 for doing this;  
37  
38 (e) upon direction from Mr. Uthman, the setting up of a new bank account when hers  
39 was closed due to suspicious activity;  
40

- 1 (f) providing Mr. Uthman with the details of this new account;  
2  
3 (g) providing the name of Adamola Malik (phonetic) when questioned by investigators  
4 as to the identity of Mr. Uthman when Ms. Obuseli was confronted about fraud  
5 concerns;  
6  
7 (h) providing the police with an incorrect phone number for Mr. Uthman in order to  
8 protect him; and  
9  
10 (i) Ms. Obuseli's willingness to continue accepting the transfer of funds for  
11 Mr. Uthman if she had a fake ID.  
12

13 The Minister believes that this is indicia of a commitment to the organization.  
14

15 Having reviewed Ms. Obuseli's interviews with the police, her interviews with CBSA  
16 Officer Nath, and her testimony at the admissibility hearing, I am satisfied that  
17 Ms. Obuseli knew or was wilfully blind to the fact that Mr. Habib Uthman was involved in  
18 some type of fraudulent activity. I find that Ms. Obuseli also either knew or was wilfully  
19 blind to the fact that her level of participation was likely personal involvement in some  
20 type of criminal activity.  
21

22 I do not find that reasonable grounds to believe exist to establish membership. I do not find  
23 that there is evidence to suggest that Ms. Obuseli knew that Mr. Uthman's requests and  
24 direction were coming on behalf of a criminal organization.  
25

26 Ms. Obuseli was remarkably consistent during all of her interactions with law enforcement  
27 including the testimony that she provided at the admissibility hearing. The information that  
28 she routinely provided was that she was dating Mr. Uthman, he asked her to allow some  
29 money to be transferred into her account, she withdrew the money and gave it to him, and  
30 that she opened up another account and provided it to Mr. Uthman when the bank shut her  
31 original one down. Ms. Obuseli also said that she did all of this even though she was  
32 suspicious as to the reasons.  
33

34 She confirmed a number of times throughout her interviews that she had heard rumours  
35 that Mr. Uthman may be involved in fraudulent activity and that she made a conscious  
36 decision not to probe him about this. Ms. Obuseli told the story about Mr. Uthman  
37 advising her that the Chalanchuck money was from his aunt three times: once to the RCMP  
38 during her E-Nicotine interview, once to CBSA Officer Nath, and during testimony at the  
39 admissibility hearing.  
40

1 Despite this consistency about the money coming from the aunt, I do not find this  
2 explanation to be credible. I agree with the Minister that the BlackBerry messages  
3 retrieved by investigators were not reflective of a couple who had previously discussed this  
4 issue; in fact, it was the opposite. A review of the messages show that Ms. Obuseli seemed  
5 a little bit surprised at Mr. Uthman's request but chose not to question it and proceeded to  
6 do it anyway. Ms. Obuseli stated a number of times that her decision not to ask  
7 Mr. Obuseli many questions or investigate the rumours was tactical on her part as she  
8 didn't really want to burden herself with the knowledge of an issue that he was likely a  
9 criminal and that she was simply trying to be a good girlfriend.

10  
11 Ms. Obuseli was consistent that she did not know anything about the lottery scam or the  
12 other people suspected of operating it. Her most compelling denial of this came when the  
13 RCMP interrogated her at length on this matter, suggesting to her that she probably knew  
14 more than she was letting on. Ms. Obuseli did not waiver under this investigative pressure.

15  
16 I do not have any credibility issues with Ms. Obuseli's denials. The police never arrested  
17 Ms. Obuseli and did not recommend that any charges be laid against him. The police may  
18 have had their suspicions about Ms. Obuseli but nothing materialized beyond that.  
19 Ms. Obuseli maintained her denial of knowledge about the operation with Officer Nath and  
20 during her testimony. Again, I do not have any credibility concerns. There simply is not  
21 any credible and trustworthy evidence to establish reasonable grounds that Ms. Obuseli  
22 knew about the criminal organization.

23  
24 I will speak briefly on Mr. Okoyai's evidence. Mr. Okoyai's evidence did not add much to  
25 this proceeding. His motivation for providing evidence against Ms. Obuseli has to be taken  
26 into account given that he appears to be involved in an acrimonious dissolution of his  
27 relationship with Ms. Obuseli where the Family Court has been involved with respect to a  
28 child that the two of them share.

29  
30 I also do not find portion of Mr. Okoyai's evidence to be credible. For instance, in  
31 Exhibit C-4, Mr. Okoyai declared that Ms. Obuseli was answering phones for  
32 Mr. Uthman's scam. I do not believe this to be true. Janelle States advised that she was  
33 targeted by Mr. Uthman for her Canadian accent. Ms. Obuseli, to this day, has a distinct  
34 Nigerian accent and at times I struggled to decipher what she was saying at the  
35 admissibility hearing. Given this fact, along with the trepidation that the general public has  
36 surrounding stereotypical Nigerian phone scams, I find it highly unlikely that Ms. Obuseli  
37 would ever be asked to operate a phone for Mr. Uthman's organization. This was also  
38 confirmed by Officer Nath when he documented the investigator's recant of this statement.

39  
40 Mr. Okoyai also said that Ms. Obuseli lived with Mr. Uthman for a time. I do not believe

1 this to be true either. Ms. Obuseli said a number of times that she hardly ever went to  
2 Mr. Uthman's home and when she did she never slept over there. No items seized by  
3 investigators at either of Mr. Uthman's residences linked Ms. Obuseli to ever having lived  
4 with Mr. Uthman. I think that Mr. Okoyai was likely upset at Ms. Obuseli's involvement in  
5 the criminal activity with her ex-boyfriend and also upset that Ms. Obuseli kept  
6 Mr. Okoyai in the dark about this. I find it more probably than not that Mr. Okoyai tailored  
7 his evidence in an attempt to assist the Minister in establishing an organized criminality  
8 allegation against Ms. Obuseli for a personal vendetta. As such, I do not find Mr. Okoyai's  
9 evidence to be credible or trustworthy.

10  
11 What is missing from the equation regarding membership is evidence of Ms. Obuseli's  
12 knowledge and/or wilful blindness to Mr. Uthman's advanced fee lottery organization. In  
13 order for membership in an organization to be established there must be reasonable  
14 grounds to believe that Ms. Obuseli knew or was wilfully blind as to the organization's  
15 existence and modus operandi.

16  
17 I do not find that such evidence exists. Ms. Obuseli's participation essentially boils down  
18 to allowing her bank account to be used for Anne Chalanchuck's fraud and for providing  
19 Mr. Uthman with details of another bank account that she opened when the bank shut  
20 down her original one. Unlike the other individuals heavily involved in this operation,  
21 there is no evidence that Ms. Obuseli had any meaningful role in the organization's  
22 inception or coordinated effort to repeatedly engage in fraudulent activity. There is no  
23 evidence to suggest that Ms. Obuseli had any direct or indirect contact or communication  
24 with anyone in the organization other than Mr. Uthman. Given that Ms. Obuseli was  
25 Mr. Uthman's girlfriend, regular contact would be expected. No information was obtained  
26 on other people's phones to show that they had any direct or indirect contact with  
27 Ms. Obuseli. There is no evidence that Ms. Obuseli ever received training or instructions  
28 or guidance on the inner workings of this organization. The phone messages retrieved  
29 pertained solely to the Chalanchuck fraud.

30  
31 There is no evidence that Ms. Obuseli had any knowledge of the two boiler rooms or the  
32 activities that took place within them. Ms. Obuseli stated a number of times that she barely  
33 ever went to Mr. Uthman's home and when she did she said she never slept over. When  
34 asked if she ever saw anything such as multiple phone lines or any other evidence of  
35 telemarketing activity in these homes, Ms. Obuseli said "no". In addition, none of the  
36 items seized by the police in either home had any link to Ms. Obuseli.

37  
38 There is no evidence to suggest that Ms. Obuseli had any role in the recruitment of  
39 potential victims, had any role in the training of other employees of the organization, had  
40 any role in the purchasing or setting up of the equipment for the boiler rooms, had any role

1 in answering phones or had any role in preparing and distributing any of the bait letters.  
2 Ms. Obuseli's role was relegated to allowing her bank account to be used for the deposit of  
3 the Chalanchuck money at her boyfriend's request. There is no evidence that Ms. Obuseli  
4 had any knowledge or even any suspicion that this deposit was linked to any type of  
5 criminal organization.

6  
7 The BlackBerry messages intercepted were indicative of personal requests and direction  
8 made by Mr. Uthman; however, nothing indicates that Ms. Obuseli had any inkling that  
9 Mr. Uthman's requests were being done on behalf of a criminal organization. The requests  
10 seemed to be for Mr. Uthman's benefit and nothing beyond that.

11  
12 All of the applicable case law pertaining to membership emphasizes an individual's ties to  
13 the criminal organization not their ties to a single person engaging in criminal conduct. In  
14 *Amaya*, 2017 FC 568, at paragraph 30, the Court notes that:

15  
16 Knowledge of a gang's criminal activities would provide for  
17 the *mens rea* for a membership finding.

18  
19 The key word here is "gang". This indicates more than one person. In order for  
20 membership to be established, the person concerned must be aware or be wilfully blind as  
21 to the criminal organization's existence and activities.

22  
23 In *Sinnaiah v. Canada*, 2004 FC 1576, the Court held that:

24  
25 "To establish "membership" in an organization, there must  
26 at least be evidence of an "institutional link" with, or  
27 "knowing participation" in, the group's activities."

28  
29 Again, the key word here is "groups", indicating more than two people. This was not  
30 established here. There was no institutional link between Ms. Obuseli and the group  
31 involved in the advanced lottery scheme. The only link established was between  
32 Ms. Obuseli and Mr. Uthman.

33  
34 The same can be said of the requirement to have knowing participation in the group's  
35 activities. Ms. Obuseli knowingly participated in the assistance of Mr. Uthman with  
36 criminal activity but there is no evidence to establish that Ms. Obuseli did this for the  
37 collective good of the group of people intimately involved in the advanced fee lottery  
38 scheme.

39  
40 There is little doubt that Ms. Obuseli was devoted to Mr. Uthman and to the furtherance of

1 his criminal activity. The text messages referenced indicate a willingness to do whatever  
2 Mr. Uthman requested with very little resistance or questioning involved. Ms. Obuseli has  
3 even gone on to state that despite her personal suspicions and various rumours surrounding  
4 Mr. Uthman's potential involvement in fraud that she did very little to investigate what her  
5 boyfriend may have been up to. Ms. Obuseli simply did what was asked of her by allowing  
6 the Chalanchuck money to be deposited into her account, withdrawing portions of it, and  
7 passing it along to Mr. Uthman. Ms. Obuseli also did not seem too concerned about  
8 opening another bank account when hers was shut down by the bank and she readily  
9 provided that information to Mr. Uthman, presumably for further deposits.

10  
11 That said, the evidence falls well short of establishing that Ms. Obuseli was devoted to the  
12 furtherance of criminal activity that was planned and organized by a group of individuals  
13 acting in concert to facilitate the advanced fee lottery scam.

14  
15 Ms. Obuseli was willing to protect Mr. Uthman as best she could during questioning by  
16 law enforcement by providing them with an alternate name for him and an incorrect phone  
17 number. Ms. Obuseli was unquestionably committed to Mr. Uthman and the criminal  
18 activity that he was engaging in but none of the evidence shows that Ms. Obuseli had a  
19 commitment and devotion to the advanced fee lottery criminal organization as a whole.

20  
21 My finding would have been different if there had been evidence led to suggest that  
22 Ms. Obuseli knew that by assisting Mr. Uthman she was also assisting the criminal  
23 organization. This was not established. There was no evidence to suggest that Ms. Obuseli  
24 knew anything about the large-scale fraud scam let alone its modus operandi. This is  
25 necessary for a finding of membership.

26  
27 A person can be found to be a member of a criminal organization if they have significant  
28 association with a member of a criminal organization over a lengthy period of time. While  
29 Ms. Obuseli dated Mr. Uthman for a long while, there was no evidence to suggest that she  
30 knew that he was a member and, in fact, a leader of a criminal organization. Ms. Obuseli's  
31 relationship was romantic and other than the Chalanchuck fraud, there is no indication that  
32 the relationship she shared with Mr. Uthman focused on his involvement in the lottery  
33 scam.

34  
35 I will briefly address the admissibility hearing decision that the Minister provided showing  
36 that Mr. Habib Uthman was found inadmissible pursuant to paragraph 37(1)(a) of the  
37 IRPA.

38  
39 Admissibility hearings are fact-based and this finding is not binding on my decision  
40 regarding Ms. Obuseli. Secondly, Mr. Uthman was found to be a member of a criminal



1 organization named the Neo Black Movement. He was not found to be a member of a  
2 criminal organization that operated an advanced fee lottery scam. This case does not assist  
3 the Minister in establishing that Ms. Obuseli is a member of a criminal organization.

4  
5 I am not satisfied that there are reasonable grounds to believe that Ms. Obuseli engaged in  
6 criminal activity on behalf of a criminal organization, which is the second part of  
7 paragraph 37(1)(a). It is notable that this was the allegation that the Minister set out in its  
8 44 Report narrative.

9  
10 For the Minister to establish this part of paragraph 37(1)(a) it is critical that evidence be led  
11 to demonstrate that Ms. Obuseli knew that any criminal activity she engaged in on behalf  
12 of Mr. Uthman was also for the mutual benefit of a larger criminal organization.  
13 Ms. Obuseli needed to have knowledge or wilful blindness that in performing the  
14 transactions upon direction from Mr. Uthman that this was part of a pattern of criminal  
15 activity planned and organized by three or more people acting together.

16  
17 In the Federal Court of *Aghevli*, 2017 FC 568, the Court analyzed whether the person  
18 concerned was aware that three or more people were involved in planned and organized  
19 criminal activity. The Court confirmed that knowledge of the scope of this activity is  
20 critical.

21  
22 I do not believe that Parliament envisaged paragraph 37(1)(a) to apply to people who  
23 engage in criminal activity with one additional person; otherwise, the section would read  
24 “planned and organized by a pair of persons” instead of “a number of persons”. The  
25 *Criminal Code* also requires a criminal organization to have three or more people however  
26 organized.

27  
28 The Minister needed to provide more compelling evidence to show that Ms. Obuseli knew  
29 that a criminal organization existed and that by helping Mr. Uthman she was also assisting  
30 that criminal organization in furthering its modus operandi.

31  
32 There is no doubt that Ms. Obuseli assisted Mr. Uthman in committing a fraudulent crime  
33 by allowing her bank account to be used for the Chalanchuck fraud. There is also no doubt  
34 that Ms. Obuseli attempted to protect Mr. Uthman when interviewed by investigators.  
35 Ms. Obuseli is by no means an innocent participant by any stretch of the imagination. She  
36 knew or ought to have known that the money being deposited into her account was likely  
37 ill-gotten gains of some sort and she seemed prepared to allow Mr. Uthman to use her  
38 account to do this again in the future.

39  
40 Similar to my finding regarding membership, Ms. Obuseli needed knowledge or wilful

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1 blindness to the existence of the criminal organization and needed to know that she was  
2 committing fraud on the organization's behalf. This was not established. Strong evidence  
3 suggests that Ms. Obuseli was committing a crime on Mr. Uthman's behalf but she did not  
4 know that Mr. Uthman's activity was being done on behalf of a criminal organization.  
5

6 Going back to the Immigration Division case provided by the Minister regarding  
7 Mr. Uthman, the member in that case did find that the fraud's Mr. Uthman engaged in via  
8 the lottery scam established that he was engaged in a pattern of activity planned and  
9 organized by a number of persons acting in concert. The member listed a series of  
10 fraudulent transactions with a number of victims that were linked to Mr. Uthman. Only one  
11 victim, Anne Chalanchuck, was linked to Ms. Obuseli. One victim does not constitute a  
12 pattern.  
13

14 The member also found that Mr. Uthman was part of a group of three or more people who  
15 engaged in this activity citing Kathleen Anderson and Ms. Obuseli as the other two. While  
16 it is true that Mr. Uthman has ties to both Ms. Anderson and Ms. Obuseli, it is not true of  
17 Ms. Obuseli. There is no evidence of any ties regarding criminal activity planned and  
18 organized between Ms. Obuseli and Ms. Anderson. A criminal organization is not founded  
19 on a pair of individuals. It requires three or more. In Ms. Obuseli's case, she was only  
20 linked to Mr. Uthman's criminal activity. As such, this decision is not helpful in advancing  
21 the Minister's case against Ms. Obuseli for the second part of the 37(1)(a) allegation.  
22

23 Based on these findings, I am not satisfied that the Minister has met their burden of proof  
24 in this case. Ms. Obuseli was not a member of a criminal organization and did not commit  
25 an offence on behalf of a criminal organization.  
26

27 Accordingly, I am issuing a favourable decision to Ms. Obuseli. I am declining to issue her  
28 a deportation order.  
29

30 That concludes this decision and reasons.  
31

32 --- DECISION CONCLUDED  
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I, the undersigned, hereby certify that the preceding constitutes a transcript of proceedings, transcribed from taped proceedings, to the best of my skill and ability, of the decision and reasons at an Immigration Division hearing held at Vancouver, British Columbia.

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Kathy Talbot