

Federal Court



Cour fédérale

Date: 20250429

Docket: IMM-15864-23

Citation: 2025 FC 775

Ottawa, Ontario, April 29, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

PRANAV OBEROI

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision by a Senior Immigration Officer [Officer] dated November 28, 2023, refusing his application for permanent residency on humanitarian and compassionate grounds [H&C] under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant's H&C application was approved in principle, but the Officer determined that he was inadmissible for organized criminality under paragraph 37(1)(a) of the IRPA.

[2] The inadmissibility finding stems from the Applicant's guilty plea under subsection 354(1) of the *Criminal Code of Canada*, RSC 1985 c C-46: possessing property of a value exceeding \$5,000 obtained through the commission of an indictable offence. The sentencing judge found that the Applicant had participated in a scheme defrauding vulnerable victims. Specifically, his cousin and another family member used the Applicant's bank account to move fraudulently obtained funds from individuals in Canada to India. While the judge found that the Applicant's role was limited, the judge determined that the Applicant eventually suspected the funds were the product of fraud. The judge ultimately concluded that "his frame of mind rose to a level of what amounts, in law, to willful blindness": Reasons for Sentence, January 28, 2020, Certified Tribunal Record at 103 [CTR]. The Applicant received a conditional discharge with two years probation.

[3] Based on the evidence, the Officer was satisfied that the Applicant's role of receiving and transferring the proceeds of crime through his bank account fell within the expansive meaning of paragraph 37(1)(a) of the *IRPA*. I am dismissing the application because the Applicant has failed to establish that the Officer's decision is unreasonable.

[4] The Applicant challenges the Officer's decision on two grounds. First, he argues that the Officer ignored his affidavit evidence submitted in response to the Officer's procedural fairness letter. I do not agree.

[5] In response to the inadmissibility allegation, the Applicant submitted evidence including an affidavit and the sentencing judge's Reasons for Sentence. These two accounts diverge as to whether the Applicant allowed his cousin to continue using his bank account after he grew

suspicious that the money being transferred was the proceeds of fraud. The Officer found that while the Applicant confronted his cousin about his suspicion, he continued to allow his bank account to be used until it was frozen. The Applicant argues that the Officer does not clearly indicate which piece of evidence they rely upon for this finding.

[6] In my view, a plain reading of the Officer's decision shows that, after considering both pieces of evidence, they preferred the facts as recounted in the Reasons for Sentence:

As stated above, I sent the applicant a procedural fairness letter (PFL) on July 5, 2023, outlining my concerns about his involvement in these crimes and his potential membership in a criminal organization as per paragraph 37(1)(a) of the IRPA. As per the counsel's response dated August 4, 2023, the applicant was said not to have been aware that he was part of a criminal organization. According to the applicant's affidavit date [sic] August 3, 2023, the applicant had suspicions about his cousin's (one of the co-conspirators) actions, but he was not aware that his cousin was using his bank account to move fraudulently money from Canada to India. Additionally, according to the same document, the applicant genuinely believed that he was helping his cousin with his IT business for a small commission.

I do not accept the argument that the applicant was genuinely innocent. I find there is a serious possibility that the applicant played a role in a fraudulent scheme of a certain magnitude that involved vulnerable people and that lasted over a period of months. According to the Reasons for Sentence document, there were numerous money transfers over \$5,000 in and out of the applicant's bank account for several months. I note those monies were not insignificant in their amount.

Furthermore, I note the applicant acknowledged that he suspected the monies deposited in his bank account via bank draft or wire transfer may have been from victims of fraud transferring the money as part of a larger scheme devised by others. Also, I note that although the applicant reportedly confronted his cousin about the origin of these monies, through online messages, the applicant continued accepting suspicious financial transactions and transferring them to India until the moment his bank account was blocked due to criminal investigation.

As such, I find reasonable grounds to believe that the applicant played a role in a fraudulent scheme that involved vulnerable persons and lasted over a period of months. The Federal Court decision in *Torre and Sittampalam* reaffirmed that when applying section 37(1)(a), it is not necessary to prove that the person concerned is a member of an organization, but rather that there are reasonable grounds to believe they were a member, regardless of how many years have passed since their involvement.

Written Decision Regarding Inadmissibility to Canada Pursuant to Section 37(1)(a), November 28, 2023, CTR at 7–8 [Officer’s Decision]

[Emphasis added]

[7] I agree with the Respondent that the Applicant is asking this Court to reweigh the evidence, which is beyond the role of a reviewing court: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125 [Vavilov]. I find that it was reasonable for the Officer to place more weight on the facts as found by the sentencing judge.

[8] Second, the Applicant argues that the Officer erred in finding that suspicion alone is sufficient for the purposes of paragraph 37(1)(a) of the *IRPA*. Relying on *Wang v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 226 [Wang], the Applicant asserts that actual knowledge of the criminal nature of the organization is required. However, the relevant passage of *Wang* refers to “knowledge” not “actual knowledge”:

[63] The jurisprudence of this court has been that the degree of *mens rea* required under paragraph 37(1)(a) is not that the Applicant have actual knowledge of the criminal activities but that she have knowledge of the criminal nature of the organization: *Chung v Canada (Citizenship and Immigration)*, 2014 FC 16 [Chung] at paragraph 84:

[84] Under subsection 37(1)(a), the person concerned, as well as being a member in the criminal organization, only needs to have knowledge of the criminal nature of the

organization. See *Stables*, above, at para 37. I see nothing in *Ezokola*, above, to suggest that the Supreme Court also intended its remarks to apply to subsection 37(1)(a) of the Act or to change the law that was identified and applied in this case. The Applicant is arguing that, in his view, *Ezokola* should be applied to the present situation, but I cannot accept that 1F(a) of the *Refugee Convention* can be equated with 37(1)(a) of the Act, because the two provisions use different language and it seems plain that the knowledge requirements are different.

[85] The ID in the present case applied the jurisprudence applicable to subsection 37(1)(a) and there is nothing in *Ezokola*, in my view, to render that approach either incorrect or unreasonable.

(Emphasis in the original)

[9] Furthermore, in *Chung*, the Court articulated the principal issue as the applicant's "knowledge of, or wilful blindness to, the criminal nature of the Manitoba Chapter of Hells Angels" [emphasis added]: *Chung* at para 65. Thus, Justice Russell equated the two for the purposes of paragraph 37(1)(a) of the *IRPA*.

[10] The Respondent argues that wilful blindness is sufficient to establish knowledge, citing *Sansregret v The Queen*, 1985 CanLII 79 (SCC), [1985] 1 SCR 570 at paragraph 22:

The rule that wilful blindness is equivalent to knowledge is essential, and is found throughout the criminal law. It is, at the same time, an unstable rule, because judges are apt to forget its very limited scope. A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended [*sic*] to cheat the administration of justice. Any wider definition would make the doctrine of wilful blindness indistinguishable from the civil doctrine of negligence in not obtaining knowledge.

[Emphasis added]

[11] The Supreme Court further explained that the doctrine of wilful blindness “imputes knowledge” to someone whose suspicion is aroused to the point where they see a need for further inquiries but deliberately chooses not to act: *R v Briscoe*, 2010 SCC 13 at para 21.

[12] Here, the sentencing judge found that the Applicant “acknowledges a *mens rea* to the level of willful blindness in relation to the financial transactions”: Reasons for Sentence, CTR at 94. Based on the sentencing judge’s findings, the Officer determined that the Applicant acknowledged that he suspected the funds deposited in his bank account were part of a fraudulent scheme, yet continued accepting these suspicious transactions until his bank account was frozen: Office’s Decision, CTR at 8.

[13] I find that the Officer’s decision in this regard is justified given the relevant constraining facts and law: *Vavilov* at para 85.

[14] For the foregoing reasons, the Applicant has failed to establish that the decision is unreasonable. The application is therefore dismissed.

[15] The parties did not raise any questions for certification and I agree that none arise.

JUDGMENT in IMM-15864-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-15864-23

STYLE OF CAUSE: PRANAV OBEROI v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: APRIL 15, 2025

JUDGMENT AND REASONS: TURLEY J.

DATED: APRIL 29, 2025

APPEARANCES:

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