

Federal Court



Cour fédérale

Date: 20250430

Docket: IMM-11042-23

Citation: 2025 FC 661

Vancouver, British Columbia, April 30, 2025¹

PRESENT: Justice Andrew D. Little

BETWEEN:

YAN ZHU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review concerning a decision dated August 15, 2023, made by the Immigration Division (“ID”) of the Refugee and Immigration Board. The ID determined that the applicant was inadmissible to Canada under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “IRPA”).

¹ The Judgment and Reasons was originally signed on April 10, 2025, and sent to the Registry. However, due to administrative error, it was not communicated to the parties. It was re-signed on April 30, 2025.

[2] The ID held that there were reasonable grounds to believe that the applicant was a member of an organization that engaged in activity that was part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of an offence punishable under the *Criminal Code*, RSC 1985, c C-46.

[3] The ID's decision stemmed from a 2014 decision of British Columbia Securities Commission. It concluded that the applicant and others contravened several provisions of the *Securities Act*, RSBC 1996, c. 418, including by perpetrating a fraud on those who purchased shares, consumer credits and ad packages offered by a company called BossTeam E-Commerce Inc. In 2015, the Commission ordered sanctions against the applicant and others. The sanctions against the applicant included a permanent prohibition from engaging in activities related to the trading of securities and an administrative penalty of \$14 million.

[4] In this application, the applicant contends that the ID's decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[5] For the following reasons, the application is dismissed.

I. Facts and Events Leading to this Application

[6] The applicant is a citizen of China. She became a permanent resident of Canada in January 2005, when she immigrated to Canada with her daughter and then-husband, Zhangzhi (George) Hu.

[7] In October 2011, the applicant became the chief financial officer and director of BossTeam E-Commence Inc. (“BossTeam”), a start-up business. Ganghzhu (Victor) Zhang was the chief executive officer of BossTeam. Mr Hu was the information technology lead and was responsible for website development.

[8] BossTeam purported to be a membership-based online advertising business. A primary part of the business was its websites, which included a platform where advertisers could post advertisement links to their own webpages to be viewed by others.

[9] However, only 1% of the ads on BossTeam’s platform were businesses with which BossTeam had contracted. Most of the genuine businesses with ads on the platform did not pay BossTeam to advertise. Business advertisements for some well-known companies were also on the platform, but had no connection whatsoever with BossTeam.

[10] Certain BossTeam members were also permitted to purchase its “shares” in relative proportion to their membership fees. However, no prospectus for the securities was ever filed.

[11] Between November 2011 and April 30, 2012, BossTeam sold more than \$14 million worth of ad packages. The company also sold an additional unknown number of shares and consumer credits.

[12] The British Columbia Securities Commission (the “Commission”) investigated and then issued a notice of hearing containing allegations that the applicant, Mr Zhang and BossTeam had contravened provisions of the *BC Securities Act*.

[13] By decision dated August 8, 2014, a Commission panel found that the applicant, Mr Zhang and BossTeam had violated several provisions in the *BC Securities Act*, including sections concerning conduct that perpetrates a fraud, illegally distributing securities, and withholding information from the Commission investigation and instructing their employees and investors to do the same.

[14] By decision dated June 23, 2015, the Commission ordered sanctions against the parties, including the applicant. The penalties included an administrative penalty of \$14 million payable by the applicant. The Commission recognized the magnitude of the fraudulent illegal activity by BossTeam, other contraventions of the *Securities Act* and the applicant’s continued failure to acknowledge any wrongdoing.

[15] On July 4, 2019, an officer of the Canadian Border Services Agency prepared an admissibility report on the applicant under *IRPA* subsection 44(1). The report found that she was inadmissible under paragraph 37(1)(a) of the *IRPA*.

[16] A Minister’s delegate reviewed the subsection 44(1) report and referred the inadmissibility allegations to the ID for a hearing.

[17] The ID held an admissibility hearing for four days in April and May 2021.

[18] By decision dated August 15, 2023, the ID found the applicant inadmissible under paragraph 37(1)(a) of the *IRPA*. The ID concluded there were reasonable grounds to believe that the applicant was a member of a criminal organization that was engaged in activity that was 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 (in this case, the *Criminal Code*) by way of indictment.

[19] The ID issued a deportation order against the applicant under subsection 45(d) of the *IRPA* and paragraph 229(1)(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “*IRPR*”).

II. Issues and Standard of Review

[20] The applicant applied for judicial review of the ID’s decision. She raised the following issues:

1. Whether the ID was reasonable to find that an organization that has been sanctioned only by provincial administrative penalties for a securities offence, with no criminal charges let alone convictions, is caught by paragraph 37(1)(a) for engaging in “a pattern of criminal activity”; and
2. Whether, in light of the SCC decision of *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, the ID interpreted and applied paragraph 37(1)(a) in a manner that properly addressed (1) the statutory context, and (2) the broad consequences of its interpretation.

[21] In my view, these issues are properly stated as follows:

- A. Has the applicant demonstrated that the ID made a reviewable error in its interpretation of the phrase “a pattern of criminal activity” in *IRPA* paragraph 37(1)(a)?
- B. Has the applicant demonstrated that the ID made a reviewable error in its interpretation of *IRPA* paragraph 37(1)(a) in light of the Supreme Court’s decision in *Mason*?

[22] The standard of review of the ID’s decision is reasonableness, as described in *Vavilov*. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15; *Mason*, at paras 8, 63. The starting point is the reasons provided by the decision maker, which are to be read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Mason*, at paras 8, 59-61, 66.

[23] The legal and factual factors that may constrain an administrative decision maker include (as are material to this case): the governing statutory scheme (here, the *IRPA* and the *IRPR*; and to some extent certain provisions in the *Criminal Code* and the *BC Securities Act*); relevant decisions of this Court, the Federal Court of Appeal and the Supreme Court; the evidence before the ID; and the submissions of the parties: *Vavilov*, at paras 106, 112, 116-124, 125-126, 127-128.

[24] The applicant bears the burden to show that the impugned decision is unreasonable, by satisfying the Court that the decision suffers from sufficiently serious shortcomings that it does not exhibit the requisite justification, intelligibility and transparency: *Vavilov*, at paras 75, 100.

III. Analysis

[25] Paragraph 37(1)(a) of the *IRPA* provides:

Inadmissibility	Interdiction de territoire
Organized Criminality	Activités de criminalité organisée
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.	37 (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants : a) être membre d’une organisation dont il y a des motifs raisonnables de croire qu’elle se livre ou s’est livrée à des activités faisant partie d’un plan d’activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d’une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d’une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d’un tel plan

[26] Subsection 380(1) of the *Criminal Code* provides:

Fraud

380 (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars [...]

Fraude

380 (1) Quiconque, par supercherie, mensonge ou autre moyen dolosif, constituant ou non un faux semblant au sens de la présente loi, frustre le public ou toute personne, déterminée ou non, de quelque bien, service, argent ou valeur :

a) est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans, si l'objet de l'infraction est un titre testamentaire ou si la valeur de l'objet de l'infraction dépasse cinq mille dollars [...]

[27] At the time of the Commission's decision in 2014, section 57(b) of the BC *Securities Act* provided:

57 A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct

[...]

(b) perpetrates a fraud on any person

[...]

A. ***Has the applicant demonstrated that the ID made a reviewable error in its interpretation of the phrase "a pattern of criminal activity" in IRPA paragraph 37(1)(a)?***

[28] The applicant made the following arguments in support of her position that the ID did not reasonably interpret the phrase “pattern of criminal activity” under paragraph 37(1)(a):

- a) the ID completely failed to analyze the “pattern of criminal activity” element of paragraph 37(1)(a);
- b) the ID failed to interpret the phrase “pattern of criminal activity” or apply it to demonstrate what it means; and
- c) paragraph 37(1)(a) requires that the organization must have a criminal record or conviction.

[29] On the first two issues, the applicant argued that the ID failed to conduct a separate analysis of whether there was a “pattern of criminal activity”, distinct from its analysis of whether there was an “offence punishable under an Act of Parliament”. She submitted that she had argued to the ID that there is a distinction between those two elements she identified in paragraph 37(1)(a), and the ID did not provide a responsive analysis in its decision. She contended:

The assessment of whether there was a “pattern of criminal activity” is distinct from the assessment of whether there is “an offence punishable under an Act of Parliament”. This secondary requirement is singular – “an” offence – while a “pattern” linguistically requires more and is further connected directly to “criminal activity.” Herein, there is no “pattern of criminal activity”, as there is no criminal activity at all. Culpability for a provincial, regulatory offence does not satisfy the requirement that there be “criminal activity” even though it may satisfy the requirement that there be “an offence punishable under an Act of Parliament”.

[30] I do not agree with the applicant that the ID failed to analyze “pattern of criminal activity” under paragraph 37(1)(a). To the contrary, as the respondent submitted (citing *Hassan v. Canada (Citizenship and Immigration)*, 2022 FC 771), the ID did conduct such an analysis.

[31] As the ID’s decision expressly recognized, the legal standard under paragraph 37(1)(a) is reasonable grounds to believe, which is a standard lower than a balance of probabilities. It requires something more than “mere suspicion” and will exist if there is “an objective basis for the belief which is based on compelling and credible information”: *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100, at para 114. See also *IRPA* section 33.

[32] The ID had to be satisfied that there was more than mere suspicion that Ms Zhu satisfied the criteria of paragraph 37(1)(a) based on compelling and credible information. As will be evident from the following discussion, the ID’s analysis found that the circumstances satisfied this onus.

[33] The ID’s reasons stated that the applicant agreed that BossTeam was an organization and that she was a member of that organization. The applicant also did not dispute that people were defrauded by BossTeam. The ID found that the outstanding issue was whether the nature of the organization was criminal. The applicant denied that it was a criminal organization and disputed that there were the requisite number of persons who planned and organized the fraudulent conduct as required for the purposes of paragraph 37(1)(a).

[34] The ID's decision provided its analysis under two headings. The first was: "*There was a pattern of criminal activity*". The second was: "*There was a criminal organization*".

[35] Under the first heading, in seven lengthy and detailed paragraphs, the ID set out the activities of BossTeam's operations and how its principal actors (including the applicant) were involved – i.e., the "pattern" of activity. Next, the ID analyzed why it was "criminal" activity under the fraud provision in subsection 380(1) of the *Criminal Code* and why fraud was the main purpose of the organization under subsection 467.1(1) of the *Code*.

[36] The ID's findings included:

- BossTeam purported to be a professional online advertising website that would help improve a company's website traffic and realize "internationalization" rapidly. BossTeam attempted to portray itself as a fast-growing, global, popular, and revenue-rich platform for companies to advertise with, and for qualified members to make easy money by clicking on advertisements.
- Qualified members could earn money by browsing advertisements to receive cash back and through BossTeam's private placement of their business ads and by enrolling new members to join by purchasing a membership package. They could also purchase BossTeam shares, tradeable on its internal trading platform.
- To launch BossTeam's website, Mr Hu created "dummy" links for members to click daily in the expectation that they would earn income according to the membership requirements. However, the "dummy" links were administrative accounts tied to BossTeam itself, and not actual businesses.
- BossTeam had very little advertising revenue from businesses paying to advertise on its online platform. Only 1% of the ads on the platform were from genuine businesses with whom BossTeam contracted. Other business advertisements had no connection at all with BossTeam and were used to create the false impression

that it was a thriving, fast-growing and global web advertising platform, which it was not.

- “BossTeam intentionally misled its members and the public about its functional operations by making it seem like BossTeam had international advertising clients and substantial advertising revenue from affluent companies and entertainment celebrities, when in fact, it only received a nominal amount of advertising revenue from very few local clients.”
- The dummy links were intentionally placed on the website to create the false impression that BossTeam was a thriving and viable advertising business. The purpose was to entice more persons to purchase qualified membership packages, and to purchase shares and consumer credits for persons to become investors in BossTeam. BossTeam had very little advertising revenue. Any money paid out to qualified members or investors was actually money from other investors. BossTeam had no real source of income, other than the funds received from investors.
- Despite having the dummy links and nominal advertising revenue, BossTeam transacted with its members to pay monthly bonuses to them. The operation required customer service representatives to arrange the payment of membership fees, the financial department to pay out the bonuses, and BossTeam’s CEO and CFO to decide when to offer to sell shares to the qualified members. BossTeam needed the entire company to function to carry out their business venture and to raise funds. The entire company benefited financially from the money collected as a result of membership fees and investor funds. The applicant and others benefited financially from the misrepresentations about BossTeam’s business clients and prospects.
- BossTeam intentionally created a website that falsely purported to be more popular and profitable than it was, in order to entice persons to invest large sums of money. Referring to subsection 380(1) of the *Criminal Code*, the ID found reasonable grounds to believe that BossTeam, along with the applicant and Mr.

Zhang, defrauded their customers, members and investors of approximately \$14 million, through selling shares and membership packages.

- The Commission found BossTeam, the applicant and Mr. Zhang contravened section 57(b) of the *BC Securities Act*, entitled Fraud. The ID found that there were reasonable grounds to believe that by presenting this false picture of BossTeam's operations to obtain money from members and investors, they also engaged in fraud under the *Criminal Code*.
- As required in s. 467.1(1) of the *Criminal Code*, fraud was the main purpose of BossTeam. The entire business model relied upon falsely and fraudulently representing itself as a larger viable business to sustain itself. The fraudulent activity was necessary to run BossTeam and was not conduct incidental to its otherwise legitimate operations. The ID found reasonable grounds to believe that BossTeam relied upon fraud to sustain itself.

[37] These findings demonstrate that the ID identified and analyzed a “pattern of criminal activity”: see comparably *Hassan*, at paras 8-12, 14, 16, 42-44. The ID's reasons dealt with the pattern of activities and its criminal nature at the same time as the analysis of an “offence punishable under an Act of Parliament” and also touched on the facts supporting “planned and organized by a number of persons acting in concert”.

[38] Under the second heading in its analysis, “*There was a criminal organization*”, the ID addressed “planned and organized by a number of persons acting in concert” under paragraph 37(1)(a), together with other issues. In that section, the ID stated that paragraph 37(1)(a):

... requires that the organization engage in a pattern of criminal activity planned and organized by a number of persons.” I find that there are reasonable grounds to believe that at least three people in BossTeam: Victor Zhang, George Hu and his Information Technology successor, and Ms. Zhu planned and organized a pattern of criminal activity of raising money through fraud.

[Emphasis added.]

[39] The applicant's submissions to the Court imply that the ID should have taken a much more granular approach to paragraph 37(1)(a), with sequential and separate assessments for each of six parts of that provision as parsed by the applicant. However, the applicant did not refer to any legal requirement that prevented the ID from considering more than one aspect of paragraph 37(1)(a) under a single heading in its reasons. The applicant has not demonstrated that the ID was constrained in law to provide a separate statement of its understanding of the phrase "pattern of criminal activity" or to define "pattern" or "criminal activity" and then apply those definitions to the facts. The applicant has not demonstrated any substantive error in the ID's reasoning. See *Vavilov*, at para 91.

[40] The applicant argued orally that there could be no pattern of criminal activity in this case because the Commission made a single allegation under paragraph 57(b) of the *Securities Act*, rather than multiple allegations akin to many counts in an indictment. In my view, it was open to the ID to find a pattern of criminal activity in the way it did: an ongoing fraud of customers, members and investors through BossTeam's business model, which included intentional misrepresentations about the nature of its business on its website, which was designed to deceive and entice people to invest amounts that, over time, cumulatively amounted to over \$14 million taken from the deceived persons.

[41] The applicant's third argument to support her position that the ID did not properly interpret the phrase "pattern of criminal activity" was that paragraph 37(1)(a) requires that the organization have a criminal record or conviction. The applicant's written submissions

contended that while a person referred to an admissibility hearing does not have to be charged or convicted to be caught by paragraph 37(1)(a), the organization itself must have a criminal record. At the hearing, the applicant altered and expanded her position, to argue that the provision required a record (a conviction), or charges, or some criminal process to be engaged, against either the organization or one of its members under an Act of Parliament.

[42] According to the applicant, given the linguistic meaning of “pattern of criminal activity”, the ID was “not entitled to find that BossTeam had a pattern of criminal activity without there being a criminal record or a conviction”. To support this position, the applicant relied on two sources outside section 37 of the *IRPA* that have used the phrase “pattern of criminal activity” or very similar. First, the applicant submitted that this Court, in cases reviewing decisions under section 44, had equated a “pattern of criminal behaviour” with criminal history (citing *Surgeon v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1314, at paras 13-16 (quoting *Abdi v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 950, at para 40, and *McAlpin v. Canada (Public Safety and Emergency Preparedness)*, 2018 FC 422, [2018] 4 FCR 225, at paras 97-101)). The applicant argued further that the Court dismissed judicial review of a decision related to a stay of deportation order in which the Immigration Appeal Division connected “pattern of criminal activity” to a person’s criminal record (citing *Zlobinski v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 810, at para 3).

[43] The second source raised by the applicant was the *Criminal Code*, section 462.37, in which “pattern of criminal activity” refers to a criminal record. She provided a list of cases in support.

[44] In response, the respondent submitted that subsection 37(1) applies if there is sufficient evidence of that the individual has engaged in or is a member of an organization involved in a pattern of criminal activity, even in the absence of conviction or charges against either the individual or the organization. The respondent relied on *Hassan*, at para 46; *Wang v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 226, at paras 77-82; *Toor*, at para 15; *Odosashvili v Canada (Citizenship and Immigration)*, 2017 FC 958, at paras 27, 76, 83; *Castelly v Canada (Minister of Citizenship and Immigration)*, 2008 FC 788, [2009] 2 FCR 327, at paras 25-26. The respondent argued that the ID's decision was consistent with the case law and supported by the evidence.

[45] The applicant sought to distinguish those cases as only referring to the individual concerned, rather than a conviction of or criminal process involving the organization. The applicant's written submissions went to considerable length to argue that the case law did not apply to her arguments because in those cases, the lack of a criminal charge against the applicant was not determinative and it was "factually established" that the organization itself had been engaged in activity that was part of a pattern of criminal activity. The applicant argued that in this case, the ID was not "entitled" to find that BossTeam had a pattern of criminal activity.

[46] According to the applicant, these issues were fundamental to the ID's decision because the applicant was never convicted or charged with any offence under the *Criminal Code*. She was only the subject of sanctions by the Commission owing to contraventions of the *BC Securities Act*.

[47] I do not agree with the applicant's position.

[48] In its reasons, the ID was aware that the applicant was not charged or convicted in Canada of any *Criminal Code* offence. It found that this was not determinative, owing to the different requirements of the *Criminal Code* and the *IRPA* (citing *Wang*, at para 76). Near the end of its reasons, the ID also recognized that the matter before it was unusual as the criminal organization was largely comprised of the founders and employees of a company engaged in financial crimes, rather than a more informal organization and crimes relating to drug trafficking, robbery or other offences. The ID found that even organizations that operate in legitimate spheres may meet the definition of a criminal organization under paragraph 37(1)(a) if their purpose is illegitimate. The ID referred again to *Wang*, which it stated involved an immigration consultant business engaged in widespread fraud to conduct its business and was found to be criminal organization whose employees could be inadmissible under paragraph 37(1)(a).

[49] The ID did not analyze the legal argument now raised by the applicant on the interpretation of paragraph 37(1)(a). In my view, that is because the applicant's argument on this application is materially different from the argument she made to the ID and indeed reverses the position she took at the ID.

[50] At the ID, the applicant did not contend that the organization had to have been convicted of the crime or be charged with an offence. Rather, the applicant expressly acknowledged that neither was necessary. The applicant's argument was that the organization had to be involved in

prior or subsequent “criminal” offences and the applicant in this case was found culpable of a “provincial regulatory offence”.

[51] In her written submissions to the ID, the applicant twice addressed whether paragraph 37(1)(a) and this Court’s case law required a conviction, as she now argues. She submitted to the ID that the “[c]ourts have been clear that A37(1)(a) may operate without criminal charges or convictions”, although this “not be taken as an unfettered ability and must still be in alignment with the purpose and intent of the legislation”. Later in her ID submissions, the applicant submitted:

[54] While the jurisprudence has been clear that there need not be criminal charges or a conviction to address the ‘offence’ being examined (fraud), this is distinct from the assessment of whether the organization of group of actors has engaged in other ‘criminal activity’. There must have been prior (or subsequent) ‘criminal’ offences, in order to situate an offence for which no criminal charges were laid. I submit that this is particularly the case for offences in Canada, where there is a robust legal system capable of identifying and prosecuting offences.

[Emphasis added.]

[52] In addition, the question now raised by the applicant goes to a proper interpretation of paragraph 37(1)(a). Because it was not put to the ID and the ID did not decide the point, this Court should presumptively not entertain the argument for the first time on judicial review:

Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association, 2011 SCC 61, [2011] 3 SCR 654, at paras 5, 23-29; *Sullivan v. Canada (Attorney General)*, 2024 FCA 7, at para 8; *Terra Reproductions Inc. v. Canada (Attorney General)*, 2023 FCA 214, at para 6; *Firsov v. Canada (Attorney General)*, 2022 FCA 191, at para 49. The applicant’s detailed written

submissions to the Court concerning the case law show that her arguments are fresh on judicial review.

[53] However, even if the applicant's arguments were considered, they cannot succeed in this case. It is apparent from the ID's decision that it was, in the applicant's words, "factually established" that BossTeam as an organization engaged in activity that was part of a pattern of criminal activity. In addition, the applicant cited no cases showing that the ID erred in law or was otherwise constrained to require criminal charges, a conviction or a criminal process against the organization. The applicant's submissions to the ID appear to acknowledge the case law relied upon by the respondent.

[54] The applicant has not demonstrated that the ID made a reviewable error in its interpretation of paragraph 37(1)(a) of the *IRPA* on any of the grounds alleged.

B. *Has the applicant demonstrated that the ID made a reviewable error in its interpretation of IRPA paragraph 37(1)(a) in light of the Supreme Court's decision in Mason?*

[55] Referring to aspects of the Supreme Court's reasoning process in *Mason*, the applicant submitted that the ID failed to interpret paragraph 37(1)(a) in its statutory context and with an understanding of the impact of the decision on the applicant: see *Mason*, at paras 85-103. She argued that the BC *Securities Act* provisions (or any provincial offences) were not criminal offences, and that paragraph 37(1)(a) was limited to catching criminal offences punishable under an "Act of Parliament". To show the alleged breadth and implications of the ID's decision, the applicant provided a list of hypothetical examples of the kinds of non-*Criminal Code* offences

and non-criminal circumstances that could fall under paragraph 37(1)(a) under her interpretation of the ID's reasoning. The applicant also noted the breadth of the fraud offence in the *Criminal Code*, and the threshold under section 33 of the *IRPA*.

[56] The applicant contended that the Court should “rein in” the ID's wide interpretation of paragraph 37(1)(a) to ensure it is restricted to criminal activities, particularly considering the impact of an inadmissibility finding on individuals (referring to *Vavilov*, at para 133).

[57] The applicant further submitted that the ID's decision was not “borne out by reality” – there was no “criminal” activity because the applicant was not charged with *Criminal Code* offences and there was no serious possibility or future prospect that she would be. The ID could therefore not have a reasonable belief or objective basis for its findings under *IRPA* section 33 and paragraph 37(1)(a).

[58] I do not agree with the applicant on this issue. First, the argument ignores the very reasoning in the ID's decision. The ID did not base its decision or its analysis on conduct contrary to the *BC Securities Act*. The ID found that the applicant, BossTeam and Mr Zhang engaged in a pattern of criminal activity that was fraud under the *Criminal Code*, an Act of Parliament, and that the main purpose of the organization was fraud. On that basis, the ID did find that there was “criminal” activity for the purposes of the *IRPA* provision.

[59] Second, the applicant's arguments do not in fact turn on the Supreme Court's decision in *Mason*, which was released after the ID's decision. *Mason* concerned the interpretation of

paragraph 34(1)(e) of the *IRPA*, which is not at issue in this application. The applicant did not identify any conclusion in the ID's decision that is inconsistent with *Mason* or shows that the ID made an error of law contrary to *Mason*.

[60] In addition, the appellant's success in *Mason* does not imply success for the applicant here. While the statutory context arguments accepted by the Supreme Court involved reading paragraph 34(1)(e) in the statutory context of section 36 (among other provisions), those arguments supported Mr Mason's argument that paragraph 34(1)(e) required a nexus with national security or the security of Canada: *Mason*, at paras 86-97. That is quite different from the applicant's argument in this case, which was that the text of paragraph 37(1)(a) refers to an "Act of Parliament", but she was found liable under a provincial statute (the *BC Securities Act*).

[61] Third, the applicant did not refer to any case law that bound the ID to interpret paragraph 37(1)(a) as she proposes. The case law on point, while not extensive, does not show that the ID erred in law by considering the fraud provision of the *Criminal Code*. If anything, this Court's decision in *Wang* appears to support rather than constrain the ID's interpretation of paragraph 37(1)(a) and its decision in this case.

[62] Finally, the applicant did not frame her argument to the Court as is contemplated by *Vavilov*, to concern whether the ID engaged in a reasonable interpretation of paragraph 37(1)(a) assessed through an analysis of the text, context and purpose of the provision: *Vavilov*, at paras 116-124. In substance, the applicant's submissions invited the Court to correct the ID's interpretation of paragraph 37(1)(a) by conducting its own interpretation and in doing so, to

consider the alleged implications for other individuals who may in future be found inadmissible in all manner of legal and factual scenarios envisioned by the applicant. The applicant's request must be declined. A reviewing court is not permitted to engage in such correctness review on a judicial review application: *Mason*, at paras 62, 68; *Vavilov*, at paras 83, 116.

[63] Accordingly, the applicant has not demonstrated that the ID made a reviewable error in its interpretation of paragraph 37(1)(a) in light of *Mason*.

IV. Conclusion

[64] For these reasons, the application for judicial review is dismissed.

[65] The parties agreed that the proper respondent is the Minister of Citizenship and Immigration: see subsection 4(1) of the *IRPA* and Rule 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Rules*. The style of cause will be amended.

V. Question(s) to Certify for Appeal

[66] The applicant proposed the following questions to certify for appeal:

(1) Is a person inadmissible to Canada pursuant to paragraph 37(1)(a) of the Immigration and Refugee Protection Act (the "Act") 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” if the organization’s activities have never been associated with any criminal charge or criminal conviction?

(2) Is a person inadmissible to Canada pursuant to paragraph 37(1)(a) of the Act 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” if the persons of the organization had acted in concert in furtherance of the commission of a provincial administrative offence?

[67] The respondent opposed certification of these questions.

[68] The Federal Court of Appeal has discussed the criteria for and proper approach to certified questions in numerous recent cases: see e.g., *Obazughanmwun v. Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151, at paras 28, 40; *Canada (Public Safety and Emergency Preparedness) v. XY*, 2022 FCA 113, at para 7; *Canada (Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50, [2022] 4 FCR 220, at paras 34-45.

[69] To be certified for appeal under *IRPA* paragraph 74(d), a proposed question must (i) be a “serious question” that is dispositive of the appeal, (ii) be a question that has been raised and dealt with in this Court’s decision; (iii) transcend the interests of the parties and (iv) raise an issue of broad significance or general importance: *Obazughanmwun*, at para 28; *XY*, at para 7; *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, [2018] 3 FCR 674, at para 46; *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, [2018] 2 FCR 229, at para 36.

[70] A certified question must not have previously been settled by the decided case law: *Obazughanmwun*, at paras 28-29, 40. The premise of a certified question must fully accord with the facts of the case: *Galindo Camayo*, at para 34.

[71] In addition, certified questions should be posed in a manner that recognizes the proper standard of review and links the certified question to the decision under review, so as to address a point that arises in the decision itself rather than an abstract question or one that focuses on the unique facts of the case: *Galindo Camayo*, at paras 35, 40 and 44-45.

[72] In my view, the applicant's first question should not be certified for appeal. The ID did not consider the proposed issue on the interpretation of paragraph 37(1)(a) because the applicant did not raise it. Her submissions to the ID recognized that no conviction, charges or other process was necessary against the criminal organization. In addition, the ID itself found that the issue framed in the proposed question was not determinative of its decision. The issue has not been raised and dealt with in this Court's decision. It would not be dispositive of an appeal.

[73] Similarly, the second question also cannot be certified for appeal. The applicant's position does not account for the reasoning in the ID's decision, as explained at paragraph 58 above. Specifically, the ID did not rely on a violation of the *BC Securities Act*. It found a pattern of criminal activity that was fraud under the *Criminal Code*, an Act of Parliament, and that the main purpose of the organization was fraud. In addition, the ID respected the constraints in the existing case law on the interpretation of the provision. The proposed question does not arise on the facts of this case and would not be dispositive of an appeal.

[74] In addition, both proposed questions are abstract questions and would be in the nature of a reference, making them unsuitable for certification: *Lunyamila*, at para 46. The proposed questions do not link to the decision under review and could not be linked because, for reasons already explained, the ID did not address the issues now raised by the applicant.

[75] Accordingly, no question will be certified for appeal.

JUDGMENT IN IMM-11042-23

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the respondent.
2. The application is dismissed.
3. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

“Andrew D. Little”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11042-23

STYLE OF CAUSE: YAN ZHU v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: OCTOBER 3, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: APRIL 30, 2025

APPEARANCES:

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Helen Park	FOR THE RESPONDENT

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