

Federal Court



Cour fédérale

Date: 20250502

Docket: IMM-5676-24

Citation: 2025 FC 797

Toronto, Ontario, May 2, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

ESTIVENSON BLANCO RUBIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant seeks judicial review of a decision by the Immigration Division [ID] of the Immigration and Refugee Board, which found him inadmissible to Canada for organized criminality.

[2] For the following reasons, I have concluded that the ID's decision was reasonable. As a result, I will dismiss this application for judicial review.

II. BACKGROUND

A. *Facts*

[3] As noted, Mr. Blanco Rubian, challenges a decision of the ID, in which he was found inadmissible to Canada for organized criminality, under s.37(1)(a) of the *Immigration and Refugee Protection Act* [IRPA].

[4] The basis of this inadmissibility is the Minister's allegation that Mr. Blanco Rubian was a member of a crime ring, headed by himself and two other Colombian nationals, that stole cellphones at music festivals in the southern United States and re-sold the phones internationally for profit. This crime ring, the Minister alleged, constituted a criminal organization. Mr. Blanco Rubian was implicated in two sets of charges, both for stealing phones at a musical festival. One of these incidents occurred in March 2018, and the other in October 2018.

[5] In support of their allegations, the Minister tendered copies of police reports from an October 2018 investigation in Osceola County, Florida. In these reports, officers detailed that UPS had alerted them to a suspicious package containing 100 iPhones slated to be delivered to a private post office box in Kissimmee, Florida. The officers identified some of the cellphone owners, who confirmed that their phones had been stolen at a music festival in Austin, Texas.

[6] The officers began surveillance of the post office box, and ultimately apprehended three men, one of whom was the Applicant, who was driving the car that arrived at the post office box, while the others were allegedly his two associates - Mr. Garcia-Castano and Mr. Arias-Arias. The three men were put under immigration detention due to their expired tourist visas, and were initially charged with possession of cannabis. Under questioning, Mr. Blanco Rubian admitted to knowing about the box of phones and advised that his co-accused had experience working on phones.

[7] The occurrence reports also confirm that Mr. Blanco Rubian had previously been arrested for stealing multiple iPhones at a different music concert in Florida in March 2018, although the charges were dropped for unknown reasons. In the resulting arrest report, the Applicant was described as having been identified by several witnesses for stealing phones at the Okeechobee Music Festival, albeit with different associates than Mr. Garcia-Castano and Mr. Arias-Arias.

[8] The Minister also entered into evidence the transcript of a police interview with a Ms. Marin, which was conducted in relation to the Osceola County police investigation. Ms. Marin is the partner of one of the Applicant's co-accused and has resided with him for two years. In her interview, she stated that she had attended five or seven musical festivals with the Applicant, the last of which was in Austin, Texas. At a previous festival, they had taken 20-30 phones. She indicated that the accused (including Mr. Blanco Rubian) searched out music festivals and attended them for the purpose of stealing phones from the bags or pockets of drunk or incapacitated individuals, for future resale.

[9] Ms. Marin indicated that she had seen the three men, including Mr. Blanco Rubian, steal phones at festivals and that the men generally took anywhere from 20-40 phones. She stated that, in her opinion, the group had stolen about 40-50 phones at the Austin show and had sent them to a mailbox in Orlando. Ms. Marin confirmed the Applicant was at the festival in Austin, and that although she could not recall exactly whose idea it had been to attend the Austin festival, she believed the three men had decided together.

[10] Ms. Marin testified that this was the normal course of business, that Mr. Blanco Rubian, Mr. Garcia-Castano, and Mr. Arias-Arias generally made decisions together, such as where to send the box of stolen phones. Similarly, she stated that the three negotiated with buyers together, during resale of the phones, and that all three did everything together with no one person making decisions or liaising with the buyer. Ms. Marin indicated that the three men had been in business together for approximately five months. She also confirmed that all three men received money from the proceeds of the stolen phones.

[11] Ms. Marin admitted that she also received money from the proceeds of the stolen cellphone resales. She also indicated that her partner, Mr. Garcia-Castano, is physically and emotionally abusive towards her. At the admissibility hearing, Mr. Blanco Rubian alleged that he was not involved in the criminal organization and only drove Mr. Garcia-Castano and Mr. Arias-Arias to the mailbox.

B. *Decision under Review*

[12] The ID found the Applicant inadmissible to Canada pursuant to s.37(1)(a) of the IRPA, as the Minister had established reasonable grounds to believe that Mr. Blanco Rubian is a member of an organized criminal group. The ID considered in detail both the police occurrence reports and the transcript of the interview with Ms. Marin. It assigned significant weight to Ms. Marin's interview, as it was an uncoerced statement that provided "an unredacted first-hand eyewitness account from a person who was herself a member and participant in the criminal organization, and who would have bore criminal liability." The ID noted the statements were unprompted, non-speculative, and not embellished. It rejected Mr. Blanco Rubian's suggestion that Ms. Marin was trying to save herself, given that she admitted to her own role in the scheme and there was no indication that she was offered a plea deal in exchange for agreeing to the interview. The ID also placed significant weight on the police reports.

[13] The ID therefore found that there were reasonable grounds to believe that there was a criminal organization; that Mr. Blanco Rubian was a part of it; that the organization was engaged in activity that was part of a pattern of criminal activity; that the criminal activity was planned and organized by a number of persons; that the persons involved were acting in concert towards the furtherance of the commission of a criminal offense; and that the criminal offenses in question would be punishable as an indictable offense, if committed in Canada.

[14] In coming to that conclusion, the ID found that the criminal organization was made up of Mr. Blanco Rubian, Mr. Garcia-Castano, Mr. Arias-Arias, and Ms. Marin, which comprises a group of three or more persons outside Canada. The main purpose of the group was to commit

cellphone theft, resulting in direct material benefit to the group. The group was not formed randomly for a single offense, but engaged in the activity repeatedly and in a pattern of criminal activity. The group also demonstrated a significant amount of planning and organization, in concert and by several persons. The offense in question was a serious offense, theft over \$5,000, which is an indictable offense pursuant to s.322(1) and s.334(a)(i) of the *Criminal Code*.

[15] The ID found that Mr. Blanco Rubian was a member of the group, as he was involved in deciding which music festivals to target and attend. He was in the car during the retrieval of the package of stolen phones, and there was ample further evidence to suggest that he was there as a key member. To that extent, the ID rejected Mr. Blanco Rubian's testimony that he was not part of the plan to sell stolen cell phones, and was only giving the other two men a ride to the mailbox on the way to the grocery store.

III. ISSUES

[16] The Applicant submits that the ID's decision was unreasonable, for two overarching reasons. First, the Applicant argues that the ID mischaracterized and unduly relied on the transcript of Ms. Marin's interview. Second, he argues that the ID erred in relying on the police occurrence reports, because the charges that resulted from them were withdrawn.

IV. STANDARD OF REVIEW

[17] It is common between the parties that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 23, 25 [Vavilov]. In conducting a reasonableness review, a court "must consider the outcome of the

administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[18] It should also be noted here that the rights at stake in cases such as this are significant. The Minister’s claim is that the Applicant is inadmissible for organized criminality, a serious allegation that carries significant immigration consequences, including removal from Canada and ineligibility to initiate a claim for refugee protection before the Immigration and Refugee Board. In *Vavilov*, the Court noted that the reasons provided in support of a decision – the justification for that decision – must reflect the stakes, which in this matter are at the high end of the spectrum: *Vavilov* at para 133.

V. STATUTORY FRAMEWORK

[19] Paragraph 37(1)(a) of the IRPA provides that a permanent resident or foreign national is inadmissible on the 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...

[20] Section 33 of the IRPA governs the interpretation of the inadmissibility provisions found at sections 34-37 of the Act. It states:

The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

[21] The “reasonable grounds to believe” standard is clearly lower than either the criminal or civil standards, but still requires an objective basis for the belief based on compelling and credible information, as opposed to mere suspicion: *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114.

VI. ANALYSIS

A. *Preliminary Issue: Non-Appearance of Counsel for the Applicant*

[22] The hearing into this matter was scheduled for April 10, 2025, at 9:30 a.m. Counsel for the Applicant did not appear at this time. The Registry called counsel, but received no response. Counsel had also not responded to earlier correspondence from the Court’s registry to confirm the time and date of the hearing. As a result of counsel’s non-appearance, the proceeding was opened and I heard from counsel for the Respondent who, aside from a few clarifying points, wished to rely on the written record.

[23] Some forty minutes later, counsel for the Applicant emailed the Registry indicating that he was “quite ill and could not make an appearance.” Counsel did not seek an adjournment or re-

hearing of the matter. As such, I have elected to render a decision in this matter based on the written record.

B. *The Immigration Division decision was reasonable*

(1) The ID reasonably relied on the Marin sworn statement

[24] The Applicant argues that it was an error for the ID to rely on the Marin statement for various reasons. First, he argues that the statement was vague and did not provide any evidence that Ms. Marin witnessed the Applicant committing the crimes in question. There is no merit to this statement. The Marin statement was, in fact, very detailed, and provided a specific and first-hand account of Mr. Blanco Rubian's involvement in the crimes in question. Contrary to the Applicant's claim, Ms. Marin acknowledged that she personally witnessed the three men in question, which includes the Applicant, stealing phones.

[25] Similarly, the Applicant argues that the ID took Ms. Marin's very general statements and made very particular findings about the Applicant's involvement in the criminal scheme. Once again, I reject this argument, as it is based on an inaccurate premise. Ms. Marin's statement was specific and was directly responsive to the questions she was asked. The information she provided clearly implicated the Applicant at all levels of the phone theft scheme.

[26] The Applicant further argues that the ID erred in concluding that Ms. Marin was a member of the alleged criminal organization. Little turns on this issue, as Ms. Marin was a direct witness to the alleged criminal acts committed, but in any event, I reject the Applicant's argument. While Ms. Marin does not appear to be one of the three principal orchestrators of the

scheme, she did admit to participating in it, primarily by receiving money into her bank account, and then transmitting it back to the men so that they could ‘settle their accounts.’

[27] Next, the Applicant argues that the ID erred in failing to consider that Ms. Marin’s statement was self-serving. In fact, the ID considered precisely this argument, and provided detailed reasons for rejecting it. I have reviewed those reasons and am of the view that they contain no errors.

[28] Finally, the Applicant relies on the decision of this Court in *Veerasingam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1661 [*Veerasingam*] to argue that the ID erred in relying on statements that were “far from certain.” Once again, I disagree. First of all, the ID did not need to be “certain” of the information provided by Ms. Marin. This is not compatible with the evidentiary standard set out at s.33 of the IRPA. Second, I am satisfied that the ID reasonably assessed the reliability of the evidence contained in the Marin statement and, to this extent, the situation is distinct from the *Veerasingam* case.

(2) The ID reasonably relied on the police occurrence reports

[29] Evidence of withdrawn or dismissed charges should not be used, on its own, as evidence of an individual’s criminality: *Canada (Citoyenneté et Immigration) v Solmaz*, 2020 FCA 126 at paras 73, 85. This said, the jurisprudence is equally clear that evidence underlying a withdrawn or dismissed charged (such as the evidence contained in a police occurrence report) can be accepted, provided the decision-maker determines that the evidence is credible and trustworthy.

[30] In other words, the mere absence of charges does not establish that information contained within police occurrence reports is unreliable, or cannot support a finding of inadmissibility based on the applicable standard: *Castelly v Canada (Minister of Citizenship and Immigration)*, 2008 FC 788 at paras 25-26; *Odosashvili v Canada (Citizenship and Immigration)*, 2017 FC 958 at paras 27, 76, 83; *Hassan v Canada (Citizenship and Immigration)*, 2022 FC 771 at paras 44-47.

[31] The Applicant acknowledges the above, but argues that, in this case, the ID did not conduct an analysis of the reliability of the information contained in the reports. This is simply factually incorrect. In fact, the ID provided clear reasons as to why, in its view, the information contained in the occurrence reports was reliable. Once again, I see no reviewable error in this aspect of the ID's analysis.

[32] The Applicant further argues that the ID erred in failing to appreciate that the occurrence report only established that the Applicant was driving suspects to a mailbox (where the stolen phones were picked up), and did not support a finding that the Applicant stole cell phones. Respectfully, the ID did not rely on the occurrence reports alone to arrive at the conclusion that there were reasonable grounds to believe that the Applicant had engaged in the criminal activity in question. It was, rather, through the combined reference to the police reports and the firsthand accounts of Ms. Marin that the ID came to this conclusion. Given the nature of this evidence, the ID's conclusions and the reasons provided for those conclusions represent a rational chain of analysis.

VII. CONCLUSION

[33] For the above reasons, this application for judicial review is dismissed. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-5676-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question of general importance is certified.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5676-24

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