Federal Court  Cour fédérale

Date: 20250828

Docket: IMM-7985-23

Citation: 2025 FC 1437

Ottawa, Ontario, August 28, 2025

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

SIGURDUR NORDAL
SNAEBJORG JONSDOTTIR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

and

FORMER COUNSEL

Intervener

JUDGMENT AND REASONS

[1] The underlying facts of this judicial review involve allegations that the Applicants Mr. Sigurdur Nordal and Ms. Snaebjorg Jonsdottir along with a few individuals, orchestrated a sophisticated investment fraud in Greece between 1997 and 1998, whereby they convinced at least 112 investors to invest into shell companies that held no assets or value. It is further alleged

the investments totalled $1,506,659,920 GRD, which was more than $7.6 million CAD at a historical exchange rate date of January 1, 1998.

[2] This is an application for judicial review of a decision rendered by the Immigration Division [ID] of the Immigration and Refugee Board dated June 8, 2023 [Decision] determining that Mr. Nordal and Ms. Jonsdottir, citizens of Iceland and permanent residents of Canada, were inadmissible to Canada for organized criminality under paragraph 37(1)(a) the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. As a result, the ID issued deportation orders against the Applicants.

[3] New counsel for the Applicants in this judicial review replaced the counsel who was acting for the Applicants during their proceeding before the ID during the admissibility hearings and who represented them for the detention review [Former Counsel]. By Order dated April 16, 2025, this Court granted leave to the Former Counsel to intervene in this proceeding, pursuant to Rule 109 of the *Federal Courts Rules*, SOR/98-106 [*Rules*].

[4] The Applicants alleged two grounds in their application for judicial review. They argue that they did not receive adequate representation before the ID from their Former Counsel and that the Decision is not reasonable.

[5] For the reasons that follow, neither of these grounds can be accepted. Former Counsel's submissions before the ID did not amount to incompetence as described in the jurisprudence. Finding otherwise would expand the threshold for incompetence of counsel far beyond what the

jurisprudence allows. Further, the Decision of the ID is not unreasonable. The application for judicial review is dismissed.

I. Background

[1] The Applicants are citizens of Iceland and permanent residents of Canada. On January 20, 1983, Mr. Nordal became a permanent resident of Canada and sponsored his wife, Ms. Jonsdottir, who became a permanent resident of Canada on August 20, 2007.

[2] Mr. Nordal was President and shareholder of a shell company, Nordic American Inc. Nordic American Inc. provided no service and had no employees, and its purpose was to acquire other companies, with the aim of managing those companies, to generate income. Ms. Jonsdottir was also a shareholder of Nordic American Inc. and ran another shell company, Blue Chip Consultants Ltd [Blue Chip].

[3] In November 2019, the Canada Border Services Agency [CBSA] served notices to the Applicants advising them that reports under section 44 of the IRPA had been prepared against them and they may be referred to the ID for an admissibility hearing for either serious criminality or organized criminality pursuant to sections 36 and 37 of the IRPA respectively. In August 2020, the Applicants were referred for an admissibility hearing, which was held between November 2021 and July 2022. It was alleged that between 1997 and 1998, the Applicants, along with other individuals, orchestrated a sophisticated investment fraud in Greece, whereby they convinced at least 112 investors to invest into shell companies that held no assets or value. It was

alleged the investments totaled $1,506,659,920 GRD, which was more than $7.6 million CAD at an historical exchange rate date of January 1, 1998.

[4] In 2021, the Minister prepared two disclosure packages, one dated August 4, 2021, for the admissibility hearing of Mr. Nodal and one dated August 5, 2021, for the admissibility hearing of Ms. Jonsdottir [Minister's 2021 Disclosure]. The Minister's 2021 Disclosure included:

i. An Arrest Warrant No. ANST/ES/27/17-7-2002 ("Greek Arrest Warrant");

ii. A Decree No. 229/2003 First Instance from the Court of Piraeus ("2003 Greek Decree");

iii. a European Arrest Warrant issued in 2010 ("European Arrest Warrant"); and

iv. an Interpol Red Notice issued in 2010 ("Red Notice").

[5] Further in 2022, the Minister prepared a disclosure package dated May 25, 2022 [Minister's 2022 Disclosure].

[6] Before the ID, the Applicants raised two principal arguments: (i) the documents in the Minister's 2021 Disclosure were fraudulent; and (ii) they were innocent and were merely being persecuted by vindictive ex-business associates.

[7] On June 8, 2023, the ID found the Applicants inadmissible based on organized criminality pursuant to section 37 of the IRPA and issued deportation orders against them. The Applicants seek judicial review of that Decision.

II. Decision Under Review

[8] The ID assessed each of the documents in the Minister's 2021 Disclosure using the standard of proof of "reasonable grounds to believe". For this standard to be met, there must be more than a suspicion but less than the civil standard of proof on a balance of probabilities. Notably, the ID considered that the three judges forming the Board of the Court of Misdemeanor of Piraeus issued the 2003 Greek Decree following a principal investigation and the submission of the prosecutor's penal case file, and motions on various orders and warrants. The ID considered that the Piraeus Court of Misdemeanor committed to trial thirteen (13) defendants or co-accused of which Mr. Nordal is the first defendant and Ms. Jonsdottir is the second defendant. The ID found the 2003 Greek Decree details the companies involved in the fraud, the persons implicated from those companies, the fraud committed by way of a variety of misrepresentations to investors and Greek authorities, and each transaction by investors resulting from the fraud. The ID found reasonable grounds to believe that the 2003 Greek Decree is not fake, because the Greek authorities initiated the European Arrest Warrant and the Interpol Red Notice based upon the 2003 Greek Decree, and they advised Interpol Ottawa of the originating warrant and its validity.

[9] Ultimately, the ID found the 2003 Greek Decree to be reliable and persuasive, and that each of the documents in the Minister's 2021 Disclosure were not fraudulent. The ID found that the documentary evidence gave credible and reasonable grounds to believe that the Greek authorities wanted the Applicants in Greece for prosecution until August 2018.

[10] Acknowledging that the evidence underlying the 2003 Greek Decree was not before them, the ID noted that the 2003 Greek Decree identifies the companies Mr. Nordal and Ms. Jonsdottir allegedly created and were involved in, as well as other persons known to both Mr. Nordal and Ms. Jonsdottir who were involved in the leadership roles of the implicated organizations. The ID noted that the 2003 Greek Decree enumerates the amounts and dates of each investment transaction per investor based on false pretences; it gives reasonable grounds to believe that fraudulent activities took place to further the investment goals of Nordic American Inc. for which Mr. Nordal was the President and shareholder and Ms. Jonsdottir was also a shareholder.

[11] The ID preferred the Minister's documentary evidence over the Applicants' contradictory testimonies that they were not involved with the corporations and/or had minor roles in the companies of concern. The ID found reasonable grounds to believe that the company referred to in the 2003 Greek Decree implicated in the fraud, Blue Chip Consultants Ltd., is the shell company that Mr. Nordal and Ms. Jonsdottir set up and which Ms. Jonsdottir operated, and made a number of other findings of fact regarding their relationships, involvement and activities with the companies of concern referred to at length at paragraph 60 of the Decision.

[12] The ID also found there were reasonable grounds to believe that the Applicants engaged in activities that was part of a pattern of criminal activity, planned and organized by a number of persons acting in concert in the furtherance of committing fraud. The ID noted that the act of fraud is an indictable offence under an act of Parliament (*Criminal Code*, R.S.C., 1985, c. C-46, section 380(1)(a)) that comes with a maximum term of imprisonment of 14 years. Given the

IRPA does not specifically define “organization” in the context of section 37(1)(a), the ID referred to the definition of criminal organization found in section 467.1 of the *Criminal Code* and the factors established by the jurisprudence like *Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326 at paras 38-39, 55.

[13] First, citing the 2003 Greek Decree that identified thirteen defendants in the alleged fraud, including Mr. Nordal and Ms. Jonsdottir, the ID found reasonable grounds to believe that more than three people engaged in the fraud scheme outside of Canada.

[14] Second, the ID found there were reasonable grounds to believe the structure of the fraud included organizations in Greece and the U.S., at the very least, and at minimum included the following organizations: Nordic American Inc., Nordic Bancorp, Standard Hellas/Nordic American Standard, Horizon Finance/Horizon and Associates, and Blue Chip Consultants. The ID found that the activity of fraud took place over a prolonged period of time, from 1997 to 1999, that the group did not form for a random criminal act, and that Mr. Nordal was in a leadership role with Nordic American Inc. and Nordic American Standard, and Ms. Jonsdottir was a member throughout this period.

[15] Third, the ID found that fraud was the main purpose/activity of the group and that the acts committed by the organization prejudiced the economic interest of the victims who invested. On the one hand, as President of Nordic American Inc. and Managing Director of Nordic American Standard, Mr. Nordal, participated in the fraud through planning and sanctioning of the variety of financial misrepresentations to Greek authorities and investors. On the other hand,

Ms. Jonsdottir was a shareholder with Nordic American Inc. who had a personal stake in making money, and by virtue of running Blue Chip Consultants Ltd., which had no other employees, there were reasonable grounds to believe she submitted false financial information on behalf of Nordic American Inc.'s efforts to acquire Standard Hellas.

[16] Finally, the ID concluded that the Applicants engaged in companies that existed solely to make money, that the investors were defrauded of their capital and promised yields, giving reasonable grounds to believe that one or more individuals who received the investments on behalf of the scheme benefited financially, which is a material benefit.

[17] On the other hand, the ID concluded that there are reasonable grounds to believe that Mr. Nordal's signature on *some* bonds issued to investors was forged. This conclusion rests primarily on a letter from Mr. Nordal's lawyer dated November 2, 2000, outlining that an investigation into bonds issued in Greece revealed the signatures on some bonds were not original. Furthermore, this was consistent with the 2003 Greek Decree, in which the Court decided not to pursue certain charges against the Applicants. However, the ID also concluded that this finding did not undermine the rest of the evidence that showed Mr. Nordal's involvement.

[18] The ID concluded that the organization(s) comprised more than three people, under specific leadership, and through multiple acts of fraud over a sustained period for at least two years. The aim was for material gain for some of its members. As such, Mr. Nordal and Ms. Jonsdottir are persons described under s. 37(1)(a) of the IPRA.

III. Issues

[19] The issues raised in this judicial review are:

A. Is the test for breach of procedural fairness based on incompetence established?

B. Is the Decision unreasonable?

IV. Analysis

A. Is the test for breach of procedural fairness based on incompetence established?

[20] In my view, the test for breach of procedural fairness based on incompetence is not established.

(1) Legal framework for allegations of ineffective assistance of counsel

[21] Negligent representation can result in a breach of procedural fairness (*R v GDB*, 2000 SCC 22 [*GDB*] at para 28). To succeed on a procedural fairness violation resulting from incompetent representation, the Applicants must establish that all parts of the following tripartite test are met:

1. The representative's alleged acts or omissions constituted incompetence;
2. There was a miscarriage of justice in the sense that, but for the alleged conduct, there is a reasonable probability that the result of the original hearing would have been different; and
3. The representative be given notice and a reasonable opportunity to respond.

(*Guadron v Canada (Citizenship and Immigration*), 2014 FC 1092 [*Guadron*] at para 11, referring to *Pathinathar v Canada (Citizenship and Immigration)*, 2013 FC 1225 at para 25 and *Nagy v Canada (Citizenship and Immigration)*, 2013 FC 640 at para 25).

[22] Incompetence of a former counsel must be sufficiently specific and clearly supported by the evidence (*Shirwa v Canada (Minister of Employment and Immigration)*, 1993 CanLII 17477 (FC), [1994] 2 FC 51 [*Shirwa*] at p 60; *MN v Canada (Citizenship and Immigration)*, 2023 FC 663 at paras 76-77), and will only constitute a breach of natural justice in extraordinary circumstances (*Memari v Canada (Citizenship and Immigration)*, 2010 FC 1196 [*Memari*] at para 36). As noted at paragraph 27 by the Supreme Court in *GDB:*

> Incompetence is determined by a reasonableness standard. The analysis proceeds upon a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. The onus is on the appellant to establish the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The wisdom of hindsight has no place in this assessment.

[23] The onus is therefore on the Applicants to prove every element of the test for negligent representation, including rebutting the strong presumption (*GDB* at para 27) that Former Counsel acted competently and proving that a miscarriage of justice resulted.

(2) The Former Counsel's alleged acts or omissions did not constitute incompetence

[24] In my view, the Former Counsel's alleged acts or omissions did not constitute incompetence.

[25] The Applicants raise two main arguments, which will be dealt with in turn below.

(a) Did the Former Counsel fail to consider and review significant exculpatory evidence?

[26] The Applicants have not met their onus of proving the Former Counsel failed to consider and review significant exculpatory evidence.

[27] The Applicants argue that their Former Counsel failed to consider, review and tender before the ID what they claim are "significant exculpatory evidence" that were made available to him prior to the hearing before the ID [Omitted Documents]. These Omitted Documents include Exhibits "A" to "F" attached to the Affidavit of Mr. Nordal sworn on October 26, 2023 [Nordal Affidavit].

[28] The Applicants submit the following:

- In the Former Counsel's letter dated October 30, 2023 (see AR at p 197 PDF), he states: "I personally reviewed extensive evidence submitted to me by [the Applicants]" but Former Counsel does not specifically address whether that evidence included Exhibits A-F; and
- Their Former Counsel did not provide any explanation as to what strategic or tactical considerations might have led him to deciding to leave these documents out of the record.

(i) *Litigation Strategy and the Nordal Affidavit's credibility*

[29] The Applicants rely on the Nordal Affidavit where it is mentioned that after their initial meeting, Former Counsel advised the Applicants that he "would focus on attacking the authenticity of a decree from the Greek criminal court and the Interpol Red Notice." (Nordal Affidavit at para 9), implying that this approach was recommended by Former Counsel. The Applicants also rely on the Nordal Affidavit where it is mentioned that they "had limited interaction with [Former Counsel]'s office until a week before the hearing in May 2023" (Nordal

Affidavit at para 10). Other than the Nordal Affidavit, there is no corroborative evidence to support these statements.

[30] In response, Former Counsel asserted that it was Mr. Nordal who insisted on pursuing this strategy, that they could obtain evidence from Europe, and that Former Counsel repeatedly followed up with the Applicants, requesting evidence the Applicants claimed was forthcoming and material. In support of his assertions, Former Counsel provided numerous email correspondence from March to June 2022 corroborating this (summarized at paras 9 through 13 of the Intervener's Memorandum of Fact and Law), contradicting Mr. Nordal's above-referenced statement that the Applicants "had limited interaction with [Former Counsel]'s office until a week before the hearing in May 2023" and corroborating Former Counsel's statement in his affidavit:

> 13. In fact, Mr. Nordal was obsessed with attacking the authenticity of these documents, whereas my obsession was to get expert or lay evidence that corroborated Mr. Nordal's theory that the decree and Red Notices were fraudulent or otherwise misleading and unreliable.

[31] The Applicants claim they had almost no interaction with Former Counsel between the retainer and the interview preparation. This claim is clearly inaccurate and lends to the lack of credibility in stating that it was Former Counsel who insisted on the defense of the authenticity of the documents.

[32] As for the alleged failure of the Former Counsel to tender the Omitted Documents to the ID, I agree with the Minister that the Applicants have failed to show how any of the Omitted Documents are exculpatory and have failed to explain the possible materiality or relevance of the

Omitted Documents. For example, Exhibit C that consists of audited financial statements is neither exculpatory nor material. Some of the Omitted Documents are self-serving, doing no more than advancing Mr. Nordal's own version of events.

[33] Moreover, some of the Omitted Documents could even appear damaging or inculpatory to the Applicants as they lead statements that are consistent with the alleged fraud. For example, Exhibit "A" is a letter written by Mr. Nordal, signing as President of Nordic American Inc Limited, to his then lawyers, in which Mr. Nordal described his version of events to them. Mr. Nordal states that he entered into business with one of the brokers because of his ability to collect funds seemed very impressive and because this broker previously was able to keep investors at bay, and collect funds from others, until, he hoped, he could raise sufficient funds to cover the "damage". I agree with Former Counsel that Exhibit "A" appears damaging as it seems to address a Ponzi scheme. Exhibit "B" is another letter written by Mr. Nordal, signing as President of Nordic American Inc Limited Ireland, to the Greek Ministry of Finance at the time when they were asking questions because there were allegations of civil litigation. For example, Mr. Nordal explains that they felt the Horizon situation was designed to use Nordic's name to collect funds, and pay clients, which the broker named in Exhibit "A" had misplaced or lost.

[34] Some of the content of the Omitted Documents appears damaging in that it could contain evidence of acts in furtherance of the alleged fraud and could be consistent with the alleged fraud: that to allay investors' growing concerns regarding the state of their investments, Nordal continued to provide false assurances.

[35] I agree with Former Counsel that when the Omitted Documents are read together, particularly Exhibits “A” to “F”, they seem to show an individual who knowingly entered into business with another person who they knew engaged in questionable practices, who then received angry correspondence from investors alleging fraud, and then entered into settlements with them once caught. It was not surprising in the circumstances for the Former Counsel to not tender these Omitted Documents to the ID.

(ii) *Did the Former Counsel fail to meaningfully engage with the legal tests for inadmissibility under paragraph 36(1)(c) and, more significantly, paragraph 37(1)(a) of the IRPA?*

[36] The Applicants argue that their Former Counsel, in his examination and submissions before the ID, failed to meaningfully engage with the legal tests for inadmissibility under paragraph 36(1)(c) of the IRPA. The Applicants submit that the Former Counsel’s examination of the Applicants and oral submissions did not engage with specific elements of a particular crime included in the *Criminal Code* (i.e., a s 36 analysis). It was open to the ID not to make a finding under section 36(1)(c), given its finding that the Applicants were inadmissible to Canada for organized criminality under paragraph 37(1)(a) of the IRPA. In the circumstances, whether Former Counsel failed to meaningfully engage with the legal tests for inadmissibility under paragraph 36(1)(c) is of no consequence.

[37] The Applicants also argue that their Former Counsel, in his examination and submissions before the ID, failed to meaningfully engage with the legal tests for inadmissibility under paragraph 37(1)(a) of the IRPA. The Applicants submit that the Former Counsel did not engage

with the structure and/or continuity of the alleged criminal organization, or evidence of material benefit to the Applicants, which are the key elements of a s 37 analysis.

[38] I disagree with the Applicants for the reasons referenced by the Minister and Former Counsel. Competent advocacy does not require that a lawyer make submissions on every minutia of a contested issue as it would dilute the lawyer's position and weaken the overall impact. From the transcript of the admissibility hearing, it is clear the Applicants' litigation strategy was to attack the authenticity and reliability of the Minister's 2021 Disclosure and Former Counsel was able to make full and thorough submissions during the hearing on why the ID should reject the Minister's 2021 Disclosure. Former Counsel's submissions addressed the Applicants' position they were innocent and there was no merit to the allegations of fraud. Former Counsel chose to focus on the criminality facet, advancing the position that the Applicants did not defraud any investors, that it was merely a failed business venture, and having done so, it was unnecessary – perhaps even counterproductive – to then dispute the rest.

[39] In my view, there was no incompetence in Former Counsel focusing on the key aspects of their litigation strategy to show that the 2003 Greek Decree and Interpol Red Notice were unreliable rather than spell out for the ID what the law on inadmissibility for participation in organized crime is. The ID, as an expert tribunal, is presumed to know the law (*Agapi v Canada (Citizenship and Immigration)*, 2018 FC 923 at para 17). It was not incompetent of Former Counsel to have a more focused argument rather than to follow a *throw everything but the kitchen sink* approach and possibly distract from what they believed their strongest argument was.

[40] The ID thoroughly covered aspects of the components required under paragraph 37(1)(a) of the IRPA (see paras 59-65 below of my Judgment and Reasons). The Applicants do not point to any flaws or deficiencies in the ID's analysis that Former Counsel could have addressed in legal submissions. The Applicants do not point either to any aspects of the ID's analysis where reliance on the Omitted Documents would have made a difference.

[41] Finally, the Applicants also provide arguments regarding the need to harmonize Canadian immigration and criminal law on the issue of what constitutes organized crime, and as such, this hearing would allow "this Court to provide guidance on the directions of the superior courts in both *Gaytan* [2021 FCA 163], *Abdulahi* [2023 SCC 19] and *Mason* [2023 SCC 21]". The Former Counsel submits that "[t]wo of these cases post-date the Immigration Division hearing", therefore Former Counsel cannot be deemed incompetent for failing to cite cases that did not yet exist, nor proposing a novel argument given their litigation strategy. I agree. The Decision was rendered by the ID on June 8, 2023, but *Abdullahi* was rendered on July 14, 2023, and *Mason* was rendered on September 27, 2023.

[42] As the incompetence of Former Counsel was not sufficiently clearly supported by the evidence (*Shirwa* at para 12), the Applicants did not prove the first element of the test for negligent representation. As the Applicants must establish that all parts of the above-referenced tripartite test are met (*Guadron* at para 11) and have failed on the first element of the test for negligent representation, the Court has not proceeded with the other two elements of the test (*Adeshina v Canada (Citizenship and Immigration)*, 2022 FC 1559 [*Adeshina*] at paras 27-28).

B. Is the Decision unreasonable?

[43] In my view, the Applicants did not demonstrate that the Decision is unreasonable.

(1) Standard of Review

[44] The parties agree, as do I, that the Decision should be reviewed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25). The burden is on the party challenging the Decision to show that it is unreasonable (*Vavilov* at para 100). To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency, and intelligibility (*Vavilov* at para 99). Flaws or shortcomings must be "more than merely superficial or peripheral to the merits of the decision" or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36). A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

(2) Legal Framework

[45] Paragraph 37(1)(a) of the IRPA provides as follows:

Organized criminality	**Activités de criminalité organisée**
37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	**37 (1)** Emportent interdiction de territoire pour criminalité organisée les faits suivants :
(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	**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

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 […].	plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction prévue sous le régime d'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 […].

[46] Pursuant to section 33 of the IRPA, the standard of proof for assessing inadmissibility under section 37 is whether there are reasonable grounds to believe that the facts have occurred, are occurring, or may occur. This standard is relatively low and requires "more than mere suspicion but less than proof on the balance of probabilities", which means that it will be met "where there is an objective basis for the belief which is based on compelling and credible information" (*Canada (Public Safety and Emergency Preparedness) v Gaytan*, 2021 FCA 163 at para 40, citing *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 [*Mugesera*] at para 114).

(3) Is the Decision justified with respect to the evidence before the ID?

[47] In their Reply memorandum, the Applicants assert that it was inappropriate for the ID to rely on *Qazi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1204 to accept as fact the alleged conduct as charged in the 2003 Greek Decree even at the relatively low standard of "reasonable grounds to believe." The Applicants argue that the ID improperly relied on the unproven allegations set out in the charging documents to establish their factual content, relying

on a summary of the unproven allegations against the Applicants in a foreign proceeding, without consideration of what evidence existed to justify any given proposition. The Applicants argue that the ID's reasons fail to contend with aspects of the Applicants' testimony that directly contradict the 2003 Greek Decree such as for example, Mr. Nordal's claim that the acquisition of Standard Hellas was never completed.

[48] I disagree with the Applicants.

[49] Relying on the similar cases of *Cugliari v Canada (Citizenship and Immigration)*, 2023 FC 263 [*Cugliari*] and *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 [*Pascal*], I agree with the Minister that the 2003 Greek Decree issued by the Piraeus Court of Misdemeanour carries significant weight as the information in it goes far beyond that of a charging document. The 2003 Greek Decree is judicial scrutiny in the local jurisdiction of the allegations against the Applicants, with a comprehensive breakdown of the allegations against the Applicants and the other individuals involved, plus a meticulous partitioning of their roles within the alleged fraud.

[50] In *Cugliari*, the applicant was found inadmissible on grounds of organized criminality under section 37 of the IRPA, based upon a report prepared by the Carabinieri Legion of Calabria, Provincial Command of Vibo Valentia, Operations Department – Investigative Unit, as well as testimony from an officer of the legion. In *Cugliari*, similar to the matter before me, the applicant argued that under section 33 of the IRPA, "decision-makers cannot 'simply rely upon bald, or unsubstantiated opinions, even when they come from experienced police officers'"; as

well, the applicant in *Cugliari* had asserted that the standard of reasonable grounds to believe "requires 'reliable facts' and 'does not justify an absence of facts to ground the reasonable belief'". In *Cugliari* at paragraphs 27 to 33, the Court rejected the applicant's arguments noting that the Carabinieri Report refers to underlying evidence and facts giving rise to its conclusion and that the ID in that matter did not simply rely on the charges against the applicant but referred to the facts presented in the Carabinieri report.

[51] Similarly, in *Pascal*, the applicant was found inadmissible on similar grounds of organized criminality, based upon police reports, the evidence of a police officer who had no prior experience with Mr. Pascal, and a true crime book. The Court in *Pascal* found that the ID was entitled to rely on sources of information that might not be admissible in a court proceeding, provided that it explained why the information was credible or trustworthy (*Pascal* at para 15, citing *Demaria v Canada (Citizenship and Immigration)*, 2019 FC 489 at para 121). At paragraphs 24 through 34 of *Pascal*, the Court enumerated multiple decisions of both the Federal Court and the Federal Court of Appeal noting that while the mere fact of a charge cannot be relied upon, the evidence underlying it, which can include police reports, can be relied upon if the reason for doing so is so explained.

[52] I agree with the analysis and conclusions of *Cugliari* and *Pascal*. Paragraphs 173(c) and (d) of the IRPA are clear – the ID "is not bound by any legal or technical rules of evidence" and "may receive and base a decision on evidence adduced in the proceedings **that it considers credible or trustworthy in the circumstances**" (emphasis added).

[53] Similar to what was decided in *Cugliari* and in *Pascal*, the ID was therefore entitled to rely on the 2003 Greek Decree and its contents to find, on a standard of reasonable grounds to believe, the Applicants inadmissible.

[54] In the judicial review before me, the ID noted the standard of proof required was only that of "reasonable grounds to believe", which is less than "on a balance of probabilities" (correctly citing *Ramirez v Canada (Minister of Employment and Immigration)*, 1992 CanLII 8540 (FCA), at para 50 of its Decision). The ID then meticulously addressed each document, while cross-referencing them to the Applicants' testimonies and conducted its own independent analysis based first on the legal principles and then on the factual circumstances before them, opposing the Minister's documentary evidence to Mr. Nordal's testimonial evidence. The ID relied on the contents of the documents that were before it and the testimonial evidence that was before it, weighed the evidence and indicated:

> [51] In general, I prefer the quality of the evidence provided by the Minister over that provided by Mr. Nordal and Ms. Jonsdottir. **Due to the details provided in the 2003 Decree against the absence of documentary evidence from Mr. Nordal and Ms. Jonsdottir to the contrary, there are not reasonable grounds to believe the charges against them were fabricated**.
>
> […]
>
> [58] Considering Court documents provided by the Minister that set out the alleged fraud in detail, **I prefer the Minister's documentary evidence over Mr. Nordal's and Ms. Jonsdottir's testimony.** Their assertions and contradictions within their own testimony or in relation to the 2003 Decree do not undermine the credibility or reliability of the Minister's evidence. As well, their testimony on these companies gave the impression of them downplaying their roles in the companies of concern, to distance themselves from the allegations.
>
> [Emphasis added]

[55] It was not unreasonable for the ID to take into consideration a Greek decree from a panel of three judges convened in the local jurisdiction, who scrutinized the documents and evidence put forward by the prosecutor, weigh it against the testimony of Mr. Nordal that "differed from documentary evidence and was at times materially contradictory with Ms. Jonsdottir's" and come to its findings in the Decision against the Applicants. The ID conducted its own independent analysis on why "the quality of the evidence provided by the Minister" was preferred "over that provided by Mr. Nordal and Ms. Jonsdottir" (Decision at para 51) and this analysis was reasonable.

(4) Did the ID reasonably apply the legal test for the existence of a criminal organization on the facts as found?

[56] The Applicants argue that the ID did not properly apply the legal test for distinguishing an organized criminal group from a criminal conspiracy as the Decision failed to consider the leading jurisprudence of the Supreme Court of Canada: *R v Venneri*, 2012 SCC 33 [*Venneri*]; recently confirmed in *R v Abdullahi*, 2023 SCC 19 [*Abdullahi*].

[57] First, the Applicants submit that the ID's analysis does not explain how this was not a single business venture where a fraud would have been committed as opposed to a criminal organization with the structure and continuity required by *Venneri*. The Applicants further explain that no analysis is provided about the relationship between the Applicants and the co-defendants; that no evidence exists in the 2003 Greek Decree to suggest that the Applicants and any of the co-conspirators had other ventures together, whether legal or illegal, either before or after; and there is no investigation into the communication or coordination between the parties.

[58] Second, the Applicants explain that there is no indication that the notion of "continuity" is to be read as being satisfied strictly by the time taken for a single crime to be committed (*Venneri* at para 35) and nothing on the face of the reasons provided by the ID reasonably distinguishes the conduct alleged in the 2003 Greek Decree from a conspiracy to defraud, nor does it suggest why the conduct or nature of the organization in question is such that it poses an elevated or enhanced threat.

[59] The ID reasonably applied the proper legal definition for an "organized criminal group" in accordance with paragraph 37(1)(a) of the IRPA. The ID identified the necessary attributes to distinguish the Applicants' group from a simple conspiracy to commit fraud, namely the structure and continuity elements (*Venneri* at para 35). Those two elements were identified in the jurisprudence because, by virtue of such structure and continuity, organized criminal groups pose an enhanced threat to society (*Venneri* at para 40 and *Abdullahi* at para 80). The enhanced threat to society is due to the inherent benefits of operating as an organized criminal group; it is not an independent attribute:

> [36] Working collectively rather than alone carries with it advantages to criminals who form or join organized groups of like-minded felons. Organized criminal entities thrive and expand their reach by developing specializations and dividing labour accordingly; fostering trust and loyalty within the organization; sharing customers, financial resources, and insider knowledge; and, in some circumstances, developing a reputation for violence. A group that operates with even a minimal degree of organization over a period of time is bound to capitalize on these advantages and acquire a level of sophistication and expertise that poses an enhanced threat to the surrounding community.
>
> (*Venneri* at para 36)

[60] In the case before me, the ID did not specifically rely on *Venneri* or *Abdullahi*. However, the Applicants' argument is similar to the one advanced in *Clarke v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 128 [*Clarke*], where the applicant argued that the decision-maker had failed to analyze whether there was any "structure and continuity" pursuant to the definition of "criminal organization" in *Venneri* (*Clarke* at para 18; *Venneri* at paras 27, 35-36). As explained by Justice Fuhrer in *Clarke*:

> [19] […] **I find that features of structure and continuity, in the context of *IRPA* s 37(1), are eminently variable and wholly fact dependent on the circumstances of each case**. As explained below, I find it was reasonable for the ID to conclude that there were reasonable grounds to believe the essential elements of *IRPA* s 37(1)(b) were met.
>
> […]
>
> [27] So where does this leave us regarding "structure and continuity" in the context of "organized criminality?" The overarching theme in *Venneri* and in case law involving subsection 37(1) of the *IRPA* is flexibility. "The words 'however organized' suggest that it must be organized in some fashion": *Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 349 at para 30. Further, organized criminal groups tend to have loose, informal structures that can vary substantially; this calls for "a rather flexible approach in assessing whether the attributes of a particular group meet the requirements of the IRPA given their varied, changing and clandestine character": *Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326 at para 39. It is sufficient that the group be somewhat organized and that it has coordinated its activities for some indeterminate period of time; it can be characterized as criminal, regardless of whether it also may have legitimate objects: *Nguesso v Canada (Citizenship and Immigration)*, 2016 FC 1295 at para 61. Finally, ***Venneri*** **underscores the need for flexibility by emphasizing that care must be taken not to transform the shared characteristics of one type of criminal organization into a checklist that needs to satisfied in every case:** *Venneri*, above at para 38.
>
> [Emphasis added]

[61] Although the ID did not explicitly mention the *Venneri* case in its Decision, the decision maker nevertheless applied the proper distinctive elements of the definition of "organized criminal group", namely the structure and continuity of the group. In its analysis, the ID set out both the structure and continuity of the organization, including the roles of both Applicants within the group's activities (Decision at paras 68-77).

[62] The ID reasonably found that the 13 defendants in the fraud constituted the criminal organization, even though they worked for different companies. The structure of the organization included many corporations, some of which were run by the Applicants in leadership positions, while other defendants acted as board members or ran other implicated companies. Various transactions occurred between the implicated parties, including the making of false representations to both investors and the Greek Ministry of Trade. The ID explained that the alleged fraud took place over a "prolonged period of time, from 1997 to 1999" and concluded that "therefore, the group did not form for a random criminal act" and that "Mr. Nordal was in a leadership role with Nordic American Inc. and Nordic American Standard, throughout this period of fraud." (Decision at para 76).

[63] Furthermore, the ID reasonably found that the Applicants and the defendants listed in the 2003 Greek Decree "all jointly planned the strategy to secure and retain investors by presenting falsified financial information to investors" (Decision at para 72). These factual findings by the ID negate the Applicants' claim that the alleged fraud was a single business transaction that happened to span over years.

[64] After careful review of the record, I do not agree with the Applicants' suggestion that the ID's analysis of the alleged fraud's structure and continuation was deficient. There is no fixed characteristics of what a sufficient structure and continuity may be. As described in *Clarke*, the approach must be flexible to assess whether a group possesses the required attributes in the circumstances of each case (*Clarke* at para 19).

[65] Reasonable grounds may be found to exist "where there is an objective basis for the belief which is based on compelling and credible information": *Mugesera* at paras 114 and 116, as cited in *Wang v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 226 at para 45. Here, the ID relied on the Minister's 2021 Disclosure and the Minister's 2022 Disclosure, which included credible information, and found that:

> [69] The 13 defendants in the fraud constitute the criminal organization, even though they worked for different companies. While there were separate legal structures, the 13 defendants **worked in concert together to achieve the fraud by committing the criminal acts together**. Per the 2003 Decree, which I find to be reliable and persuasive evidence, **the structure for the fraud was set up through a board of directors of Nordic American Standard. It included Mr. Nordal as an influential member in the role of Managing Director, Mr. Jonsdottir as a member, and it was comprised of more than three board members**.
>
> […]
>
> [74] Based on the details in the 2003 Decree, which have not been undermined by Mr. Nordal or Ms. Jonsdottir's testimony or documentary evidence, I find reasonable grounds to believe that as President of Nordic American Inc. who negotiated the acquisition of 100% of Standard Hellas shares, after which he became Managing Director of Standard American, Mr. Nordal planned in concert with others, and knew of and sanctioned the falsification of the Nordic American Inc.'s assets to the Ministry of Trade to obtain the shares. **There are also reasonable grounds to believe he planned in concert with others, knew of and sanctioned the misrepresentation of Nordic American Inc.'s financial assets to potential investors. The purpose of the false representations**

> **was to obtain, increase or retain client investments, for financial gain.**
>
> [Emphasis added]

[66] The ID reasonably applied the legal test for the existence of a criminal organization on the facts as found and came to reasonable conclusions. I therefore find this argument is not a basis to grant this application for judicial review.

V. Conclusion

[67] This application for judicial review is dismissed. The Applicants have not established a breach of procedural fairness based on incompetence. The Decision is not unreasonable.

[68] The parties did not propose a question for certification pursuant to section 74 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and I agree that none arises.

JUDGMENT in IMM-7985-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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