CANADA / JUDGMENT

Malhi v. Canada (Public Safety and Emergency Preparedness)

2026 FC 6

COURT
Federal Court

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Decision Content

Date: 20260106

Docket: IMM-16367-24

Citation: 2026 FC 6

Ottawa, Ontario, January 6, 2026

PRESENT: Madam Justice Conroy

BETWEEN:

MUNIR AHMAD MALHI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Munir Ahmad Malhi, seeks judicial review of a decision of the Immigration Division [ID] of the Immigration and Refugee Board of Canada. The ID found that the Applicant is inadmissible to Canada pursuant to s. 35(1)(a) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. The IAD concluded that there were reasonable grounds to believe that Mr. Malhi made a voluntary, significant and knowing contribution to the crimes against humanity committed by the Punjab Police Service in Pakistan [PPS].

[2] For the reasons that follow, I conclude that the ID's assessment of the Applicant's alleged contribution to the PPS's crimes is unreasonable.

I. Background [3] The Applicant is a citizen of Pakistan. He worked for the PPS for 37 years, from 1979 until his retirement in 2016. He served as a Constable and was promoted to Head Constable two years before his retirement.

[4] He arrived in Canada in January 2020 and shortly thereafter sought refugee protection. The Refugee Protection Division [RPD] found the Applicant and his wife to be Convention Refugees and, that as adherents to the Ahmadiyya faith, they faced a serious risk of persecution in Pakistan.

[5] The Minister of Citizenship and Immigration appealed the RPD decision arguing that the Applicant is excluded from refugee protection because he served with the PPS which has committed crimes against humanity. The Refugee Appeal Division [RAD] allowed the appeal and the matter was referred back to the RPD.

[6] In April 2022, the Applicant was interviewed by a Canada Border Services Agency [CBSA] Officer due to concerns regarding his inadmissibility to Canada.

[7] His case was then referred to the ID for an admissibility hearing pursuant to s.44(2) of IRPA. His refugee claim process was suspended pending the outcome of the admissibility hearing before the ID.

II. Decision Under Review [8] The admissibility hearing took place over five days between January and April 2024. The ID's decision rendered August 8, 2024 found that the PPS has committed crimes against humanity and that the Applicant was complicit in those crimes.

[9] At the hearing, the Applicant did not dispute the Minister's generalized evidence about the PPS and acknowledged that the PPS's propensity for violence is common knowledge in Pakistan. The ID relied on extensive objective evidence filed by the Minister to find that the PPS engaged in systemic human rights abuses, including torture, rape, enforced disappearances, and extrajudicial killings. It concluded that these offences constitute crimes against humanity.

[10] The Minister did not allege that the Applicant was personally involved in committing crimes against humanity. Rather, the issue before the ID was whether Applicant contributed to the PPS's crimes against humanity in a manner that made him complicit in those crimes.

[11] The ID found that the Applicant attempted to portray himself as a low-level mail carrier with minimal involvement in policing activities. The ID found that this account was inconsistent with written statements in his "Details of Police Service" form provided with his refugee claim. It determined that the Applicant's testimony attempting to minimize his role was not credible and the ID drew a negative inference against the Applicant's testimony and documentary evidence.

[12] The ID focused on the Applicant's long tenure with the PPS, his promotion from Constable to Head Constable, and the receipt of service awards throughout his career and concluded that there were reasonable grounds to believe that he knowingly, voluntarily, and significantly contributed to the PPS's abuses. The Applicant was accordingly found inadmissible to Canada under s.35(1)(a) of IRPA and a deportation order was issued.

III. Issues and Standard of Review [13] The sole issue is whether the ID's decision is reasonable.

[14] The parties agree, as do I, that the ID's decision is reviewable on a standard of reasonableness: Mason v Canada (Citizenship and Immigration), 2023 SCC 21 at para 9; Ghirme v Canada (Citizenship and Immigration), 2024 FC 104 at para 4; Canada (Public Safety and Emergency Preparedness) v Verbanov, 2021 FC 507 at para 48.

[15] 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": Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 15 [Vavilov]. 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.

[16] The Applicant does not challenge the ID's conclusion that the PPS has a long history of human rights abuses. He, however, takes issue with the ID's assessment of his credibility, how it weighed some of the evidence, as well as its application of the test established by the Supreme Court of Canada in Ezokola v Canada (Citizenship and Immigration), 2013 SCC 40 [Ezokola] to determine complicity with international crimes.

[17] I find the ID's assessment of complicity under the Ezokola framework determinative and therefore refrain from expressing an opinion on the other issues raised by the Applicant.

IV. Analysis [18] Pursuant to s. 35(1)(a) of IRPA, a person is inadmissible to Canada for violating human or international rights if they have committed an act outside Canada that amounts to an offence under ss. 4 to 7 of the Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24 [CAHWCA]. Section 6 of the CAHWCA includes crimes against humanity.

[19] As noted, the Minister does not allege that the Applicant was personally involved in committing crimes against humanity and there was no evidence of the Applicant's direct involvement in such crimes. Rather, the Minister submits that the Applicant made a voluntary, knowing and significant contribution to the PPS's crimes against humanity or criminal purpose.

[20] The Applicant, on the other hand, contends that he was not involved in any crimes against humanity, nor did he endorse or contribute to them. He says he was aware of the crimes against humanity and the use of torture by the PPS, but did not leave the force because he had to earn a living to support his family. He contends that his role in the PPS was restricted and, as an Ahmadiyya Muslim, his authority and influence was limited. He says he did not conduct interrogations, and his duties consisted mainly of mail delivery.

A. Ezokola framework for culpable contribution to international crimes [21] As recognized by the ID, the law governing the analysis of culpable contribution to crimes against humanity is set out in Ezokola.

[22] Although the Ezokola decision was made in the context of an exclusion from refugee protection pursuant to article 1F(a) of the United Nations Convention Relating to the Status of Refugees, it is equally applicable to inadmissibility determinations under s. 35(1)(a) of the IRPA: B.Y. v Canada (Citizenship and Immigration), 2025 FC 777 at para 17 [B.Y.]; Muhmud v Canada (Citizenship and Immigration), 2025 FC 470 at para 19; Wadud v Canada (Citizenship and Immigration), 2025 FC 1383 at para 20 [Wadud]; Concepcion v Canada (Citizenship and Immigration), 2016 FC 544 at para 11 [Concepcion].

[23] Ezokola represents a "course correction" away from earlier jurisprudence that had, in some cases, "been overextended to capture individuals on the basis of complicity by association": Canada (Citizenship and Immigration) v Belhaj, 2024 FC 1296 at para 31 [Belhaj]; Ezokola at para 9. As articulated by Justice Grant in Belhaj at paragraph 33:

Under the Ezokola formulation, it is clear that passive acquiescence to, or mere association with, an organization that has committed international crimes is not sufficient to ground a finding of complicity. Rather, there must be a link between the individual and the crimes or the criminal purpose of the group: Ezokola at paras 8, 77.

(see also, Verbanov v. Canada (Public Safety and Emergency Preparedness), 2019 FC 324 [Verbanov] at para 29)

[24] To establish someone is inadmissible pursuant to s. 35(1)(a) of IRPA there must be "reasonable grounds to believe" (IRPA, s.33) that they "voluntarily made a knowing and significant contribution to the crime or criminal purpose of the group alleged to have committed the crime": Ezokola at para 29. The burden rests on the Minister: Ezokola at paras 101-102. Accordingly, the test is conjunctive and the Minister must establish that the individual:

(1) made a voluntary contribution to the crime or criminal purpose;

(2) made a knowing contribution to the crime or criminal purpose; and

(3) made a significant contribution to the group's crime or criminal purpose.

(Ezokola at paras 84-90; Habibi v Canada (Citizenship and Immigration), 2016 FC 253 [Habibi] at para 20; B.Y. at para 33).

[25] The Supreme Court laid out six non-exhaustive factors to be considered in assessing whether someone has voluntarily made a significant and knowing contribution to an international crime or criminal purpose:

(1) the size and nature of the organization;

(2) the part of the organization with which the person was most directly concerned;

(3) the person's duties and activities within the organization;

(4) the person's position or rank in the organization;

(5) the length of time the person was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and

(6) the method by which the person was recruited and the person's opportunity to leave the organization.

(Ezokola at para 91)

[26] The Court recognized that the assessment of the factors will be highly contextual, and some may weigh more heavily than others: Ezokola at para 92-93.

[27] It is critical that, when assessing these factors, the focus always remain on the individual's contribution to the crime or criminal purpose: Ezokola at para 92. The evidence must show that the person made a significant contribution to a crime or the organization's criminal purpose, not just a contribution to the organization generally: Concepcion at para 17.

[28] As discussed in further detail below, the ID's assessment of the Applicant's complicity under the Ezokola framework is unreasonable.

B. ID's unreasonable assessment of complicity [29] At paragraphs 45 and 50 of its decision, the ID correctly identified that Ezokola governed its analysis of complicity:

[45] The Supreme Court sets forth the test for complicity in Ezokola,27 which is a contribution-based approach in the significant contribution test. In this case the Court enumerates a non-exhaustive list of factors to consider when assessing complicity.

...

[50] The Supreme Court states that “mere association becomes culpable complicity...when an individual makes a significant contribution to the crime or criminal purpose of a group”.31 Significant contribution is not only the criminal act itself but can also be indirect participation or assistance in the accomplishment of the criminal act.

[30] The ID’s articulation of the Ezokola test could have been clearer and more robust. For example, it could have listed the non-exhaustive six factors to consider in assessing contribution. However, this alone will not justify intervention on judicial review under the reasonableness standard: Habibi at para 24. The question for this Court is whether the ID’s reasons, in substance, demonstrate the Member engaged with the factors prescribed in Ezokola and provide a rational and intelligible chain of analysis connected to the evidence: B.Y. at para 52.

[31] The ID’s application of the Ezokola test to the Applicant is set out at paragraphs 46 to 53 of its decision under the heading “Voluntary, Significant and Knowing Contribution”.

[32] I find the reasons are deficient in at least one respect: the ID failed to consider all six factors from Ezokola (and I note that all six factors are relevant here). This is sufficient to dispose of the judicial review.

[33] In addition, for the purposes of the redetermination, I provide further guidance, particularly with respect to the “significance” branch of the three-part Ezokola test.

C. Failure to assess six non-exhaustive factors from Ezokola [34] In determining complicity with international crimes, the assessment of all six factors set out in Ezokola, assuming they are relevant, is mandatory: B.Y. at para 52. As explained by Justice Azmudeh, “[p]articularly when there is no specific evidence of any direct involvement in the international crime, it becomes determinative that the Officer engages with a full assessment of complicity”: B.Y. at para 52, citing Habibi at para 24.

[35] The ID addressed some, but not all, of the six factors. For example, it noted the Applicant voluntarily joined the PPS, served 37 years, and remained even after acquiring knowledge of the PPS’s crimes. The ID found that the Applicant downplayed his duties in the PPS.

[36] The ID’s reasons, however, do not demonstrate that it considered the size and nature of the PPS (factor 1), and the Applicant’s rank (factor 4), when assessing the Applicant’s personal complicity with the PPS’s crimes.

[37] Under its assessment of the PPS's crimes against humanity, the ID noted "the PPS is not an organization of limited brutal purpose. It is a state-wide police force responsible for maintaining public order" (ID Decision at para 38). However, the reasons do not demonstrate that the heterogeneous nature of the PPS was factored into the ID's analysis of the Applicant's complicity.

[38] As explained by the Supreme Court, the nature of the organization helps determine the likelihood that the person would have known and participated in crimes or the criminal purpose. Where the organization "performs both legitimate and criminal acts", such as the PPS, "the link between the contribution and the criminal purpose will be more tenuous": Ezokola at para 94; Habibi at para 25.

[39] The ID also failed to consider the Applicant's rank. According to the objective evidence filed by the Minister, Constable (the rank held by the Applicant for most of his tenure), is the lowest rank in the PPS. This omission is a serious error.

[40] With respect to factor 4 - rank - the Supreme Court explains:

A high ranking individual in an organization may be more likely to have knowledge of that organization's crime or criminal purpose. In some cases, a high rank or rapid ascent through the ranks of an organization could evidence strong support of the organization's criminal purpose. Moreover, by virtue of their position or rank, individuals may have effective control over those directly responsible for criminal acts.

(Ezokola at para 97)

[U]nless an individual has control or responsibility over the individuals committing international crimes, he or she cannot be complicit by simply remaining in his or her position without protest.

(Ezokola at para 82)

[41] The ID recognizes Mr. Malhi's job title: "Mr. Malhi started as a Constable, and at the time he qualified for retirement, he was offered a promotion to Head Constable." The reasons are however silent on his rank, or relative position in the hierarchy of the PPS, and how his rank relates to his alleged complicity in the PPS's crimes against humanity.

[42] The ID's failure to engage with all the relevant Ezokola factors is, by itself, a significant shortcoming sufficient to render its decision unreasonable: Vavilov at para 100.

D. Anemic reasons on the "significance" of Applicant's contribution [43] The reasons provided by the ID on the significance of the Applicant's contribution to the PPS's crimes (the third prong of the Ezokola tripartite test) leave much to be desired. They consist of a single paragraph and are largely conclusory.

[44] Accordingly, for the purposes of the redetermination, I provide the following guidance:

A finding that someone contributed to crimes against humanity has severe legal consequences and carries significant stigma. The reasons provided by the decision-makers must reflect these high stakes: Vavilov at para 133; Wadud at para 30.

As cautioned by the Supreme Court: “[g]iven that contributions of almost every nature to a group could be characterized as furthering its criminal purpose, the degree of contribution must be carefully assessed”: Ezokola at para 88 [emphasis added].

> *“It is not sufficient to find that there is ‘some’ contribution to the crime or the criminal purpose at issue. The degree of the contribution must be explained”: Wadud at para 22, per Justice Sadrehashemi.*

To establish the “significance” prong of the Ezokola test, the Minister must provide evidence to establish the Applicant made a significant contribution to the organization’s crimes or criminal purpose. A significant contribution to the organization in general does not meet the test: Concepcion at para 17, per Justice O’Reilly.

A careful assessment of the person’s contribution to the international crimes is required even where decision-maker finds the individual lacks credibility. An adverse credibility finding does not displace the Minister’s onus to establish all three prongs of the Ezokola test. In other words, if the Applicant is not believed, it does not automatically follow that the Minister’s position has been made out. The Minister’s case must stand on its own evidence.

V. Conclusion [45] The ID’s failure to examine the relevant six factors set out in Ezokola rendered its decision unreasonable. The decision lacks the hallmarks of reasonableness - justification, transparency and intelligibility - and is therefore set aside: Vavilov at para 99.

JUDGMENT in IMM-16367-24

THIS COURT’S JUDGMENT is that:

The Minister of Citizenship and Immigration is replaced with the Minister of Public Safety and Emergency Preparedness as the Respondent.

The application for judicial review is granted and shall be sent back for redetermination by a different decision-maker.

No question is certified for appeal.

"Meaghan M. Conroy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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CONROY J.

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