

Federal Court



Cour fédérale

Date: 20250617

Docket: IMM-6591-24

Citation: 2025 FC 1093

Ottawa, Ontario, June 17, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

DOUGLAS EGHAREVBA

Applicant

and

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**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Douglas Egharevba [Applicant], seeks judicial review of a decision by the Immigration Appeal Division [IAD] dated March 25, 2024 [Decision]. The Minister of Public Safety and Emergency Preparedness [Minister] appealed the decision by the Immigration Division [ID] dated September 23, 2020, which determined that the Applicant was not subject to

inadmissibility under paragraphs 34(1)(b.1), 34(1)(c), and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The IAD reversed the ID's decision and found that the evidence was established on reasonable grounds to believe that, pursuant to paragraph 34(1)(f) of the IRPA, the Applicant was a member of an organization that engages, has engaged, or will engage in acts of subversion against a democratic government, institution or process as they are understood in Canada [subversion] as contemplated by paragraph 34(1)(b.1), and terrorism under paragraph 34(1)(c) of the IRPA. As a result, the Applicant was found to be inadmissible to Canada pursuant to section 34 of the IRPA.

[3] For the reasons that follow, this application for judicial review is dismissed. I cannot conclude that the Decision is unreasonable.

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II. Background and Decision Under Review

[4] The Applicant is a citizen of Nigeria. In September 2017, the Applicant entered Canada and initiated an inland refugee claim. The Applicant submitted a Background Declaration Form stating that he was a member of the People's Democratic Party [PDP] of Nigeria from December 1999 until December 2007, and a member of the All People's Congress [APC] party of Nigeria from December 2007 until May 2017. As a result of this information, he was referred to a Canadian Border Services Agency [CBSA] officer to determine whether he was admissible to Canada. In September 2018, the Applicant confirmed his membership in the PDP and APC an interview with the CBSA officer.

[5] In January 2019, an immigration officer declared that the Applicant was inadmissible to Canada under paragraph 34(1)(f) of the IRPA as it relates to paragraphs 34(1)(b.1) and 34(1)(c) for being a member of an organization that has engaged in acts of subversion against a democratic government, institution, or process and engaged in terrorism, based on his membership with the PDP. The Applicant challenged his inadmissibility before the ID.

[6] On September 23, 2020, the ID concluded that the Applicant was not inadmissible on any of the grounds alleged by the Minister as there was insufficient evidence to establish that the leadership of both the PDP and APC intended to cause death or serious bodily harm or intended to subvert democratic processes in Nigeria. The ID found that the Minister had not produced sufficient evidence of the internal structure of the PDP and APC and the degree of control that each party's leadership exercised over its members. The Minister appealed the ID's decision to the IAD, submitting additional evidence.

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[7] On March 25, 2024, the IAD allowed the appeal and concluded that the Applicant was inadmissible to Canada pursuant to paragraph 34(1)(f) of the IRPA as it relates to acts described in paragraphs 34(1)(b.1) and 34(1)(c) of the IRPA. Under paragraph 34(1)(f) of the IRPA, a permanent resident or a foreign national is inadmissible on security grounds for being a member of an organization that there are reasonable grounds to believe engage, has engaged or will engage in acts referred to in paragraphs 34(1) (b.1) or (c).

[8] In the Decision, the IAD noted that there was no evidence or allegations that the Applicant has personally engaged in terrorism or subversion. However, the IAD found that there

were reasonable grounds to believe that the PDP engaged in terrorism and subversion of democratic institutions. The IAD concluded that the PDP engaged in political violence and subversion including ballot stuffing, ballot box snatching, voter intimidation, violence, and murder of opposition supporters and candidates in the 2003 state elections and 2004 local elections [Elections]. The conduct of individuals who are members of the PDP, including high-ranking officials, and those who committed political violence and intimidation on their behalf is too widespread and persistent over too great a period of time to dissociate the leadership of the party from their actions. The Applicant's membership to the PDP was sufficient to link him to these acts for the purpose of inadmissibility under paragraph 34(1)(f) of the IRPA. The IAD also found that the leadership had a high degree of control over its members, as evidenced by the Applicant's testimony before the ID that he left the PDP because the leadership imposed their own candidate overriding the decision of the Applicant's local ward. The IAD declined to make a finding on whether the Applicant is also inadmissible for his membership in the APC as the evidence on the PDP was sufficient and determinative.

III. Issues and Standard of Review

[9] The issue on judicial review is whether the IAD's Decision was unreasonable.

[10] The parties submit that the standard of review with respect to the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]). I agree that reasonableness is the applicable standard of review.

[11] On judicial review, the Court must consider whether a decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126).

[12] During a reasonableness review, the reviewing court must assess the reasons of the decision “holistically and contextually” in light of the history of the proceedings, the evidence submitted and the central arguments of the parties (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61; *Vavilov* at paras 91, 94, 97). The role of the Court is not to reweigh the evidence presented to the decision maker or to question the exercise of its discretionary power or conduct its own interpretation of the law. That is the decision maker’s responsibility. Insomuch as the decision maker’s interpretation of the law is reasonable and the reasons for its decision are justifiable, clear and intelligible, the Court must show restraint (*Lapaix v Canada (Citizenship and Immigration)*, 2025 FC 111 at para 31[*Lapaix*], citing *Vavilov* at paras 75, 83, 85-86, 115-24). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[13] The relevant statutory references are as follows:

Security

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

Sécurité

34 (1) Empoortent interdiction de territoire pour raison de sécurité les faits suivants :

a) être l’auteur de tout acte d’espionnage

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| <p>(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;</p> <p>(b) engaging in or instigating the subversion by force of any government;</p> <p>(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;</p> <p>(c) engaging in terrorism;</p> <p>(d) being a danger to the security of Canada;</p> <p>(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or</p> <p>(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).</p> | <p>dirigé contre le Canada ou contraire aux intérêts du Canada;</p> <p>b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;</p> <p>b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;</p> <p>c) se livrer au terrorisme;</p> <p>d) constituer un danger pour la sécurité du Canada;</p> <p>e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;</p> <p>f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).</p> |
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[14] The Applicant challenges the IAD's analysis on three grounds: the IAD's assessment on the Applicant's membership to the PDP pursuant to paragraph 34(1)(f), its findings that the PDP was an organization engaged in acts of subversion pursuant to paragraph 34(1)(b.1) and the conclusion that the PDP engaged in terrorism according to paragraph 34(1)(c) of the IRPA.

[15] The Applicant argues that the IAD erred in its analysis of his membership with the PDP. The Applicant does not deny his membership with the PDP and accepts the IAD's finding that he was a member of the PDP from 1999 until December 2006. However, the Applicant alleges that he was never personally engaged in acts that would be considered as acts of terrorism or subversion against a democratic government, institution, or process. The Applicant further states

that the Decision ought to have considered the criteria of his “significant integration” with respect to membership (citing *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at para 30 [*Poshteh*]).

[16] On the other hand, the Respondent argues that the Applicant’s reliance on *Poshteh* is incomplete, as the Federal Court of Appeal instructed that the definition of membership must receive an “unrestricted and broad interpretation” in order to meet the purposes of section 34 of the IRPA (*Poshteh* at paras 26-29). The test is rather “relatively easy to meet” and seems to cast a wide net (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 22 [*Kanagendren*]). The Respondent submits that it was not required to establish whether the Applicant was personally involved in the alleged acts and an admission of membership in an organization is sufficient to meet the membership requirement within the meaning of paragraph 34(1)(f) of the IRPA, “[r]egardless of the nature, frequency, duration or degree of involvement” (*Aldaw Alsheikh Altayeb v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 139 at para 55 [*Altayeb*], citing *Canada (Public Safety and Emergency Preparedness) v Ukhueduan*, 2023 FC 189 at para 23; *Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2010 FCA 274 at para 3).

[17] As a result, the Respondent submits that the sole question to determine membership is whether the Applicant is or has been a member of that organization (*Yamani v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 1457 at para 12). Once membership is established or admitted, then it is membership for all purposes (*Altayeb* at para 55). In this case, the Respondent states that the IAD’s finding on this matter was reasonable since the Applicant

has confirmed on multiple occasions his membership with the PDP. The Applicant's admission that he was a member of the PDP was determinative.

[18] I cannot agree with the Applicant's interpretation of the law on membership. There is no standard of "significant integration" for paragraph 34(1)(f).

[19] Paragraph 34(1)(f) is only concerned with membership in an organization that engaged in such acts of subversion under paragraph 34(1)(b.1) or terrorism under paragraph 34(1)(c) of the IRPA. It is broad in scope and does not require for the person to commit the acts referred to or to participate in them in any way (*Kiese c Canada (Citoyenneté et Immigration)*, 2025 CF 846 at para 31, citing *Lapaix* at paras 62-70).

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[20] Justice Régimbald in *Lapaix* recently summarized the case law and interpretation of paragraph 34(1)(c). Participating in certain activities that support the objectives of the group could be enough, even if they are not violent and without requiring evidence of an intention to contribute to the group or satisfying a specific mental element. Informal participation or support may therefore suffice (*Lapaix* at para 55, other citations omitted). Evidence of complicity of the type described in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 is not required – which is whether an individual has voluntarily made a significant and knowing contribution to a group's crime or criminal purpose (*Lapaix* at paras 61-62, other citations omitted).

[21] In sum, the test imposed in paragraph 34(1)(f) must be more flexible than for an inadmissibility finding under paragraphs 34(1)(a) to 34(1)(e), at the risk of rendering paragraph 34(1)(f) redundant (*Lapaix* at para 70, citing *Kanagendren* at para 24, other citations omitted).

[22] Given this context, I find that the IAD's conclusion on the Applicant's membership with the PDP for the purposes of a determination under 34(1)(f) was reasonable. I also note the IAD's uncontested finding of fact that the Applicant had testified being aware of ballot-box snatching and political violence in Rivers State, but not in Edo State where he was located. However, the Decision referenced objective evidence that reported deaths and incidents of violent intimidation in Edo State during the Elections. The IAD stated that while knowledge was not a required element in assessing admissibility as a member of the PDP, the IAD found the Applicant most likely downplayed his knowledge and the seriousness of political violence committed by the parties in which he was involved. I see no reason to intervene with the IAD's conclusion on the Applicant's membership with the PDP.

[23] At the hearing, the parties agreed that if I were to find the IAD's analysis to be reasonable on either subversion or terrorism, that would be sufficient to uphold the finding of inadmissibility under paragraph 34(1)(f) given that the Applicant could be determined to be inadmissible on the basis of either paragraph 34(1)(b.1) or 34(1)(c).

[24] In respect of the IAD's findings on subversion, the Applicant alleges that a state like Nigeria with weak institutions and rule of law cannot be said to be a democratic government, institution or process as "it is understood in Canada". The Elections were not "free and fair"

compared to Canada and the use of violence goes hand in hand in every electoral process in Nigeria. As such, the Applicant explains that political violence is systemic and generally accepted as part of electoral politics in Nigeria. The Applicant explains that he therefore cannot be held accountable for subversion of democratic processes, institutions, or governments where none exists. He was a member of the impugned political party that was simply operating under the “rules of the game” in the country. Hence, it would be unreasonable to require the Applicant to bear the weight of this political reality.

[25] With respect, I cannot agree with the Applicant’s argument. Indeed, this type of submission was also considered in *Altayeb*, where the applicant in that case raised the argument of whether elections that are corrupt or marred by irregularities can even be qualified as a democratic process or institution. Associate Chief Justice St-Louis found that this argument could not succeed as it would be circular and paradoxical:

“[i]t would be circular to consider that elections marred by irregularities and during which certain actors used illicit means cannot qualify as a democratic institution or process as provided for in the IRPA. The fact that there was subversion would have the effect of denying the very possibility of recognizing subversion, which would be paradoxical. In this case, the democratic institution is the electoral process, which includes the pre-election and post-election periods, as pointed out by the ID. The quest for a Canadian standard of democracy, and for elections in particular, is not a criterion (*Altayeb* at paras 33-35).

[26] A similar analysis applies to the Applicant’s case. Here, there is nothing to support his assertion that the Elections are not encompassed within the definition of “a democratic institution or process as they are understood in Canada”. While I understand the Applicant’s argument that individuals should not always be held accountable for the subversion of democratic processes,

institutions, or governments where none exists, this assertion cannot be considered in a vacuum. A contextual analysis must always be undertaken.

[27] Having reasonably found that the Applicant is a member of the PDP, the IAD appropriately undertook an analysis of the acts perpetrated by the PDP in order to determine whether these acts qualify as acts of subversion under paragraph 34(1)(b.1) or terrorism under paragraph 34(1)(c) of the IRPA. The acts under paragraph 34(1)(b.1) of the IRPA are defined as acts of subversion against a democratic government, institution or process as they are understood in Canada. The “reasonable grounds to believe” standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities. This standard will exist where 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 at para 114).

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[28] The notion of subversion in paragraph 34(1)(b.1) of the IRPA is distinct from the other grounds of inadmissibility in subsection 34(1) (*Altayeb* at para 29). Specifically, subversion “connotes accomplishing change by illicit means or for improper purposes related to an organization” (*Altayeb* at para 26). The specific language in paragraph 34(1)(b.1) - in contrast to the language in 34(1)(b) - does not include the terms “by force”.

[29] The question that was before the IAD is whether the acts described “accomplish change for improper purposes in regards to a democratic government, institution or process” (*Ramirez* at para 32 citing *Gakumba v Canada (Citizenship and Immigration)*, 2024 FC 1561 [*Gakumba*]).

Whether the “improper purpose” is to maintain the status quo or to change it, more broadly, is not necessarily determinative. Maintaining the status quo and subverting democratic processes or institutions are not mutually exclusive (*Gakumba* at para 10).

[30] The IAD listed in its Decision uncontradicted evidence that the PDP engaged in acts violating the basic democratic principles. While the objective evidence indicated that other political parties were also engaged in wrongdoings during the Elections, the majority of the acts were undertaken by the PDP, who benefitted from these acts as they were able to maintain power. In this case, the IAD made numerous findings in support of its determination that the PDP engaged in acts that fall within the meaning of paragraph 34(1)(b.1) of the IRPA. These findings are summarized as the following:

- A. The PDP were perpetrators of political violence, intimidation, and subversion and were protected as the PDP was the governing party from 1999 onwards. The PDP was the governing party in power during the Elections. The PDP then consolidated power after the Elections;
- B. The PDP conducted unlawful acts such as ballot-stuffing, ballot box snatching, intimidation, violence, and murder of opposition supporters and candidates in the Elections;
- C. The PDP had knowledge of the crimes committed by members and supporters but has done nothing to discipline its members or discourage violent and subversive practices;
- D. The use of political violence is a long-standing feature of the PDP – from the time of the party’s inception.

[31] As such, applying the reasonableness standard of review, I cannot find the IAD’s conclusion that the Elections in question constituted a democratic process or institution and that the PDP, its members and supporters engaged in subversive acts committed against the electoral

process for the improper purpose of maintaining political power to be unreasonable (*Ramirez* at para 33, citing *Gakumba* at para 10).

[32] I underline that the Court's task on judicial review is not to itself determine whether there were reasonable grounds to believe that the Applicant was inadmissible, or whether the PDP engaged in acts of subversion during the Elections. Rather, the Court must assess the reasons set out in the Decision and determine whether, based on the record and legal constraints that bear upon the IAD, its conclusions were reasonable (*Kololo c Canada (Sécurité publique et Protection civile)*, 2025 FC 436 at para 15 citing *Rahaman v Canada (Citizenship and Immigration)*, 2019 FC 947 at para 9). As such, each decision must be reviewed on a case-by-case basis in light of the evidence that was before the decision maker, and how they grappled with this evidence in light of the submissions that were presented to them (*Chukwudi v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 423 at para 28).

[33] Ultimately, having considered the Applicant's submissions, it is clear that the Applicant disagrees with the Decision. Although the Applicant stressed that he is not asking the Court to reweigh the evidence and come to a different conclusion, his arguments have such an effect. It is not the role of the Court on judicial review to consider whether it would have arrived at a different conclusion (*Vavilov* at para 125). As such, I find that the IAD's Decision is transparent, intelligible and justifiable in light of the legal and factual constraints that bear on it.

[34] Having found that the IAD's analysis on subversion was reasonable, this is sufficient to dismiss the application for judicial review. I will therefore refrain from analyzing the IAD's findings on terrorism.

[35] It also bears mentioning that the Applicant sought as a remedy an order restoring the ID's decision should the Court find the IAD's Decision unreasonable. Had I found that the Decision was unreasonable, the appropriate remedy would have been to remit the matter to the decision maker who would reconsider it with the benefit of the Court's reasons. This is not a situation that would have justified directing the IAD's decision (*Vavilov* at paras 141-142).

V. Conclusion

[36] Given the above, the Decision is not unreasonable and the application for judicial review must therefore be dismissed.

[37] The parties do not propose any question for certification, and I agree that in these circumstances, none arise.

JUDGMENT in IMM-6591-24

THIS COURT'S JUDGMENT is that:

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

"Phuong T.V. Ngo"

Judge

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FEDERAL COURT
SOLICITORS OF RECORD

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