Federal Court  Cour fédérale

Date: 20190717

Docket: IMM-3083-18

Citation: 2019 FC 947

Ottawa, Ontario, July 17, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MD MOZIBOR RAHAMAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, MD Mozibor Rahaman, is a citizen of Bangladesh who came to Canada in April 2014 on a temporary resident visa. In June 2014, he sought refugee protection claiming that he would be targeted by the Bangladesh Awami League due to his political opinion. His claim for protection was dismissed by the Refugee Protection Division in March 2015 and by the Refugee Appeal Division [RAD] in December 2015. The Applicant's pre-removal risk

assessment [PRRA] application was also rejected in May 2017. Leave to bring an application for judicial review of both the RAD and the PRRA decisions were refused.

[2] In December 2017, the Applicant filed an application for permanent residence within Canada on humanitarian and compassionate grounds. In May 2018, a senior immigration officer [Officer] sent the Applicant a procedural fairness letter to inform him that he may be inadmissible to Canada due to his self-admitted membership in the Jatiyatabadi Jubo Dal [Jubo Dal], a youth wing affiliated with the Bangladesh National Party [BNP]. The Officer informed the Applicant that in order to complete the security assessment, she required information on the Applicant's roles and responsibilities in this organization. The Applicant's submissions were filed in June 2018.

[3] The Applicant's application for permanent residence was refused on June 21, 2018. The Officer found that the Applicant was inadmissible to Canada under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for being a member of the BNP, an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts of subversion and terrorism, as per paragraphs 34(1)(b) and 34(1)(c) of the IRPA.

[4] The Applicant seeks judicial review of the Officer's decision. He contends that the Officer erred in concluding that the BNP is a violent organization that engages, will engage or has engaged in acts of subversion or terrorism. The Applicant does not deny his involvement and membership in the BNP. He joined the Jubo Dal in January 2009, became an executive member

of his local branch in February 2010, was appointed Publicity Secretary in April 2011 and held the position of Organizing Secretary from January 2013 until June 2014.

[5] For the reasons that follow, the application for judicial review is dismissed.

II. Analysis

[6] The relevant provisions of the IRPA read as follows:

Security	**Sécurité**
33 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.	33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
…	[…]
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(c) engaging in terrorism;	c) se livrer au terrorisme;
…	[…]
(f) being a member of an organization that there are reasonable grounds to believe engages, has	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera

engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).	l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

[7] Findings of inadmissibility under subsection 34(1) of the IRPA involve questions of mixed fact and law in which immigration officers have a degree of expertise and are therefore reviewable against the standard of reasonableness (*Saleheen v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 145 at para 24 [*Saleheen*]; *Intisar v Canada (Citizenship and Immigration)*, 2018 FC 1128 at para 15 [*Intisar*]; *Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080 at para 19 [*Rana*]; *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 at para 11 [*Alam*]; *Kamal v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480 at para 12 [*Kamal*]; *AK v Canada (Citizenship and Immigration)*, 2018 FC 236 at para 12 [*AK*]; *SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494 at para 9 [*SA*]; *Chowdhury v Canada (Citizenship and Immigration)*, 2017 FC 189 at para 8 [*Chowdhury*]; *Gazi v Canada (Citizenship and Immigration)*, 2017 FC 94 at para 17 [*Gazi*]; *Pizarro Gutierrez v Canada (Citizenship and Immigration)*, 2013 FC 623 at para 21 [*Gutierrez*]).

[8] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and the law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[9] The facts giving rise to inadmissibility must be established on the standard of "reasonable grounds to believe" (IRPA, s 33). Reasonable grounds to believe require "something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities" (*Mugesera v Canada (Citizenship and Immigration*), 2005 SCC 40 at para 114; *Alam* at para 12; *Gazi* at paras 21-22; *Gutierrez* at para 22). Accordingly, the question before this Court is not whether there were reasonable grounds to believe the Applicant was inadmissible pursuant to paragraph 34(1)(f) of the IRPA but rather, whether the Officer's finding that there were reasonable ground to believe was itself reasonable (*Alam* at para 13; *Rana* at para 21; *Gutierrez* at para 22).

[10] In the majority of cases, this Court has concluded that it was reasonable to find that former members of the BNP are inadmissible pursuant to paragraph 34(1)(f) of the IRPA (*Saleheen*; *Intisar*; *Alam*; *Kamal*; *SA*; *Gazi*). In other cases, however, the Court has found otherwise and for different reasons (*MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796; *Rana*; *AK*; *Chowdhury*). A useful overview of the relevant cases is provided by Associate Chief Justice Gagné in *Saleheen*. Despite the different outcomes, it is well established that each case must be decided on its particular record and on the findings of fact of the impugned decision (*Saleheen* at para 26; *Rana* at para 7).

[11] In the case at hand, the Officer found the Applicant to be inadmissible to Canada under paragraph 34(1)(f) of the IRPA due to his membership in the BNP, an organization for which there were reasonable grounds to believe engages, has engaged or will engage in acts of subversion and terrorism, as per paragraphs 34(1)(b) and 34(1)(c) of the IRPA.

[12] While the Applicant denies the BNP is a violent organization that engages, has engaged or will engage in acts of subversion and terrorism, the Applicant only addresses the Officer's analysis of the BNP through the lens of terrorism and fails to articulate specific submissions on the Officer's analysis of subversion as per paragraph 34(1)(b) of the IRPA. The failure to do so, in my view, suffices to dispose of the matter. Having said that, I will nevertheless address the arguments of the Applicant regarding paragraph 34(1)(c) of the IRPA.

[13] In determining that the BNP is an organization that engages, has engaged or will engage in terrorism as per paragraph 34(1)(c) of the IRPA, the Officer applied the definition of terrorism as enunciated by the Supreme Court of Canada in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*]. The Applicant does not dispute the Officer's application of this definition which was defined as including :

> … any "act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". (*Suresh* at para 98).

[14] Unlike other decisions reviewed by this Court, the Officer did not, in this case, refer nor rely on the definition of "terrorist activity" as defined in the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*].

[15] In essence, the Applicant contends that the definition of terrorism in *Suresh* requires an intention that relates to the causing of serious injury, death, endangerment of life, a serious risk to life and safety and therefore does not include the unfortunate death of civilians in any given

event such as a strike. Serious interference or disruption of essential services as part of strikes and hartals cannot be considered terrorist activities unless there is an intention by the calling of these protests to cause death, serious injury, endangerment to life or serious risk to health and safety. Moreover, the presence of violence in strikes and situations of civil disobedience is not uncommon in democratic countries and not sufficient to conclude to acts of terrorism on the part of the BNP. The Applicant stresses that the fact that hartals are often associated with violence is not evidence of the BNP's intention to cause violence in calling such protests. In the Applicant's view, there is no evidence in the record that can lead to a conclusion that the BNP leadership *intended* for civilians to be injured or die when calling any act of civil disobedience, such as demonstrations, strikes or hartals. For this reason, the Applicant contends that the Officer's decision is unreasonable.

[16] The Applicant places considerable reliance on the decision of this Court in *AK*, where Justice Richard G. Mosley stated at paragraphs 41 and 42:

> [41] I have considerable difficulty with the notion that a general strike called by a political party in an effort to force the party in power to take steps such as proroguing Parliament or convening by-elections, falls within the "essence of what the world understands by 'terrorism'". It is not an overstatement to suggest, as the Applicant has in these proceedings, that the Respondent's interpretation of the stature could capture political activities which, if carried out in Canada, would be protected under s 2 of the *Canadian Charter of Rights and Freedoms*, absent an intention to use violence to achieve the political ends.
>
> [42] In this matter, I had difficulty understanding what the officer's findings were as the comments about the BNP leadership's intentions in calling hartals were hedged about with qualifications. The officer acknowledged that the leadership had condemned the use of violence but considered that it was too late and only after the fact. Unlike *S.A.*, there is no express finding that the calls for hartals were synonymous with calls to commit acts that would fall within the meaning of terrorism.

[17] As noted by this Court in *Alam*, the absence of any express finding that the BNP's calls for hartals were synonymous with calls to commit terrorist acts appears to have been determinative in the *AK* decision (*Alam* at para 20).

[18] In the case at hand, the Officer acknowledged that freedom of expression includes the right to demonstrate and to go on strike. However, she also noted that a BNP call for a hartal was not the same as a call to demonstrate or go on strike in a country such as Canada. The Officer explicitly found that a BNP call to demonstrate was not merely a call for a general strike but a specific call to violent action, which she qualified as terrorist and subversive actions as understood under paragraphs 34(1)(b) and (c) of the IRPA.

[19] To reach this conclusion, the Officer relied on objective country condition evidence which demonstrated: that the Jubo Dal was a "youth wing" of the BNP and a front organization for the BNP; the participation of the BNP in the upsurge in violence prior to the January 2014 election; the number of deaths and injured civilians; the widespread use of intimidation; the unlawful destruction of private property; the economic disruption; and more importantly, the targeting of innocent civilians in order to contest the party in power. Relying on this evidence, the Officer emphasized the magnitude of the violence, the use of intimidation, the intention and effect of the BNP hartals on the country's economy, the scale of the killings as well as the wounding of innocent civilians.

[20] The Officer also addressed the news article concerning Khaleda Zia's statements instructing the BNP members, the leaders of the 18-party alliance and other parties not to resort

to violence against common and innocent people and to refrain from damaging their properties when demonstrating. The Applicant relied upon this article to demonstrate that a call for hartals was not a call for violence. By emphasizing the fact that the BNP-initiated terrorist and subversive actions intensified after this time, the Officer clearly had the intention analysis at the forefront of her mind. The Applicant has not persuaded me that it was unreasonable for the Officer to afford less weight to this article.

[21] In light of the evidence that was before the Officer, and considering the expertise of the Officer to which I owe deference, I am satisfied that the Officer reasonably concluded that there were reasonable grounds to believe that the BNP engages, has engaged or will engage in acts of terrorism under paragraph 34(1)(c) of the IRPA.

[22] Accordingly, the application for judicial review is dismissed. No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-3083-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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