Federal Court  Cour fédérale

Date: 20210127

Docket: IMM-5219-19

Citation: 2021 FC 91

Ottawa, Ontario, January 27, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MD AWAL HOSSEIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision from a Senior Immigration Officer (Officer) of Immigration, Refugees and Citizenship Canada, dated July 30, 2019, which denied the Applicant's application for permanent residence in Canada for inadmissibility on security grounds pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 34 [IRPA].

[2] The Applicant and his family were granted asylum in Canada in October 2014 for risk to life or of serious harm for fear from a powerful member of the Awami and involvement with the Bangladesh Nationalist Party (BNP). The Applicant was a member of the political youth wing of BNP in 2000 for approximately two years, later limited his participation in the BNP's activities and returned as an active supporter from 2011 to 2014.

[3] Upon application for permanent residence, the Officer determined that the Applicant was inadmissible as he was a member of the BNP, an organization of which there are reasonable grounds to believe has engaged in subversion by force of a government and in terrorism.

[4] This judicial review relates to the reasonability of the Officer's finding that the BNP is an organization described above. A reasonable decision is internally coherent, rational and justified in light of the factual and legal constraints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[5] Section 34 of the IRPA stipulates that a permanent resident is inadmissible for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in designed acts, such as subversion by force of any government or terrorism. The standard of "reasonable grounds to believe" requires more than suspicion, but less than on the balance of probabilities (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114).

[6] The Applicant does not argue his membership to the BNP but instead contends that the evidence does not establish the intention of the BNP to subvert by force a government or to engage in terrorism, i.e. to cause death or serious bodily injury as intended by case law or by the IRPA. Rather, the evidence points to unfortunate consequences common from civil disobedience. It is further remarked that intention could not imputed from awareness or willful blindness of such consequences.

[7] In the present matter, the Officer found that the evidence was sufficient to find that the BNP had engaged in subversion by force of a government and in terrorism given: the magnitude of the strikes and street violence prior to the 2013 elections, the most violent in the country's history, which is well documented as emanating from the BNP as well as that of other parties, the intention and effect of the BNP hartals on the country's economy and the scale of the killing and wounding of civilians is very much in evidence.

[8] The legislative framework and guidance from case law were considered, along with diversified sources on the BNP. In its analysis, the Officer gave substantial weight to reports from nongovernmental organizations and human rights bodies as to the BNP's violent activities during the 2013 to 2014 period.

[9] It was open to the Officer to weigh and prefer evidence tendered that showed that the BNP intended to subvert the government, or to kill or seriously harm civilians. The Officer made an explicit determination as to intent that was not dependent on awareness, knowledge or willful ignorance by the BNP, contrary to the Applicant's assertion.

[10] Further, the Officer did not conflate civil disobedience with subversion of government or terrorism. It notably retained, as detailed in *S.A. v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494, that the BNP call for a hartal was not merely a call for a general strike, but for violent action.

[11] Though the analysis on inadmissibility is grounded in particular findings and the evidentiary record, it bears repeating that a number of decisions from this Court have previously upheld that it was reasonable to find that the BNP is an organization whose activities – notably relating to the concerned period in this case – are believed to engage in subversion of a government and terrorism for the purpose of the IRPA (see *Rahaman v Canada (Citizenship and Immigration)*, 2019 FC 947; *Khan v Canada (Citizenship and Immigration)*, 2019 FC 899).

[12] Taking into account the broad definition to subversion and terrorism in Canadian law and the standard required under the IRPA to establish inadmissibility on security grounds, the Officer acted reasonably in considering the facts and the evidence in making its determination.

[13] For the aforementioned reasons, the judicial review is dismissed.

JUDGMENT in IMM-5219-19

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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