

Federal Court



Cour fédérale

Date: 20240326

Docket: IMM-9788-21

Citation: 2024 FC 477

Ottawa, Ontario, March 26, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

A S M SAZZAD HOSSAIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Bangladesh, arrived in Canada in March of 2017 and made a refugee claim on the basis that he was targeted in Bangladesh as a result of his membership in the Bangladesh Nationalist Party [BNP]. In August of 2018, the Refugee Protection Division determined that he was a Convention refugee and in December of 2018, the Applicant submitted an application for permanent residence based upon his protected person status.

[2] On June 3, 2021, Immigration, Refugees and Citizenship Canada [IRCC] advised the Applicant that the information in his application for permanent residence suggested that he may be inadmissible pursuant to subsection 34(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], stating that “[i]n Canada, the BNP has been deemed to be an organization that has committed terrorism or subversion by force of any government [...]” Further exchanges occurred thereafter between the Applicant and IRCC, with IRCC providing a list of hyperlinked resources (and later some of the resources themselves) to substantiate the claims in their June 3, 2021 letter and the Applicant providing substantive submissions to address IRCC’s concerns regarding his inadmissibility.

[3] On December 15, 2021, IRCC determined the Applicant was inadmissible pursuant to paragraph 34(1)(f) of the *IRPA* on the basis that there were reasonable grounds to believe that the BNP engages, has engaged or will engage in acts of terrorism.

[4] On the present application, the Applicant seeks judicial review of IRCC’s decision, asserting that: (a) IRCC’s determination that the BNP is an organization that has engaged in terrorism is unreasonable, as the Officer failed to explain how the evidence before the Officer supported the conclusion that the BNP intended to cause death or serious injury by calling for hartals; and (b) the Applicant was denied procedural fairness because the procedural fairness letters provided by the Officer did not provide the Applicant with information as to how the resources cited by the Officer supported a finding under paragraph 34(1)(f), the result of which being that the Applicant did not know the case he had to meet.

[5] Turning to the first issue, the parties agree, and I concur, that the standard of review is reasonableness. When reviewing for reasonableness, the Court must take a “reasons first” approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

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

Rules of interpretation

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.

Security

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

[...]

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will

Interprétation

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.

Sécurité

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

[...]

f) être membre d’une organisation dont il y a des motifs raisonnables de croire qu’elle est, a été ou sera

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] The standard of proof that applies to an inadmissibility determination under section 34 is “reasonable grounds to believe,” which is low. “Reasonable grounds to believe” is more than mere suspicion, but less than the civil standard of balance of probabilities [see *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114; *Thanaratnam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 349 at paras 11-13]. Reasonable grounds will exist where there is an objective basis for the belief, which is based on compelling and credible information [see *Mugesera, supra* at para 114]. Put differently, reasonable grounds to believe are established where there is a *bona fide* belief of a serious possibility based on credible evidence [see *Hadian v Canada (Citizenship and Immigration)*, 2016 FC 1182 at para 17, citing *Chiau v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16793, [2001] 2 FC 297 (FCA) at para 60].

[8] The meaning of the term “terrorism” for the purposes of determining admissibility under paragraph 34(1)(f) of the *IRPA* is set out in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraph 98:

In our view, it may safely be concluded [...] that “terrorism” in s. 19 of [the *IRPA*] includes 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... to do or to abstain from doing any act”. This definition catches the essence of what the world understands by “terrorism”.

[9] Several decisions of this Court have held that it was reasonable for a decision-maker to conclude that the BNP have engaged in terrorism [see e.g. *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922; *Kamal v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480; *SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494; *Gazi v Canada (Citizenship and Immigration)*, 2017 FC 94; *Intisar v Canada (Citizenship and Immigration)*, 2018 FC 1128; *Saleheen v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 145; *Rahaman v Canada (Citizenship and Immigration)*, 2019 FC 947; *Miah v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 38].

[10] Conversely, in some cases, this Court has held that similar findings were unreasonable [see e.g. *Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080; *AK v Canada (Citizenship and Immigration)*, 2018 FC 236; *Chowdhury v Canada (Citizenship and Immigration)*, 2017 FC 189; *MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796 [MN]; *Islam v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 912 [Islam 2019]; *Islam v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 108].

[11] In considering these varying outcomes, it must be kept in mind that decisions relating to whether or not the BNP engages in terrorism turn on the evidentiary record that was before the decision-maker (which will vary from case to case) and the particular findings made by the decision-maker on that record [see *Alam, supra* at para 22]. Moreover, any determination by this Court as to the reasonableness of the decision will turn on the specific reasons provided by the decision-maker and whether the decision-maker's finding of the requisite specific intent is based

on an internally coherent and rational chain of analysis that is justified in relation to the factual record that was before them.

[12] The parties agree that an organization only engages in terrorism within the meaning of section 34 of the *IRPA* if they have the specific intent to cause death or serious injury [see *Foisal v Canada (Minister of Citizenship and Immigration)*, 2021 FC 404 at para 14 [*Foisal*]; *Saleheen, supra* at para 41]. This requires more than simply “an awareness of the likelihood that [such acts] will occur, or a recklessness or wilful blindness to their resulting from conduct, even violent conduct” [see *Chowdhury v Canada (Citizenship and Immigration)*, 2022 FC 311 at para 12; *Miah, supra* at paras 34-35; *Rana, supra* at para 66]. Put differently, more is required than simply an awareness of the likelihood that violence will occur by calling for a hartal, or wilful blindness to the fact that doing so would result in deaths and serious injuries [see *Musa v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1172 at para 28[*Musa*]].

[13] I agree with the Applicant that the Officer failed to provide adequate justification for imputing intent to BNP leadership. The Officer did not explain how the actions of some BNP members or activists are directly attributable to the BNP. Rather, the Officer appears to find that “the presence of violence is sufficient to infer a specific intent and attribute it” to the political party, as Justice Grammond held at paragraph 20 of *Foisal*. As this Court explained in *MN*, the fact that lethal violence takes place during protests called by a political party may or may not lead to a finding that the party has engaged in terrorism, but any such finding would need to be based on an analysis of a number of factors, including (i) the circumstances in which violent acts resulting in death or serious injury were committed; (ii) the internal structure of the organization; (iii) the

degree of control exercised by the organization's leadership over its members; and (iv) the organization's leadership's knowledge of the violent acts and public denunciation or approval of those acts [see *Foisal, supra* at para 20, citing *MN, supra* at para 12].

[14] In this case, the Officer's reasons are largely silent on these issues. The Officer provided a brief background on the BNP and the history of hartals (general strikes) in Bangladesh. In particular, the Officer explained that the BNP and Awami League are the two main political parties and that both parties frequently employ tactics that result in violence, including hartals. The Officer explained that historically, hartals were a form of peaceful protest, but that the "modern day use of hartals is economic disruption as a means of coercion against the government in power to achieve a particular goal," and they frequently result in violence. In fact, the Officer states that "hartals and violence became synonymous due to [the] frequency in which hartals resulted in incidences of violence. As a result, the use of hartals became a de facto forceful means of coercion against the government." After excerpting large portions of the United Nations Development Programme report, the Officer then concludes that:

This report shows a more significant causal relationship between the BNP and the resulting riot and violence that occurs during the hartals. Hartals are planned events authorized by the BNP Steering Committee. It shows that the violence during hartals is not an incidental result of mere supporters who are not members of the BNP instigating riotous acts randomly. Rather, members of the armed cadres of the BNP deliberately incite fear and apprehension by setting off explosives before and during the hartal as well as party workers. The report also shows that people are hired to participate in hartals, including persons who are involved in violence.

[Emphasis added.]

[15] However, there is no reference in the reasons to the degree of control the BNP has over its members and very little reference to the internal structure of the organization, beyond a brief reference to the BNP Steering Committee and the BNP's "armed cadres." As noted by Justice Grammond in *Foisal*, "assessing the accountability of a major political party with a nationwide following for the actions of its members is a delicate exercise that must take into account the intentions communicated by the party's 'directing mind' and the degree of control it exercises over its members" [see *Foisal, supra* at para 22].

[16] In *Foisal, Musa and Islam 2019*, this Court held that in order to infer such intention, the decision-maker would need to refer to evidence such as political speeches, plans or codes to demonstrate the organization's intention was to kill or seriously injure people [see *Foisal, supra* at para 22; *Musa, supra* at para 34; *Islam 2019, supra* at para 29]. The existence of a link between isolated acts of violence and the intention of a political party or organization must be proven [see *Musa, supra* at para 34]. In this case, the Officer failed to point to evidence or provide reasons demonstrating this link.

[17] The Officer also noted that, in some cases, BNP leadership has publicly denied responsibility for certain actions in the past and condemned the use of violence. However, the Officer stated that there is little evidence that the BNP leadership publicly discouraged the use of violence before or during these hartals. It was, in the Officer's view, not in the BNP's "best interests to publicly appear as if they were intentionally organizing and directing these violent clashes to deliberately cause societal instability or death and injury among the populace," since they are a legitimate political party. However, the failure to discourage violence, in the absence of

evidence demonstrating the organization's intention was to kill or seriously injure people, cannot reasonably lead to a finding of the requisite intent.

[18] Accordingly, I find that the Officer failed to explain why the violent actions referred to in the source documents are attributable to the BNP leadership, so as to satisfy the specific intent requirement.

[19] Moreover, I would note that nowhere in the Officer's reasons does the Officer expressly conclude that the BNP intended to cause death or serious injury. Rather, the Officer finds that: (a) "[t]he hartals and transportation blockades employed by the BNP have significant economic impact on Bangladesh's economy and have resulted in both substantial damage to property and both death and serious bodily harm caused by BNP activists and members as well as disruptions in services"; and (b) the reports show that "hartals organized by the BNP were intentionally planned with violent and criminal activities in mind."

[20] The Officer's finding that hartals have resulted in deaths and serious injury is reasonable based on the evidence that was before them. However, results and intent are distinct concepts and the only finding of intention made by the Officer relates to violence and "criminal activities." While the Respondent urges the Court to find that the Officer's reference to violence and criminal activities is synonymous with death and serious injury, I am not satisfied that such a finding is warranted. In considering the issue of terrorism, "[v]iolence cannot be indiscriminately confused with causing death or serious injury" [see *Foisal, supra* at para 17] and to accept the Respondent's suggestion would have the improper effect of lowering the fault requirement.

[21] I find that the aforementioned errors render the Officer's decision unreasonable and provide a sufficient basis upon which to grant the application for judicial review, set aside the decision of the Officer and remit the matter for redetermination. As such, I need not go on to consider whether the Applicant's procedural fairness rights were breached.

[22] The parties have proposed no question for certification and none arises.

JUDGMENT IN IMM-9788-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The December 15, 2021 decision of the Officer is set aside and the matter shall be remitted to a different officer for redetermination.
3. No question will be certified.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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