Federal Court  Cour fédérale

Date: 20240815

Docket: IMM-9091-23

Citation: 2024 FC 1273

Toronto, Ontario, August 15, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

RAFAEL CHOWDHURY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a Senior Immigration Officer [Officer], dated July 14, 2023, refusing the Applicant's permanent residence application on the basis that he is inadmissible to Canada, pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for his membership in an organization that has engaged in acts of terrorism [Decision].

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a citizen of Bangladesh. He arrived in Canada on December 4, 2012, and made a refugee claim on December 11, 2012. His claim was based on persecution he was facing as a member of the Bangladesh National Party [BNP] by the ruling party, the Awami League [AL]. In a decision dated January 8, 2018, the Refugee Protection Division [RPD] granted the Applicant's refugee claim.

[4] In September 2018, the Applicant applied for permanent residence in Canada. He received a procedural fairness letter on August 26, 2019, advising him that he may be inadmissible, and requesting submissions, which the Applicant provided. On December 19, 2019, he was found to be inadmissible and his application for permanent residence was rejected.

[5] On December 30, 2019, the Applicant applied for leave and judicial review of this decision. Justice McHaffie granted his application for judicial review, set aside the decision finding him to be inadmissible, and sent his application back for redetermination by a different officer (*Chowdhury v Canada (Citizenship and Immigration)*, 2022 FC 311 [*Chowdhury 2022*]).

[6] On March 7, 2023, the Applicant received another procedural fairness letter stating that he may be inadmissible and requesting submissions, which he provided. On July 14, 2023, the Applicant received a letter with the Decision, now the subject of this application for judicial

review, which again found him to be inadmissible to Canada and consequently rejected his permanent residence application.

III. Decision under Review

[7] In the Decision under review, the Officer refused the Applicant's permanent residence application on the basis that he is inadmissible to Canada, pursuant to paragraph 34(1)(f) of the IRPA for his membership in the BNP, an organization that the Officer found that there were reasonable grounds to believe has engaged in acts referred to in paragraph 34(1)(c), *i.e.*, acts of terrorism.

[8] The Officer first addressed whether there were reasonable grounds to believe that the Applicant was a member of the BNP. The Officer explained that the IRPA does not define a "member" for the purposes of subsection 34(1), but that membership is to be interpreted in an unrestricted and broad manner (*Poshteh v Canada (MCI)*, 2005 FCA 85 at paras 27, 29). However, the Applicant indicated in his Basis of Claim form and in his permanent residence application that he was a member of the BNP and, prior to that, its student wing. This point was also determined by the RPD and was not contested by the Applicant. As such, the Officer was satisfied that there were reasonable grounds to believe that the Applicant was a member of the student wing from 2001 to 2003 and then a member of the BNP from 2003 to 2012.

[9] The Officer also considered temporal arguments advanced by the Applicant, to the effect that he had ceased his membership in the BNP in 2012, before the 2013 commencement of the *hartals* (or general strikes) that have in some cases resulted in conclusions that the BNP had

engaged in acts of terrorism. The Officer accepted the teachings of *El Werfalli v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 612 [*El Werfalli*], to the effect that no link can be established between membership in an organization and future terrorism unless there were reasonable grounds to believe that the organization may engage in acts of terrorism in the future.

[10] The Officer then assessed whether there were reasonable grounds to believe that the BNP is an organization that engages, has engaged or will engage in acts of terrorism. The Officer took notice of the definitions of "terrorism" provided by *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*] and at subparagraph 83.01(1)(b) of the *Criminal Code*, RSC 1985, c C-46, and relevant case law (*Rana v Canada*, 2018 FC 1080; *Islam v Canada*, 2021 FC 108; *Islam v Canada*, 2019 FC 912 [*Islam 2019*]). The Officer explained that terrorism requires an element of intent involving the causing of serious bodily harm, death, endangerment of life, or serious risk to life and safety. In connection with the requirement to establish whether an organization has the specific intent to commit acts that amount to terrorism, the Officer assessed the following four factors identified in *MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796 [*MN*] as assisting that evaluation:

A. The circumstance in which the violent acts were committed;

B. The internal structure of the organization;

C. The degree of control exercised by the organization over its members; and

D. The organization's knowledge of the violent acts and public denunciation or approval of those acts.

[11] In relation to the first factor, the Officer provided an overview of the political context in Bangladesh and the use of *hartals* by both the BNP and the AL to disrupt essential infrastructure and the national economy to put pressure on those in power. The Officer relied on various reports, all dated between 1996 and 2012, which speak to a host of violent acts conducted at the behest of the BNP while they were in power, as showing that their acts of violence were not limited to the calling of *hartals*, but also included violent acts targeting opposition party supporters and religious minorities. The Officer also cited to sources dated post-2012 which speak to the rise in violence which took place in 2013, leading to the 2014 parliamentary elections.

[12] Turning to the second factor, the Officer assessed the internal structure of the organization and found that the BNP has a top-down structure, with several external wings that are all under the discipline of the BNP. The Officer recognized that the BNP is a legitimate political party in Bangladesh and is not recognized as a terrorist organization by international organizations, other countries, or Canada. The Officer also noted that the BNP's constitution does not support or condone violence, and it includes sanctions for individuals who do not respect its line of conduct. However, the Officer explained that neither its legitimacy nor its constitution precluded the BNP being recognized as responsible for terrorism.

[13] In relation to the third factor, the Officer found that the BNP is a highly structured organization, with a central committee and dozens of organizations that also report to it. The Officer also concluded from the documentary evidence notes that the BNP has used criminals to strengthen its base and terrorize its opponents, these criminals being protected by the political class and conducting criminal activities with impunity.

[14] On the fourth and final factor, the Officer concluded that, given the sheer volume of documentary evidence on the acts of violence committed by its members since 2001, it was unlikely that the BNP was not aware of their occurrence. Beyond that, the Officer found that the BNP seldom took responsibility for the violent acts perpetrated by its members and typically deflected, downplayed or denied its involvement in those violent acts.

[15] Based on the above, the Officer concluded that the Applicant was a member of the BNP and was satisfied that there were reasonable grounds to believe that the BNP had engaged in terrorism. The Officer was satisfied that the BNP was responsible for committing violent acts prior to 2012, while the Applicant was still a member, upon members and supporters of opposition parties as well as upon the civilian population including targeted attacks on Hindu communities sympathetic to the AL. The Officer was also satisfied that the intent to cause death or serious bodily harm was established, because the BNP used criminals to attack its opponents and because the BNP leadership failed to denounce or sanction the multiple attacks that took place and were publicly documented in the period it was in power.

[16] The Officer therefore found that the Applicant was inadmissible under paragraph 34(1)(f) of IRPA.

IV. Issues

[17] The determinative issue in this judicial review is whether the Officer's Decision was reasonable. As reflected in that articulation, reasonableness is the applicable standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

V. Analysis

[18] The Applicant argues that the Decision demonstrates the same errors that Justice McHaffie identified in *Chowdhury 2022*. As summarized in paragraph 21, Justice McHaffie accepted the Applicant's arguments that: (a) the officer who made the decision then under review conducted an analysis of whether the BNP had engaged in terrorism that relied materially on events that occurred after the Applicant's departure from Bangladesh, without considering whether there were reasonable grounds at the time of his membership to conclude that the BNP would subsequently engage in terrorism; and (b) in relation to the period when the Applicant was a member of the BNP, the officer inferred intent to kill or seriously injure from knowledge and foreseeability.

[19] Turning first to the temporal aspects of the Applicant's arguments, he submits that, like in *Chowdhury 2022*, the Decision is unreasonable because the Officer did not distinguish between evidence related to the BNP and its tactics in relation to *hartals* in the periods up to 2012 (when the Applicant left Bangladesh) and in 2013 and following.

[20] I find no merit to this argument. The Officer expressly agreed with the Applicant's position that, as he had left the BNP after his departure from Bangladesh in December 2012, he could not be associated with the acts of violence committed by the party's members after January 2013, which the Officer described as a turning point that marked the beginning of a particularly bloody chapter in Bangladesh's political history. While the Officer canvassed evidence of the *hartals* and associated violence that occurred in 2013 and following, it is clear that the Officer did not find the Applicant inadmissible under paragraph 34(1)(f) of IRPA based on events that occurred after the end of his BNP membership. Rather, as will be explained in more detail below, the Officer's finding was based on events that occurred while the Applicant was a BNP member.

[21] Before leaving the temporal analysis, I note that the Applicant also argues that the Decision is deficient and therefore unreasonable in that the Officer did not conduct the sort of analysis that Justice Mandamin described as follows in *El Werfalli* (at para 78):

> 78. In the case of organizations where there is reasonable grounds to believe the organization will engage in terrorism in the future, I am satisfied the point of reference must be during the time of membership. Are there reasonable grounds to believe an organization, during the time the individual is a member, will engage in future acts of terrorism? This approach provides for a nexus between membership and future organizational activity associated with terrorism. It provides for the requisite national security and public safety objectives. Importantly, it does not include within paragraph 34(1)(f) individuals who are themselves innocent of the conduct of the organization in the future.

[22] Again, I find no merit to the Applicant's argument. While I accept that the Officer did not conduct the sort of analysis described in *El Werfalli*, there was clearly no requirement to do so. Such an analysis is required only where a decision-maker is assessing whether a member of an

organization may be inadmissible under paragraph 34(1)(f) as a result of terrorist acts conducted by the organization after the individual ceased to be a member.

[23] As Justice Mandamin explained, when considering the language of paragraph 34(1)(f) that contemplates inadmissibility where there are reasonable grounds to believe that an organization "will engage" in terrorism (see para 70), it is necessary to assess whether there were reasonable grounds to believe, as of the time of the individual's membership, that the organization will engage in terrorism in the future (see para 78). However, as noted above, the Officer found the Applicant inadmissible based on reasonable grounds to believe that the BNP was engaging in acts of terrorism during the period of his membership. Having found him inadmissible on that basis, there was no requirement for the Officer to also consider whether he might be inadmissible based on there being reasonable grounds to believe that the BNP would commit acts of terrorism in the future.

[24] I therefore turn to the Applicant's argument surrounding the required intent. In *Chowdhury 2022*, Justice McHaffie found that the officer arrived at the finding of inadmissibility based on a conclusion that the violence used in *hartals* was foreseeable by the leadership of the BNP. The officer thereby invoked a lower mental element than the specific intent to kill or seriously injure required by the definition of terrorism adopted in *Suresh* (see para 30). The Applicant submits that the Officer committed the same error in the case at hand.

[25] In particular, the Applicant notes that, after considering the four factors identified in *MN*, the Officer commenced the next portion of the analysis (under the heading "Decision") with the following conclusions:

> In light of what has been submitted before me, I am of the opinion that the violence committed in the context of *hartals* is contextual; in this regard, the BNP's specific intent is not to victimize, but to advance its political agenda and put pressure on those in power. …
>
> (Applicant's emphasis)

[26] However, I agree with the Respondent's submission that these statements must be read in the context of the ensuing lines in the Decision, in which the Officer explained that, because the Applicant left the BNP in December 2012, he cannot be associated with the acts of violence committed by the party's members after January 2013. As such, to the extent the portion of the Decision upon which the Applicant relies may be read as a conclusion by the Officer that the BNP did not have the required specific intent in connection with these *hartals*, this is not inconsistent with the Officer's subsequent conclusion that the BNP did have the required intent in connection with the violence, during the period of the Applicant's membership, upon which the Officer based the paragraph 34(1)(f) finding.

[27] In connection with this violence, in particular during the years after the BNP seized power in 2001, the Officer noted based on country condition evidence [CCE] that the BNP was being held responsible for multiple attacks, not only on members and supporters of opposition parties, but also on the civilian population, including targeted attacks on Hindu communities sympathetic to the AL. The Officer noted based on the CCE that the BNP used criminals and thugs to attack its opponents, which the Officer concluded indicated a direct intent to inflict

death and serious bodily harm, and further found that attacking innocent civilians, including children, established an intent to cause death and bodily harm.

[28] In relation to the BNP's exercise of control over the actions of its members, the Officer concluded that intent could be communicated by condoning and allowing acts of violence such as those established by the CCE. Given that attacks had been publicly documented over several years but had not been met denounced by the party's leaders, and considering that those responsible faced no sanctions especially during the BNP's time in power, the Officer concluded that intent was present.

[29] The Applicant does not challenge the Officer's interpretation of the CCE but rather argues that, in applying that evidence, the Officer employed the lower mental element of foreseeability as impugned in *Chowdhury 2022*. Noting the Officer's reference to the BNP's leadership's failure to denounce and sanction those involved in the violence that occurred during its period in power, the Applicant argues that this Court's jurisprudence does not permit reliance on such considerations to support a finding of the required intent. In *Hossain v Canada (Citizenship and Immigration)*, 2024 FC 477 [*Hossain*], Justice Aylen noted that, in the absence of evidence demonstrating that an organization's intention was to kill or seriously injure people, the failure to discourage violence cannot reasonably lead to a finding of the requisite intent (at para 17). This conclusion is consistent with Justice Grammond's analysis in *MN* (at para 12) that the decision-maker in that case had erred by focusing only upon the BNP leadership's failure to denounce violence.

[30] However, an organization's knowledge of violent acts and its public denunciation or approval of those acts is one of the factors endorsed by Justice Grammond in *MN* (at para 12). As such, it was not unreasonable for the Officer to take that factor into account in conducting the analysis of the BNP's intent. Rather, the import of this Court's jurisprudence is that failure to denounce violence cannot alone support a finding of the required intent.

[31] *Hossain* noted that the reasons in the decision under review in that case were largely silent on the *MN* factors. In contrast, in the case at hand, the Officer conducted an analysis under each of these factors, canvassing CCE that the Officer consider relevant to each factor, and then provided an explanation as to how those factors supported a conclusion that the BNP possessed the requisite intent. As the Respondent submits, the Officer's conclusion resulted not only from the evidence that the BNP failed to denounce or sanction its members who were responsible for violence, but also from the evidence that it hired criminals to attack its opponents and innocent civilians. To the extent the Applicant is arguing that the BNP's use of criminals to attack its opponents does not support a conclusion that the BNP had the necessary intent, I find no reviewable error in the Decision. As required by *Vavilov*, the Officer's reasoning is intelligible, the Decision is based on conclusions that were available to the Officer based on the CCE, and there is no basis for the Court to interfere.

[32] Having considered the parties' arguments, I find the Decision reasonable and will therefore dismiss this application for judicial review. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-9091-23

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

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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