

Federal Court



Cour fédérale

**Date: 20181108**

**Docket: IMM-1627-18**

**Citation: 2018 FC 1128**

**Toronto, Ontario, November 8, 2018**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**ASIR ARIF INTISAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of the decision [the Decision] of the Immigration Division [ID] of the Immigration and Refugee Board of Canada, dated March 20, 2018, which found the Applicant inadmissible to Canada and issued an order for his deportation. The ID held that the Applicant is inadmissible to Canada under section 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], concluding there were

reasonable grounds to believe that he had been a member of the Bangladesh National Party [BNP] and that the BNP is an organization which has engaged in terrorism.

[2] As explained in more detail below, this application is dismissed because, having considered the Applicant's arguments, I find the Decision to be within the range of acceptable outcomes, based on the applicable law and the facts of this case, and therefore reasonable.

## II. **Background**

[3] The Applicant, Asir Arif Intisar, is a 24-year old male citizen of Bangladesh. He was born in Dhaka, Bangladesh, to parents whom he describes as non-political. From 2006 to 2011, he studied at the Rajuk Uttara Model College, after which he studied independently for his "A Levels" examinations, which he completed in 2012. Mr. Intisar describes himself as being very interested in the education system of Bangladesh, particularly problems and corruption he observed, and the need, in his view, for English-language education. While at the College, Mr. Intisar was a member of the debate team and, as a member of the team, he spoke out about his views on the education system. He states that his political views were unpopular at the school and that he was frequently pushed and harassed by other students. In March 2010, he joined the Jatiyabadi Chatra Dal [JCD], a student group associated with the BNP, one of the two major political parties in Bangladesh at that time.

[4] As a member of the JCD, Mr. Intisar says that he organized and held rallies and debates, at which he spoke, and that he helped to disseminate information about his cause. When

speaking, he promoted educational reforms, but also criticized the Student League Chatra League [Chatra League], a student group opposed to the JCD and affiliated with the Awami League [AL], the other major political party of Bangladesh, which was in power at that time. Mr. Intisar states that he criticized the Chatra League and the AL for violence, vandalism, political killings, and disruption of the opposition party's events and programs. In his Basis of Claim [BOC] narrative filed in support of his refugee claim, Mr. Intisar describes organizing conferences and debates on the topic of education reform between 2010 and 2012.

[5] Mr. Intisar alleges that, as a member of the JCD, he was targeted by the Chatra League and began receiving threats in 2010. He alleges that he received his first death threat in May 2012, from an unidentified telephone caller, and that in July 2012 he was attacked and physically beaten. Following his mother's receipt of a further threat in October 2012, he made the decision to leave Bangladesh and applied for a Canadian student visa. He arrived in Canada in May 2013, studied for a year at the post-secondary level, and subsequently applied for refugee protection in August 2015.

[6] Following Mr. Intisar's initiation of his refugee claim, he was the subject of a report under s 44(1) of IRPA, alleging that he is inadmissible to Canada pursuant to s 34(1)(f) of IRPA. Specifically, it was alleged that he was a member of the BNP and its student wing, the JCD, which is alleged to be an organization that engages in, has engaged or will engage in or instigates the subversion by force of the Government of Bangladesh, or engages in, has engaged in or will engage in terrorism. The ID considered this case on October 25, 2017 and on March 20, 2018 issued the Decision which is the subject of this application for judicial review.

III. **Immigration Division Decision**

[7] The following summary of the Decision employs some of the same headings as found in the ID's analysis.

A. *Membership in an Organization and Student Wing Connection to the BNP*

[8] The ID observed that Mr. Intisar conceded that he was a formal member of the JCD, the student wing of the BNP. The ID noted Mr. Intisar's evidence that he used his membership to pursue his goal of compulsory English-language education. He knew of the JCD's affiliation with the BNP and stated that he was aware that there were rallies by the BNP and "hartals" or strikes, which affected communications, travel, and productivity, but stated that he never participated in these events. After being attacked, Mr. Intisar decided to quit the JCD. He stated that he informally cut ties in May 2012, although the letter formally confirming his withdrawal is dated March 2013. The ID noted that a letter from the Secretary of the JCD corroborates Mr. Intisar's assertion that he was involved on educational grounds, but the ID also pointed out that the letter recognizes a clear link between the student organization and the BNP.

[9] The ID explained that Mr. Intisar testified that he only became aware of the BNP violence and hartals after receiving death threats and then undertaking to learn more about BNP activity. However, the ID noted that, in his BOC narrative, Mr. Intisar says that he spoke out against the violence of the Chatra League prior to this. As such, the ID found him to be more aware of the violence between the two political parties than he suggested. The ID also referred to

documentary evidence, and evidence contained in letters submitted by Mr. Intisar, illustrating the connection between the JCD and the BNP and that the student wing of the BNP had been involved in the BNP's violent activities. The ID therefore found that Mr. Intisar was a voluntary member of the student wing of the BNP, from 2010 to 2012 or 2013, and that the student wing was closely enough linked to the BNP to consider membership in it as membership in the BNP itself.

B. *Minor Age*

[10] The ID took into consideration that Mr. Intisar was only 15 years old at the time he joined the JCD. However, the ID observed that it was his intellectual abilities which drove him to join, as a platform to pursue his goal of improving the education system. Given his agenda and political motivation for joining the JCD, the ID did not accept that Mr. Intisar did not understand the nature of the BNP's activities. The ID also referred to his BOC narrative as demonstrating a high level of maturity at the time of his involvement with the JCD. Citing *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 [*Poshteh*], the ID noted that there is no blanket exception for minors when considering s 34(1)(f) and that Mr. Intisar was closer to becoming an adult than being a child during his involvement. The ID therefore concluded that Mr. Intisar's argument that he was a minor when he joined the JCD was not sufficient to find that he was not a person described under s 34(1)(f).

C. *Has the BNP Engaged in Terrorism?*

[11] Mr. Intisar's counsel argued that the BNP is not a terrorist organization, noting that Canada and the U.S. do not list it as such, that the BNP is not involved with terrorist organizations, that the BNP is a mainstream political party in Bangladesh, and that courts elsewhere have found it not to be a terrorist organization. However, the ID observed that what is to be considered is whether there are reasonable grounds to believe the BNP is an organization that engages, has engaged, or will engage in terrorism.

[12] The ID referred to the definition of "terrorist activity" from s 83.01(1)(b) of the *Criminal Code*, RSC, 1985, c C-46 and the Supreme Court's language in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, in its consideration of the BNP's activities. The ID considered the country condition documentation and noted the history of violence between the two main parties, including violence carried out by the BNP, based on information from sources the ID considered credible. The ID also noted that much of the evidence of violence related to a period after Mr. Intisar left Bangladesh, but observed there was also evidence of violent activities before Mr. Intisar joined the JCD in 2010. The ID concluded that the violence perpetrated by the BNP and its collaborators and fronts, including student wings, fell squarely within the definition of terrorism.

D. *Temporal Component of Membership*

[13] Having concluded that the BNP is a terrorist organization, the ID considered the issue of the temporal component of membership in a terrorist organization, given that much of the evidence of the BNP's activities post-dated Mr. Intisar's membership. The ID held that, because there was a pattern of violent BNP activity before he left the BNP and Bangladesh, the recognized instances that would allow the ID to consider the temporal element of Mr. Intisar's membership did not apply.

E. *Conclusion*

[14] The ID concluded that there were reasonable grounds to believe that Mr. Intisar was a member of an organization, the BNP, from 2010 until 2012 or 2013 and that there were reasonable grounds to believe that the BNP is an organization that has engaged in terrorism. The ID therefore found that Mr. Intisar is inadmissible to Canada pursuant to s 34(1)(f) of IRPA.

IV. **Issues and Standard of Review**

[15] The Applicant submits that the issue for the Court's consideration is whether the ID erred in a reviewable manner in its finding that the Applicant is inadmissible to Canada pursuant to s 34(1)(f) of IRPA. The parties agree, and I concur, that the Decision is reviewable on a standard of reasonableness.

V. **Analysis**

[16] As explained by his counsel at the hearing of this application, the crux of Mr. Intisar's argument is that the ID erred in finding him inadmissible, because he joined the JCD when he was 15 years old for a limited reason related to his interests in educational reform, left the organization before he was 18, and was unaware of the broader political activities of the BNP.

[17] Mr. Intisar's arguments focus significantly upon his evidence before the ID, which he submits demonstrates his lack of awareness of the JCD or BNP being involved in violent activities. He testified that he was involved only with the student front, the JCD, and was aware only of activities surrounding the reason for his involvement, educational reform. His involvement was restricted to public speaking and debating, using the JCD to reach more people and communicating his ideas about the education system. He testified that it was only after he started receiving death threats in 2012 that he made an effort to learn more about the BNP and its activities and then withdrew from his involvement with the JCD.

[18] However, as submitted by the Respondent, Mr. Intisar's arguments amount to a request that the Court reweigh the evidence that was before the ID, which is not the Court's role in judicial review. The Decision demonstrates that the ID was aware of the evidence upon which Mr. Intisar's arguments rely and considered the fact that Mr. Intisar joined the JCD when he was 15 and left the organization while he was still a minor. The ID relied upon the explanation in *Poshteh* that there is no blanket exemption for minors in considering inadmissibility under s 34(1)(f). It considered the fact that Mr. Intisar's time with the JCD was as he closed in on



becoming an adult and concluded that his maturity level at the time of his involvement, and the fact that he joined the group in order to further his political objectives, were such that he could not rely upon his age at the time of his involvement to preclude a finding under s 34(1)(f).

[19] Mr. Intisar submits that *Poshteh* is distinguishable, because the minor involved in that case testified that he understood the goals of the organization he sought to join. I agree that the facts of the two cases are different. However, this does not give rise to a reviewable error on the part of the ID in its reliance on the principles described in *Poshteh*. He also argues that the ID erred by concluding that he was a mature 15-year-old based on its impressions of his testimony at the hearing, when he was older. I find no error in this regard, as the ID expressly concludes that Mr. Intisar was mature at the time of his involvement with the JCD and based this conclusion on Mr. Intisar's statements regarding his interests and activities at that time.

[20] Mr. Intisar also argues that the ID's conclusions offend the principle described in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 F. C. 302 (C.A.) at 305, that where a claimant swears to the truth of certain allegations, this creates a presumption those allegations are true unless there is a reason to doubt that truthfulness. He submits that it was an error on the part of the ID not to accept his testimony that he was unaware of the violence carried out by the BNP until close to the time that he resigned from the JCD.

[21] I find little merit to this submission, as the Decision provides a reasonable explanation for the ID's conclusion. It considered Mr. Intisar's evidence and accepted that it was probably true that he began to look more closely at all the political activities going on in Bangladesh during the

time that he was threatened and beaten. However, the ID also noted Mr. Intisar's statements in his BOC that he used to speak out about the wrongdoings of the opposition group, including violence, vandalism, political killings and other disruptions, which the ID found to illustrate that he was more aware of the political issues and violence between the two leading political parties than he suggested.

[22] Mr. Intisar also relies on the decision in *B074 v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1146 at para 29, which explained that, in determining whether a foreign national is a member of an organization as part of an inadmissibility analysis, three criteria that should be considered include the nature of the person's involvement in the organization, the length of time involved, and the degree of the person's commitment to the organization's goals and objectives. Mr. Intisar refers to his evidence that he was involved in a rally or debate only every four to six months, over a period of approximately two years, and again emphasizes that his commitment was to furthering education reform, not to any other goals or objectives of the JCD or BNP.

[23] As submitted by the Respondent, the jurisprudential guidance surrounding criteria to be taken into account, in assessing whether a person is a member of an organization, applies to circumstances where the person has not admitted to membership (see, e.g., *Nassereddine v Canada (Minister of Citizenship and Immigration)*, 2014 FC 85 at paras 57-59). In the case at hand, the ID concluded that Mr. Intisar had conceded his formal membership in the student wing of the BNP, and I find no error in that conclusion.

[24] Regardless, the ID also considered the period of Mr. Intisar's involvement, the nature of his involvement in organizing rallies, and his testimony that his purpose for joining the student wing had nothing to do with the goals of the BNP. As previously noted, the ID concluded that Mr. Intisar was more aware of the political issues and violence between the two leading political parties than he suggested. The ID also considered that the JCD operated according to its own constitution but noted documentary evidence surrounding the links between the JCD and the BNP, including student wing involvement in the political violence. It found that the student wing was closely enough linked to the BNP to conclude that Mr. Intisar was a member of the BNP itself. This conclusion is grounded in the evidence, and there is no basis for the Court to interfere with it on judicial review.

[25] Turning to the ID's conclusion that there were reasonable grounds to believe that the BNP is an organization that has engaged in terrorism, Mr. Intisar submits that the ID erred because the BNP does not appear in the list of terrorist groups of maintained by countries including Canada, the U.S., the U.K. and Australia, and that the ID failed to consider U.S. case law finding that there was insufficient evidence to conclude that the BNP was a terrorist organization. Mr. Intisar notes the conclusion in *Karakachian v Canada (Minister of Citizenship and Immigration)*, 2009 FC 948 at para 40, that the fact an organization does not appear on the list of terrorist organizations maintained by the Canadian government can be considered one indication among others that it is not a terrorist organization.

[26] The Decision expressly demonstrates that these points were taken into consideration by the ID, and I find nothing unreasonable in that aspect of the ID's analysis. The ID nevertheless

concluded, based on the documentary evidence of BNP activities, that there were reasonable grounds to believe that the BNP is an organization that has engaged in terrorism.

[27] In further challenging this finding, Mr. Intisar relies on the decision in *Jalil v Canada (Minister of Citizenship and Immigration)*, 2007 FC 568 at para 38, which held that, in making an assessment under s 34(1)(f), an immigration officer must determine whether there is enough evidence to establish that the organization sanctioned the acts. Mr. Intisar refers to portions of the documentary evidence which he argues supports the conclusion that, while the BNP has routinely called for strikes and protests, it has denounced any associated violence, and that such violence has been linked to criminal activities rather than to political motives.

[28] The Respondent acknowledges that there can be circumstances where acts of terrorism have been committed by rogue elements within an organization, such that the organization itself has not engaged in terrorism. However, the documentary evidence relied upon by the ID included evidence of involvement by BNP leaders in the violence associated with the party. I find the ID's conclusion, that there were reasonable grounds to believe that the BNP is an organization that has engaged in terrorism, to be within the range of acceptable outcomes based on the country condition documentation.

[29] Finally, Mr. Intisar submits that the ID erred in considering the temporal component of his membership. On this point, the parties diverge as to their positions on the applicable law. Mr. Intisar relies on this Court's decision in *Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2017 FC 189 [*Chowdhury*], which considered the analysis required under

s 34(1)(f) of IRPA, in particular circumstances where a person's membership in an organization completely predated the organization's participation in terrorist acts. The Respondent takes the position that that there is no temporal restriction applicable to s 34(1)(f) and no requirement, under any circumstances, to compare the timing of a person's membership to the timing of the organization's terrorist activity.

[30] It is unnecessary for the Court to address the parties' disagreement on the applicable law, as the circumstances addressed in *Chowdhury* do not arise in the present matter. The ID referred to the possibility of a temporal analysis, citing the decision in *El Werfalli v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 612 (upon which *Chowdhury* relied), but concluded that the circumstances where a temporal analysis may be required did not apply in Mr. Intisar's case. The ID expressly acknowledged that much of the documentary evidence, demonstrating that the BNP is an organization which engages in terrorist activities, references the time period following Mr. Intisar's departure from Bangladesh, but identified that there was also evidence demonstrating these activities from before he joined in 2010. The ID also noted the evidence that, although Mr. Intisar withdrew from the JCD in 2012, the cessation of his membership was not formally confirmed until 2013. It based its analysis on the conclusion that he was a member from 2010 until either 2012 or 2013, such that its analysis does not depend on which of those two years was adopted as the termination of his membership. I find nothing unreasonable in the ID's consideration of the timing of Mr. Intisar's membership.

[31] As the arguments presented on Mr. Intisar's behalf do not demonstrate a basis to conclude that the Decision is unreasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

[32] Finally, as a housekeeping point, the Court notes that the style of cause in this matter incorrectly names the Respondent as the Minister of Immigration, Refugees and Citizenship. My Judgment will correct the Respondent's name to the Minister of Citizenship and Immigration.

**JUDGMENT IN IMM-1627-18**

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

No question is certified for appeal. The style of cause is amended to change the name of the Respondent to "The Minister of Citizenship and Immigration."

"Richard F. Southcott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1627-18

**STYLE OF CAUSE:** ASIR ARIF INTISAR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 5, 2018

**JUDGMENT AND REASONS** SOUTHCOTT, J.

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