Federal Court Cour fédérale

Date: 20230615

Docket: IMM-5844-22

Citation: 2023 FC 847

Toronto, Ontario, June 15, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

MOHAMMAD JYPSED IBNE HAQUE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] In this application for judicial review, the applicant asks the Court to set aside an inadmissibility decision of the Immigration Division of the Immigration and Refugee Board of Canada (the "ID") dated June 10, 2022.

[2] The ID concluded that the applicant was inadmissible to Canada on security grounds under paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 (the

"IRPA") because he was a member of an organization that there were reasonable grounds to believe engages, has engaged or will engage in acts referred to in *IRPA* paragraph 34(1)(*b*), namely, engaging in or instigating the "subversion by force of any government".

[3] From 2011 to 2015, the applicant was a member of the Bangladesh National Party (the "BNP"). The ID found reasonable grounds to believe the BNP was an organization that had engaged in or instigated the subversion by force of the Awami League government in Bangladesh. The ID did not find reasonable grounds to believe that the BNP was an organization that had engaged in terrorism.

[4] The applicant challenged the ID's decision under paragraph 34(1)(*f*) in this proceeding, arguing that the ID's decision was unreasonable on the basis of the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653. The applicant argued that the ID made a reviewable error by failing to analyze an unchallenged expert report bearing on whether the BNP intended to overthrow a government, an element in the definition of "subversion by force".

[5] For the reasons that follow, I conclude that the application must be dismissed.

I. Events Leading to this Application

[6] The applicant is a citizen of Bangladesh. He is a foreign national in Canada.

[7] The applicant joined the BNP in January 2011 and remained a member until November 2015.

[8] The applicant initially entered Canada in August 2013 on a study permit. He returned to Bangladesh in September 2015, prior to the expiry of the study permit. He re-entered Canada in November 2015.

[9] In January 2016, CBSA made a report against the applicant under paragraph 40(1)(*a*) of the *IRPA*, alleging that he was inadmissible to Canada for misrepresentation. His study permit had been identified as part of a larger group suspected of having obtained study permits through the use of fraudulent academic transcripts. In February 2016, a warrant for his arrest was issued.

[10] The applicant attempted to make a refugee claim on March 2, 2018, but was referred to the CBSA, which arrested him. He was released on March 5, 2018.

[11] On March 23, 2018, the applicant made a claim for refugee protection in Canada. He claimed to fear persecution by the Awami League due to his membership and active role in the BNP.

[12] By letter dated July 14, 2021, Canada Border Services Agency advised the applicant that it had referred a report to the ID for an inadmissibility hearing under subsection 44(2) of the *IRPA*.

[13] By decision dated June 10, 2022, the ID found that the applicant was inadmissible under *IRPA* paragraph 34(1)(*f*). The ID issued a deportation order against the applicant under paragraph 45(*d*) of the *IRPA* and paragraph 229(1)(*a*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[14] The ID's decision concluded that the BNP was an "organization" under *IRPA* paragraph 34(1)(*f*) and that he was a member of that organization. Neither conclusion is in dispute in this proceeding.

[15] In addition, the Minister has not challenged the ID's conclusion that the applicant was not a member of an organization for which there are reasonable grounds to believe engaged in terrorism under paragraphs 34(1)(*f*) and (*c*).

II. Analysis

A. *Standard of Review*

[16] The parties agreed that the standard of review of the ID's decision is reasonableness, as described in *Vavilov*. I agree: see, e.g., *Badsha v Canada (Citizenship and Immigration)*, 2022 FC 1634, at para 22, citing *Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080, at para 19.

[17] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision contains the attributes of transparency, intelligibility and justification: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker,

which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov,* esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

[18] The Supreme Court in *Vavilov,* at paragraph 101, identified two types of fundamental flaws that may warrant intervention from a reviewing Court: a failure of rationality internal to the reasoning process in the decision; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.

[19] A decision may be unreasonable if the reasons for it, read holistically, reveal that the decision was based on an irrational chain of analysis. A decision may also be unreasonable if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point: *Vavilov,* at para 103. However, administrative decision makers are not held to the formalistic constraints and standards of academic logicians. A reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up": *Vavilov,* at para 104.

[20] As noted, a reasonable decision is justified in light of the legal and factual constraints that bear on it: *Vavilov,* at para 105. Such constraints include the application of statutory interpretation principles and constraining court decisions. Some aspects of the evidence and the parties' submissions may also serve as constraints on the decision. However, absent "exceptional

circumstances", a reviewing court will not interfere with the decision maker's factual findings and will not reweigh or reassess the evidence: *Vavilov,* at para 125.

[21] A reviewing court's ability to intervene arises only if the reviewing court loses confidence in the decision because it was "untenable in light of the relevant factual … constraints" or if the decision maker fundamentally misapprehended the evidence, failed to account for critical evidence in the record that runs counter to a material conclusion, or ignored evidence: *Vavilov,* at paras 101, 126 and 194; *Canada Post,* at para 61; *Canada (Attorney General) v Best Buy Canada Ltd,* 2021 FCA 161, at paras 122-123; *Canada (Attorney General) v Clegg,* 2008 FCA 189, at paras 34-44; *Ozdemir v Canada (Citizenship and Immigration),* 2001 FCA 331, at paras 7 and 9-11; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* [1999] 1 F.C. D-53, [1998] FCJ No 1425, at paras 14-17; *Federal Courts Act,* RSC 1985, c F-7, paragraph 18.1(4)(*d*).

[22] Not all errors or concerns about the decision under review will warrant the Court's intervention. To intervene, the Court must find that the identified flaw(s) are more than superficial or peripheral to the merits of the decision, or a "minor misstep". Rather, the problem must be sufficiently central or significant to render the decision unreasonable – there must be "sufficiently serious shortcomings" in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov,* at para 100.

[23] The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov,* at paras 75 and 100.

B. ***Did the ID make a reviewable error by failing to analyze the expert report filed by the applicant?***

(a) *Context for the Central Arguments on this Application*

[24] One issue before the ID was whether the BNP had an intention to change or overthrow the government, as an element of the "subversion by force" of any government in *IRPA* paragraph 34(1)(*b*).

[25] In elections since 1996, both the BNP and the Awami League had agreed to allow a caretaker government to oversee elections, to ensure the elections were free and fair. After the Awami League was elected in 2008, its government ended that practice for the next election scheduled for 2014.

[26] At the inadmissibility hearing before the ID, the Minister's position was that in 2013-2015, the BNP engaged in subversion by force by calling for violent hartals and protests with the intention of overthrowing the Awami League government. The applicant was a member of the BNP at that time. By contrast, the applicant's position was that the BNP wanted the reinstatement of the neutral caretaker government to oversee free and fair elections and safeguard against election fraud. The applicant argued that the BNP did not seek to overthrow the system, but instead sought to work within the electoral system and compel the Awami League to hold new elections.

[27] In his written submissions to the ID, the applicant's position was that "subversion by force" in *IRPA* paragraph 34(1)(*b*) was about overthrowing a government. He submitted that the *IRPA*'s use of *"renversement"* more directly meant to overthrow or reverse an "established system". He referred to case law that defined subversion as directed to acts intended the process of overthrowing a government, or most commonly as the use or encouragement of force, violence or criminal means with the goal of overthrowing a government, either in part of its territory or the entire country (citing *Canada v USA*, 2014 FC 416).

[28] The applicant argued to the ID that there was no evidence that the BNP was trying to overthrow a government. Rather, it was "contesting elections through an established system. The most notorious hartal at issue here was called out of a concern for electoral fairness."

[29] After referring to this Court's decision in *Rana*, the applicant's submissions to the ID set out the expert evidence that was the focus of his position on this application. The applicant's expert stated that it was apparent from the political demands of the BNP leadership that "their intention was not to overthrow the government, but rather to compel [the Awami League] to organize new, and in this case free and fair elections".

[30] The applicant's submissions to the ID argued that two previous ID decisions had rejected a subversion argument "because the BNP was working within the electoral system and not trying to overthrow it, and in fact did not ultimately seek power as they stood down given a concern over electoral fairness." The applicant disagreed with the respondent's argument that subversion by force covered any illicit use of force to effect change, arguing that the Minister's argument

was “broad beyond recognition, and would apply to any political organization in the often conflict-scarred countries where refugees seek protection from”. The applicant’s submissions concluded that:

> Contesting elections and calling a general strike in protest of the elimination of an election integrity mechanism is not “subversion by force”.

[31] The Minister disagreed, arguing to the ID that even if the BNP’s goal was to force the government from power, that goal would not immunize the BNP from a finding that it engaged in subversion by force (citing *USA*, at paras 47-49). The Minister argued that the hartals were intended to choke the economic lifelines of the country and to undermine the government’s authority to carry out elections. The Minister maintained that there were reasonable grounds to believe that the BNP’s acts were meant to topple the government and constituted subversion by force.

[32] The ID concluded that there was “insufficient evidence to demonstrate that the BNP intended to use force, or the threat thereof, in an attempt to overthrow the AL [Awami League] government”. It held:

> [97] In the BNP’s efforts to step outside the democratic process, it is clear that the requisite elements of subversion are satisfied. There is evidence that the intention of the BNP as an organization was to overthrow the government, and further, that this was attempted through the use of force and the threat thereof, albeit the attempt failed.

(b) *The Parties' Positions*

[33] On this application, the applicant submitted that on the determinative issue of whether the BNP intended to overthrow the government of Bangladesh, the ID failed to engage with the critical expert evidence that was inconsistent with its conclusion.

[34] The applicant noted that he filed only one expert report and that it was critical to his position before the ID. The applicant emphasized that the respondent did not contest the expert's evidence or the expert's qualifications and expertise.

[35] According to the applicant, the ID's reasons lacked an explanation of how the ID weighed the expert's evidence and how the ID reached its conclusion on the BNP's intention to overthrow the government in the face of the expert evidence to the contrary. The applicant initially submitted that decision did "not even mention the expert evidence, let alone explain what weight if any it gave this evidence, and why it ultimately found the opposite" of the expert opinion.

[36] At the hearing, the applicant's argument was refined to recognize that the expert's opinion was mentioned in the ID's reasons and to focus on the expert's statement that the BNP's intention was not to overthrow the government, but rather to compel the Awami League to organize new, free and fair elections. The applicant submitted that the ID's "Analysis" section was silent on it and did not meaningfully engage with the expert opinion by analyzing the expert's statement and explaining why it was rejected.

[37] The applicant maintained that an expert evidence offered on behalf of an individual facing an inadmissibility determination requires "thoughtful and comprehensive analysis if it is to be rejected" (citing *Naeem v Canada (Citizenship and Immigration),* 2008 FC 1375, at paragraph 24). The applicant relied on *Safi v Canada (Public Safety and Emergency Preparedness),* 2023 FC 135, in which the Court applied the requirement in *Naeem* and set aside an inadmissibility decision under *IRPA* paragraph 35(1)(*a*) due to the ID's lack of substantive engagement with the expert evidence: *Safi,* at paras 31-32.

[38] In *Vavilov* terms, the applicant contended that the ID's reasons (a) ignored and failed to engage with critical expert evidence contrary to its conclusion, without explanation, and (b) did not meaningfully grapple with his position on the determinative issue on subversion by force. Accordingly, the ID's decision was unreasonable and should be set aside: *Vavilov,* at paras 125-128; *Cepeda-Gutierrez*, at paras 14-17.

[39] The applicant buttressed his position with several additional arguments that, according to the applicant, should further undermine the Court's confidence in the ID's decision:

a) Citing *Vavilov*, at para 131, the applicant argued that the ID did not explain why it departed from the its conclusions on "subversion by force" by the BNP in two previous inadmissibility cases, namely *X (Re)*, 2017 CanLII 88867 (CA IRB) and *X (Re)*, 2016 CanLII 107108 (CA IRB). In those decisions, the ID found that it could not be said that the BNP was trying to overthrow the government;

b) At the hearing, the applicant argued that early in its decision, the ID made the strange and inexplicable statement that the BNP was "founded upon principles, such as the intersection of church and state, that are antithetical to parliamentary democracy and subversive in their fundamental nature";

c) The ID's legal analysis on subversion was internally contradictory, relied repeatedly on an illogical finding and took into account factors that were legally irrelevant to the proper meaning of "subversion by force". The applicant argued that the ID stated that "there must be an intention to overthrow the government"

but also inconsistently held that there was no such requirement ("I do not believe that the definition of subversion necessarily requires the ouster or overthrow of the government").The applicant argued that later in the ID's reasons, intention to overthrow was found to be a "non-mandatory factor to be considered along with others" to satisfy the definition of "subversion by force".

d) The applicant challenged the ID's factual finding that the BNP stepped out of the political process by using calls for hartal and street agitation, as illogical and a mischaracterization of the evidence. The ID repeatedly described BNP conduct as abandoning democracy, while simultaneously acknowledging the importance of the democratic integrity mechanism the BNP sought to be installed that had been eliminated by the Awami League (i.e., a caretaker government to oversee elections); and

e) The applicant contended that the ID did not address country condition evidence supporting his position that the BNP's chief demand was the reinstatement of the neutral caretaker government to oversee free and fair elections and safeguard against election fraud. The applicant submitted that the ID's attribution of an intention to the BNP that is contradicted by such authoritative evidence was unreasonable in the absence of any attempt to explain what weight, if any, it gave to this country condition evidence and why it found it unpersuasive (citing *Jafari v Canada (Citizenship and Immigration),* 2022 FC 975, at para 10).

[40] The respondent had a different perspective on the ID's decision and reasons, particularly its treatment of the expert evidence. The respondent argued that the ID's reasoning and findings properly and adequately assessed the expert evidence.

[41] The respondent argued that the applicant was reiterating arguments made to the ID on the merits of his position, which is not a matter for judicial review: *Vavilov,* at paras 125-126. The respondent also submitted that, in substance, the applicant's argument simply disagreed with the weight given to the expert's report, which was a matter for the ID to decide.

[42] According to the respondent, the applicant's submissions focused too narrowly on one sentence in the expert's report, which was not the expert's core opinion. Rather, the report was primarily concerned the use of arson in Bangladesh during protests and hartals. The concluding

paragraph of the report summarised its “main points” but did not mention the point now emphasized by the applicant. The report’s main points argued that political violence in Bangladesh was fairly decentralized, with activists not directly steered by the central leadership; and that the BNP was rightly apprehensive about the “closing democratic space” that led it not to call off the campaigns of 2013–2015. The report’s conclusion noted that after the 2014 elections, the democratic space became gradually more closed and the opposition was effectively curtailed.

[43] The respondent submitted that the Court should take a contextual and holistic view of the ID’s reasons, which expressly quoted the relevant passage from the expert’s report and then considered well-researched publications concerning the history of hartals, protests and violence in Bangladesh and the intense rivalry between the BNP and the Awami League. The ID expressly summarized the applicant’s position on subversion by force (and in doing so, made express reference to the expert’s report). According to the respondent, the ID’s reasons provided a clear definition of “subversion by force” and reached a clear conclusion that the BNP intended to overthrow the Awami League government, which was open to it on the evidence. The ID found that in calling for hartals with continuing violence, the BNP stepped out of the democratic process and sought to oust the Awami League government by force. The ID therefore rejected the expert’s opinion on the issue of whether the BNP intended to overthrow the government.

[44] The respondent relied on Justice Aylen’s recent decision in *Shohan v Canada (Citizenship and Immigration),* 2023 FC 515. In *Shohan,* the Court concluded that the ID’s inadmissibility decision related to another member of the BNP was reasonable. In particular, the Court held that the ID reached a reasonable conclusion that the nature of the hartals was not to

effect democratic change but “regime change through inciting the threat of force”: *Shohan,* at para 50. Aylen J. also found that the ID expressly grappled with the issue of whether the acts of the BNP should be characterized as legitimate political tactics or acts of subversion by force, and clearly identified why it perceived the actions and expressed intentions of the BNP with respect to hartals and protests to be an attempt to overthrow the government of Bangladesh.

[45] Justice Aylen also concluded in *Shohan* that three paragraphs in the ID’s reasons were reasonable, parts of which bear a striking resemblance to the ID’s analysis in the present case: *Shohan,* at para 51.

(c) *The ID’s Decision was Reasonable*

[46] For the following reasons, I have concluded that the ID’s decision did not contain a reviewable error.

[47] In my opinion, the ID referred to, and explained why it disagreed with, the applicant’s position and the expert’s opinion on the critical point of whether the BNP had the intention to overthrow the government in Bangladesh. Reading the entirety of the ID’s reasons alongside the record – including the parties’ submissions and the expert’s report – it becomes clear that the ID’s reasons adequately understood, engaged with and responded to the applicant’s submissions and expert evidence on that point.

[48] Three aspects of the ID’s reasons are relevant to this conclusion.

[49] First, the ID discussed the history of Bangladesh politics, including political violence before and during 2013 to 2105. The ID considered country condition evidence, including a research paper from the International Crisis Group which the ID found was “exceptionally well-researched and documented” using multiple sources, and therefore credible, reliable and an accurate depiction of the history of the political crisis in Bangladesh. The ID relied on several other independent sources as country condition evidence for Bangladesh, including a United Nations research paper that it found insightful on how hartals were formed and related to the BNP.

[50] The ID found that those years in Bangladesh involved the “most intensive political violence in its history”.

[51] In its review of the political history, the ID’s reasons set out long excerpts from the expert’s opinion. The excerpts included the specific statement now raised by the applicant in this proceeding and the report’s conclusion about the “closing democratic space” at the time.

[52] Next, the ID’s reasons noted evidence about how hartals were organized by the BNP and their changing nature – that the reasons for a hartal today were less about substance in political discourse than about the parties’ main interests in seeking power. The ID relied on the International Crisis Group report which stated that, in addition to the use of hartals as a political tool, the BNP’s strategic approach in 2013-2015 was “boycotting polls, resorting instead to violent agitation and so undermining the legislature’s ability to check executive overreach.” The same report indicated that some BNP members believed that continued violence would provoke

the military to act and thereby displace the Awami League government. The report viewed the BNP's strategic approach and resort to agitation as having deprived the BNP and its leadership of a meaningful role as the main parliamentary opposition.

[53] The ID referred to the BNP's alliance with another party to have been for the purpose of specifically mobilizing street power against the Awami League.

[54] The ID found that the respondent's sources and submissions supported the notion that the BNP's leader was directly responsible for continuing to incite ongoing hartals, and quoted its leader advising people to continue protests "until the government [was] toppled".

[55] Second, having discussed the historical and political context in which the applicant was a member of the BNP from 2011 to 2015, the ID summarized the parties' contrasting positions on inadmissibility. In that summary, the ID's reasons set out the applicant's position on subversion by force as follows (in material part):

> [75] With respect to subversion, counsel argues that the Minister's arguments can be dispensed with in considering the very dictionary and case law definitions that the Minister submitted for subversion. The meaning of subversion by force is about "overthrowing" a government. Counsel argues there is no evidence that the BNP was trying to overthrow a government, but rather that they were contesting elections through an established system, and the most notorious hartal at issue was called out of a concern for electoral fairness. Counsel cites its expert as stating that the intention was not to overthrow the government, but to compel the AL [Awami League] to organize new, free, and fair elections.
>
> [76] Counsel argues that the BNP was working within the electoral system and not trying to overthrow it, and ultimately were not seeking power as they stood down over their concerns for electoral fairness. The security objectives of the *IRPA* do not give license to expand this definition beyond groups who intend to overthrow the

> government. There is no basis in the *IRPA*, in the English or French meanings of subversion or in the Federal Court of Appeal case law which support an application of subversion to anything other than groups seeking a revolution or the overthrow of an existing system. Contesting elections and calling for strike protests in the elimination of an election integrity mechanism is not subversion by force.
>
> [Emphasis added.]

[56] This summary of the applicant's position reflects the applicant's written submissions and cites the key point from the expert's report (as underlined). The applicant did not argue otherwise.

[57] Third, and critically, the Analysis section of the ID's reasons addressed the substance of the expert report and the applicant's submissions.

[58] The ID considered the meaning of "subversion by force" in the case law and in dictionary definitions. The ID found that subversion by force required a finding of intention and that the object of subversion is to overthrow a government. For subversion purposes, intention included the use of force, or the threat of it, during an attempt to overthrow a government.[1]

[59] After setting out its conclusion that there was sufficient evidence to demonstrate that the BNP intended to use force, or the threat of force, in an attempt to overthrow the Awami League government, the ID found it clear that the requisite elements of subversion were satisfied in the

[1] The parties did not make arguments on this application concerning possible legal distinctions amongst intention, motivation, objective, and attempted outcomes.

BNP's efforts "to step outside the democratic process". The intention of the BNP as an organization was to overthrow the government through the use of force and the threat of it.

[60] The ID then stated:

> [98] Counsel for [the applicant] submits that in calling for hartals, there is no evidence that the BNP was attempting to overthrow the government, but was attempting to protest unfair elections and reinstate the caretaker election system within the system.

[61] This paragraph clearly refers to the applicant's written submissions, supported by the expert's opinion, that the BNP did not intend to overthrow the government. While it does not expressly mentioned the expert's report, there can be no mistaking its substantive meaning when read with the rest of the reasons and the record.

[62] The ID then explained why it disagreed.

[63] The ID did not agree that the definition of subversion necessarily required the actual ouster or overthrow of a government, but included the concepts of corrupting and destroying.

[64] In addition, the ID did not believe that the country condition evidence supported the view that the BNP were legitimately protesting within the system. Rather, the BNP made a strategic choice to step outside democratic process and resorted instead to using hartals and "street agitation". To the ID, the evidence was clear that the hartal of the 21st century in Bangladesh had "quite thoroughly evolved into something much more sinister and perverse" than previously. Recent hartals were "far beyond recognizable as a form of legitimate protest that would be

acceptable in a free and democratic society". The ID held that the BNP's strategic efforts undermined its position as a legitimate democratically elected opposition party and its "intention was indeed to oust the AL government".

[65] The ID's reasons made the following additional points:

a) The BNP's leader's language about toppling the government was "more than simple political rhetoric intended to inflame the passions and zeal of its membership". Rather, the language undermined the BNP's attempts to engage in genuine political protest and undermined the argument that the BNP was attempting to protest "within the system" as the applicant's counsel argued.

b) While the establishment of a caretaker system may have been one of the outwardly stated purposes and grievances of the BNP when it called for hartals in 2013-2105, "the country conditions evidence and historical dynamics suggest that a broader purpose was intended", which was "to altogether cause the ouster of the AL government". The BNP chose to step outside of the political process and achieve its goals through hartals and street agitation, which was evidence that subversion was intended.

c) The ID found sufficient evidence that BNP's calls for hartals were synonymous with the intentional threat of force. The hartals and violence that ensued were a deeply entrenched fact of Bangladeshi political life, which the applicant's expert acknowledged was the case long before 2015. The fact that widespread violence and death did ensue was evidence that the threat of force and subversion was intended.

[66] As is apparent, the content of the ID's analysis was a direct response to the applicant's legal and expert position on "subversion by force". Specifically, in the ID's express conclusions in the Analysis, and reading that section of the reasons with the earlier section on the historical and political context for the applicant's membership in the BNP, it is clear that the ID did not agree with the applicant's submissions on the scope of "subversion by force". The ID relied on the country condition evidence in the record to draw a conclusion about the intention of the BNP to overthrow the Awami League Government, rather than adopting the applicant's position as supported by the expert's opinion.

[67] To summarize: having surveyed the political history of Bangladesh and of hartals and violence in particular, the ID recognized the parties' positions, including the applicant's position and the expert's statement about the BNP's intention. The ID reached a finding about the BNP's "intention" to overthrow a government based on the country condition evidence of the BNP's activities and the surrounding circumstances in Bangladesh. It also assessed statements from the BNP, including its leader. The ID provided a reasoned response to the applicant's position on the law and the evidence, including the statement in the expert report. Its reasons displayed a rational chain of analysis that respected the legal and factual constraints in the record. The ID's decision was transparent, intelligible and provided adequate justification for the conclusion it reached.

[68] I have carefully considered Justice Southcott's reasons in *Safi*. I do not doubt the principles set out in *Safi*, or their application to the facts in that case. However, the same reasoning does not apply to the ID's decision and reasons in the present case.

[69] In *Safi*, the expert report addressed whether the relevant organization committed crimes against humanity and war crimes, and whether the applicant was complicit in them. The applicant did not dispute that the organization was involved in crimes against humanity. His principal submissions before the ID were that there was insufficient evidence to establish reasonable grounds to believe he was complicit in war crimes: *Safi*, at para 10. The applicant tendered an expert report that provided evidence that at one point, the organization officially changed to intolerance of torture and that unsanctioned torture was conducted by only a few individuals and likely without the knowledge of the majority. The area where the applicant worked was not amongst the parts of the organization that may have continued to engage in

torture: *Safi,* at para 24, esp. 24E. This was the thrust of the expert's evidence – that by the time of the applicant's tenure, the organization was an officially changed organization that did not tolerate torture: *Safi,* at para 30. Justice Southcott stated that expert evidence offered on behalf of an individual facing an inadmissibility determination requires thoughtful and comprehensive analysis if it is to be rejected (citing *Naeem*). He concluded that the ID's decision was unreasonable for lack of substantive engagement with the expert report: *Safi,* at paras 31-32.

[70] For the reasons already explained, I have found that the ID's reasons reasonably addressed the substance of the expert's evidence, taking this case outside of the reasoning in *Safi*. There was sufficient analysis of the relevant statement in the applicant's expert report to demonstrate substantive engagement with it.

[71] There is a final point related to the applicant's expert report and the decision in *Safi.* The short statement in the expert's report may appear on the surface to be the converse of the situation in *Safi*, in which the ID reasonably addressed "only a very small component of the otherwise unchallenged report" but did not deal with its "thrust" and gave no explanation for rejecting the expert's evidence based on his expertise: *Safi,* at paras 26-27, 30. The present case is somewhat closer to *Safi* than might appear at first glance, because the expert's statement here was key evidence supporting the applicant's submissions to the ID on "subversion by force" and the expert's opinion in *Safi* went to complicity, the critical issue for the applicant before the ID: *Safi,* at paras 10, 25E, 30, 31-32. Nonetheless, the reasoning in *Safi* does not apply to the present case because the central point of the expert's statement on the BNP's intention was responsively addressed in the ID's reasons.

[72] My conclusion on this application is consistent with Justice Aylen's reasons in *Shohan.* See also *Mohammed v Canada (Citizenship and Immigration),* 2022 FC 980, at para 77; *Clegg,* at paras 34-44. The ID in this case demonstrated materially more engagement with the substance of the expert's statement and the applicant's position compared with other cases in which the Court has set aside a decision for failure to do so, such as *Ahmed v Canada (Public Safety and Emergency Preparedness),* 2020 FC 507; *Soe v Canada (Public Safety and Emergency Preparedness),* 2018 FC 557; and *Shariaty v Canada (Public Safety and Emergency Preparedness),* 2017 FC 986. See also *Narula v Canada (Citizenship and Immigration),* 2021 FC 1423, at paras 27-32.

[73] It is true that the ID's reasons did not include express language connecting its conclusion with the expert report, such as "For the following reasons, I disagree with the expert's statement" or "Contrary to the expert's opinion that the BNP did not have the intention to overthrow the government, …" But that omission is not fatal here. On judicial review, the reviewing court looks at the reasons with the contents of the record, including the evidence and the parties' written submissions: *Vavilov,* at para 94. The express reasoning on the substance of the applicant's position and the expert evidence is apparent when viewed with the record. There can be no material doubt about what the ID was doing: see *Zeifmans LLP v Canada,* 2022 FCA 160, at paras 9-11. Although paragraph 98 of the ID's Analysis referred to counsel's submission, the reasons leave no realistic concern that the ID might have misunderstood that the position was supported by the expert's report.

[74] The ID also did not reject the expert's opinion without any analysis at all, in which case there would be a manifest need for a "more thoughtful and comprehensive analysis" before rejecting the expert's opinion: *Naeem,* at paras 15, 24. Such a cursory dismissal of a critical expert opinion would not pass muster; but that is not what the ID did in this case. The reasons are not just a summary of argument and a cursory conclusion or stated outcome: see *Vavilov,* at para 102; *Alexion Pharmaceuticals Inc. v Canada (Attorney General),* 2021 FCA 157, at paras 31, 44-45.

[75] As noted earlier, the applicant raised several other concerns in the ID's reasons that he argued should undermine the Court's confidence in the ID's decision. Given the reasons above, these arguments do not require extensive analysis.

[76] In my view, the ID did not err in this case by failing to explain why it did not follow two prior ID decisions concerning the BNP's intention. The ID had to reach its own conclusion on the evidence before it. In addition, while prior decisions may serve as a constraint on an ID decision, the two prior decisions identified by the applicant did not come to a common conclusion on the issue. One decision found it unclear what the BNP's objectives were in early 2015. In the other, the ID was not satisfied that the BNP had an intention to overthrow. I agree that consistency of decisions is a very important value and objective for a decision maker, as reflected in the case law. In this circumstance, I am not persuaded that the prior cases constituted a quorum of established internal authority of the ID, departure from which required the ID to compare and contrast. The ID's reasons were sufficient to ground its conclusion and explain the different outcome. See *Vavilov,* at paras 131-132; *Montano Alarcon v Canada (Citizenship and*

Immigration), 2022 FC 395, at para 30; *Faisal v Canada (Citizenship and Immigration)*, 2021 FC 412, at para 26; *Qayyem v Canada (Citizenship and Immigration)*, 2020 FC 601, at paras 19-20; *Domtar Inc v Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 SCR 756, at pp. 796–801. This conclusion should not dissuade the ID from actively pursuing consistency in its decisions involving similarly situated individuals and organizations.

[77] I do not agree with the applicant's position that the ID's reasoning was internally inconsistent. As I read the reasons, the ID simply differentiated between having an intention to overthrow a government and the actual ouster or overthrow of a government.

[78] Finally, the ID made no demonstrable error by deciding which country condition evidence to rely on and, as already emphasized, the Court will not assess or re-assess the evidence for itself.

III. Conclusion

[79] The application for judicial review will be dismissed.

[80] Neither party proposed a question to certify for appeal to the Federal Court of Appeal. No question will be stated.

JUDGMENT in IMM-5844-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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