Federal Court Cour fédérale

Date: 20231215

Docket: IMM-6598-22

Citation: 2023 FC 1695

Ottawa, Ontario, December 15, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

SAIDUR RAHMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Saidur Rahman, is a citizen of Bangladesh. It is common ground that the Applicant became a supporter of the Bangladesh National Party [BNP] by 2011. He formally became a member of their student wing, Jatiyatabadi Jubo Dal in January 2012. Shortly after joining the BNP, he was named an Organizing Secretary of the Section Number 8 of Sunapur

Union. He remained in this position until April 2013. In 2013, the Applicant left Bangladesh and arrived in the United States. He then entered Canada by way of Roxham Road in 2018.

[2] In this application for judicial review, the Applicant seeks to set aside a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board rendered on July 27, 2021 [Decision] determining that the Applicant was inadmissible to Canada on security grounds as a member of the BNP under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The IAD concluded that there were reasonable grounds to believe that the BNP was an organization that engages, has engaged or will engage in acts referred to in paragraphs 34(1)(b) and (c) of the IRPA, which concern engaging in or instigating the subversion by force of any government and engaging in terrorism. The IAD further concluded that by the Applicant's own admission, there were serious reasons to believe that the Applicant remained a member of the BNP from 2012 until his arrival in Canada.

[3] The Applicant submits that the IAD erred in concluding that the Applicant was inadmissible for the following reasons: (i) the BNP is not a violent organization that engages in acts of terrorism; (ii) the BNP did not 'intend' to cause serious injury or death; (iii) willful blindness and/or knowledge of violence on the part of the BNP is insufficient to render the Applicant inadmissible; (iv) the little evidence the IAD referenced is outdated, bleak and lacking; (v) while the Applicant did donate funds to assist detained BNP members, he did not consider himself a member or a supporter of the BNP and simply providing financial support does not demonstrate continued membership; and (vi) the IAD erred in its analysis on subversion and referred to no evidence whatsoever.

[4] The Respondent submits that the IAD: (i) correctly identified and applied the test in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*] when determining whether the BNP's activities constituted "terrorism" under paragraphs 34(1)(c) and (f) of the IRPA; (ii) referred to and relied upon the evidence in the record when coming to its conclusions; and (iii) avoided the errors made in other cases and issued a well-written Decision.

[5] The Respondent further submits that the IAD reasonably determined that the Applicant remained a member of the BNP until his arrival in Canada in 2018, given that he (i) informed the authorities at the point of entry that he remained a member of the BNP after he left Bangladesh for the United States; (ii) provided financial support to BNP members; and (iii) never resigned his membership in the BNP. As such, the Applicant was a member during the period in which the BNP's activities met the definition of terrorism.

[6] Having considered the record and the parties' submissions, as well as the applicable law, the Applicant has failed to persuade me that the IAD's Decision is unreasonable. For the reasons that follow, and despite the able submissions of counsel for the Applicant, this application for judicial review is dismissed.

II. Issue and Standard of Review

[7] The issue in the present case is whether the IAD reasonably determined that the Applicant is inadmissible to Canada by virtue of paragraph 34(1)(f) of the IRPA. The Respondent breaks the issue down into three sub-issues, namely: (i) Is or was the Applicant a member of the BNP and their youth wing? (ii) Does the evidence point to reasonable grounds to

believe that the BNP engaged in terrorism under paragraph 34(1)(c) of the IRPA, and defined in *Suresh* as any “act intended to cause death or serious bodily injury to a civilian”? (iii) Does the evidence point to reasonable grounds to believe that the BNP engaged in or instigated the subversion by force of the government of Bangladesh under paragraph 34(1)(b) of the IRPA? I agree that these three sub-issues appropriately capture the issues in the present matter.

[8] The parties agree that the applicable standard of review is that of reasonableness as set out in Canada *(Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

III. Analysis

[9] Pursuant to section 33 of the IRPA, the standard of proof that applies to inadmissibility determinations on security grounds under section 34 of the IRPA is “reasonable grounds to believe”. In *Shohan v Canada (Citizenship and Immigration)*, 2023 FC 515, Justice Mandy Aylen succinctly described this standard:

> [33] …“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, 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 (FCA), [2001] 2 FC 297 (FCA) at para 60].

[10] The standard of proof of "reasonable grounds to believe" applies to each of the three issues considered below, namely: (a) the Applicant's membership in the BNP; (b) whether the BNP engaged in terrorism under paragraph 34(1)(c) of the IRPA; and (c) whether the BNP engaged in or instigated the subversion by force of the government of Bangladesh under paragraph 34(1)(b) of the IRPA.

[11] To be clear, however, the question before this Court is not whether there were "reasonable grounds to believe" the Applicant is inadmissible on security grounds. Rather, this Court must consider whether the Officer's conclusion that there were "reasonable grounds to believe" that the Applicant was a member of the BNP and the BNP engages, has engaged or will engage in the acts referenced in paragraphs 34(1)(b) and (c) of the IRPA – was in itself reasonable (*Rahaman v Canada (Citizenship and Immigration)* 2019 FC 947 at para 9 [*Rahaman*]; *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 at para 13).

[12] During the hearing, there was much discussion on differing outcomes in cases before this Court on the issue of the BNP and its engagement in terrorism and subversion by force of a government. I agree with the Respondent that the decisions should not be characterized as

conflicting. There are differing outcomes, however, one must bear in mind that each case is decided on the basis of its particular record, the findings of fact made in the impugned decision, and the reasons given by the administrative decision maker (*Saleheen v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 145 at para 26 [*Saleheen*]; *Rahaman* at para 10; *Haque v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 847 at para 67; *Miah v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 38 at para 30 [*Miah*]). In the context of a reasonableness review, differing outcomes ought to be expected given that this Court's decisions are based on the aforementioned factors. The decisions of this Court are not, nor should they be, characterized as broad proclamations on the status of the BNP that bind future decisions (*Rahman v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 807 at para 33).

A. *The Temporal Nature of the Applicant's Membership in the BNP*

[13] In his memorandum, the Applicant submitted that he was not in agreement with the IAD's finding that he was a member after April 2023. During the hearing, however, the Applicant focused his argument on issues B and C addressed further below.

[14] I agree with the Respondent that the IAD reasonably concluded, based on the evidence in the record, that the Applicant was a member of the BNP until his arrival in Canada in 2018. As noted by the IAD, in the Applicant's interview at the port of entry he confirmed he was officially still a member and had donated to assist BNP members who were arrested by the government. A review of the transcript satisfies me that it was not unreasonable for the IAD to come to the conclusion it did. I note that during this interview, the Applicant stated that he had a membership

card and letter from the party member recommending him but that it was with the United States' courts. He clearly indicated that he would still like to work for the BNP and be active if he could.

[15] Accordingly, I do not find that the IAD erred with respect to the temporal nature of the Applicant's membership in the BNP.

B. *Terrorism*

[16] It is common ground between the parties that the IAD referenced the proper definition of terrorism as set out in *Suresh* when assessing whether the BNP engaged in terrorism. In *Suresh,* the Supreme Court defined terrorism as follows:

> 98 In our view, it may safely be concluded, following the International Convention for the Suppression of the Financing of Terrorism, that "terrorism" in s. 19 of the Act 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 or an international organization to do or to abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". Particular cases on the fringes of terrorist activity will inevitably provoke disagreement. Parliament is not prevented from adopting more detailed or different definitions of terrorism. The issue here is whether the term as used in the Immigration Act is sufficiently certain to be workable, fair and constitutional. We believe that it is.

[17] Where the parties differ in their views is on the IAD's application of the test. The Applicant submits that the IAD did not properly apply the test, and in particular in relation to the issue of intention. The Applicant pleads that the jurisprudence has evolved and that focusing on violence and knowledge of the violence is insufficient to demonstrate intent. Highlighting the

number of deaths due to violence during civil disobedience or protests is insufficient. One cannot infer intent nor can the Court go picking through the record to find a justification for the Decision. It must be clear that the intention was to cause serious injury or death.

[18] The Respondent submits that the Decision is thorough, well written and appropriately deals with the issue of intent. The Respondent highlights that the IAD recognized that willful blindness is not sufficient to satisfy the test. The IAD stated in numerous places in the Decision that the BNP had the specific intent to cause death or serious bodily harm. The Respondent notes the IAD's statement that the hartals are planned in advance, with armed cadres of the BNP attending these organizational meetings. The Respondent pleads that the IAD reasonably concluded, based on the evidence before it, that the BNP activities met the definition in *Suresh,* namely that the BNP had specific intent to cause death and bodily harm to civilians with the express purpose of intimidating the Bangladeshi population and to compel the Bangladesh government to change its policies.

[19] I do not find that the IAD misapplied *Suresh* or lowered the mental element required for intention. For a finding of terrorism, more is required than simply an awareness of the likelihood that violence will occur by calling for a hartal, or willful blindness to the fact that doing so would result in deaths and serious injuries – specific intent must be imputed to the BNP (*Saleheen* at para 41; *Miah* at paras 34-35). Specific intent may be found where a consequence is substantially certain to result from an act or omission, such as engaging "in acts or omissions while being substantially certain that violence would occur" (*Saleheen* at paras 42, 44).

[20] Having carefully considered the language of the Decision, the incidents to which the IAD refers, and the record before the IAD, I am not persuaded that it was unreasonable for the IAD to find that the BNP engages, has engaged in, or will engage in acts of terrorism. The IAD traced the history and inevitability of violence during hartals; the implication of the senior leadership of the BNP, youth members and armed cadres; the numerous examples of violence; the manner in which it was organized and perpetrated; and the resulting deaths and injuries. The IAD repeatedly noted that it was satisfied that the BNP had the specific intent to cause death or serious bodily harm, describing activities such as setting fire to buses with people inside; rape; the use of firearms, grenades and petrol bombs; firebombing buses of civilians; kidnappings and murder. The IAD found that the senior leaders of the BNP organized and used armed cadres to violently enforce the hartals knowing that it will lead to death and serious bodily harm to innocent people.

[21] I agree with the Applicant that simply referring to violence is not enough. In the present case, however, the IAD's reasoning and its factual findings demonstrate that it turned its mind to the mental element required for a finding that the BNP specifically intended to cause bodily harm and death. I find the IAD properly applied the definition of terrorism in *Suresh* and the resulting findings are internally coherent and justified on the record.

[22] The Applicant pleads that the IAD failed to rely on evidence to support its conclusion on terrorism. This point is two-fold as first, the Applicant highlights that very little evidence was referenced, and second, while there was violence nowhere does it expressly state in the record that the BNP was encouraging violence.

[23] The Respondent took the Court through the record highlighting the places where the IAD had drawn language and facts from the evidence. The Respondent submits that it is clear that there is a wealth of evidence relied upon by the IAD in support of its Decision.

[24] It would have been preferable if the IAD had cited the articles and reports in the country condition documentation from which it drew the language, facts, and figures, however, I do not find that this renders the Decision unreasonable.

C. *The Subversion by Force of the Bangladeshi Government*

[25] As noted by the Applicant, the term "subversion by force" in paragraph 34(1)(b) is not defined in the IRPA. The parties both rely on *Najafi v Canada (Citizenship and Immigration)*, 2014 FCA 262 [*Najafi*], and agree that Parliament intended the term "subversion by force" to have a broad application (*Najafi* at para 78).

[26] The Applicant submits that subversion must have as its objective the overthrowing of a government. While there was violence, the Applicant pleads that the BNP's intent was to persuade the Awami League government to hold new multiparty elections under a neutral caretaker system with the goal of fairer and more democratic elections. The Applicant states that protest is not an act of subversion.

[27] The Respondent submits that the hartals aimed at coercing the Awami League government to re-establish the caretaker form of government qualify as subversion by force

under the IPRA. The Respondent highlights the statement attributed to Khaleda Zia, the leader of the BNP, in 2015 to "continue protests until the government is toppled".

[28] I am not persuaded that the IAD unreasonably concluded that the BNP engaged in subversion by force of the Bangladesh government. The IAD considered the BNP's use of armed violence to oppose the Awami League government while they were in power. The IAD noted the directions from the senior ranks of the BNP that led to the kidnapping and murder of individuals within the government, along with their supporters. Based on the facts considered by the IAD, and the record before it, it was not unreasonable to conclude that the BNP was seeking to subvert the government by violent means.

[29] As with the preceding section, it would have been preferable if the IAD had cited the country condition documentation from which it drew the facts, however, I do not find that this renders the Decision unreasonable.

IV. Conclusion

[30] For the foregoing reasons, I conclude that the Decision meets the standard of reasonableness set out in *Vavilov*. This application for judicial review is therefore dismissed. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-6598-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed;
2. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper Respondent; and
3. There is no question for certification.

"Vanessa Rochester"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Me Viken Artinian	FOR THE APPLICANT
Me Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Joseph W. Allen & Associates Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT