

Federal Court



Cour fédérale

Date: 20170125

Docket: IMM-2401-16

Citation: 2017 FC 94

Ottawa, Ontario, January 25, 2017

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

MOHAMMAD JEWEL HOSSAIN GAZI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review by Mohammad Jewel Hossain Gazi [the Applicant] pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*], of a decision made by a Senior Immigration Officer [the Officer], dated May 16, 2016, in which the Applicant's application for permanent residence [PR] as a protected

person was rejected on the grounds of inadmissibility pursuant to paragraphs 34(1)(f) [membership] and (c) [engaging in terrorism] of the *IRPA* [the Decision].

[2] A non-disclosure order, pursuant to section 87 of the *IRPA*, was granted by Justice Noël on December 2, 2016.

[3] The application is dismissed for the reasons that follow.

II. Facts

[4] The Applicant is a citizen of Bangladesh. He arrived in Canada on January 18, 2013. He made a refugee claim that same day. On September 26, 2013, he was found to be a refugee under the *IRPA*. On February 27, 2014, the Applicant applied for permanent resident status. On April 28, 2015, he received stage one approval. At the second stage, security concerns resulted in a delay in processing his application; the Applicant was subsequently found inadmissible pursuant to paragraph 34(1)(f) of the *IRPA* for being a member of the Bangladesh National Party [BNP].

[5] The Applicant admitted his membership in the BNP on several occasions. In his Basis of Claim [BOC] Narrative, he states that he joined the student wing of the BNP in mid-1997, while a student at college in Dhaka. During that time, he participated in political activities such as demonstrations, seminars and political meetings. In 2004, he went to Korea to study and returned to a worsening political situation in Bangladesh. He left for Japan in 2005 and remained there “to observe the situation” at home. Upon expiry of his visa, he was arrested and deported to

Bangladesh in 2008. He joined the Sechashebak Dal (Volunteers' Party) of the BNP Mirpur chapter in late 2008 and campaigned for them in a subsequent election. He was also a member of the political party. He stated that "[A]ll the local leaders of the AL [Awami League], BNP, and other major political parties knew me personally as a dedicated worker of the BNP and my attachment with the party was sincere, wholehearted and devotional."

[6] He admitted his membership in BNP and therefore, his membership is taken as conclusively determined; his membership in BNP is not at issue, it is a given.

[7] On October 27, 2015, a Section 34(1) Inadmissibility Assessment was completed by the CBSA National Security Screening Division, which included the following summary of the Applicant's comments regarding the BNP's activities:

The applicant indicated that the BNP is a "party that uses armed struggle or violence to reach political objectives." He specified that when there is a strike, the party uses ammunitions and arms. The BNP, like the opposition party, "uses arms like a war. They use hand bombs, pistols, and big swords. They attack the leading government's people at the time of strike or precession." During a strike, the applicant stated that no one is able to come out of their homes, offices are closed, there is no transportation, and the roads are barricaded. He specified that these acts are done by the opposition party.

The applicant further elaborated on the violent methods used by the BNP on his IMM 5669 form, stating that he was a member of an organization that is or was engaged in an activity that is part of a pattern of criminal activity. He stated that the BNP meets this definition as the group "...uses sticks to hit people and shoot pistols at people and throw hand bombs. They burn the stores." When asked if he personally has ever taken part in the aforementioned activities, he stated that he has not and is trying to stay away from these activities. He stated that he was just an "ordinary" member of the party. The applicant stated that he would attend the meetings, processions, and when there was a strike, "[he] would have to be there for [the BNP]." He declared that

while he was asked numerous times “to throw cocktails,” he never did and simply provided “accompaniment.” He took part in strikes in Gubtoly, Mirpur. He also admitted that he witnessed people being hurt by members of the BNP. About two months prior to his arrival in Canada, the BNP approached a car that was running, took the passenger outside, and beat them up. He stated that “when this kind of situation [happened], I always go and hide because the police [were] there also.” When he told the party that he did not want to engage in its violent activities, he stated that he was told he must as the elections were upcoming. He stated that he said he wanted to quit because he did not want to be arrested by the police. He stated that the BNP will try to kill him and hide his body.

[8] On January 21, 2016, the Applicant received a request for updated information in his PR application. On February 22, 2016, the Applicant replied, submitting that the BNP is not a terrorist organization. In this respect, he pointed to a decision from a US Immigration Court, dated July 2015, which found that the BNP had not “evolved into a terrorist organization.” The Applicant submitted the reasoning of that case was persuasive support for finding the BNP not to be a terrorist organization and the Applicant therefore not inadmissible under paragraphs 34(1)(f) and (c) of the *IRPA*. While paragraph 34(1)(b) of the *IRPA*, namely, whether the BNP engaged in or instigated subversion against a democratic government or subversion by force of any government, was initially in issue, that allegation was not pursued before this Court.

III. Decision

[9] On May 16, 2016, the Applicant was found inadmissible for PR status as a protected person because he was found to have been a member of an organization which there are reasonable grounds to believe engages, has engaged or will engage in acts of terrorism under paragraphs 34(1)(f) and (c) [engaging in terrorism] of *IRPA*.

[10] Citing from both *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 [*Poshteh*] and *Al Yamani v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1457 [*Yamani*], the Officer made note of the broad meaning ascribed to the word “member.” He noted the Applicant’s self-admitted membership in the BNP and concluded that “on reasonable grounds, the applicant was a member of the BNP.”

[11] Regarding the BNP’s engagement in acts of subversion or terrorism, the Officer cites several reports, news articles and studies, as well as “general information” found online on Wikipedia. The Officer acknowledges searching for and finding this general information on the internet by using the search term “Bangladesh nationalist party terrorist acts”, but notes these search results were not shared with the Applicant since they are “publicly available information.” Several excerpts of information collected through this search are included in the Decision, discussing BNP-led air strikes and general strikes (hartal), the economic effects of hartal blockades and sieges, firebomb attacks and the history of the violent conflict between the BNP and the AL:

The BNP and the Awami League have been the two main political parties in Bangladesh. As counsel for the Applicant has noted, politics in Bangladesh is a violent affair. In that respect both parties have engaged in similar tactics. One such practice is the use of general strikes (hartal) as a form of political protest. The underlying reason to stage a hartal is economic disruption as a means of coercion against the government to achieve a particular goal. The other issue with these hartals is that they also frequently resulted in violence by BNP activists and members and those incidences too became a means of coercion against the government.

[12] In analyzing whether the actions of the BNP fall under subsection 83.01(1) of the *Criminal Code*, RSC, 1985, c C-46, the Officer concluded:

The hartals employed by the BNP have significant economic impact on Bangladesh's economy and have resulted in both substantial damage to property and both death and serious bodily harm caused by BNP activists and members as well as disruptions in services. I note that in some cases, BNP leadership have denied responsibility in the past for some actions and have condemned the violence. However, the continued use of hartals by the BNP as a means of forcibly compelling the government to meet the BNP's demands as well as the incidences of violence that erupts from these hartals are indicators that these tactics rise above simple peaceful protest or advocacy.

[13] The Officer also noted that the definition used to define terrorism is broader in Canada than it is in the States, insofar as it relates to the *Criminal Code* definition: "there are sufficient differences in the application of how a terrorist organization is defined and the standard of proof used to make that determination, between the one in IRPA and the one used in the US Immigration case cited."

[14] In conclusion, the Officer states:

I note that there is little evidence before me to find that the applicant personally engaged in violence for the BNP. However, I note that the BNP's continued reliance on hartals as a tool to coerce the government by creating significant economic disruption as well as the incidences of violence that resulted from the implementation of the hartals caused by BNP members are sufficient to find that the BNP constituted terrorist acts.

I therefore find there are reasonable grounds to believe the applicant is inadmissible to Canada under section A34(1)(f) being a member of an organizations [*sic*], namely the Bangladesh National Party, that there are reasonable grounds to believe engages, has engaged or will engage in terrorist acts.

[15] It is from this Decision the Applicant seeks judicial review.

IV. Issues

[16] The issue is whether the Officer's finding that he or she had reasonable grounds to believe that the BNP engaged, is engaging or will engage in terrorism, is reasonable.

V. Standard of Review

[17] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." Findings under s. 34(1) of the *IRPA* are reviewed on the reasonableness standard: *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at para 56, leave to appeal to SCC refused, 36241 (23 April 2015) [*Najafi (FCA)*].

[18] In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[19] In addition, I also wish to note at the outset that Senior Immigration Officers have a recognized and accepted degree of expertise in these matters: *Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 623 at para 21 [*Gutierrez*]:

[21] The Federal Court of Appeal has held that the question of whether a person is a “member” of an organization described in paragraph 34(1)(f) of the *IRPA* is a question of mixed fact and law reviewable on a standard of reasonableness: *Poshteh*, above. The same applies to determining whether there are reasonable grounds to believe that the organizations in question have engaged, are engaging or will engage in acts of terrorism. In fact, these two aspects are closely related, and both raise questions of mixed fact and law in which immigration officers have a degree of expertise, as our Court has also recognized on a number of occasions: see, *inter alia*, *Jalil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 246 at paras 19-20, [2006] 4 FCR 471 [*Jalil*]; *Daud v Canada (Minister of Citizenship and Immigration)*, 2008 FC 701 at para 6, (available on CanLII) [*Daud*]; *Omer v Canada (Minister of Citizenship and Immigration)*, 2007FC 478 at paras 8-9, 157 ACWS (3d) 601.

[emphasis added]

[20] Moreover, the Federal Court of Appeal said of paragraph 34(1)(b) of *IRPA* that there is a presumption of deference to be afforded to the IAD’s interpretation of its home statute: *Najafi (FCA)*, above at para 56. I see no reasons why a Senior Immigration Officer acting under paragraph 34(1)(c) of *IRPA* should not be afforded the benefit of the same presumption of deference, and so find.

[21] This Court in *Gutierrez* considered the standard of review in terms of the standard of proof under paragraph 34(1)(f):

[22] On the other hand, it should be noted that the standard of proof that an immigration officer must apply in the context of sections 34 to 37 of the *IRPA* is that of “reasonable grounds to believe” that the facts stated in those sections have occurred, are occurring or may occur (*IRPA*, s 33). It is settled law that this standard requires more than mere suspicion but is not equivalent to the balance of probabilities required in civil matters: *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114, [2005] 2 SCR 100; *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 39, [2007] 1 SCR 350.

Accordingly, the role of this Court when reviewing an immigration officer's inadmissibility decision is not to determine whether, in fact, there were reasonable grounds to believe that the individual engaged in or was a member of an organization that engaged in the alleged acts but to consider whether the officer's finding that there were reasonable grounds to believe can itself be regarded as reasonable.

[22] The Supreme Court of Canada held in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114, that "reasonable grounds to believe" requires something more than mere suspicion but less than the balance of probabilities:

The Federal Court of Appeal has found, and we agree, that the "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities [citations omitted] in essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible evidence.

[23] The Supreme Court of Canada instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

VI. Relevant Provisions

[24] Sections 33 and 34(1) of the *IRPA* state:

Rules of interpretation

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

Security

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

- (a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;
- (b) engaging in or instigating the subversion by force of any government;

- (b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;
- (c) engaging in terrorism;
- (d) being a danger to the security of Canada;
- (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
- (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

marginale : Interprétation

33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

Sécurité

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

- a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
- b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
- b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
- c) se livrer au terrorisme;
- d) constituer un danger pour la sécurité du Canada;
- e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
- f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

[25] Section 83.01(1) of *Criminal Code* states:

Definitions**Définitions**

83.01 (1) The following definitions apply in this Part.

...

terrorist activity means

...

(b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or

83.01 (1) Les définitions qui suivent s'appliquent à la présente partie.

activité terroriste

...

b) soit un acte — action ou omission, commise au Canada ou à l'étranger :

(i) d'une part, commis à la fois :

(A) au nom — exclusivement ou non — d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique,

(B) en vue — exclusivement ou non — d'intimider tout ou partie de la population quant à sa sécurité, entre autres sur le plan économique, ou de contraindre une personne, un gouvernement ou une organisation nationale ou internationale à accomplir un acte ou à s'en abstenir, que la personne, la population, le gouvernement ou l'organisation soit ou non au Canada,

(C) compromet gravement la santé ou la sécurité de tout ou partie de la population,

(D) cause des dommages matériels considérables, que les biens visés soient publics ou privés, dans des circonstances telles qu'il est probable que l'une des situations mentionnées aux divisions (A) à (C) en résultera,

(E) perturbe gravement ou paralyse des services, installations ou systèmes essentiels, publics ou privés,

private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law. (activité terroriste)

...

terrorist group means
 (a) an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or
 (b) a listed entity,
 and includes an association of such entities. (groupe terroriste)

sauf dans le cadre de revendications, de protestations ou de manifestations d'un désaccord ou d'un arrêt de travail qui n'ont pas pour but de provoquer l'une des situations mentionnées aux divisions (A) à (C).

Sont visés par la présente définition, relativement à un tel acte, le complot, la tentative, la menace, la complicité après le fait et l'encouragement à la perpétration; il est entendu que sont exclus de la présente définition l'acte — action ou omission — commis au cours d'un conflit armé et conforme, au moment et au lieu de la perpétration, au droit international coutumier ou au droit international conventionnel applicable au conflit ainsi que les activités menées par les forces armées d'un État dans l'exercice de leurs fonctions officielles, dans la mesure où ces activités sont régies par d'autres règles de droit international. (terrorist activity)

...

groupe terroriste
 a) Soit une entité dont l'un des objets ou l'une des activités est de se livrer à des activités terroristes ou de les faciliter;
 b) soit une entité inscrite.
 Est assimilé à un groupe terroriste un groupe ou une association formé de groupes terroristes au sens de la présente définition. (terrorist group)

VII. Analysis

[26] In my respectful view, the Officer's conclusion that he had reasonable grounds to believe that the BNP was, is, or will be engaged in terrorism is reasonable; it is supported by the evidence having regard to the broad definition of terrorism under Canadian law. I should note this is not the end of the matter for the Applicant. He is entitled to apply to the Minister under subsection 42.1(1) of the *IRPA* for an individual exemption such that he might obtain permanent residence status. I also note that the Officer stated there was "little evidence before me to find that the applicant personally engaged in violence for the BNP".

[27] I will begin with the definition of terrorism. The *IRPA* does not define terrorism. The Officer applied the definition of terrorist activity found in subsection 83.01(1) of the *Criminal Code*, set out above; this was not in issue. Subsection 83.01(1) in the context of this case, notably covers both acts and omissions whether they are conducted in or outside Canada (in this case, it applies to activities and, importantly, omissions occurring in Bangladesh), that are in whole or in part for a political purpose, objective, or cause, and which are committed in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including economic security, or compelling a person or government to do or refrain from doing any act whether inside or outside Canada, where that act or omission intentionally causes death or serious bodily harm to a person by violence, endangers a person's life, causes a serious risk to the health or safety of the public or a segment thereof, causes substantial property damage or where such acts or omissions intentionally cause serious interference with or serious disruption of an essential service, facility or system [my emphasis].

[28] In addition, the definition of terrorist activity in the *Criminal Code* is further broadened in that it includes not only acts or omissions, but also conspiracies, attempts or threats to commit any such act or omission, being an accessory after the fact, or counselling in relation to any such acts or omissions. There are limitations, but these are the broad strokes.

[29] In this case, the Officer focused on the BNP's use of general strikes (or hartals) as a form of political protest. The Officer determined that such general strikes (or hartals) have as their underlying reasons "economic disruption as a means of coercion against the government to achieve a particular goal. The other issue with these hartals is that they also frequently resulted in violence by BNP activists and members and those incidences too became a means of coercion against the government."

[30] In my respectful view, the reasons of the Officer speak for themselves in terms of the evidence relied upon. In relevant part, the Officer's reasons state:

IS/WAS THE BANGLADESH NATIONALIST PARTY (BNP)
AN ORGANIZATION THAT ENGAGED, ENGAGES OR WILL
ENGAGE I N ACTS OF SUBVERSI ON OR TERRORI SM?

Some general information about the BNP from Wikipedia:

"The party was founded on 1 September 1978 by former Bangladeshi President Ziaur Rahman, politician and physician A. Q. M. Badruddoza Chowdhury, human rights activist and lawyer Moudud Ahmed and leftist politician Mashiur Rahman as the key people.

Till date, BNP has won the second, fifth, sixth and eighth national election and two Presidential elections in 1978 and 1981 respectively. The party also holds the record of being the largest opposition in the history of parliamentary elections of the

country with 116 seats in the seventh national election of 1996.

The party floated the ideology of Bangladeshi nationalism as its core concept and adopted 19 points program with a view to "realize the golden harvest of the Bangladesh liberation war" according to its manifesto."

The BNP and the Awami League have been the two main political parties in Bangladesh. As counsel for the applicant has noted, politics in Bangladesh is a violent affair. In that respect both parties have engaged in similar tactics. One such practice is the use of general strikes (hartal) as a form of political protest. The underlying reason to stage a hartal is economic disruption as a means of coercion against the government to achieve a particular goal. The other issue with these hartals is that they also frequently resulted in violence by BNP activists and members and those incidences too became a means of coercion against the government.

Basic research on the internet was conducted using the following search term: "Bangladesh nationalist party terrorist acts" and the following information was found. As this is publicly available information, it has not been shared with the applicant.

From an article from BBC News: Bangladesh BNP-led strike arred by deaths, it states:

"The strike began at 06:00 (00:00 GMT), with the main opposition Bangladesh Nationalist Party (BNP) and its Islamist ally Jamaat-e-Islam hoping to bring the country to a standstill.

They want to force the prime minister to allow a neutral caretaker administration to oversee the election process."

From the Institute of Commonwealth Studies-Note on Hartal Blockades and Sieges:

"The economic damage to the country from frequent politico/ strikes is significant. A former finance adviser to the caretaker government, A. B. Mirza Azizul Islam, said he believed the country's GDP would be reduced by 0.5 to 0.6% because of political instability. "It hampers exports, it hampers production, it hampers transport," he said.

The association representing the country's largest export industry, the readymade garment sector, the BGMEA, estimated factories were losing approximately £17 million daily in 2013 as a result of strikes. The garment sector is particularly vulnerable to unrest because of time sensitivity of exports that need to feed modern supply chains.

Hartals also have longer term effects, discouraging foreign and local investment. Attempts have been made to estimate what the country's growth might have been if it weren't for the stoppages. Economists complain there appear to be no proper record kept of hartal days to help them calculate their impact. It's also not clear if the cost of a hartal is a full day of productivity, or less in practice, since some economic activity does always continue. Conversely the long term impact on the country's development could be much greater than one days loss of trade.

The World Bank calculated that during the 1990's, 5% of GDP was lost annually to hartal. A 2005 UNDP study thought it might actually be less-around 3-4%. UNDP pointed out that regional and localized hartal occurred more often and lasted longer than nationwide hartal. It observed that hartal tend to happen around periods connected to regime change.”

From BBC News: Bangladesh Firebomb Attacks on Bus and Truck Kill Nine:

Police reportedly blamed opposition activists for the violence, which also injured 30 others. At least 70 people have been killed in attacks since anti-government protests began last month.

The opposition Bangladesh Nationalist Party (BNP) called for a general shutdown in January, on the anniversary of last year's disputed election.

The BNP had boycotted that election, saying it would be rigged, and is now trying to force Prime Minister Sheikh Hasina to step down and call new polls.

Six people died when petrol bombs hit a packed bus from the northern district of Gaibandha to Dhaka on Friday, police said.

A similar arson attack on a truck in the southern district of Barisol killed three people early on Saturday, police added.

Last week, police charged BNP leader Khaleda Zia with instigating an arson attack on a bus which killed seven people.

Ms Zia denied responsibility and condemned the violence.

The BNP has been blockading roads, railways and waterways as part of anti-government protests that began last month, and says they will not end the protests until the government resigns.

More than 7,000 opposition activists have been arrested since the protests began.

The BNP has called for another 72-hour countrywide general strike from Sunday, and demanded that schools and businesses remain closed.

From an article from Foreign Policy.com:

“The opposition party BNP took to the streets earlier this year in protests that turned violent when the party called for a transport blockade and sought to enforce it by firebombing buses. More than 120 people were killed over a four month period in the political clashes. While the violence has calmed for the time being, there has been no resolution to the political deadlock, and tensions continue to simmer.”

In an article from the Economist, 02 February 2015, it states

“For the past month Bangladesh, a country of nearly 160m people, has (yet again) been paralysed. The opposition leader, Khaleda Zia, has been confined to a party office in the capital, Dhaka. Her Bangladesh Nationalist Party {BNP} has been staging a nationwide blockade of roads,

railways and waterways. The trigger for the unrest was a banned protest to mark the anniversary on January 5th of last year's election, in which the incumbent Awami League, led by the prime minister, Sheikh Hasina, was re-elected easily thanks to an opposition boycott. Nearly 50 people have been killed and more than 10,000 opposition activists arrested. BNP leaders are mostly in jail, in exile or in hiding, and face criminal charges that will probably bar them from running in the next election. This week events appeared to be reaching a head. The government temporarily cut the electricity supply and internet cables to Mrs Zia's redoubt. In addition to the crippling blockade, she called a three-day national strike from February 1st."

...

With this in mind, I turned to a Congressional Research Service report, CRS report for Congress: Bangladesh: Background and US Relations which states:

"Both the AL and the BNP, when out of power, have devoted their energies to parliamentary boycotts, demonstrations, and strikes in an effort to unseat the ruling party. The strikes often succeed in immobilizing the government and disrupting economic activity. The President's powers are largely ceremonial, though they are expanded during the tenure of a caretaker government."

A report from the International Relations and Security Network entitled, Bangladesh: Political and Strategic Developments and US Interests, notes that:

"Despite these challenges, Bangladesh has established a reputation as a largely moderate and democratic majority Muslim country. This status has, however, been under threat. When in opposition, both parties have sought to regain control of the government through demonstrations, labor strikes, and transport blockades. The BNP likely will increasingly use such tactics, as it lacks sufficient representation in parliament at present to mount any substantial opposition to the government in that body. This makes continued control of the

military a key aspect of stability for the AL in order to maintain control of the streets.”

It later states in the same report:

“Bangladeshi politics have been characterized by a bitter struggle between the Bangladesh National Party (BNP) and the Awami League (AL), and particularly between the two leaders of the respective parties, former Prime Minister Khaleda Zia (1991-1996, 2001-2006) and Prime Minister Sheikh Hasina Wajed (1996-2001, 2009 to the present). Zia is the widow of former president and military strongman Ziaur Rahman, who was assassinated in 1981. Sheikh Hasina is the daughter of Bangladeshi independence leader and first Prime Minister Sheikh Mujibur Rahman, who was assassinated in 1975. When out of power, both the AL and the BNP have devoted their energies to parliamentary boycotts, demonstrations, and strikes in an effort to unseat the ruling party. The strikes often succeeded in immobilizing the government and disrupting economic activity. The president's powers are largely ceremonial but are expanded during the tenure of a caretaker government.”

In an Immigration and Refugee Board (IRB) Report on Bangladesh: Political Developments December 1996-April 1998, it notes:

“Figures compiled by the Coordinating Council for Human Rights in Bangladesh (CCHRB) indicate there were 6 nation-wide and 99 local-level general strikes (hartals) in Bangladesh in 1997 (Bangladesh Observer 31 Dec. 1997, 12). Most of these were called by opposition political parties and their student wings and worker organizations, as well as various business and local organizations (ibid. 31 Dec. 1997, 12). Five of the six nation-wide hartals were called by the BNP to pressure the government to meet various political demands (ibid. 31 Dec. 1997, 12). Hartals were most numerous in the three-month period July-September 1997, when four nation-wide and 40 local hartals were called (ibid. 31 Dec. 1997, 12), but overall the number was “greatly reduced” as compared to 1996 (Country Reports 1997 1998, 1626). Both government and

opposition party supporters used armed violence and intimidation to enforce hartals or disrupt rival parties' demonstrations and street rallies, resulting in at least 18 deaths and hundreds of injuries (ibid. 1998, 1615). For example, at least seven people were killed and 200 injured in a series of clashes between AI and BNP supporters in Chittagong from 27 to 30 November 1997 (Bangladesh Observer 1Jan. 1998, 3; Country Reports 1997 1998, 1615, 1616).

In 1997 and early 1998, ostensibly for reasons of public security, the government took measures to restrict where and when political rallies and demonstrations could be held (ibid.1998, 1620; AFP 9 Oct. 1997). On 31 August 1997 the AI mayor of Dhaka, Muhammad Hanif, banned political rallies from city streets (Country Reports 1997 1998, 1620; AFP 9 Oct. 1997). Although political marches and parades were still permitted to pass through city streets, demonstrations and rallies were required to be held at seven open-air venues designated by city council (ibid.; The Hindu 26 Sept. 1997). The government claimed the ban was instituted not for political reasons but to prevent traffic jams, but opposition parties denounced the measure as an unnecessary restriction on the right to freedom of assembly (AFP 9 Oct. 1997; Country Reports 1997 1998, 1620). Although some opposition parties that opposed the ban held their events at the government-approved sites (AFP 9 Oct. 1997), the BNP was determined to defy the government (The Hindu 26 Sept. 1997; Bangladesh Observer 23 Sept. 1997, 1; AFP 25 Sept. 1997). On 22 and 25 September 1997, the BNP called general strikes in an attempt to force the government to back down (The Hindu 26 Sept. 1997; Bangladesh Observer 23 Sept. 1997, 1; AFP 25 Sept. 1997), but strict enforcement of the ban resulted in repeated violent clashes between police and opposition protesters (Bangladesh Observer 23 Sept.1997, 1; AFP 25 Sept. 1997; Country Reports 1997 1998, 1620). In late September Dhaka's mayor, on the advice of President Shahabuddin Ahmed, organized a meeting to discuss alternate venues, but both the BNP and Jamaat declined to attend (AFP 9 Oct. 1997; Country Reports 1997 1998, 1620; The

Hindu 26 Sept. 1997). Prime Minister Sheikh Hasina indicated the government would not repeal the ban (AFP 9 Oct. 1997)."

In another Congressional Research Service report, Bangladesh: Political and Strategic Developments and US Interests, it states:

"Despite these challenges, Bangladesh has established a reputation as a largely moderate and democratic majority Muslim country. This status has, however, been under threat. When in opposition, both parties have sought to regain control of the government through demonstrations, labor strikes, and transport blockades. The BNP likely will increasingly use such tactics, as it lacks sufficient representation in parliament at present to mount any substantial opposition to the government in that body. This makes continued control of the military a key aspect of stability for the AL in order to maintain control of the streets."

It later states in the same report:

"Bangladeshi politics have been characterized by a bitter struggle between the Bangladesh National Party (BNP) and the Awami League (AL), and particularly between the two leaders of the respective parties, former Prime Minister Khaleda Zia (1991-1996, 2001-2006) and Prime Minister Sheikh Hasina Wajed (1996-2001, 2009 to the present). Zia is the widow of former president and military strongman Ziaur Rahman, who was assassinated in 1981. Sheikh Hasina is the daughter of Bangladeshi independence leader and first Prime Minister Sheikh Mujibur Rahman, who was assassinated in 1975. When out of power, both the AL and the BNP have devoted their energies to parliamentary boycotts, demonstrations, and strikes in an effort to unseat the ruling party. The strikes often succeeded in immobilizing the government and disrupting economic activity. The president's powers are largely ceremonial but are expanded during the tenure of a caretaker government."

The same Immigration Judge's decision also recognizes that:

However, at least some of the incidents credibly reported by Human Rights Watch, as well as some of the less reliable reports from more dubious sources, fall within the definition of terrorist activity. ... Here, it appears that several acts which were reliably reported fall within the definition. For example, the attacks on villages reported in the reliable Human Rights Watch report, fall within the subclause “use of any ... weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals.” INA § 212(a)(3)(B)(iii)(V). Members of the BNP's student wing enticing street children to throw petrol bombs at buses also fits within this provision in conjunction with the attempt and conspiracy provision. ... A number of incidents reported by the South Asian Terrorism Portal also fall within this definition, especially the ones regarding the creation and detonation of explosives.

...

The hartals employed by the BNP have significant economic impact on Bangladesh's economy and have resulted in both substantial damage to property and both death and serious bodily harm caused by BNP activists and members as well as disruptions in services. I note that in some cases, BNP leadership have denied responsibility in the past for some actions and have condemned the violence. However, the continued use of hartals by the BNP as a means of forcibly compelling the government to meet the BNP's demands as well as the incidences of violence that erupts from these hartals are indicators that these tactics rise above simple peaceful protest or advocacy. There is little evidence that the BNP leadership discouraged the use of violence during these hartals; they only condemned the violence after the fact in some incidences, deflecting the blame directly from them. Keeping in mind that the BNP is still a legitimate political party in Bangladesh, it would not be in their best interests to publicly appear as if they were intentionally organizing and directing these violent clashes to deliberately cause instability. Nevertheless, the BNP's consistent use of hartals and their resulting incidences of violence leads me to believe, on reasonable grounds, that the BNP implicitly condoned the use of violence by the continued use of hartals without discouraging the use of violence by its membership. This is especially true when the hartals were being

enforced with the use of violence. The IRB R1R 105262.E provided by the applicant notes:

“Sources state that prior to the January 2014 elections, the BNP-led opposition called for “blockades” [abarudh, or traffic blockades] in October 2013 (Human Rights Watch Apr. 2014, 13; New Age 14 June 2015) and hartals [general strikes] in October 2013 (ibid). Sources further state that BNP and Jamaat-e-Islami supporters allegedly used petrol bombs to enforce the blockades (Human Rights Watch 29 Jan. 2015; The Diplomat 22 May 2015). According to Human Rights Watch, BNP and Jamaat supporters were identified by their neighbours as being responsible for attacks on Hindu homes and businesses, including an attack on the village of Kornai in Diapjur district (Human Rights Watch Apr. 2014, 19,20). Sources state that approximately 500 people were killed in political violence leading up to the January 2014 elections (AFP 5 Jan. 2015; Andersen 4 May 2015). According to Human Rights Watch, the January 2014 elections “were the most violent in the country's history” (Apr. 2014, 1).

Sources indicate that opposition supporters also attacked polling stations during the 2014 elections (ibid., 13; AFP 5 Jan. 2015). According to the 2014 monitoring report by Odhikar, BNP supporters removed ballot boxes and papers from a school in Digharpar and polling was subsequently suspended at that location (Odhikar 1 July 2014, 15). The same source further reports that BNP and Jamaat activists attacked Pa/para and Sahapur polling centers (ibid.0. According to Human Rights Watch, local media reported that on 4 January 2014, between 100 and 150 BNP-Jamaat supporters attacked the Molani Cheprikura polling station in Thakurgaon (Human Rights Watch Apr. 2014, 18).”

[footnotes omitted throughout] [emphasis in original]

[31] In my respectful view these reasons are balanced. More importantly for these purposes, the evidence cited and relied upon by the Officer reasonably supports the Officer's conclusion that he had reasonable grounds to believe that the BNP was, is or will be engaged in terrorism. I find no merit in the Applicant's argument that the finding was not supported by the record.

[32] The Applicant raised a number of other objections to the Decision.

[33] First, he emphasized the important role BNP plays in Bangladesh and the relationship Bangladesh has with Canada. As the Applicant urges, I accept that the BNP and the Awami League are the two major political parties in Bangladesh and that BNP has been both in and out of power over the last two decades or so. I also accept that the BNP is the main opposition party to the government of Bangladesh and is described as "the actual opposition to the government." While it currently has no seats in the Bangladesh Parliament, that is because BNP boycotted the last parliamentary elections; previously, it had 30 seats. Importantly, the BNP formed the Government of Bangladesh from 1991 to 1996 and, more recently, between 2001 and 2006. The essence of this evidence is in fact set out in the Officer's reasons.

[34] It is also the case that Canada has enjoyed diplomatic relations with Bangladesh since 1972. We exchange High Commissioners and various Ministers from the two countries have paid official visits to each other. An excerpt from a Government of Canada website, contained in the record, states: "[B]uilt upon shared values of democracy and pluralism, Canada's relations with Bangladesh are focused on development cooperation, trade and investment, and people-to-people links." Bilateral trade between Canada and Bangladesh totalled \$1.7 billion in 2012.

[35] These factors underscore the important role such Officers play in assessing the evidence presented for consideration, but do not exempt BNP from the operation of the terrorist membership provisions of *IRPA* in terms of screening out those who wish Canada to confer permanent resident status upon them.

[36] I agree with the Officer's assessment, emphasized by the Applicant, that violence characterizes both political parties: "... politics in Bangladesh is a violent affair." That is, I do find that supporters of both the BNP and the governing party have resorted to violence to influence the public and government in various ways at various times. But I do not agree that mutual misconduct immunizes BNP from being considered a terrorist organization under *IRPA* thereby depriving Canadian immigration authorities of the ability to reject requests for permanent residence status by foreign nationals who are or were BPN party members.

[37] In this case, the issue for the Officer remains whether or not he or she had reasonable grounds to believe that the BNP is a terrorist organization per paragraphs 34(1)(f) and (c) of the *IRPA*. After a thorough, careful and detail-attentive review, the Officer found as Canada submitted, namely that he or she had reasonable grounds to believe that BNP is or was a terrorist organization as defined.

[38] In addition, to emphasize, Canada defines terrorism very broadly and in in my view, in such a way that hartals may reasonably be said to come within that definition. To repeat, Canada's definition of terrorism in this case include acts *and* omissions outside Canada (e.g., that occurred in Bangladesh) that have elements of intimidation of the public or parts of the public

(e.g., perhaps, hartals) that affect security, including economic security (e.g., perhaps, hartals), that compel a government to do or refrain from doing any act (e.g., perhaps, hartals), where that act or omission intentionally causes death or serious bodily harm to a person by violence, endangers a person's life, causes a serious risk to the health or safety of the public or a segment thereof (e.g., perhaps, hartals), or causes substantial property damage (e.g., perhaps, hartals) or where such acts or omissions intentionally cause serious interference with or serious disruption of an essential service, facility or system (e.g., perhaps, hartals).

[39] On the record and with the Canada's extended definition of terrorism in hand, the Officer found he or she had reasonable grounds to believe that the BNP, through general strikes and hartals, was engaged in terrorism as defined by the *Criminal Code*. In my respectful view, that finding was open on the evidence in this case.

[40] The Applicant submits it is relevant to this determination that the Canadian government has not listed the BNP as a Listed Terrorist Entity, which indeed it has not done. With respect, listing is a different process managed by the Governor in Council (Canadian Cabinet) which counsel indicated may involve political issues. I do not accept, nor was it argued, that the absence of listing is conclusive on the issue before the Officer.

[41] The Applicant says that while individual members of a party may have committed acts of terrorism, this is very different from saying the BNP, as a party, engaged in terrorism. I agree with this statement as a general principle but that is not the issue here, given the finding by the Officer that there are reasonable grounds to believe BNP was engaged in terrorist activities. The

point of the Officer's exercise was to determine if there were reasonable grounds to believe that the BNP itself was engaged in terrorism and the Officer found there were. I have concluded this finding was open to the Officer on the record.

[42] The Applicant alleges that the BNP disavows violence; however, I am far from persuaded on this point. He points to the BNP's Constitution which, while containing vague references to anti-people activity, underground political organizations and armed cadres, does not in fact contain any express disavowal of violence. The Applicant points to disciplinary actions having been taken against party members for disobeying the BNP Constitution, but while evidence of expulsions are in the record, the reasons for those expulsions are not, therefore they do not support the Applicant's point. Moreover, only a handful of expulsions are reported, a number which pales in comparison with the number of violent incidents and hartals cited by the Officer. In my view, the proffered evidence of expulsions does not assist the Applicant.

[43] In fact, as the Minister's counsel observed, the only evidence of BNP leadership denouncing violence is a single statement by a party leader made at a time he or she was facing criminal charges for firebombing a bus full of sleeping passengers that killed seven people. This I consider material; other than this defensive position, taken after the fact and made in the face of serious criminal charges, there is no evidence in this record that the BNP has disavowed or condemned violence by its members. The omission by the BNP to discourage violence is noteworthy in terms of the definition of terrorism and its inclusion not only of acts but "omissions" by the alleged terrorist organization.

[44] The Applicant submits that “[T]o tar everyone in the BNP with the brush of terrorism is to go too far. Since the BNP and the AL are the two mainstream parties in the country, and since members of both parties commit violence, to do so would mean that every single mainstream politician in Bangladesh is automatically an accomplice of terrorism, as are all members or followers of the two parties.” I am unable to accept this argument as working in the Applicant’s favour because the issue before the Officer was whether the BNP, not the ruling Awami League, is a terrorist organization as Canada broadly defines it. The governing Awami League is not before this Court.

[45] The Applicant submits that the U.S. Immigration Court’s analysis and conclusion to the effect that the BNP is not a terrorist entity are persuasive and should be followed in Canada. There are several difficulties with this argument. The first is that the both definitions of terrorism and the applicable standards of proof differ between Canada and the U.S. The U.S. statute, in its definition of terrorism as reported by the learned U.S. Immigration Judge and not contradicted by the Applicant, does not refer to economic security, or serious interference with or serious disruption of an essential service, facility or system. These are, in fact, critical differences given these are matters at which the BNP’s hartals are calculated to strike. The U.S. definition is far narrower and deals with hijacking or sabotage of a conveyance, seizing and threatening to kill to compel a third person to do or not do any act, violent attacks, assassination, use of biological, chemical or nuclear weapons with intent to danger the safety of one or more individuals or to cause substantial damage and includes conspiracies.

[46] In this connection, I note that the Respondent argued that U.S. terrorism law contains temporal limitations, unlike Canadian law which allows for the consideration of all past, present and future terrorist activities (as defined) in determining whether an entity is a terrorist organization for the purposes of paragraphs 34(1)(f) and (c). With respect, I decline to make a finding in this respect without proof of the relevant U.S. statute law in this connection. In any event, I note the Officer ultimately relied on the differences between the definitions of terrorism and the standards of proof and did not rely on temporal differences as the basis for rejecting this aspect of the Applicant's submissions.

[47] However, I do agree that the standards of proof appears to differ between the U.S. and Canada: here, as noted, it is "reasonable grounds to believe" pursuant to *IRPA*, while in the U.S. it is "preponderance of evidence", according to the learned U.S. Immigration Judge. This finding and the clear text of Canadian law justified the Officer's conclusion that the standards of proof differ between the two countries.

[48] In addition, the learned U.S. Immigration Judge conducted a *de novo* proceeding. Here, however, I am not conducting a *de novo* hearing. This Court is conducting a judicial review where the issue is not the correctness of the decision, but rather, its reasonableness.

[49] I have considered the Applicant's argument relating to the persuasiveness of the learned U.S. Immigration Judge but, in my respectful view, the rejection of the U.S. decision was reasonably open to the Officer on this record.

[50] The Applicant also argued that differences in the standards of proof did not matter in relation to general strikes or hartals. This argument ignores the fact that the Officer is entitled to draw inferences from the evidence, particularly in relation to violence, economic loss and the absence of adequate evidence of his allegation that BNP discourages violence in the face of evidence accepted by the Officer to the contrary. As the Officer reasonably held:

There is very little evidence that the BNP leadership discouraged the use of violence during these hartals, they only condemned the violence after the fact in some incidences, deflecting the blame directly from them. Keeping in mind that the BNP is still a legitimate political party in Bangladesh, it would not be in their best interests to publicly appear as if they were intentionally organizing and directing these violent clashes to deliberately cause instability. Nevertheless, the BNP's consistent use of hartals and their resulting incidences of violence lead me to believe, on reasonable grounds, that the BNP implicitly condoned the use of violence by their continued use of hartals without discouraging the use of violence by its membership. This is especially true when the hartals were being enforced with the use of violence.

[51] I have set out the major issues with the Decision raised by the Applicant, and have reviewed them in coming to this conclusion. However, judicial review does not involve adding up the positives and subtracting the negatives; judicial review must be of the Decision as an organic whole. In my respectful view, when viewed as an organic whole, the Decision meets the test set out by *Dunsmuir* because it falls within the range of outcomes that are defensible in terms of the facts and law. Therefore, judicial review must be dismissed.

VIII. Certified Question

[52] Neither party proposed a question for certification, and none arises.

IX. Conclusion

[53] The application for judicial review must be dismissed and no question will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, no question is certified and there is no order as to costs.

“Henry S. Brown”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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