Federal Court  Cour fédérale

Date: 20190612

Docket: IMM-5185-18

Citation: 2019 FC 807

Ottawa, Ontario, June 12, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

MD MAHBUBUR RAHMAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Bangladesh, seeks judicial review of a decision by the Immigration Division (ID) Officer of the Immigration and Refugee Board finding him inadmissible to Canada on security grounds. For the reasons that follow this judicial review is dismissed as the Officer undertook the proper analysis, based his findings on the evidence, and made a reasonable decision. There are no grounds for this Court to intervene.

Preliminary Issue

[2] The Respondent requested that the style of cause be amended to name the Minister of Citizenship and Immigration as the Respondent, stating that this is the ministry with general oversight of the ID who rendered the decision under review.

[3] The Applicant disagrees and notes that the Minister of Public Safety and Emergency Preparedness is listed as a party on the decision under review.

[4] In the circumstances, I am not convinced there is a compelling reason to amend the style of cause. Accordingly, I decline the Respondent's request.

Background

[5] The Applicant, Md Mahbubur Rahman, is a Bangladeshi citizen who was found to be inadmissible to Canada on security grounds pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] as a member of an organization for which there are reasonable grounds to believe engages, has engaged in, or will engage in acts of subversion by force and terrorism as pursuant to paragraphs 34(1)(b) and (c) of the *IRPA*.

[6] The admissibility proceedings arose out of the Applicant's refugee claim made in December 2015 claiming to be at risk of persecution and facing threats from the ruling party of Bangladesh, the Awami League, as well as Muslim fundamentalists. He claims to be at risk as a result of his activities as the co-founder of an organization called the Noakhala Social Welfare

Organization. However, in his refugee claim he disclosed that he had been a member of the Bangladesh Nationalist Party (BNP) from February 1, 2006 until January 25, 2014. His refugee claim was suspended pending an admissibility hearing to determine if he was inadmissible due to his previous membership in the BNP.

[7] A report was prepared under subsection 44(1) of the *IRPA* and reviewed by the Minister's Delegate, with referral of the matter sent to the ID and signed on October 18, 2016. The report alleges that the Applicant is as described under paragraph 34(1)(f) of the *IRPA* as a former member of the BNP.

[8] The Applicant admits that he was a member of the BNP.

Decision under Review

[9] In its decision of October 2, 2018, the ID found the Applicant inadmissible pursuant to paragraph 34(1)(f) of the *IRPA* and issued a deportation order against him. The ID noted that in both his testimony and documentary evidence the Applicant admits that he is a member of the BNP. He states that he joined in February 2006 and was elected as the assistant joint secretary of his local BNP office. The Applicant testified that he held that position until January 2014. During the elections in 2014, the Applicant explained that he was a field worker and that he participated in peaceful demonstrations and organized events. The ID noted that the issue for consideration was whether there was any connection between the BNP's activities and terrorism and/or subversion by force.

[10] The ID noted that the standard of proof was "reasonable grounds" which has been addressed in Federal Court cases and is defined as required proof to a standard less than the civil test of balance of probabilities, or, a *bona fide* belief in a serious possibility based on credible evidence (*Chiau v Canada (Minister of Citizenship and Immigration)*, [1998] 2 FC 642 (FC) at para 27, aff'd [2001] 2 FC 297 (FCA)). The ID indicated that Minister has the burden of proof.

[11] The ID noted that membership is a critical element of a finding of inadmissibility under paragraph 34(1)(f). The ID recognized that while "membership" is not defined in the *IRPA*, case law has provided guidance and, in *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 [*Poshteh*], the Court directed that membership be given a broad interpretation (at para 27).

[12] With respect to terrorism, the ID noted that while the *IRPA* does not provide a definition of terrorism, the Supreme Court of Canada in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*] has provided direction. The ID further made note of the *Criminal Code*, RSC, 1985, c C-46 [*Criminal Code*] definitions of "terrorist activity" and "terrorist group" in subsection 83.01(1). In considering *Suresh*, the *Criminal Code*, international instruments, as well as Federal Court jurisprudence to the Applicant's situation, the ID determined that the actions of the BNP met the definition of terrorism.

[13] The ID referred to the country condition evidence and documentary evidence that shows that the BNP utilizes violent *hartals* (or strikes/blockades) as the main weapon to assert its political opposition to the ruling party. The ID Officer determined that there are more than

reasonable grounds to establish that the calling of strikes and traffic blockades as a means of forcing the government to a particular action has a severe and significant financial impact on the economy which amounts to terrorism. The ID also detailed the incidents of violence and determined that there is a direct link between *hartals* and the violence that ensues to the extent that the two cannot be separated. The ID also highlighted the Applicant's evidence that he left the BNP because of this known violence.

[14] Although the BNP is not on a list of terrorist entities recognized by Public Safety Canada or the United States Department of State, the ID noted that these lists are not exhaustive and are not binding on the ID. Based on the totality of the evidence, the ID was satisfied that there are more than reasonable grounds to believe that the BNP is an organization that engages, has engaged, or will engage in terrorism.

[15] With respect to subversion by force, the ID again noted that there is no definition for the word "subversion" in the *IRPA*, but that case law has directed that subversion should also be given a broad interpretation (*Qu v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 399 at para 33). The ID relied on *Eyakwe v Canada (Minister of Citizenship and Immigration)*, 2011 FC 409, which at paragraph 30 defines subversion as "the changing of a government or instigation thereof through the use of force, violence or criminal means".

[16] Thus, the ID pointed out that the BNP's acts of terrorism were also applicable to the analysis of whether the BNP engaged in acts of subversion. The ID noted that the BNP expresses a desire for the electoral process to unfold unfairly because what it seeks to do during

elections is to use violence or threats of violence to prevent those who do not support the party from exercising their right to vote. This, the ID concluded, amounts to subversion by force.

[17] The ID found that the Applicant is inadmissible for being a member of the BNP for which there are reasonable grounds to believe engages, has engaged, or will engage in or instigate the subversion by force of the Bangladeshi government and terrorism pursuant to paragraph 34(1)(f) of the *IRPA*.

[18] As a result of this conclusion, a deportation order was issued against the Applicant.

Issues

[19] The only issue on this judicial review is if the ID Officer made reasonable findings on the following topics:

A. The Applicant's Membership in the BNP

B. Whether the BNP Engaged in Terrorism

C. Whether BNP Engaged in Subversion by Force.

Standard of Review

[20] The applicable standard of review is not in issue. The parties agree, and I concur, that reasonableness is the standard of review to be applied to the ID decision.

Analysis

A. *The Applicant's Membership in the BNP*

[21] Although the Applicant admitted to being a member of the BNP, on this judicial review he argues that the ID failed to consider whether the nature of his membership or involvement was sufficient to find he was a member for the purposes of paragraph 34(1)(f) of the *IRPA*. He argues that the ID needed to consider the nature of his membership to assess if he was in common purpose with the BNP.

[22] As noted by the ID, membership is a critical element to a finding of inadmissibility under paragraph 34(1)(f) of the *IRPA*. The ID also correctly noted that membership is to be given a broad and unrestricted interpretation based on the nature and duration of a person's activities within an organization (*Poshteh* at para 27).

[23] In *Saleh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 303 [*Saleh*], the applicant argued that mere formal membership should not inevitably constitute "membership" for the purposes of subsection 34(1)(f) of the *IRPA*. Justice Gibson, as he then was, dismissed this argument stating at paragraph 19 that:

> With great respect to counsel for the Applicant, the burden of the jurisprudence of this Court and the Federal Court of Appeal appears to be to the contrary. In short, if one is a "member" then he or she is a "member" for the purposes of paragraph 34(1)(f) with all of the implications that that membership carries with it and with relief, if warranted, lying in the discretion of a Minister of the Crown under subsection 34(2) of IRPA and not in the discretion of Immigration Officers or this Court. An example of this interpretation is reflected in the reasons of my colleague, Justice de Montigny, who in *Tjiueza v. Canada (Minister of Citizenship and Immigration)* wrote at paragraph [31]:

> Once again, I do not think that the ID [Immigration Division] erred in its interpretation of s. 34(1)(f) of the Act. That provision makes a foreign national inadmissible for membership in an organization; it does not require active participation. If active participation were necessary, then s. 34(1)(f) would be redundant, because active participation in subversion by force is a ground for inadmissibility under s. 34(1)(b) of *IRPA*. Paragraphs 34(1)(b) and 34(1)(f) are "discreet but overlapping grounds": ... [citations omitted in original.]

[24] In this case, the Applicant has admitted membership in the BNP. For the Applicant to argue that the ID had to undertake additional analysis of membership is in effect imputing a higher test for membership similar to "active participation", which was specifically denounced by Justice de Montigny, as he then was, in the passage quoted above.

[25] In any event, the case review and recommendation for referral to an admissibility hearing included an analysis of the Applicant's membership in the BNP, which was accepted by the ID. This analysis demonstrated that the Applicant had a 7-year active membership demonstrating a significant commitment to the BNP.

[26] In the circumstances, I agree with the Respondent that the ID conducted a sufficient analysis of membership even though the Applicant admitted membership. This is even more so considering that, in *Nassereddine v Canada (Citizenship and Immigration),* 2014 FC 85 (at paras 57-59), the Court listed that factors such as the nature of a person's involvement in the organization, the length of time involved, and the degree of the person's commitment to the furtherance of the organization are factors to be considered where membership is not admitted. Here, however, membership is admitted and thus does not warrant any greater analysis.

[27] Overall, the Applicant's arguments with respect to membership are without merit. He admitted to being a long-term member of the BNP in a capacity which was beyond a passive or non-active manner. He was admittedly an active member who was elected to a position which he held from February 2006 until January 2014. He also did field work for the BNP during the 2014 elections. Given his admitted membership and the level of his direct participation in the objectives of the BNP, the ID made no error in its analysis with respect to membership.

B. *Whether the BNP Engaged in Terrorism*

[28] The Applicant argues that the finding by the ID with respect to terrorism is unreasonable as the ID relied upon and applied the *Criminal Code* definitions of terrorist activity and terrorist group. The Applicant argues that the *Criminal Code* description of terrorism is broader than that outlined by the Supreme Court Canada in *Suresh*.

[29] The Applicant relies upon *AK v Canada (Citizenship and Immigration)*, 2018 FC 236 [*AK*] to support these arguments. However, *AK* can be distinguished because the officer relied entirely upon the *Criminal Code* definitions, whereas here the ID Officer took guidance from various sources. In my view, the ID Officer used the criminal law to contextualize the issues, not to import criminal law concepts into immigration and refugee law proceedings (*Kamal v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480 [*Kamal*] at paragraph 67).

[30] Subsection 34(1) of the *IRPA* provides as follows:

34 (1) A permanent resident or a foreign national is	34 (1) Emportent interdiction de territoire pour raison de

inadmissible on security grounds for	sécurité les faits suivants :
(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;	a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
(c) engaging in terrorism;	c) se livrer au terrorisme
(d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada;
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(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).	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).

[31] As noted by the ID Officer in this case, the overarching definition outlined by the Supreme Court of Canada in *Suresh* is as follows at paragraph 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.

[32] Recent cases from this Court have upheld findings that the BNP is an organization that has engaged in terrorist activity for the purposes of the *IRPA*, see: *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 [*Alam*]; *Kamal*; *SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494 [*SA*]; *Gazi v Canada (Citizenship and Immigration)*, 2017 FC 94; and *Intisar v Canada (MCI)*, 2018 FC 1128. In my view, the assessments by the Courts in *Alam* and *SA* are applicable to this case.

[33] I disagree with the Applicant's assertion that there are conflicting decisions from this Court on the issue of the BNP and its engagement in terrorism. Upon closer examination of these decisions however, it is clear that they are made in relation to particular findings and the particular evidentiary record before the Court. They are not broad proclamations on the status of BNP that bind future decisions.

[34] I also endorse Justice Fothergill's statement in *Alam* at paragraph 22:

> Whether an immigration officer has reasonable grounds to believe the BNP is an organization that engages, has engaged or will engage in acts of terrorism depends on the factual record before the officer. Justice Mosley found in *AK* that the officer had made no explicit finding that the BNP's calls for hartals were synonymous with calls to commit terrorist acts. In *SA*, I upheld an officer's

> decision to find a former member of the BNP inadmissible based on the factual conclusions reached in that case. Justice Henry Brown did the same in *Gazi* and, most recently, in *Kamal v. Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480 (F.C.) at paragraphs 56 to 65 [*Kamal*].

[35] In *Alam*, the officer made an explicit finding that the BNP had engaged in activities that constitute terrorism. These included violent protests, rallies, bombings and beatings. The activities had a political purpose and were intended to intimidate political opponents and innocent civilians alike. They were directed and organized by the BNP itself, not by rogue elements of the organization.

[36] Here the ID similarly made explicit findings at paragraphs 26 and 27 of the decision that the BNP had engaged in activities that constitute terrorism. In particular, at paragraph 27 there is reference to the BNP engaging in the following activities: raping Hindu women; events described as an "orgy of violence"; hundreds of people killed and/or injured in protests; using homeless children to carry out attacks; pro-*hartal* activists torching vehicles; BNP-led *hartals* resulting in firebomb attacks; beatings and harassment tactics to garner votes; and setting a bus on fire with people inside.

[37] The Applicant relies on *Chowdhury v Canada (Citizenship and Immigration)*, 2017 FC 189 [*Chowdhury*] to dispute his connectedness to these activities. In *Chowdhury*, the Applicant submitted that the ID's decision erroneously relied on acts that the BNP was alleged to have committed after he ceased his membership in 2012. Justice Southcott granted the application, concluding that the ID's reasons did not demonstrate a sufficient understanding of the analysis required under paragraph 34(1)(f) of the *IRPA*. Notably, Justice Southcott's analysis dealt with

the temporal connection between an Applicant's membership and an organization's disputed activities, finding that when a member of an organization is subject to inadmissibility as a result of terrorist acts committed by an organization after the cessation of his or her membership, such inadmissibility requires an analysis as to whether, at the time of the membership, there were reasonable grounds to believe that the organization would in the future engage in terrorist activities (*Chowdhury* at para 20). The *Chowdhury* case is of limited application given that the temporal link between the Applicant's membership and the BNP's activities is not contested in the case at bar.

[38] Moreover, Justice Southcott explicitly stated at paragraph 30 of *Chowdhury*, "I emphasize that I am not expressing a conclusion on whether the evidence that relates to periods before and during Mr. Chowdhury's membership in the BNP would support a finding that it engaged in terrorist activities during such period. It is the role of the ID to conduct this analysis."

[39] Based on the particular record before the ID Officer in this case, I believe it was reasonable to determine that the BNP engages, has engaged in, or will engage in acts of terrorism, particularly during the Applicant's membership period.

C. *Whether BNP Engaged in Subversion by Force*

[40] The Applicant argues that the ID Officer's assessment of paragraph 34(1)(b) of the *IRPA* was unreasonable in finding that the Applicant participated in subversion by force.

[41] The Officer notes that subversion by force is considered within the parameters of a broad definition. At paragraph 37 of the decision, the Officer states that the incidents outlined as acts of terrorism are also applicable to the analysis of whether or not BNP engaged in subversion. The Officer provides the following examples of subversion by force at paragraph 39:

> Reports from the lead up to the January 2014 elections indicate that BNP-led coalition supporters went to Hindu villages and drove families out of Bangladesh. They speak to religious minorities being beaten, raped and killed. They speak to religious buildings and homes being vandalized and burned down. Reports also speak to BNP supporters blocking access to polling stations, and attacking and killing people who are either working at polling stations or attempting to exercise their right to vote.

[42] Although the evidence for terrorism and subversion by force are the same or similar, it was open to the ID Officer to base the subversion by force finding on the evidentiary record. This accordingly renders the finding justifiable, transparent, and intelligible and within the range of acceptable, possible outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). There is no basis for this Court to intervene with the finding.

[43] In any event, even if I were to conclude that the assessment of subversion by force conducted by the ID Officer was incomplete, it would not be sufficient to allow this judicial review as the finding of the Officer with respect to membership and terrorism is sufficient to render the Applicant inadmissible (see *Kamal* at para 73).

JUDGMENT in IMM-5185-18

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

There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	MD MAHBUBUR RAHMAN v MPSEP
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