Federal Court  Cour fédérale

Date: 20220504

Docket: IMM-5524-20

Citation: 2022 FC 650

Toronto, Ontario, May 4, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

MD ALMAMUN OPU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] In this application for judicial review, the applicant seeks to set aside a decision of the Immigration Appeal Division ("IAD") made on September 9, 2020, under paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The IAD concluded that there were reasonable grounds to believe that the applicant was inadmissible to Canada on grounds of security as a member of the Bangladesh Nationalist Party

("BNP") under paragraph 34(1)(*f*). The IAD concluded that the BNP was an organization that engages, has engaged or will engage in acts referred to in paragraph 34(1)(*c*), which concerns engaging in terrorism. There was no allegation that the applicant himself engaged in any acts of terrorism. His inadmissibility was solely based on his membership in the BNP.

[3] For the reasons below, I conclude that the IAD's decision was reasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. The application will therefore be dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of Bangladesh. He arrived in Canada in June 2013.

[5] In June 2014, he claimed refugee protection under the *IRPA* on the basis of political belief.

[6] In his refugee claim, the applicant declared himself a "senior official" of the BNP. His membership began in the student wing of the BNP from December 1999 to December 2004. From January 2005 to May 2013, he was Assistant Organization Secretary at the branch level in the district of Dhaka. From March 2003 until April 2013, the applicant was also Vice President of the BNP branch of his home village.

[7] At his first admissibility hearing, the Immigration Division ("ID") found that the applicant was inadmissible as a member of an organization described in *IRPA* paragraph 34(1)(*f*)

and issued a deportation order. This Court granted him leave to apply for judicial review and the matter was returned on consent for redetermination.

[8] On redetermination, the ID concluded that the Minister had not established that the applicant was inadmissible on security grounds as alleged.

[9] The Minister appealed to the IAD and succeeded. The IAD's decision dated September 9, 2020, is the subject of this application for judicial review. The IAD also issued a deportation order dated September 9, 2020.

II. The IAD's Decision and Reasons

A. *Introduction*

[10] The IAD made a number of initial findings, which are not at issue in this application, including:

a) the standard of proof was "reasonable grounds to believe" under *IRPA* section 33 as understood in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100, at para 114 (i.e., "reasonable grounds to believe" requires something more than mere suspicion, but less than a balance of probabilities, and will exist where there is an objective basis for the belief that is based on compelling and credible information);

b) the BNP was an "organization" for the purposes of paragraph 34(1)(*f*);

c) the applicant was a member of the BNP (although the applicant took issue with the timing, level of involvement and cessation of his membership).

[11] The IAD adopted the following definition of terrorism from the Supreme Court of Canada's decision in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3, at paragraph 98:

> [terrorism] 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".

[12] Neither party disputed the IAD's use of this (non-exhaustive) definition of terrorism.

[13] There are two major political parties in Bangladesh. BNP is one and the Awami League is the other. The two parties have effectively alternated being in government and opposition. There are periodic national elections, one of which occurred in 2014.

[14] The IAD provided a history of political opposition and violence in Bangladesh from the time it became an independent nation in 1971. The IAD also described the use of blockades and *hartals* in Bangladesh politics, including during the period leading up to an election.

[15] *Hartals* are a form of opposition protest. *Hartals* have been used by both major parties in Bangladesh, while in opposition, as a way to attempt to effect change by the other party in government. Unfortunately, *hartals* in Bangladesh have commonly led to violence, including death and serious injury to individuals. Government security forces and others involved in the *hartals* have perpetrated the violence.

[16] The IAD's decision in this case found that *hartal* violence routinely occurs and causes death and serious injury to those involved. The IAD found that some forms of violence are built

into the planning and preparation for a *hartal*. Overall, the IAD concluded that *hartals* in Bangladesh had become synonymous with a call to violence and that this violence was intended to intimidate the public into respecting the *hartals* and blockades and to obtain the political goals of the BNP. The IAD found that there were reasonable grounds to believe that the BNP intended to cause death or serious injury to civilians when calling for *hartals* in the context of the political situation in Bangladesh.

[17] The IAD concluded on the evidence that there were reasonable grounds to believe that actions of the BNP in calling for *hartals* amounted to acts of terrorism or subversion by force, including in the period from 2013 to 2015 that is important for this case.

[18] The IAD relied on a 2014 report by Human Rights Watch entitled *Democracy in the Crossfire: Opposition Violence and Government Abuses in the 2014 Pre- and Post-Election Period in Bangladesh* and a 2005 report of the United Nations Development Program ("UNDP") entitled *Beyond Hartals: Towards Democratic Dialogue in Bangladesh*.

B. ***The IAD's Reasoning***

[19] The IAD recognized that to be terrorism, an act must have intended to cause death or serious bodily injury to a civilian 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 abstain from doing from any act.

[20] The IAD stated that the existence of general political violence did not preclude a determination that an organization engages in terrorism, nor did it lead to such a finding. The

context was relevant to the analysis. The question to be answered was whether there were reasonable grounds to believe that the specific actions of the BNP amounted to acts of terrorism or subversion by force. The IAD agreed with the applicant that blanket allegations without specifying the acts, or showing the general existence of violence without showing a clear link between the BNP and the violence, would not be sufficient for the Minister to discharge his burden.

[21] After referring to prior decisions of this Court, the IAD found that specific intent can be found where "a consequence is certain or substantially certain to result from an act or omission" (citing *Saleheen v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 145, [2019] 3 FCR 43, at para 42). The IAD found, for the "reasons set out below", that there were reasonable grounds to believe that the BNP intended to cause death or serious injury to civilians when calling for *hartals* in the context of the political situation in Bangladesh.

[22] The IAD concluded that the call for *hartal* in contemporary Bangladeshi politics had become synonymous with a call to violence. Such violence was intended to intimidate the public into respecting the *hartals* and to obtain the political goals of the BNP. In 2013 – 2014, the goal was to have a caretaker government installed for the upcoming elections. In 2015, it was to have fresh elections called. This was also the approach taken by the Awami League in opposition prior to the scheduled 2007 elections, which were held in late 2008.

[23] The IAD made a number of other statements and findings related to the BNP's acts, its responsibility for them and its intent, as follows:

- While some violence such as clashes between protesters and security forces routinely occur and may be seen as a by-product of a *hartal*, other forms of *hartal* violence are built into the planning and preparation for carrying out the *hartal*;
- the UNDP report found that violent enforcement acts are part of the preparation and implementation of calls for *hartal*, and that the government, through its party supporters and use of security forces, aggressively reacts to such action;
- while political violence was quite common in Bangladesh, the period between 2013 to 2015 (covering the lead up to the 2014 election, the 2014 election itself and the period following the election) saw "violence on an unprecedented scale". This included violent clashes involving the BNP and other opposition protesters against pro-government supporters and security forces, as well as violence committed against the general public while enforcing the *hartal* and blockade actions called by the BNP;
- the enforcement action was part of the planning and implementation of the *hartal* and involved procuring the tools of *hartal*, including various types of explosives (bombs and grenades);
- many Bangladeshis lost their lives or suffered horrific burns. The IAD noted the number of people dead and injured in late 2013 to early 2014;
- although many opposition parties played an active role in the protests and violence, the BNP called for the *hartal* action through the party's Steering Committee. In continuing calls for *hartals* and blockades when the resulting deaths and serious injuries to civilians were clear to see, there were reasonable

grounds to believe that the continuation of the violence likely was intended by the BNP leadership;

- the IAD disagreed with the applicant's submission that the BNP was not in a position to lead protests, control its crowd or give directions and instructions. While some BNP leaders were arrested during the *hartal* action, its leader and other party officials continued calling for the *hartal* action;
- while some reports referred to the BNP acting with another party, or described those responsible for the attacks against civilians as the "BNP-led opposition" or "the opposition", the BNP remained responsible for the acts. The BNP was the leading opposition party, called for the *hartals* and blockades and continued to call for these actions when they resulted in violence causing death and serious bodily injury to members of the general public. "That hartals and blockades were again called by the BNP in January 2015 with the same violence resulting in death and serious injury to civilians further supports there being reasonable grounds to believe that such deaths and serious injury were intended in the calls for blockade and hartal action";
- there was little evidence that the BNP condemned or disavowed violence, outside of casting blame on the government and condemning its acts. "Undermining these statements against violence, the BNP continued calls for hartals and blockades, even as violence intensified and called again for such action in 2015";
- as seen in the evidence around the organization and implementation of *hartals* and their use in Bangladeshi politics, built into the call for *hartal* was their enforcement and their intention to do so through violence. This intention could be

seen in the BNP's continuing call for *hartals* as the violent enforcement action was leading to deaths and serious bodily injury to civilians;

- while other parties may have been involved in the violence and while each individual violent incident may not have been directly ordered by the BNP, this did not change the fact that in calling for *hartals* there was an intention that the violent enforcement of the *hartal* would occur for the political party's gain; and
- the BNP again made calls for *hartal* in 2015, as the anniversary of the 2014 elections approached, which continued for weeks.

[24] The IAD's reasons included several paragraphs containing specific incidents targeting civilians in late 2013 and early 2014, in which individuals were seriously injured or killed.

[25] The IAD was also conscious that some political activities akin to a *hartal* such as a general strike could, if carried out in Canada, be protected under the *Canadian Charter of Rights and Freedoms*, "absent an intention to use violence to achieve the political ends" (citing *AK v Canada (Citizenship and Immigration)*, 2018 FC 236, at para 41). However, the IAD found that the evidence was sufficient to establish on reasonable grounds to believe that in calling for the *hartals* and blockades there was such an intention on the part of the BNP to use violence to achieve their political ends.

[26] The IAD held that knowing what the call to *hartal* and blockade meant to followers and the likely outcome of the enforcement measures, given the development of *hartals* in the current political context in Bangladesh and what is involved in the planning and implementation of

hartals, such a call was synonymous with the likely death or serious injury of civilians. This was "part of the chaos the BNP was trying to create in Bangladesh" to have the government either concede to demands for the installment of a caretaker government for the elections or to have military intervene and install one as was done when the Awami League previously protested elections under the BNP in 2006.

[27] The IAD concluded that the evidence was sufficient to establish reasonable grounds to believe that the BNP engaged in acts of terrorism with the calls for *hartals* and blockades in the lead up to and aftermath of the 2014 election and around the 2015 anniversary of election, knowing the violent enforcement of these acts by its supporters would likely lead to serious bodily injury or death to members of the general public (civilians). The violent enforcement was an intended part of the planning and carrying out of the *hartal* and blockade action, meant to intimidate the population into complying with the cartel and blockade action and to compel the government to act according to the opposition demands, initially seeking the instalment of a neutral caretaker government for the elections and later seeking fresh elections (after boycotting the initial elections).

III. Was the IAD's Decision Reasonable?

A. *Standard of Review*

[28] Both parties submitted that the standard of review is reasonableness, as described in *Vavilov*. I agree: *Al Ayoubi v Canada (Citizenship and Immigration)*, 2022 FC 385, at para 15; *Chowdhury v Canada (Citizenship and Immigration)*, 2022 FC 311, at para 7 (*"Chowdhury 2022"*); *Islam v Canada (Citizenship and Immigration)*, 2022 FC 261, at paras 14-17; *Islam v*

Canada (Public Safety and Emergency Preparedness), 2021 FC 108 (*"Islam 2021"*), at paras 11-12.

[29] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15.

[30] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86.

[31] A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, at paras 24-35.

[32] The Supreme Court has identified two types of fundamental flaws in administrative decisions: a failure of rationality internal to the reasoning process; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it: *Vavilov*, at para 101; *Canada Post*, at paras 32, 35 and 39.

[33] A minor misstep or peripheral error will not justify setting aside a decision. In order to intervene, the court must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

[34] On a judicial review application, this Court's role is not to agree or disagree with the decision under review, to reassess the merits or to reweigh the evidence: *Vavilov*, at para 126; *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50, at paras 53-54; *Mason*, at para 12. The Court's task is to determine whether the decision maker made one or more of the kinds of errors described in the appellate cases above and if so, whether the decision should be set aside as unreasonable.

B. ***The Applicant's Position***

[35] The applicant took the position that the IAD's decision was unreasonable to conclude that the BNP was an organization that engages, has engaged or will engage in terrorism under paragraph 34(1)(*c*). The applicant submitted that the IAD:

- made errors of law with respect to specific intent and failed to support its findings on that issue; and
- made errors in its assessment of the evidence that led to its conclusions under paragraph 34(1)(*c*), including by failing to show a clear link between actions of the BNP and the violence surrounding the 2014 election.

[36] Second, the applicant also argued that the IAD erred in its analysis of the temporal connection between the applicant's membership in the BNP and the BNP's alleged acts of terrorism.

[37] Third, the applicant argued that he was denied procedural fairness because the IAD did not address one of his alternative submissions.

[38] I will address these issues in turn.

C. *Was the IAD's conclusion reasonable that the BNP engaged in terrorism under IRPA paragraph 34(1)(c)?*

(1) Specific Intent

[39] This Court has held that the requirement in the description of terrorism in *Suresh* for an "act intended to cause death or serious bodily injury" is a requirement that there be a specific intention to cause such an outcome: see e.g., *Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080, at para 66; *Saleheen*, at paras 41–43; *Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404, at paras 14–16. Neither party disputed this requirement as a matter of law.

[40] The applicant made a number of arguments to challenge the IAD's conclusions about specific intent. The applicant disputed the evidence the IAD used to infer that the BNP had the specific intent to cause death or serious injury. According to the applicant, the IAD erroneously used evidence about the Awami League's activities, when it was in opposition prior to 2005, as a basis to make conclusions about what the BNP did to plan, implement and enforce *hartals* for the

period around the 2014 election. In particular, it allegedly imputed conduct required to show specific intent from one opposite party onto another party's actions much later in time.

[41] The applicant also submitted that the IAD erred in law by equating knowledge that an act may cause violence, with the more onerous requirement to show specific intent to cause death or serious injury in the definition of terrorism in *Suresh*, contrary to decisions of this Court in *Islam v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 912 at paras 23-25 (*"Islam 2019"*), *Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404 at para 15 and *MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796, at para 11. The applicant maintained that the IAD could not find that a general call for *hartal* substituted for the intention to cause death or serious injury even if violence, or death and serious injury, had occurred during *hartals* before the 2014 election period. On this view, knowledge that such consequences might occur after a call for *hartal*, or that they were foreseeable, was not enough to show specific intent.

[42] In criminal proceedings in Canada, criminal offences require proof of a mental element. The Supreme Court in *Tatton* confirmed that most are general intent offences: they require the proof of a mental element that is "straightforward" and involves "little mental acuity". Some other offences require proof of a heightened mental element that involves more complex thought and reasoning processes – acting with an ulterior purpose in mind or with an intention to being about certain consequences, or with actual knowledge of certain circumstances or consequences: *R v Tatton*, 2015 SCC 33, [2015] 2 SCR 574, at paras 35-38, 41 and 48. In *Tatton*, the Supreme Court stated:

> [39] To summarize, specific intent offences contain a heightened mental element. That element may take the form of an ulterior purpose or it may entail actual knowledge of certain circumstances or consequences, where the knowledge is the product of more complex thought and reasoning processes. Alternatively, it may involve intent to bring about certain consequences, if the formation of that intent involves more complex thought and reasoning processes. General intent offences, on the other hand, require very little mental acuity.

[43] How has the legal standard for specific intent been considered by this Court with respect to an organization's acts of terrorism under *IRPA* subsection 34(1), when reviewing decisions for reasonableness? A number of recent cases have specifically considered these issues in the context of the BNP.

[44] In *SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494, the Court did not set aside the ID's decision. The Court stated summarily that given the broad definition of terrorism in Canadian law, the purpose and intent of the BNP's calls for *hartals*, the violence and disruption that ensued, and the BNP's awareness of the consequences of its calls to action, the ID reasonably concluded that the BNP is an organization that engages, has engaged, or will engage in terrorism: *SA*, at para 20.

[45] In *Saleheen*, the Court recognized the requirement for proof of specific intent, noting that in criminal law, a specific intention requires actual intent or purpose to achieve a consequence. "Specific intent can also be found where a consequence is certain or substantially certain to result from an act or omission": at para 42. The Court in *Saleheen* upheld the ID's decision because, despite apparent confusion about the degree of mental element to show terrorism, the ID had made the requisite finding of specific intent to cause violence: *Saleheen*, at paras 46-49.

The Court found that the ID's findings of fact showed that while recklessness or wilful blindness could be said to characterize the first calls for *hartals*, the continued calls for hartals after that time showed that the BNP intended the violence to happen: *Saleheen*, at para 50.

[46] In *Khan v Canada (Citizenship and Immigration)*, 2019 FC 899, the Court declined to set aside an ID decision. The ID found that violence taking place prior to and during *hartals* was predictable enough such that leaders knew that it would lead to death or serious injury, and consequently that the BNP was a terrorist organization: *Khan*, at paras 30, 34-35. The Court noted that the ID also found that the leader of the BNP did not intervene, or at least not enough, to ensure that *hartals* would no longer be synonymous with violence: at para 35.

[47] In *Islam 2019*, the Court set aside a decision of the ID, owing to an error on the mental element required. The Court concluded that the ID ignored the requirement to show an intention to cause death and serious bodily harm and substituted a requirement that there was knowledge, or even wilful blindness, that the calling for *hartals* would result in deaths and injuries: *Islam 2019*, at paras 21-31.

[48] In *Miah v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 38, the ID's conclusions imported concepts of knowledge and wilful blindness into its reasoning, stating for example that given the "predictable consequences of calling a hartal, it is difficult to find that political leaders did not know that deaths amongst the civilian population or serious bodily harm would result". The Court did not set aside the decision, concluding at paragraph 43:

> the ID also found that it was not plausible that the BNP did not intend to further its political goals through the use of violence that

> would cause civilian deaths and serious injury. The panel traced the history and inevitability of *hartal* violence; the BNP's repeated calls for *hartals*; the role of its leadership, student wings, armed cadre and supporters; the mechanics and perpetrators of the violence; and the resulting deaths and injuries. Although expressed in the negative, the ID imputed to the BNP and its political leaders the requisite specific intention to cause death and bodily harm. In so doing, the panel properly applied the *Suresh* test. The ID's finding is internally coherent and justified on the record.
>
> [Emphasis added.]

[49] In some recent cases, the Court has set aside decisions under subsection 34(1) on the grounds that the decision maker erred in law by finding specific intent using a lower level of intent or culpability than required to show specific intent.

[50] In *Islam 2021*, the Court set aside an ID decision. The ID had found it "implausible that the BNP did not intend to cause death or serious bodily harm because it should have known that the hartals would result in violence": at para 21. The Court held that the ID made the same error as it did in *Islam 2019* by conflating intent with wilful blindness and knowledge and by substituting a lower mental element for the required intention to cause death or serious bodily harm: *Islam 2021*, at paras 21-22.

[51] In *MN*, the Court also set aside an ID decision. The only issue was whether the BNP was an organization that had engaged in terrorism. The Court held that the ID never clearly made a finding that the BNP, as an organization, had an intention to cause death or serious bodily harm. Instead of focusing on the intention to cause death or bodily harm, the ID's findings conflated violence in general with death or serious injury: *MN*, at paras 10-11. The Court stated at paragraph 12:

> ... the fact that lethal violence takes place during protests called by a political party may or may not lead to a finding that the political party has engaged in terrorism. Such a finding would need to be based on an analysis of a number of factors, including the circumstances in which violent acts resulting in death or serious bodily harm were committed, the internal structure of the organization, the degree of control exercised by the organization's leadership over its members, and the organization's leadership's knowledge of the violent acts and public denunciation or approval of those acts. In this case, it appears that the ID focused exclusively on the last factor.
>
> [Emphasis added.]

[52] In *Foisal*, the Court concluded that the decision was unreasonable because it equated the required specific intent with "knowledge of probable consequences" of the use of *hartals* or with a form of recklessness regarding the effects of *hartals* on the general population. In so doing, it effectively substituted a lower degree of fault for the specific intent requirement that characterized the concept of terrorism: at para 15. The decision maker had not mentioned a requirement to show specific intent anywhere in the decision and relied on the climate of violence during the 2014 election period and the impact of *hartals* on Bangladeshi society to conclude that only an intent to cause death or serious injury could have motivated the BNP when it decided to use the *hartals: Foisal,* at paras 16-17. The Court stated at para 17:

> To the extent that the ID based its reasoning on the presumption that there is an equivalence between the use of violence and the intent to cause death or serious injury, I am of the view that its analysis is unreasonable. Violence cannot be indiscriminately confused with causing death or serious injury: *M.N.* at paragraph 11; *Islam 2019* at paragraph 23; *Islam 2021* at paragraph 20. This intellectual shortcut amounts, in effect, to a lowering of the fault requirement.

[53] In *Chowdhury 2022*, the Court found a reviewable error because the officer's primary conclusion was that the BNP engaged in tactics for which injuries and deaths were "entirely foreseeable": *Chowdhury 2022*, at para 30.

[54] In the present case, I find no reviewable error in the IAD's description or application of the legal standard in *Mugesera* for finding that there were reasonable grounds to believe the BNP engaged in terrorism as described in *Suresh*, including on specific intent.

[55] First, the IAD recognized that the legal requirement was to show specific intent and expressly concluded that there were reasonable grounds to believe that the BNP intended to cause death or serious injury to civilians when calling for *hartals* in the context of the political situation in Bangladesh.

[56] Second, the IAD's findings were consistent with the substantive requirements in *Tatton*. The IAD found that violence by BNP supporters was an intended part of the planning, execution and enforcement of the *hartal* and blockade action, including with bombs and grenades, which led to serious bodily injury or death to members of the general public. Its factual findings, in particular concerning *hartal* planning, implementation and enforcement, and the continued calls for *hartal* after deaths and serious injuries had already occurred, demonstrate that the IAD turned its mind to and concluded that the BNP intentionally engaged in acts involving a heightened mental element: as *Tatton* described, intent or knowledge based on a more complex thought and reasoning processes.

[57] Third, the IAD expressly made important findings related to calls for *hartals* and blockages that this Court has concluded were reasonable to support specific intent in prior cases. The IAD held, as of the lead-up to the 2014 elections:

a) the call for *hartal* in contemporary Bangladeshi politics had become synonymous with a call to violence, where violence was intended to intimidate the public into respecting the *hartals* and to obtain the political goals of the BNP;

b) *hartal* violence routinely occurred and caused death and serious injury to those involved; and

c) the call for *hartal* was also synonymous with the likely death or serious injury of civilians and was part of the chaos the BNP was trying to create.

[58] The IAD also found "violence on an unprecedented scale" in the lead up to the 2014 election, the 2014 election itself and the period following the election.

[59] The IAD further expressly found that the BNP leader and party officials continued to call for *hartals* after violence had occurred and had intensified and after the resulting deaths and serious injuries to civilians were clear to see: see *Saleheen*, at para 50. In January 2015, the BNP continued to call for *hartals* and blockades, with the same violence resulting in death and serious injury to civilians. To the IAD, this further supported the existence of reasonable grounds to believe that such deaths and serious injury were intended in the calls for blockade and *hartal* action. Further, there was little evidence that the BNP condemned or disavowed violence: see *Khan*, at para 35.

[60] The IAD reached its conclusions after considering the UNDP and Human Rights Watch reports and other materials filed by both parties. Its conclusion that calls for *hartals* were synonymous with violence that resulted in death or serious injuries to civilians was based on numerous factors: a review of historical *hartals* prior to elections; the BNP's ongoing calls for *hartals* in the period leading up to and after the 2014 elections; the finding that the planning and enforcement of *hartals* included tools such as bombs, petrol bombs and grenades; the conclusion that deadly violence is inherent in the call for *hartal*; and the BNP leadership's knowledge, continuing calls for *hartals* even after death and serious injuries had occurred; and failure to condemn such violence. The IAD's overall approach was similar to the ID that was upheld in *Miah*, in which the ID "traced the history and inevitability of *hartal* violence; the BNP's repeated calls for *hartals*; the role of its leadership, student wings, armed cadre and supporters; the mechanics and perpetrators of the violence; and the resulting deaths and injuries": *Miah*, at para 43.

[61] In this Court's decisions, a finding of equivalence between calls for *hartals* and violence, or *hartals* and violence that resulted in death or serious injuries to civilians, has been important in upholding prior ID and IAD decisions as reasonable. The ID made a similar finding that *hartals* had become synonymous with violence in *Miah*, at para 13; *Kamal v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480, at paras 58 and 64; and *SA*, at para 18.

[62] Conversely, as the Court recognized in *Saleheen*, *Rahman* and *Alam*, the absence of a finding that the BNP's calls for *hartals* were synonymous with calls to commit terrorist acts was central to Justice Mosley's decision to set aside the ID's decision in *AK v Canada (Citizenship*

and Immigration), 2018 FC 236: *Saleheen*, at para 30; *Rahman v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 807, at para 29; and *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922, at para 20. Justice Mosley distinguished the decision in *SA* on that basis: *AK*, at para 42. It is true that the Court set aside an ID decision in *Islam 2019* despite a finding that *hartals* were synonymous with violence where deaths and serious violence ensued: *Islam 2019*, at para 18. However, the IAD in this case expressly did what the Court required in *Islam 2019*, at para 26. It found that the BNP intentionally caused the requisite harm.

[63] Fourth, reading the IAD's reasoning on this issue as a whole, the IAD did not apply an incorrect legal standard for specific intent by lowering the mental element or substituting recklessness or wilful blindness for the required intention, as occurred in in *Islam 2019*, at paras 21-31; in *Islam 2021*, at paras 21-22; in *MN*, at paras 10-11; and in *Foisal*, at paras 15-18. It understood the requirements for the degree of fault required and expressed conclusions about a specific intention to cause death or serious injury, finding reasonable grounds to believe that the BNP intended to cause death or serious injury to civilians when calling for *hartals* in the context of the political situation in Bangladesh.

[64] It is true that the IAD's reasoning was not entirely uniform, in that it also used some language of knowledge (which the applicant challenged) and likelihood (which I raised in a question at the hearing). For example, it stated that BNP engaged in acts of terrorism with the calls for *hartals* and blockades in the lead up to and aftermath of the 2014 election and around the 2015 anniversary of election, "knowing the violent enforcement of these acts by its supporters would likely lead to serious bodily injury or death to members of the general public".

Recognizing the Court's recent cases on the mental element under paragraph 34(1)(*c*), the IAD's language on likelihood appears to be consistent with recklessness rather than knowledge or appreciation of consequences that are certain or substantially certain: see *Saleheen*, at paras 42 and 46-50 (which was expressly relied upon by the IAD) and the discussions in *R v Boone*, 2019 ONCA 652, at paras 51-63; *R v Chartrand*, [1994] 2 SCR 864, at pp. 889-890; and *R v Buzzanga and Durocher* (1979), 49 CCC (2d) 369, at pp. 384-385. However, read in the context of its other findings about the BNP's purposes and intentions and the Supreme Court's guidance in *Tatton*, I am not persuaded that the IAD's use of this language in this case leads to the conclusion that the IAD made a reviewable error of law, or that the IAD ignored a legal constraint in a manner that was fatal to the reasonableness of its conclusions on engaging in terrorism. As already noted, the IAD made express findings about specific intent that complied with the standard in *Tatton*, and extensive factual findings to support them. Those findings included the planning and implementation of violent *hartals*, that calls for *hartals* were synonymous with violence and death or serious injury to civilians, that the time period in question saw violence on an "unprecedented scale" and that the BNP continued to call for *hartals* even after civilians had been killed or seriously injured, all to attain its desired outcomes. As already noted, the requirement for the required heightened mental element, as a matter of law, may take the form of an ulterior purpose or it may entail actual knowledge of certain circumstances or consequences, where the knowledge is the product of more complex thought and reasoning processes; or alternatively, it may involve intent to bring about certain consequences, if the formation of that intent involves more complex thought and reasoning processes: *Tatton*, at paras 38-39. In the end, the root issue, as required in *Suresh*, was the BNP's intention to cause death or serious

injury to civilians, proven on a standard of "reasonable grounds to believe". The IAD reached that conclusion in this case.

[65] The IAD was aware of the status of the BNP as a legitimate political party and the need to ensure that legitimate political activities such as protests, without violence, are not considered acts of terrorism: see *AK*, at para 41 (cited by the IAD); *Rana*, at para 65; *Kamal*, at para 55. The IAD's factual findings with respect to intended violence were sufficient to distinguish legitimate political activities from activities that amounted to terrorism under paragraph 34(1)(*f*).

[66] The applicant argued that the IAD failed to consider the factors set out in *MN* that may lead to the conclusion that a political party engaged in acts of terrorism: *MN*, at para 12 (quoted at paragraph 51 above). I do not agree. The IAD considered the circumstances in which the violent acts were committed; the internal structure of the BNP – specifically its leadership personnel, its Steering Committee, and its student wings used to execute *hartals*; and the knowledge of the BNP leadership and its failure to publicly denounce the violence. As such, the present case is different from the decision under review in *MN*, which had focused exclusively on one of the various factors identified by the Court: *MN*, at para 12.

[67] The applicant contended that that the IAD failed to account for his written submission on the absence of control by the IAD leadership over its members. However, the IAD recognized and addressed his submission that the BNP was not in a position to lead protests, control its crowd or give directions and instructions, and concluded it was not borne out by the evidence. The IAD also considered the argument that the leadership was in detention, but concluded that its

leader and other party officials continued calling for the *hartal* and blockade. The rest of the evidence on this issue, as mentioned by the applicant, appears to be merely consistent with the applicant's position, rather than supporting it. Accordingly, it did not operate as a constraint on the IAD's decision and cannot ground a reviewable error.

[68] I conclude that the applicant has not demonstrated that the IAD made a reviewable error with respect to its consideration of the BNP's intent to cause death or serious injury.

(2) The IAD's Assessment of the Evidence

[69] At the hearing of this application, the applicant focused considerable time on arguments about how the IAD addressed the evidence. The applicant submitted that the IAD was required to rely upon clear and cogent evidence to show that the BNP engaged in terrorism under subsection 34(1), specifically by proving that the BNP carried out a specific violent act on a stated date with specific terroristic intent (to cause death or serious injury to civilians), as well as which BNP members carried it out. The applicant argued that there was "hardly any evidence" of BNP involvement in acts that cause death or serious injury; the documentation referred to acts by the "opposition", but not by BNP in particular, yet the IAD imputed certain acts to the BNP. In addition, the applicant challenged the reliability of the information mentioned in certain reports used by the IAD, to argue that it should not have relied on that evidence.

[70] The applicant argued that the BNP's calls for *hartals* were not synonymous with or equivalent to terrorism or with a call to violence. He submitted that such equivalency has been rejected by the Supreme Courts of India and Bangladesh and by this Court in *Islam 2019* and

MN. According to the applicant, the IAD should have identified an act or acts by the BNP that were intended to cause death or serious injury – specifically, that BNP engaged in "specific violent acts with specific terroristic intent". The applicant argued that the IAD failed to demonstrate an objective basis to say that the BNP and not other organizations carried out the specific violent acts during the 2014 election period based on clear, credible and trustworthy evidence. With respect to the 2015 events, the applicant argued that the evidence only showed that the BNP called for *hartals* and blockades for the anniversary of the 2014 election and that "opposition supporters" or "opposition activists" carried out the violent activities.

[71] To support his argument, the applicant referred to *Ahmad v Canada (Public Safety and Emergency Preparedness)*, 2012 CanLII 102356 (CA IRB); *Haqi v Canada (Citizenship and Immigration)*, 2014 FC 1167; and *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262, [2015] 4 FCR 162. However, these cases do not establish the higher standard of proof advocated by the applicant. They echo the language of *Mugesera*, which requires "reasonable grounds to believe". The applicant's position assumed a legal standard that did not reflect the case law and therefore did not constrain the IAD.

[72] The IAD was responsible for assessing and evaluating the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reasonableness of the IAD's decision may be jeopardized if it "fundamentally misapprehended or failed to account for the evidence before it": *Vavilov*, at para 126. This is a high threshold: *Makivik Corporation v Canada (Attorney General)*, 2021 FCA 184, at para 98. In addition, care must be taken to ensure that arguments alleging failure to account for evidence do not erode the

general prohibition against reweighing or reassessing evidence considered by the decision maker: *Gordillo v Canada (Attorney General)*, 2022 FCA 23, at para 122.

[73] In my view, the applicant has not met this high threshold in this case. Many of the submissions made by the applicant went to the merits of the IAD's decision, rather than to a fundamental concern about the reasoning process it used to reach its conclusions. The applicant's written submissions, which were supplemented during oral argument, principally concerned the facts and inferences to be drawn from the record, including concerning whether the IAD's reasons properly demonstrated an objective basis to conclude that the BNP carried out the specific violent acts in the 2014 election period based on clear, credible and trustworthy evidence.

[74] The IAD's role gave it latitude to make findings of fact and draw inferences, including about whether the call to *hartal* was synonymous with violence and with death or serious injury based on the evidence in the record (as had also been concluded by other decision makers before it), and about whether the evidence met the legal standard in *IRPA* section 33. The applicant's submissions did not persuade me that the IAD was constrained by the evidence to make the conclusions with respect to the BNP as proposed by the applicant, or that the IAD's conclusions did not meet the legal requirements for "reasonable grounds to believe" described in *Mugesera* and *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 FCR 344 ("*Mahjoub FCA"*), at paras 88-89. Accordingly, I conclude that the IAD's factual findings and inferences should not be disturbed on judicial review.

[75] Overall, I conclude that the IAD did not make a reviewable error in its conclusions related to BNP's acts and specific intention for the purposes of paragraph 34(1)(*c*).

D. *Temporal Connection between the applicant's membership and the BNP's actions under IRPA paragraph 34(1)(f)*

[76] The applicant submitted that the IAD erred its by finding that he was still a member of the BNP after he arrived in Canada in June 2013 and therefore ceased to be a member by the time of the events on which the IAD relied in making its conclusions under subsection 34(1). The applicant noted that the BNP did not have a formal membership list and provided nothing to him to show that he was a member. According to the applicant, he ceased or significantly reduced his involvement with the BNP during the year before he left owing to overseas business travel. The applicant submitted that it was unfair to hold him accountable for the actions of the BNP after he arrived in Canada because he no longer had any affiliation or contact with it.

[77] The applicant criticized the IAD's discussion of his testimony during the admissibility hearing, in which he stated that he believes he might still be a member of the BNP. The applicant submitted that the IAD misunderstood him and sought to clarify what he "meant" by his statements at the hearing.

[78] To that end, the applicant sought to introduce additional evidence on this application in the form of his affidavit dated January 19, 2021. It sought to clarify that he stopped having any involvement with the party – he had no contact with BNP members, active or inactive and had done nothing for the party, since his arrival in Canada. However, on a judicial review application, the evidentiary record before the reviewing court is restricted to the evidentiary

record that was before the administrative decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter is not admissible on an application for judicial review in this Court: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, at para 19; *Delios v Canada (Attorney General)*, 2015 FCA 117, at para 42; *Perez v Hull*, 2019 FCA 238, at para 16, citing *Sharma v Canada (Attorney General)*, 2018 FCA 48, at para 8. There are exceptions to the general rule: see *Perez*, at para 16, and in *Association of Universities*, at para 20. In my view, the applicant's new evidence on this issue is inadmissible on this application. It goes directly to the merits of his membership in the BNP, an issue raised at the very beginning in the applicant's Basis of Claim form, on which he testified at the admissibility hearing, and on which the IAD found facts and rendered a conclusion. The applicant tenders the new evidence to impugn the IAD's decision. It cannot be considered on this application.

[79] Turning to the substance of the applicant's submissions in this Court, I find no reviewable error by the IAD.

[80] The requirement under *IRPA* paragraph 34(1)(*f*) is "being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to" in four other paragraphs of subsection 34(1). Two of those other paragraphs refer to engaging in terrorism and engaging in an act of subversion against a democratic government.

[81] For present purposes there are therefore two intimately connected aspects of an analysis of the IAD's reasons under paragraph 34(1)(*f*): whether the applicant was a member of the

organization, and the existence of reasonable grounds to believe that the organization engages, has engaged or will engage in terrorism at the time of that membership. There is no debate about the first aspect in this case. The applicant's submission focused on the second.

[82] In *Gebreab v Canada (Public Safety and Emergency Preparedness)*, the Federal Court of Appeal held that it was not a requirement for inadmissibility under paragraph 34(1)(*f*) that the dates of an individual's membership in an organization correspond with the dates on which that organization committed acts of terrorism or subversion by force: 2010 FCA 274, at para 3 (aff'ing 2009 FC 1213).

[83] Citing its decision in *Gebreab,* the Federal Court of Appeal stated in *Harkat* that paragraph 34(1)(*f*) "does not require a temporal nexus between membership in the organization and the period during which the organization engaged in terrorist activity": *Harkat v Canada (Citizenship and Immigration)*, 2012 FCA 122, at para 35.

[84] This Court subsequently rendered a number of decisions on the temporal relationship between an applicant's membership in an organization and the dates on which that organization engages in terrorism: *El Werfalli v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 612, [2014] 4 FCR 673, at paras 61-78; *Mahjoub (Re)*, 2013 FC 1092, at para 49; *Chowdhury v Canada (Citizenship and Immigration)*, 2017 FC 189, at paras 13–20 (*"Chowdhury 2017"*); *Abdullah v Canada (Citizenship and Immigration)*, 2021 FC 949, at para 29; and *Chowdhury 2022*, at paras 14-21.

[85] In the present case, it was undisputed that the applicant was a member of the BNP and its student wing, beginning as early as 1999. The IAD noted that the applicant declared in his 2014 refugee claim that he was a “senior official” of the BNP and did not state at that time that he had left the BNP earlier. The IAD noted that after admissibility proceedings began against the applicant due to his BNP membership, he “walked back [his] level of involvement”: he played down his involvement, despite the roles he played and sought to push his membership back to 2012. The IAD recognized that the applicant advised that he was out of the country for much of 2012, less active in the party starting in 2012, and had no contact with the party since coming to Canada in June 2013. The IAD found that it was reasonable to expect consistency in the applicant’s testimony and that his “shifting description and timeline” had not been reasonably explained. The IAD preferred his initial statements given in his refugee claim, provided closer in time to his involvement with the BNP.

[86] On this application, the applicant essentially sought to reargue the correctness of these conclusions. However, he did not establish that the IAD ignored or failed to properly account for any material evidence. Although the applicant attempted to impugn the IAD’s analysis about his testimony that he may still be a member of the BNP, the IAD’s conclusions were within its purview as fact finder and decision maker.

[87] Later in its reasons, the IAD carried out a detailed analysis of the temporal connection between the applicant’s membership in the BNP and the dates on which the BNP committed acts of terrorism or subversion by force. The IAD referred to decisions of this Court and the Federal

Court of Appeal. It made a series of conclusions, with one main conclusion and several others in the alternative.

[88] The IAD principally concluded that, having found the applicant to be a member of the BNP and having found the BNP to be an organization that has engaged in acts of terrorism, there was no further need to connect the two, citing *Gebreab*.

[89] In the alternative, if that was in error, the IAD found that there was a temporal connection or nexus between the applicant's membership and the acts of terrorism found on reasonable grounds to believe to have been engaged in by the BNP. The IAD recognized the applicant's evidence but noted that he had not declared quitting the BNP or terminating his membership and simply listed it as ended in his refugee claim because he was travelling out of the country and not so active with the party. However, the IAD noted that he testified that he believed he was still a member seven years after he was in Canada which would also provide a link between the acts of 2013 through 2015 and his membership. The IAD found there was little to suggest that the applicant ceased being a member of the BNP when he left for Canada in 2013. It was not until almost a year later when he filed his refugee claim that he first stated that his membership ended.

[90] The IAD referred to the applicant's testimony in 2018 that he was likely still a member and that at the time of the violent incidents in the fall of 2013-early 2014, he was merely on a business trip here in Canada and so only temporarily away from Bangladesh. In that context, the IAD found that there were reasonable grounds to believe that he was a member of the BNP during the lead up to and aftermath of the January 2014 elections.

[91] In the further alternative, the IAD found that even if the applicant's membership did end in 2013 when he travelled to Canada, there were acts engaged in by the BNP during his membership which were sufficient to find him a member under paragraph 34(1)(*f*). The IAD referred to an article from April 2013 reporting a BNP-led opposition alliance *hartal* with reports of crude bombs and picketers attacking vehicles. This evidence was consistent with another article from December 2012 reporting that the BNP and its allies were already demanding a caretaker government to oversee the next election, with *hartals* involving buses set alight or damaged and crude bombs set off (albeit without injuries). The IAD concluded that the violent enforcement of BNP *hartals* and blockades during the applicant's time of membership involved acts intended to cause death or serious bodily injury to civilians with the purpose of intimidating the population and compelling the government to act, thereby creating the necessary link between the acts and the time of his membership. The IAD further referred to the pattern of violent action in the lead up and aftermath of parliamentary elections in Bangladesh since the 1990s.

[92] The IAD further held that if there was a requirement for a temporal connection between the reasonable grounds to believe the BNP will engage in terrorism in the future, and the applicant's membership, there were reasonable grounds to believe that such acts occurred during his declared membership and there were reasonable grounds to believe that the BNP will engage in acts that would intentionally cause serious bodily injury or death to civilians given the pattern of violence at election time with harshly enforced *hartals* and blockades in the context of the upcoming elections.

[93] With respect to the IAD's latter analysis, the applicant submitted that while there were "passing references" to documentary evidence of violence coinciding with his membership period, the evidence was not subjected to any "meaningful analysis" and did not appear to form the basis of the BNP's inadmissibility finding. He also submitted that the analysis of these incidents was not sufficient to show specific intent and that the IAD was required to support its analysis more robustly and did not refer to any specific incidents tying the BNP to the acts of violence. The applicant argued that at the time his membership ceased in 2012 or 2013, there were no reasonable grounds to believe that the BNP had engaged in terrorism, was engaging in it or would engage in it (citing *El Werfalli* and *Chowdhury 2017*).

[94] The respondent's submissions took a very broad view of the scope of paragraph 34(1)(*f*), arguing that there was no temporal component to the analysis at all and that the Court's decisions in *El Werfalli* and *Chowdhury 2017* had not clarified or distinguished the Federal Court of Appeal's decision in *Gebreab* on the issue of a temporal nexus. With respect to the IAD's reasons, the respondent submitted that the IAD made two conclusive findings against the applicant: (i) there were reasonable grounds to believe that the applicant was a member of the BNP during the lead up to and aftermath of the January 2014 elections in Bangladesh; and (ii) there were acts engaged in by the BNP during his declared period of membership which would be sufficient to find him inadmissible under paragraph 34(1)(*f*). Whatever end date one could choose, there was a temporal connection between the applicant's membership and terrorism committed by the BNP.

[95] In my view, on the basis of the IAD's factual findings and layers of conclusions on temporal connection and the Federal Court of Appeal's decisions in *Gebreab* and *Harkat*, the IAD made no reviewable error. It concluded (citing *Gebreab*) that having found the applicant to be a member of the BNP and having found the BNP to be an organization that has engaged in acts of terrorism, there was no further need to connect the two. Important to my conclusion is that, as already noted, the IAD concluded on the evidence that the applicant's BNP membership had not ceased in 2013 as he claimed. It found he was likely still a member in 2018 and specifically that there were reasonable grounds to believe that he was a member of the BNP during the lead up to and aftermath of the January 2014 elections.

[96] While this conclusion is sufficient to conclude the analysis of this issue, I will address the applicant's additional arguments.

[97] Relying on *El Werfalli* and *Chowdhury 2017*, the applicant submitted that an individual is not captured by paragraph 34(1)(f) if that individual was a member, but had ceased being a member, of an organization before the time when there were reasonable grounds to believe that the organization was engaging, had engaged or would in future engage in terrorism. I agree with the respondent that the IAD expressly found both a link between the applicant's membership in the BNP and its present or past acts of terrorism (i.e., that during his membership there were reasonable grounds to believe the BNP had engaged in or was engaging in terrorism) and a link between his membership and future acts of terrorism (i.e., that during his membership there were reasonable grounds to believe the BNP will engage in terrorism in the future).

[98] The applicant challenged these two conclusions. He argued that there were insufficient facts and evidence to support a conclusion that the BNP engaged in acts of terrorism prior to his arrival in Canada in June 2013. He further argued that when he was in Bangladesh, he was a relatively low-level member of the BNP as a vice president of a rural village unit of the BNP and had no knowledge of what was going on or decisions being made by the leadership of the BNP. As such, there was no nexus between his membership and acts of terrorism because it was not reasonable for him to foresee that the organization would engage in terrorism in the years after his membership ended (i.e., in 2014).

[99] On the first point, the IAD made specific findings related to acts of violence which it attributed to the BNP. As already mentioned, the IAD expressly found reasonable grounds to believe that the applicant was a member of the BNP during the lead up to and aftermath of the January 2014 elections. On that basis and given the rest of its analysis, I cannot conclude that it was unreasonable to find a link between the applicant's membership in the BNP and its present or past acts of terrorism on the required standard of "reasonable grounds to believe". It is therefore not material whether the acts identified by the IAD before mid-2013 were as strong or as persuasive to demonstrate that the BNP engaged in terrorism, compared with the acts that occurred a few months later in the period immediately before the scheduled 2014 elections.

[100] The applicant's second argument also missed the mark. There is no requirement for active or participatory membership in an organization for the purposes of paragraph 34(1)(*f*), or that the individual actively participate in the wrongful acts of the organization under that provision: *Mahjoub FCA*, at paras 91-97; *Kanagendren v Canada (Citizenship and Immigration),*

2015 FCA 86, [2016] 1 FCR 428, at paras 22-27; *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, at paras 26-32; *Al Ayoubi*, at paras 21-22; *Foisal*, at para 11. The relevant concern is the applicant's membership. In addition, the question is not whether the applicant personally could have reasonably foreseen in 2012 or early 2013 that the BNP would engage in terrorism. In my view, the question under paragraph 34(1)(*f*) is whether there were reasonable grounds to believe that the organization will engage in terrorism at the time his membership allegedly ceased. The IAD concluded that there was, and that was a conclusion open to it.

[101] Overall, I conclude that the applicant has not demonstrated that the IAD erred in its analysis of the temporal connection between the applicant's membership in the BNP, and the BNP's acts of terrorism.

IV. Procedural Unfairness Claims

[102] The applicant submitted that the IAD did not provide him with procedural fairness because it failed to address his alternative argument that there was a fundamental change in the nature and activities of the BNP as of 2018. He submitted that the BNP's engagement in the alleged acts of terrorism in 2014 were short-term, uncoordinated and incidental to its legitimate political activities. As the organization has fundamentally changed in or around 2018, it was excluded from paragraph 34(1)(*f*). He referred to *Vavilov*, at paras 127-128 and to factors that, in his submission, enhanced the procedural fairness requirements in relation to the IAD's decision such as the importance of the decision for the rest of his life, the impact of a possible return to Bangladesh, and IAD's obligation to provide written reasons (citing *IRPA*, section 169).

[103] The respondent's position was that there was no onus on the IAD to address each and every argument advanced by the applicant. The respondent submitted that the IAD provided a fair and just process and rendered comprehensive reasons totaling 138 paragraphs and 128 footnotes which were responsive to the submissions made by the applicant. In addition, the specific issue of the recent change in the nature of the BNP after 2018 was explicitly considered by the IAD in its decision, as were the applicant's submissions on this point.

[104] The respondent also maintained that in substance, the applicant's argument was a disagreement with the IAD's observation that by shifting to a new peaceful approach to opposition politics, the BNP was also implicitly acknowledging that its previous calls for *hartals* and blockades were in fact calls for violence. As such, the applicant's issue was not a procedural fairness issue.

[105] The Court's review of procedural fairness considers whether the procedure was fair having regard to all of the circumstances, focusing on the nature of the substantive rights involved and the consequences for the individual(s) affected: *Gordillo v Canada (Attorney General)*, 2022 FCA 23, at para 63; *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69, at paras 46-47; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121, esp. at paras 49 and 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

[106] In my view, the IAD did not deprive the applicant of procedural fairness. First, I agree with the respondent that the IAD did address the issue raised by the applicant, although perhaps

not as the applicant would have preferred. The IAD's reasons recognized the recent actions of the BNP suggested a shift in approach including explicit calls for non-violence, "something absent in the reporting of their earlier actions". The IAD found that the BNP's shift "almost implicitly acknowledges that calls for hartals and blockades are in and of themselves calls for violence". In the IAD's view, while the recent change to peaceful tactics appeared to be a positive move forward for the BNP and for politics in Bangladesh, it did not absolve the BNP of its previous actions.

[107] Second, I am not persuaded that the issue raised by the applicant is, strictly speaking, an issue principally of procedural fairness. His submissions relied on *Vavilov* at paragraphs 127–128, which concerned substantive review issues (albeit issues that are tied to underlying procedural fairness principles). The principles of justification and transparency require that a decision maker's reasons to be responsive, in that they meaningfully account for the central issues and concerns raised by the parties: *Vavilov*, at para 127. In my view, the IAD did so on this issue.

[108] Third, the law cited by the applicant is not on his side. The Federal Court of Appeal's decisions in *Gebreab* and *Harkat* do not support his argument: *Gebreab*, at para 3; *Harkat*, at para 35. In addition, his cited cases are distinguishable. In *El Werfalli*, the Court held that the ID failed to consider whether there was a nexus between the applicant at the time of membership and the organization's future involvement with terrorism after the applicant left – something the IAD in this case expressly did consider: see *El Werfalli*, at paras 59-62 and 105. The IAD here also determined that there were reasonable grounds to believe that at the time of the applicant's

membership in the BNP, it would engage in terrorism in the future: *El Werfalli*, at paras 74-78. The second case, *Kozonguizio v Canada (Citizenship and Immigration)*, 2010 FC 308, does not assist the applicant either. There, the applicant joined the organization very shortly after it attacked the government of Namibia and there was no evidence that it ever laid down its guns to pursue its goals non-violently: *Kozonguizio*, at para 26. The Court dismissed the application for judicial review. Finally, in *Chwah v Canada (Citizenship and Immigration)*, 2009 FC 1036, a militia organization renounced terrorism before the individual joined. The renunciation transformed the organization and, in effect, severed the connection that might have been drawn between the individual's later membership and the organization's past involvement with terrorism because the organization was not one to which paragraph 34(1)(*f*) applied. Here, the alleged change occurred after the applicant was already a member and after the BNP engaged in the activities found by the IAD to be terrorism. In addition, the BNP did not renounce its prior conduct (at best it stopped doing some things it did before) and there was no transformation of the organization akin to *Chwah*.

[109] Accordingly, I conclude that the applicant did not demonstrate a breach of procedural fairness on the ground alleged.

V. Conclusion and Proposed Certified Questions

[110] The application will therefore be dismissed.

[111] The applicant did not propose questions for certification until oral submissions in this Court, and therefore did not follow the Court's *Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings* dated November 5, 2018. As the respondent observed, the

applicant had ample opportunity to raise and make submissions on possible certifiable questions long before the hearing occurred. He filed his further memorandum in late May 2021. The initial hearing scheduled for June 2021 was postponed. The hearing was held in October 2021. The applicant raised possible questions for certification at the hearing and then revised and supplemented them (including with an additional question) by letter a few days later. All this raises concerns about non-compliance with the Practice Guidelines and fairness to the respondent. Having said that, in a matter such as this one that could have a profound impact on an individual, it is in the interests of justice to ensure that questions of importance falling under paragraph 74(*d*) of the *IRPA* be addressed by the Federal Court of Appeal if and when they arise. The respondent had the opportunity to respond in writing to the applicant's positions on the proposed questions for certification. Considering also my conclusions, I will address the questions.

[112] The applicant's proposed questions were:

1. Whether the "specific intent" for terrorism can be imputed on an organization to satisfy the required elements under s. 34(1) of the *IRPA* primarily based on a finding that the directing minds of the organization ought to have known that death or serious injury to civilians was likely to occur if the organization engages in the exercise of its legitimate political functions such as *Hartals*?

2. Whether the required elements under s. 34(1) of the *IRPA* can be satisfied only through identifying a general act of the organization such as call for *Hartal*, without specifying the specific violent act, the victim, the perpetrator and the time and place where the violent acts occurred, or where a specific organization engaged in the alleged specific violent act is not established?

3. Whether an organization is exempt from s. 34(1) on the basis that the organization's engagement in the alleged terrorist acts were temporal, uncoordinated and incidental to its legitimate political activities and the organization has fundamentally changed and returned to its legitimate political activities under new leadership and mandate.

[113] To be certified for appeal under *IRPA* paragraph 74(*d*), a proposed question must be a "serious question" that (i) is dispositive of the appeal, (ii) transcends the interests of the parties and (iii) raises an issue of broad significance or general importance: *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, [2018] 2 FCR 229, at para 36. In addition, a certified question "must be a question which has been raised and dealt with in the decision below": *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89, at para 12; *Canada (Citizenship and Immigration) v Kassab*, 2020 FCA 10, at para 72; *Lewis*, at para 46.

[114] In *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, [2018] 3 FCR 674, Laskin JA explained at paragraph 46 that the test set out in *Lewis*:

> … means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness*), 2015 FCA 21, 29 Imm. L.R. (4th) 211, at paragraph 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186, at paragraphs 15, 35).

[115] The premise of a certified question must fully accord with the facts of the case: *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50, at para 34.

[116] Finally, certified questions should be posed in a manner that recognizes the proper standard of review and links the certified question to the decision under review: *Galindo Camayo*, at paras 35 and 44-45. The drafting approach contemplated by *Galindo Camayo* ensures that the question is framed to address a point that arises in the decision itself and poses a

general question of importance (such as a question of law), rather than an abstract question or one that focuses on the unique facts of the case: *Galindo Camayoi*, at paras 40 and 45.

[117] Applying these principles, I conclude that the first proposed question cannot be certified. The IAD's decision did not conclude that the BNP "ought to have known" that death or serious injury was likely to occur. Its findings were much clearer on intention than the proposed question suggests. The proposed question is not premised on an issue in the IAD's decision and is not appropriate for certification.

[118] The second proposed question characterizes certain facts in a manner that the IAD did not adopt (a "general" call for *hartal*, versus an alleged requirement to show "specific" acts, perpetrator, victim, time and place). It also assumes a legal position about specificity of proof required under section 33 and paragraph 34(1)(*f*) that did not constrain the IAD's decision, as that position is not found in *Mugesera* or the case law cited by the applicant. The IAD recognized that the Minister had to show reasonable grounds to believe there the specific actions of the BNP amounted to acts of terrorism and that blanket allegations showing the general existence of violence without a direct link between the BNP and violence were not sufficient, which was the position of the applicant at the time in his written submissions to the IAD. Its reasoning did not accept or contain one of the two dichotomous positions presented in the proposed question. In my view, an appeal on this question would turn on the specific facts of this case. For these reasons, the second proposed question is not appropriate for certification.

[119] The third proposed question is premised partly on the applicant's position that the alleged acts of terrorism were temporal, uncoordinated and incidental to its legitimate political activities, a position argued in this Court and not accepted by the IAD on the facts. Similarly, the IAD did not find that the BNP had fundamentally changed and returned to its legitimate political activities under new leadership and mandate. Rather, that was the applicant's position. An appeal on these issues would only provide an opportunity for the applicant to re-argue his position that the IAD erred on the merits. They do not support a certified question for the Federal Court of Appeal in this case.

[120] For these reasons, none of the applicant's proposed questions will be certified for appeal.

JUDGMENT in IMM-5524-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5524-20
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