Federal Court  Cour fédérale

**Date: 20221128**

**Docket: IMM-7804-21**

**Citation: 2022 FC 1634**

**Ottawa, Ontario, November 28, 2022**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**MD SALIM BADSHA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant seeks judicial review of the decision of the Immigration Appeal Division ("IAD") dated September 28, 2021, finding the Applicant inadmissible to Canada under subsection 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"), for having been a member of an organization that there are reasonable grounds to believe engages,

has engaged, or will engage in terrorism. Terrorism is one ground of inadmissibility on security grounds under subsection 34(1)(c) of *IRPA*.

[2] The Applicant claims to be targeted by the current party in power in Bangladesh, the Awami League ("AL"), for his involvement with the Jatiyatabadi Chatra Dal ("JCD"). The JCD is a student wing of the opposition party, the Bangladesh Nationalist Party ("BNP"). At the Applicant's admissibility hearing, the Immigration Division ("ID") determined that he was not inadmissible under subsection 34(1)(f) of *IRPA*. The IAD overturned this decision on appeal, finding that as a "youth wing" of the BNP, the JCD engages, has engaged, or will engage in terrorism, and that the Applicant is therefore inadmissible for being a member of the JCD.

[3] The Applicant submits that the IAD erred in finding that the JCD and BNP are linked to such an extent that a member of the JCD is responsible for the BNP's actions, as this is based on an improper assessment of the evidence, rendering the IAD's decision unreasonable.

[4] For the reasons that follow, I find the IAD's decision is unreasonable. This application for judicial review is therefore granted.

## II. Facts

### A. *The Applicant*

[5] The Applicant is a 30-year-old citizen of Bangladesh. He belongs to the Ahmadi sect of Islam, who are a religious minority in Bangladesh.

[6] There are two ruling political parties in Bangladesh: the AL, who have formed the government since 2009, and the BNP. In 2008, the Applicant began his involvement with the JCD, a student-led group affiliated with the BNP, at Ichhamati College in Galimpur. He was president of the JCD at his college from 2009 to 2011. The Applicant's involvement in the JCD and support for the BNP allegedly resulted in threats to his life by members of the AL.

[7] In September 2012, the Applicant spoke at a JCD meeting at his college, criticizing the AL government's rule. He claims he was later attacked by an extremist group affiliated with the AL, and arrested and beaten by the police for his outspoken opposition to the AL. The Applicant claims that AL leaders threatened to kill him and his parents.

[8] The Applicant also fears persecution for his Ahmadi beliefs. He claims that in 2012, he was attacked by an extremist group at an Ahmadi annual meeting in Bakshibazar, Dhaka.

[9] On February 17, 2013, the Applicant arrived in Canada on a study permit. He made a refugee claim in April 2018. In his Basis of Claim form, the Applicant declared his involvement with the BNP and his fear of returning to Bangladesh. The Minister of Public Safety and Emergency Preparedness (the "Minister") issued a section 44(1) report and referred the Applicant for an admissibility hearing, seeking that he be found inadmissible under subsection 34(1)(f) of *IRPA*, in relation to two security grounds: subversion by force of any government under subsection 34(1)(b) and terrorism under subsection 34(1)(c). While the ID decision considered both grounds, the IAD decision focused on terrorism. This decision will therefore be restricted to the issue of terrorism.

B. *ID Decision*

[10] In a decision dated March 18, 2021, the ID found that the Minister provided insufficient evidence to declare the Applicant inadmissible under subsection 34(1)(f) of *IRPA*.

[11] The ID first assessed whether the JCD and the BNP are distinct organizations or whether the Applicant's membership in the JCD would also connect him to the BNP. The ID reviewed the extent of the JCD's relationship to the BNP, specifically the cooperation between the groups in organizing hartals, which are general strikes often organized as a form of resistance. The ID found insufficient evidence to show that the two organizations have distinct leadership and different political goals, thereby finding them to be connected and, in turn, finding the actions of the BNP to implicate the JCD.

[12] The ID then considered whether the Applicant was a member of the JCD, noting his multiple admissions that he was president of the JCD at his college and involved in its events. The ID applied the criteria of membership laid out in this Court's jurisprudence to conclude that the Applicant was a member of the JCD. These criteria include the individual's involvement, length of time being involved in the organization, and degree of commitment (*T.K. v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 327 at para 105). These factors, and the "unrestricted and broad" interpretation of membership, led to the ID's finding that the Applicant was a member of the JCD (*Denton-James v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1548 at para 12). The ID also found that the Minister provided insufficient evidence to find that the Applicant was a member of the BNP.

[13] The final and determinative issue before the ID was whether there are reasonable grounds to believe that the JCD has engaged, is engaging, or will engage in acts of terrorism. While the ID found that there were reasonable grounds to believe the JCD had engaged in such acts, the required intention to cause death or bodily harm only existed as of October 2013, after the Applicant's involvement in the JCD had ended. The ID was unable to conclude that the Applicant was a member of the JCD during the relevant period and therefore could not find him inadmissible under subsection 34(1)(f) in relation to subsection 34(1)(c) of *IRPA*. The Minister appealed the ID decision.

C. *Decision Under Review*

[14] In a decision dated September 28, 2021, the IAD overturned the ID decision and found the Applicant inadmissible under subsection 34(1)(f). The IAD did not analyze the Minister's additional argument regarding subversion by force under subsection 34(1)(b).

[15] On a reassessment of the evidence, the IAD found that both requirements were met for a finding of admissibility under subsection 34(1)(f) in relation to terrorism: (1) there are reasonable grounds to believe that the JCD engages, has engaged, or will engage in acts of terrorism and; (2) the Applicant was a member of the JCD during the relevant period.

(1) Acts of Terrorism

[16] The IAD found that while the JCD and BNP are separate entities, the former being a "student wing" of the BNP, the evidence shows that the JCD's involvement in the BNP's

political goals predates 2013, contrary to the ID decision. This includes reports pointing to "clear and extensive interconnection" between the two organizations and indicating that JCD student groups are often main actors in the political violence perpetrated by the BNP.

[17] The IAD relied on the definition provided by the Supreme Court of Canada in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 ("*Suresh*") 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.
>
> [Emphasis added]

[18] Assessing whether the BNP meets the intent element as defined in *Suresh*, the IAD agreed with the Minister that the evidence showed hartals to be "a kind of mandatory general strike forced with the use of weapons" and the BNP has used them to knowingly incite violence and cause the death or serious bodily injury to civilians. The IAD also stated that the BNP's intention to use terrorism prior to 2013 is, in part, proven by its violent targeting of journalists for at least 20 years. The IAD noted that the Federal Court "knows that hartals lead to violence"

and has found it reasonable to conclude that the BNP uses hartals to reach its political objectives. With respect to hartals and the required element of intent, the IAD stated:

> The BNP's ordering of a hartal, thus a kind of call to arms, rests upon the intention to use violent social coercion. Otherwise, there would be no point in using weapons. The BNP's stakeholders understand that the death and serious injury of innocent citizens result from their refusal to accept the hartals. In other words, the choice of attempting to continue living and disobeying a hartal decreed by the BNP goes hand in hand with a risk of death or serious injury. The number of deaths and injuries over the years demonstrates the existence of a coordinated hard line that ensures the implementation of societal paralysis, while those who oppose it must be stopped by death or serious injury.

[19] The IAD ultimately concluded that the armed violence within and beyond the use of hartals is a clear indicator that the BNP intends to cause death or bodily injury, sufficient to classify its acts as terrorism under the *Suresh* definition.

(2) Membership

[20] The IAD recognized that the term "membership" must be given an "unrestricted and broad interpretation" (*Canada (Minister of Citizenship and Immigration) v Singh*, [1998] FCJ No 1147 (FC) at para 52). It found that the Applicant was a member of the JCD because he had admitted his involvement and his election as president of his college's JCD in both his submissions to the ID and in his refugee claim. The IAD found that the Applicant was involved in the JCD with the knowledge that the BNP organizes hartals because the BNP has used hartals "for decades" and it would be "unreasonable to assume that the [he] did not know" that hartals are intended to cause death or serious injury.

## III. Issue and Standard of Review

[21] The application for judicial review raises the sole issue of whether the IAD decision is reasonable.

[22] The standard of review is not disputed. The parties agree that the applicable standard of review in admissibility decisions made under subsection 34(1)(f) of *IRPA* is reasonableness. I agree. As stated by my colleague Justice Norris in *Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080 ("*Rana*"), the applicability of a reasonableness review to these decisions is "well-established in the jurisprudence" (at para 19).

[23] Reasonableness is a deferential, but robust, standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12-13) ("*Vavilov*"). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[24] In *Rana*, Justice Norris provided a helpful account on what a reasonableness review requires of the Court in this case:

> [21] The question before the Court on this application for judicial review is not whether there were reasonable grounds to believe that the BNP engages in terrorism or subversion. This was for the member to determine. What I must determine is whether the member's conclusion that there were reasonable grounds to believe the BNP is an organization that engages in terrorism and subversion is itself reasonable (*Gutierrez v Canada (Citizenship and Immigration)*, 2013 FC 623 at para 22).
>
> [Emphasis added]

[25] This is the same determination to be made on a reasonableness review in this case.

## IV. Analysis

[26] The Applicant submits that the IAD decision is unreasonable at two stages of the analysis: (1) the finding that the JCD and BNP are connected, and (2) the requirement of intent to cause death or bodily injury. In my view, the IAD's conclusions on the connectedness were reasonable, but those on intent were unreasonable.

### A. *Connectedness of JCD and BNP*

[27] The Applicant submits that the IAD decision is unreasonable because the IAD selectively cited evidence to conclude that the JCD and BNP are linked to the extent that members of the JCD are responsible for the BNP's actions. The Applicant contends that the IAD ignored the evidence that did not support this view.

[28] The Respondent submits that the IAD properly and thoroughly assessed the evidentiary record to arrive at its conclusion regarding the JCD and BNP's terrorist activities. The Respondent submits that the IAD is not required to refer to all evidence in its reasons and failing to do so does not equate to unreasonableness.

[29] In my view, the IAD's analysis of the evidence on this particular point is reasonable. The conclusion that the JCD is connected to the BNP and the latter's political objectives is the result of a "line of analysis within the given reasons" (*Vavilov* at para 102, citing *Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 55). The reasons for this conclusion are explicitly "justified in relation to the relevant factual and legal constraints" (*Vavilov* at para 99).

[30] The IAD does not dispute that the JCD and BNP are distinct organizations. It explicitly recognizes that certain evidence points to separate leadership and executive structure in the organizations, and acknowledges that the JCD being a student wing of the BNP does not necessarily mean that they are one organization. The IAD goes on to review a variety of other evidence pointing to interconnectedness between the JCD and BNP.

[31] The Applicant submits that the IAD's analysis on this point is "internally inconsistent" because it accepts that the JCD and BNP are separate organizations with no overlap, only to ultimately conclude that there is a clear and extensive interconnection between them. However, the IAD's recognition of both these statements does not lead to a finding of unreasonableness on this point. The IAD reasonably found that although certain evidence shows that the two organizations are distinct *in certain ways*, several other points of evidence support the opposite

conclusion. This includes evidence that JCD leaders are often implicated in BNP-related activities, that the BNP's student wing plays a "vital role" in BNP movements, and that the responsibility of central activities of the BNP is often entrusted to the student organization, dating prior to 2013. It is this basis that the IAD found the two to be connected well before 2013. The IAD's reasoning on this point reveals a reasonable line of analysis that flows rationally from the evidentiary record (*Vavilov* at para 102).

[32] This line of reasoning is analogous to the one reviewed by my colleague Justice Southcott in *Intisar v Canada (Citizenship and Immigration)*, 2018 FC 1128 ("*Intisar*"). This case concerned an applicant who was an active member of another college's JCD from 2010 to 2012 (*Intisar* at para 4). The ID in *Intisar* similarly referred to documentary evidence to illustrate the connection between the JCD and BNP (*Intisar* at paras 8-9). Justice Southcott stated the following at paragraph 24:

> The ID also considered that the JCD operated according to its own constitution but noted documentary evidence surrounding the links between the JCD and the BNP, including student wing involvement in the political violence. It found that the student wing was closely enough linked to the BNP to conclude that Mr. Intisar was a member of the BNP itself. This conclusion is grounded in the evidence, and there is no basis for the Court to interfere with it on judicial review.

[33] This analysis can also be applied to this case. The conclusion that the JCD and BNP are connected is grounded in the evidence, which the IAD illustrates, and is therefore reasonable.

B. *Intent to Cause Death or Serious Bodily Injury*

[34] The Applicant submits that the IAD reached its conclusion on this point based on inaccurate assessments of the evidence and incorrect statements regarding this Court's jurisprudence. The Applicant further submits that the IAD made unsupported assertions about the BNP's actions, or failed to reference evidence to justify its assertions.

[35] The Respondent maintains that the IAD provided a reasonable basis for concluding that the use of hartals in particular "rests upon the intention to use violent social coercion," which is supported by "express findings of specific intent and extensive factual findings." The Respondent submits that it was reasonable for the IAD to infer intention prior to 2013 because it is "highly unlikely that an organization will publically admit to intentionally calling for terrorism" and that this inference was still based on the evidentiary record.

[36] To justify its finding that the intent element was met, the IAD stated that the use of hartals signifies the BNP's intention because the use of weapons and bombs during hartals is a "clear example" of terrorism. The IAD reasoned that there "would be no point in using weapons" during the hartals if there was no such intention, and the number of deaths and injuries "demonstrates the existence of a coordinated hard line that ensures the implementation of societal paralysis."

[37] In my view, the IAD's reasoning on this point is not justified in relation to the facts and jurisprudence (*Vavilov* at para 85). For instance, the IAD concluded that the BNP "knows that

inciting hartals leads to violent confrontation" [emphasis added] and that this, in turn, represents the intent to cause death or bodily injury. The IAD did not reference which evidence shows that the BNP or members of the BNP have this knowledge, or how such knowledge would fulfil the element of intent.

[38] The IAD also stated that the "firebombing of buses circulating during the hartals is a clear example" of intentional terrorism, and that the "BNP's top leadership" made the decision to organize "armed" hartals. The IAD found that the connection between the BNP's actions and its intention to cause death or bodily injury is, in part, signalled by "the number of deaths or injuries over the years." However, these various conclusions do not reference any specific pieces of evidence. The IAD did not explain how these instances of violence equate to a finding that the BNP intends to cause death or bodily injury and, rather, makes a jump in the analysis that is unsupported by evidence.

[39] The IAD stated that the history of violence perpetrated against journalists by "supporters of the BNP" clearly represents the intent to cause death or bodily injury because "dozens of journalists cannot be attacked simultaneously without an order to do so". A reviewing court on reasonableness review must assess the internal rationality of the decision and be "satisfied that the decision maker's reasoning 'adds up'" (*Vavilov* at para 104). The IAD's assertions regarding the BNP's supposed intent to cause death or bodily injury contain unexplained jumps in analysis, resulting in reasoning that does not "add up" and warrants this Court's intervention.

[40] As stated by Justice Norris in *Rana*, a finding that hartals constitute intentional terrorist activity cannot stand "absent an express finding that when it called for *hartals* and blockages the BNP intended to cause death or serious bodily harm by the use of violence" (at para 66). The IAD's reasoning in this case did not fulfil this requirement.

[41] In *Islam v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 108, the ID referenced evidence about the existence of violence during hartals to conclude that hartals themselves are proof of the intent element (at para 20). On judicial review, my colleague Justice Mosley found the following:

> [20] In this case, it is clear that political parties in Bangladesh, including the BNP, use hartals and that these often lead to violence. However, contrary to the member's conclusion at paragraph 82 of his decision, the mere fact that innocent children or bystanders are victims of indiscriminate violence is not sufficient to conclude that a group is engaged in terrorist activity. The group must have the intention to cause death or serious bodily harm.
>
> [21] At paragraphs 85 and 86 of his decision, the member makes the same error as the ID made in *Islam*, above. The member conflates intent with wilful blindness and knowledge. He finds 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. However, the test is not one of wilful blindness or knowledge, but rather one of intention.
>
> [22] By ignoring that the law requires that the perpetrator intentionally caused death and serious bodily harm, and substituting a different element (the requirement that there was knowledge, or even wilful blindness, that the calling for hartals would result in death and injuries), the ID rendered a decision which is unreasonable as, "in order for a decision to be reasonable, it must relate to a matter within the Minister's statutory authority and he must apply the correct legal tests to the issues before him" (*Németh v Canada (Justice)*, 2010 SCC 56 at para 10).
>
> [Emphasis added]

[42] This finding is relevant to the case at hand. The IAD applied the incorrect legal test by asserting that the number of deaths and injuries caused by hartals over the years, or certain BNP members' knowledge that hartals involve violent activity, sufficiently represents the BNP's intention to cause death or bodily injury.

[43] I agree with the Respondent that failing to mention certain evidence does not mean that it was not considered. A reasonableness review is "not a line-by-line treasure hunt for error" (*Vavilov* at para 102) the reasonableness of the decision is not undermined simply because all elements were not expressly mentioned (*Alexion Pharmaceuticals Inc. v Canada (Attorney General,* 2021 FCA 157 at para 18). Therefore, the IAD's statement that it would not reproduce the entirety of the lengthy evidentiary record is not itself unreasonable.

[44] However, the IAD's reasoning on the issue of intent goes beyond a failure to mention certain evidence. The intent to cause death or serious bodily injury is a higher evidentiary burden than the existence or knowledge of death or serious bodily injury. Reasonableness is at risk "where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" and there are gaps in the IAD's rationale on the element of intent that make its conclusion on this point unreasonable (*Vavilov* at para 126).

[45] The IAD stated that "the Federal Court confirms that the BNP knows that hartals lead to violence" and it is therefore "reasonable to conclude that the BNP used hartals to reach a political objective". However, as stated by Associate Chief Justice Gagné in *Saleheen v Canada (Public Safety and Emergency Preparedness*), 2019 FC 145, "the question of whether the BNP

engaged in terrorism turns on whether the requisite specific intention can be imputed to the BNP in the context of this factual record" [emphasis added] (at para 41). This Court's finding that another decision on this matter was reasonable does not mean that it can automatically find the same intent in all similar cases.

## V. Conclusion

[46] This application for judicial review is granted. While the IAD reasonably assessed the link between the JCD and BNP, its decision is ultimately unreasonable on the required intent element under the *Suresh* definition of terrorism. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-7804-21**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a differently constituted panel.

2. There is no question to certify.

"Shirzad A."
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7804-21 |
| **STYLE OF CAUSE:** | MD SALIM BADSHA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | BY VIDEOCONFERENCE |
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| **JUDGMENT AND REASONS:** | AHMED J. |
| **DATED:** | NOVEMBER 28, 2022 |

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