Federal Court  Cour fédérale

Date: 20190205

Dockets: IMM-5532-17
IMM-465-18

Citation: 2019 FC 145

Ottawa, Ontario, February 5, 2019

PRESENT: The Associate Chief Justice Gagné

Docket: IMM-5532-17

BETWEEN:

KAZI HASIBUS SALEHEEN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

Docket: IMM-465-18

AND BETWEEN:

KAZI HASIBUS SALEHEEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Kazi Hasibus Saleheen is a 48-year-old citizen of Bangladesh. He made a refugee claim when he entered Canada with his wife and two minor children in August 2015. He disagrees with the decision of the Immigration Division [ID] finding him inadmissible to Canada pursuant to paragraph 34(1)(*f*) of the *Immigration and Refugee Protection* Act, SC 2001, c 27 [IRPA] for being a member of the Bangladesh Nationalist Party [BNP], an organization engaging in acts of subversion by force and terrorism pursuant to paragraphs 34(1)(*b*) and 34(1)(*c*) of the IRPA.

[2] The Applicant applies for judicial review of the ID's decision (Docket IMM-5532-17). At the same time, in a related matter (Docket IMM-465-18) he challenges the dismissal of his refugee claim on the sole basis that he was found inadmissible to Canada. Both matters were heard together as the outcome of the second matter hinges on the outcome of the first matter.

II. Facts

[3] The Applicant holds a Master's degree in Political Science, which he obtained in 1993. The same year, he joined the Tangail branch of the BNP as a regular member. A few years later, he started working as a flight attendant at Biman Bangladesh Airlines, a position he held until 2015.

[4] From February 2014 until he left Bangladesh in August 2015, the Applicant held the position of Vice-President of the Tangail branch of the BNP.

A. *Membership and activity in the BNP*

[5] The ID found that the Applicant's testimony with respect to his involvement in the BNP lacked credibility, due to the many contradictions with the version of events he provided in his Basis of Claim Form.

[6] In his Basis of Claim Form, he claimed that he had a deep interest in politics, that he actively participated in the politics of the BNP, and that he attended all political events in his area. He was elected Vice-President of the Tangail branch of the BNP because of his active participation in the political program. This led to his persecution by members of the Awami League [AL], the ruling political party.

[7] However, in his testimony delivered at the admissibility hearing, he attempted to distance himself from the BNP and claimed that he never played any role in BNP political events and that he was detached from politics. His involvement with the BNP was allegedly limited to social and humanitarian activities. He claims to have been elected to the position of Vice-President of the Tangail branch of the BNP out of respect for his father, who was a lawyer and had been a political activist with the BNP 22 years earlier.

B. *Alleged acts of subversion or terrorism by the BNP*

[8] Since 1991, the power has alternated between the BNP and the AL.

[9] Violence has frequently marred the political process, both in the lead up to elections and in between them. Opposition parties systematically alleged the unfairness of the elections and

called for hartals (i.e. generalized strikes, demonstrations, protests and traffic blockades) in order to pressure the government. These hartals often resulted in widespread violence.

[10] Since 1996, both parties supported a caretaker government scheme during each election, whereby the caretaker government would oversee the election instead of the incumbent party, in order to ensure the fairness of the electoral process. However, in 2011 the Supreme Court of Bangladesh found that the caretaker government violated the principle of sovereignty of the people. Even though the declaration of unconstitutionality was suspended for the following two elections, the AL used its parliamentary majority to amend the constitution and abolish the caretaker government scheme immediately.

[11] In the lead-up to the 2014 general election, the AL proposed a multiparty interim cabinet with certain limitations on the powers of the Prime Minister instead of the caretaker government. However, the BNP insisted on the restoration of the caretaker government scheme. Faced with the AL's refusal, the BNP called for hartals in order to pressure the government and prevent the election from proceeding. This had a significant impact on the economy of Bangladesh, as roads were blocked, and businesses and schools were closed. In the resulting chaos, civilians who attempted to pass the blockades were attacked and buses were set on fire. Deaths, injuries and property damage occurred throughout the country.

[12] The government's response was equally extreme. The police attempted to break up the blockades and reportedly resorted to mass arrests, torture and extrajudicial killings.

[13] In December of 2013, the BNP and other opposition parties continued to call for hartals and called for a boycott of the election. Polling stations were burned down, electoral officers were attacked, and voters were intimidated in order to prevent them from voting. There was a poor turnout, with most estimates varying between 10% and 40%. Since most parties boycotted the election, a majority of seats went uncontested, with 127 out of 300 seats going by default to AL candidates.

[14] While he denies any involvement in or knowledge of violent activities, it is in this context that the Applicant was elected as a Vice-President of the Tangail branch of the BNP in February 2014.

[15] One year after the 2014 general election, the BNP called for another round of hartals, which again resulted in deaths and property damage, even though the national BNP leader publicly condemned the violence.

III. Impugned Decision

[16] On December 8, 2017, the ID found the Applicant inadmissible for being a member of the BNP, an organization instigating the subversion by force of the government of Bangladesh and engaging in terrorism.

[17] The ID found that the Applicant's recantation of his membership in the BNP and his attempts to distance himself from it during the hearing were not credible. The ID found that the Applicant has been a member of the BNP since he was 23 years old, and would most likely have

been aware of all policies and activities of the BNP. His Basis of Claim narrative shows that he played an active political role in the BNP, and does not contain any mention of humanitarian and charitable work that he instead attempted to emphasize during the hearing. Given his Master's degree in Political Science, it is implausible he would have mischaracterized this work as "political" in his Basis of Claim Form. The ID also found implausible that the Applicant would have been selected as and would have remained Vice President of the Tangail branch of the BNP in a time of political turmoil if he was not actively involved in the activities of the party.

[18] While the ID accepted that the Applicant's involvement was mostly with the Tangail branch of the BNP, his attempts to distinguish between the national branch and the Tangail branch of the BNP failed to convince the ID. While the local branches may have some degree of autonomy, they are ultimately controlled by the national BNP, and are part of the same organization.

[19] The ID found that the AL lawfully proceeded with the 2014 general election, despite not having recourse to the caretaker government. The calls for hartals of the BNP resulted in widespread deaths, injuries and property damage. The Tangail branch of the BNP participated in the hartals by promising that between 10,000 to 50,000 protesters from the district would march to Dhaka in December 2013. Given the political context, the leaders of the Tangail branch of the BNP, including the Applicant, must have known or must have been willfully blind to the possibility that violence would occur. The Applicant continued to participate in the political activities of the BNP and to hold the rank of Vice-President of the Tangail branch for more than a year after the 2014 general election.

[20] Despite publicly condemning violence, the BNP instigated subversion by force by repeatedly calling for hartals which were intended to overthrow or undermine the government as well as to interfere with the election. Given the turbulent recent political history of Bangladesh, violence was the predictable consequence of those acts. The magnitude and frequency of the violence make it difficult to characterize the perpetrators as merely a few rogue members or members of another party. The fact that the calls for hartals continued and were repeated in 2015, one year after the election, shows that there was a deliberate attempt to undermine the government by force.

[21] The ID also found that the hartals were meant to intimidate the government and members of the AL, and that they corresponded to the definition of terrorism enunciated in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3, and to that found in subsection 83.01(1) of the *Criminal Code*, RSC 1985, c C-46. Even though the BNP is not listed as a terrorist organization, it nevertheless engaged in terrorism by conducting hartals with the intention to interfere with the 2014 general election, while knowing or being willfully blind to their foreseeable consequences.

[22] Lastly, the ID found that paragraph 34(1)(*f*) does not infringe section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitutional Act, 1982*, being Scheduled B of the *Canada Act 1982* (UK), 1982, c 11 [*Charter*] The Supreme Court has foreclosed a finding that section 7 is engaged at the stage of determining admissibility, since it is typically engaged at the stage of removal (*B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at paras 74-75).

IV. Issues and Standard of Review

[23] This application for judicial review raises the following issues:

A. *Did the ID Member err in finding that the BNP is an organization that engages, has engaged or will engage in terrorism?*

B. *Did the ID Member err in finding that the BNP's actions were meant to forcibly subvert any government?*

C. *Did the ID Member err by ignoring case specific evidence?*

[24] The applicable standard of review is reasonableness (*SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494 at para 9).

V. Analysis

[25] Since the 2014 general election in Bangladesh, this Court has determined in the majority of cases that it was reasonable to find that former members of the BNP are inadmissible pursuant to paragraph 34(1)(*f*) of the IRPA (*Alam v Canada (Citizenship and Immigration)*, 2018 FC 922; *Kamal v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480; *SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494; *Gazi v Canada (Citizenship and Immigration)*, 2017 FC 94). However, in some cases, this Court has found otherwise (*Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080; *AK v Canada (Citizenship and Immigration)*, 2018 FC 236; *Chowdhury v Canada (Citizenship and Immigration)*, 2017 FC 189).

[26] That is to say that each case must be decided on its particular record and on the findings of fact made in the impugned decision.

[27] In *Gazi*, a decision rendered by Justice Henry Brown, the Court found that it was reasonable for the decision-maker to conclude that the BNP had engaged in terrorism. Specifically, the decision-maker in that case properly considered all of the evidence available to him. The evidence, as in the present case, detailed political violence committed by the BNP in Bangladesh. While the Court accepts that the BNP has formed the government in the past, and that both major parties have engaged in violence, this does not exempt the BNP from the status of terrorist organization. In finding so, the Court accepted the decision-maker's reliance on the definition of "terrorism" contained in the *Criminal Code*. The absence of the BNP from the government of Canada's list of terrorist entities was not considered determinative. The political violence could reasonably be attributed to the BNP, even if the evidence contained a statement by the party's leader disavowing violence after it had already occurred. The BNP implicitly condoned violence by continuing to call for hartals without discouraging the use of violence. The decisions of the United States Immigration Court were neither binding, nor persuasive since they dealt with a different legal framework, standard of proof, and definition of terrorism. For these reasons, the decision was found reasonable.

[28] In *Chowdhury*, Justice Richard Southcott found that the ID's decision was unreasonable on the grounds that Mr. Chowdhury's membership in the BNP predated the subversive or terrorist acts that were committed by the BNP. As such, that case is of limited assistance in the present matter.

[29] In *SA*, Justice Simon Fothergill found that the ID correctly applied the definition of terrorism found in subsection 83.01(1) of the *Criminal Code* and in *Suresh* at paragraph 98. The

BNP knew the foreseeable consequences of its calls for hartals and failed to denounce – and thereby condoned – the violence. Justice Fothergill declined to certify the three questions proposed by the parties.

[30] In *AK*, Justice Richard Mosley allowed a judicial review of a decision in which the applicant, a BNP member, was found to be a member of an organization engaging in terrorism, using the definition of terrorist activity set out in the *Criminal Code*. Justice Mosley found that in the immigration context, it was more appropriate to use the definition of terrorism set out in *Suresh*. He was not convinced that calling for hartals fell "within the essence of what the world understands by 'terrorism'", as it would possibly be protected by section 2 of the *Charter* if it were to occur in Canada. Chiefly, Justice Mosley found that unlike *SA*, there was no express finding by the ID that the calls for hartals were synonymous with calls to commit acts that would fall within the meaning of terrorism. Justice Mosley declined to certify the question proposed by the minister.

[31] In *Kamal*, another decision rendered by Justice Brown, the Court found that it was reasonable to conclude that the BNP was engaging in terrorism pursuant to paragraph 34(1)(*c*) of the IRPA. The ID reasonably relied on both the definition of "terrorist activity" in the *Criminal Code* and on the definition of terrorism set out in *Suresh*. According to those definitions, an intention to cause violence is required for a finding of terrorism. However, using these definitions did not mean that criminal law concepts should be imported in the immigration context. The Court found reasonable the ID's conclusion that calling for hartals had become synonymous with condoning violence causing death and serious bodily injury, because the BNP

continued to call for protests despite their foreseeable consequences. The Court similarly rejected the argument that violence was caused by rogue or fringe members, as the BNP leadership continued to call for hartals despite seeing that violence systematically ensued. The Court deemed it unnecessary to make a finding on whether the acts of the BNP also constituted "subversion by force" according to paragraph 34(1)(*b*) of the IRPA. Justice Brown declined to certify the two questions proposed by the parties.

[32] In *Alam*, Justice Fothergill found that an immigration officer reasonably decided that the BNP had directed and engaged in activities that constitute terrorism, such as violent protests, rallies, bombings and beatings. Justice Fothergill found that it was open to the decision-maker to rely on the definition of terrorist activity contained in the *Criminal Code* as well as the one set out in *Suresh*. Justice Fothergill declined to certify a question proposed by the applicant on the grounds that the determinative question was factual and not legal.

[33] Lastly, in *Rana*, Justice John Norris recently found that while the decision-maker could reasonably rely on the definition of terrorism contained in the *Criminal Code*, she committed a reviewable error in its application to the facts. As the decision-maker's findings on "subversion by force" were inextricably linked to her findings on terrorism, Justice Norris ordered both issues to be reconsidered.

[34] According to Justice Norris, special care must be taken when importing criminal law concepts to immigration law, as criminal law and immigration law pursue different objectives by different means. The definition of "terrorist activity" in the *Criminal Code* may not be seen as

being transposable in the immigration context, as the IRPA is not a statute *in pari materia*. In the *Criminal Code*, the definition of "terrorist activity" has a limited reach due to the requirement that an individual be found beyond a reasonable doubt to have a subjective purpose to enhance the ability of a terrorist group to facilitate or carry out a terrorist activity in order to conclude that he or she is guilty of an offence. There are no such limitations in the immigration context, where a decision-maker must merely find that there are reasonable grounds to conclude that an individual was a member of an organization engaging in terrorism in order to find that he or she is inadmissible. In addition, in the immigration context, the concept of membership in an organization is already given a broad interpretation. As such, absent express language, the Court cannot conclude that Parliament intended the definition of "terrorist activity" to apply in the immigration context.

[35] Justice Norris held that the member did not adequately explain how the BNP's actions constituted terrorism, especially given that she misunderstood the definition of terrorism as applicable in the immigration context. In particular, the BNP engages legally in conventional politics and its purpose is not to violently overthrow the government. Furthermore, while not determinative, the BNP is not listed as a terrorist organization by Canada, the United Kingdom and Australia.

[36] In any event, the member made reviewable errors in applying the definition of "terrorist activity" contained in the *Criminal Code* since that definition excludes acts or omissions which are a result of advocacy, protest, dissent or stoppage of work, unless they are intended to cause

death or serious bodily harm by the use of violence, to endanger a person's life, or to cause a serious risk to the health or safety of the public or any segment of the public.

[37] According to Justice Norris, finding that the BNP engaged in terrorism on the sole basis (i.e. absent a specific intention) that its acts or omissions resulted in death and bodily harm was a serious error. Consequently, Justice Norris allowed the application for judicial review.

A. *Did the ID Member err in finding that the BNP is an organization that engages, has engaged or will engage in terrorism?*

[38] In the present case, the ID relied on both the *Criminal Code* and the *Suresh* definitions. Given the consistent case law on this subject, I cannot conclude this was a reviewable error. I must add that I do not see a significant difference between these two definitions. In my view, the first definition is not broader or narrower than the other; the *Criminal Code* definition is simply more detailed while the *Suresh* definition is more general. The *Criminal Code* definition needs to enunciate each specific element of the offence (detailed definition) since the Crown bears the burden to prove all the objective elements (*actus reus*) beyond a reasonable doubt.

[39] For convenience, both the *Criminal Code* and the *Suresh* definitions of terrorism are reproduced below:

Definitions	**Définitions**
83.01(1) The following definitions apply in this Part.	**83.01(1)** Les définitions qui suivent s'appliquent à la présente partie.
[…]	…
terrorist activity means	**activité terroriste**

(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:	a) Soit un acte – action ou omission, commise au Canada ou à l'étranger – qui, au Canada, constitue une des infractions suivantes :
[…]	…
(b)an act or omission, in or outside Canada,	b) soit un acte — action ou omission, commise au Canada ou à l'étranger :
(i) that is committed	(i) d'une part, commis à la fois:
(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and	(A) au nom — exclusivement ou non — d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique,
(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and	(B) en vue — exclusivement ou non — d'intimider tout ou partie de la population quant à sa sécurité, entre autres sur le plan économique, ou de contraindre une personne, un gouvernement ou une organisation nationale ou internationale à accomplir un acte ou à s'en abstenir, que la personne, la population, le gouvernement ou l'organisation soit ou non au Canada,
(ii) that intentionally	(ii) d'autre part, qui intentionnellement, selon le cas :
(A) causes death or serious bodily harm to a person by the use of	(A) cause des blessures graves à une personne ou la mort de celle-ci, par

violence,

(B) endangers a person's life,

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

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

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its

l'usage de la violence,

(B) met en danger la vie d'une personne,

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

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

(E) perturbe gravement ou paralyse des services, installations ou systèmes essentiels, publics ou privés, sauf dans le cadre de revendications, de protestations ou de manifestations d'un désaccord ou d'un arrêt de travail qui n'ont pas pour but de provoquer l'une des situations mentionnées aux divisions (A) à (C).

Sont visés par la présente définition, relativement à un tel acte, le complot, la tentative, la menace, la complicité après le fait et l'encouragement à la perpétration; il est entendu que sont exclus de la présente définition l'acte — action ou omission — commis au cours d'un conflit armé et conforme, au moment et au lieu de la

commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law. (*activité terroriste*)	perpétration, au droit international coutumier ou au droit international conventionnel applicable au conflit ainsi que les activités menées par les forces armées d'un État dans l'exercice de leurs fonctions officielles, dans la mesure où ces activités sont régies par d'autres règles de droit international. (*terrorist activity*)

(*Criminal Code*, RSC 1985, c C-46, section 83.01)

> [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.
>
> (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 98)

[40] The ID found that Mr. Saleheen and the BNP leadership were, at a minimum, willfully blind to the possibility that violence would occur if further hartals were ordered. The calls for hartals continued even though the protests became increasingly violent.

[41] I agree that a specific intention to cause death or serious injury is required for a finding of terrorism, whether the *Criminal Code* or the *Suresh* definition is used. 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.

[42] 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.

[43] This is distinct from recklessness, which means choosing to proceed while knowing the likelihood that a risk may materialize, and from wilful blindness, which means purposefully failing to inquire where there would be reason to do so.

[44] Applying strictly the criminal law definition explained above, the ID would need to make a finding that the BNP actually intended the violence to occur, or that it engaged in acts or omissions while being substantially certain that violence would occur.

[45] The ID's factual findings in that respect are not entirely clear, focusing at times on intent to carry out violence, and at other times on knowledge of the likelihood of violence (recklessness), which it mistakenly refers to as wilful blindness. For instance, the first of the following paragraphs seems to focus on intent, whereas the second seems to equate knowledge of likelihood of violence with intent:

> The panel must assess whether the denials of responsibility and intent to carry out violence in statements by the BNP represent the actual intent of the organization, or as argued by the Minister that the acts of violence carried out represent the actual intent. (Paragraph 47, emphasis mine.)

> Despite the likelihood that the violence would continue the BNP leadership continued to order further hartals in order to subvert the election of the AL as a government, at a minimum being willfully blind to the likelihood that violence would occur. The violence deliberately exercised in order to interfere with the process of carrying out an election in a manner lawfully authorized is alleged to be a fundamental means of undermining the authority of the government by force and an act of terrorism committed against the population. (Paragraph 51, emphasis mine.)

[46] Despite the apparent confusion regarding the degree of *mens rea* found by the panel, I am of the view that the panel made the requisite finding of specific intent to cause violence:

> The panel is of the view that the BNP leadership knowingly ordered its supporters to engage in protests where the foreseeable consequence was violence. (Paragraph 55, emphasis mine.)
>
> While the opposition consisted of some 18 parties and the Jamaat party are noted as playing an active role in the protests and violence the panel finds that the continuation of the violence likely was intended by the BNP leadership. Continuing to call for the use of a tactic which leads to widespread fire bombings of civilians, injuries and deaths is clear evidence of the intent to use violence as a means to a political end. The fact that this tactic was employed again in January 2015 and the violence was repeated contributes to the finding that it was a deliberate attempt to use violence to undermine the AL government. (Paragraph 57, emphasis mine.)
>
> The BNP sought to force the government to change the electoral system by use of violence and substantially interfering with the economy by violence and threatened violence. The panel finds that the BNP sought to force the AL to change the electoral system by illicit means. It did so by force and the threat of force. The elected government was authorized to call and carry out the election as set out in the constitution. The BNP sought to undermine the authority to do so by illicit and violent means. (Paragraph 58, emphasis mine.)
>
> The panel finds that the use of violence as a tactic in order to influence the ability of voters to peacefully participate in the election was a means of seeking to subvert the authority of the government by force. (Paragraph 59, emphasis mine.)

[47] Accordingly, the ID's conclusion is that the BNP engaged in violence for political ends, with the specific intention to use violence. Given the record, this was a possible, acceptable outcome defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[48] The Applicant argues that the ID made no clear finding with respect to the requisite intention of the BNP to use violence. In doing so, the Applicant refers to paragraph 53 of the ID's decision, however, he omits the first part of the sentence:

> After the first few days of the protests, which lead [sic] to civilian vehicles being firebombed and civilian casualties, it was clear that violence against civilians was the actual consequence of this tactic, whether this was the initial intention or not. (Paragraph 53 of the ID's decision, emphasis on the part omitted by the Applicant.)

[49] I don't read this statement as being inconsistent with a finding of intent on the part of the BNP. Rather, the ID acknowledges that while the first few calls for hartals may have not been sufficient to show that the BNP had the intention to use violence for political ends, the continued calls for protests after that time demonstrate that this was indeed the intention. As previously noted, the panel explicitly makes that finding just a few paragraphs later:

> Continuing to call for the use of a tactic which leads to widespread fire bombings of civilians, injuries and deaths is clear evidence of the intent to use violence as a means to a political end. The fact that this tactic was employed again in January 2015 and the violence was repeated contributes to the finding that it was a deliberate attempt to use violence to undermine the AL government. (Paragraph 57.)

[50] In my opinion, these findings of fact show that while recklessness or wilful blindness could be said to characterize the first calls for hartals in favour of the return to the caretaker

government scheme, the continued calls for hartals after that time show that the BNP intended the violence to happen. Therefore, the ID had reasonable grounds to find that the BNP engaged in terrorism.

[51] Finally, I do not find determinative the fact that the BNP is a major political party in Bangladesh. The same can be said about the fact that it is not listed as a terrorist group. In my view, there is a difference between being listed as a terrorist group and being an organisation that "engages, has engaged or will engage" in terrorist activities. It would be sufficient for an organisation, whether it is listed as a terrorist group or not, to only temporarily or incidentally engage in terrorist activities in order to meet the definition found in the IRPA.

B. *Did the ID Member err in finding that the BNP's actions were meant to forcibly subvert any government?*

[52] Given my conclusion on the previous question, it is not necessary to answer this question.

C. *Did the ID Member err by ignoring case specific evidence?*

[53] The Applicant submits that the ID ignored several important pieces of evidence, including:

> Evidence that would tend to call into question the reliability and accuracy of Bangladeshi news sources;
>
> Expert evidence with respect to the BNP and Bangladeshi politics; and
>
> Evidence that the BNP leadership did not condone violence.

[54] According to the Applicant, evidence in the record shows that journalists, newspapers and TV editors have been under pressure not to publish negative news stories about the

government. There is no free press and self-censorship exists. One of the main newspapers in the country admitted to publishing groundless stories. The Applicant submits none of this evidence was specifically considered by the ID member, who instead found that no credible evidence had been presented to show that news sources were manipulated by the AL or that there was a bias against the BNP (*Omoregbe v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1189 at paras 26-27; *Ali v Canada (Citizenship and Immigration),* 2008 FC 448; *Penez v Canada (Citizenship and Immigration),* 2017 FC 1001).

[55] The ID did not refer to the Applicant's expert evidence which showed, in the Applicant's opinion, that the BNP did not order violent attacks, that other parties were responsible for the violence, and that some violence was possibly incorrectly blamed on the BNP.

[56] Lastly, the Applicant submits that the ID ignored evidence that the BNP leader strongly condemned violence and terrorism, notably by supporting the United States in counterterrorism efforts, by calling for an independent investigation on political violence committed against Hindus, by taking a stance against extremism, and by banning individuals contravening party rules. Instead, the panel found that the BNP's statements were made merely to maintain a public face of non-violence, in contradiction with the actual actions of the party against violence and terrorism.

[57] As explained above, I find that the ID's conclusions were defensible with respect to the record. A tribunal does not need to refer to every single piece of possibly contradictory evidence (*Herrera Andrade v Canada (Citizenship and Immigration),* 2012 FC 1490). The Applicant has

not shown that the above contrary evidence is determinative or that it would render the ID's decision unreasonable.

[58] There was sufficient objective third-party evidence to support the main finding that continued calls for hartals evidenced the BNP's intention to use violence for political ends. The specific evidence to which the Applicant points changes nothing to this finding.

[59] The fact that some evidence suggests the BNP did not directly order attacks or condone violence, or that other parties may have been involved in the violence does not mean that the BNP's calls for hartals were not intended to cause violence for political gain. The identity or allegiance of the perpetrators does not matter, since the ID made a reasonable finding that the BNP intended for the violence to occur by continuing to call for hartals.

[60] Even the evidence that the BNP leader publicly disavowed violence is not sufficient to overshadow the fact that the BNP's calls for hartals continued after the violence intensified. The ID specifically discounted this disavowal at paragraph 35 of its reasons.

[61] I therefore find that the ID did not make any unreasonable error in its appreciation of the evidence.

VI. Conclusion

[62] In my opinion, the ID needed to find that the BNP had the specific intent to cause death or serious bodily injury to a civilian (or any other consequence listed in subsection 83.01(1) of

the *Criminal Code*), in order to find that it engaged in terrorism. The ID made the requisite findings of fact that the BNP had the specific intent to cause these consequences when it continued to call for hartals despite knowing the certain or substantially certain consequences. Accordingly, the ID reasonably concluded that there were reasonable grounds to believe the BNP had engaged in terrorism. The Applicant is inadmissible to Canada pursuant to paragraph 34(1)(*f*) of the IRPA.

[63] The parties have proposed no question of general importance for certification and none arises from the facts of this case.

JUDGMENT in IMM-5532-17 and IMM-465-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-5532-17 AND IMM-465-18
STYLE OF CAUSE:	KAZI HASIBUS SALEHEEN v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS ET AL
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 3, 2018
JUDGMENT AND REASONS:	GAGNÉ A.C.J..
DATED:	FEBRUARY 5, 2019

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