

Federal Court



Cour fédérale

Date: 20220324

Docket: IMM-7876-19

Citation: 2022 FC 403

Ottawa, Ontario, March 24, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

RAFAEL CHOWDHURY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

SUPPLEMENTARY JUDGMENT AND REASONS AS TO CERTIFIED QUESTION

[1] On March 7, 2022, I granted the applicant's application for judicial review: *Chowdhury v Canada (Citizenship and Immigration)*, 2022 FC 311 [*Chowdhury (2022)*]. As set out in that decision, I granted the parties the rare opportunity to make submissions on a certified question after receiving my decision. In their submissions, the Minister proposed a question for certification under paragraph 74(d) of the *Immigration and Refugee Protection Act*, SC 2001,

c 27 [IRPA]. Mr. Chowdhury did not propose a question and argued the Minister's question did not meet the requirements for certification.

[2] These are my reasons for declining to certify the question proposed by the Minister, which is the following:

Was it reasonable for the Officer to find reasonable grounds to believe that the BNP 'intended to cause death or serious bodily injury to a civilian' and thereby engaged in terrorism under paragraph 34(1)(c) of the IRPA where the BNP leadership caused and directed acts that foreseeably and frequently resulted in death or serious bodily injury and, if so, that there were reasonable grounds to believe that a person who was a member of the BNP during the time that such acts were caused and directed is inadmissible under paragraph 34(1)(f) of the IRPA?

[3] As the parties agree, the Federal Court of Appeal has clearly stated the criteria a question must satisfy to be certified as a serious question of general importance under paragraph 74(d) of the IRPA: *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46, citing *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36. Justice Laskin for the Court of Appeal set out the criteria in the following terms:

The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This 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. 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.

[Citations omitted; *Lunyamila* at para 46.]

[4] The Minister submits that its proposed question arises from the case and would be dispositive of the appeal, since it addresses what it describes as two determinative aspects of my decision: (i) the conclusion that the officer’s decision was unreasonable because he inferred an intent to kill or seriously injure from knowledge and foreseeability, and (ii) the conclusion that the officer relied materially on events that took place after Mr. Chowdhury left the Bangladesh Nationalist Party [BNP]. The Minister further submits that the question transcends the interests of the parties since it pertains to broader issues regarding the intent requirement for engaging in terrorism that have arisen in a number of cases involving the BNP to date and can be expected to arise in future in cases involving membership not only in the BNP but in other organizations alleged to engage in terrorism.

[5] Having reviewed the proposed question in the context of the officer’s decision and my own, I conclude that it does not raise a question of broad significance or general importance that was dispositive of the matter or would be dispositive of an appeal. The second half of the proposed question asks whether it was reasonable for the officer to find “that there were reasonable grounds to believe that a person who was a member of the BNP during the time that such acts were caused and directed is inadmissible under paragraph 34(1)(f) of the *IRPA*” [emphasis added]. However, as Mr. Chowdhury notes, my reasons for judgment concluded that the officer’s decision was unreasonable in part because he “did not distinguish in his analysis between information and evidence regarding the BNP and its tactics in *hartals* in 2012 and before and in 2013 and after”: *Chowdhury (2022)* at paras 26, 29. Thus, the Minister’s question, which speaks of reasonable grounds to believe that a person who was a member of the BNP

“during the time” the acts were caused and directed does not address the officer’s decision as it relates to Mr. Chowdhury, nor the Court’s reasons for concluding the decision was unreasonable.

[6] I note in this regard that my conclusion on this issue followed the decision of *Chowdhury v Canada (Citizenship and Immigration)*, 2017 FC 189 [*Chowdhury (2017)*], in which Justice Southcott found a decision unreasonable for failing to consider the temporal nexus issues raised in *El Werfalli v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 612: *Chowdhury (2022)* at paras 24–29. As noted in my decision, the Minister did not argue that *El Werfalli* was wrongly decided: *Chowdhury (2022)* at para 20. I conclude that the officer’s failure, in this particular case, to consider the issues raised in *El Werfalli* or to distinguish between events occurring during or after Mr. Chowdhury’s departure from the BNP, is not an issue of general importance that transcends the interests of the parties. Nor is it addressed in the Minister’s question, which addresses a finding not clearly made by the officer.

[7] I recognize that the issue of inferring specific intent from foreseeability, raised in the first half of the Minister’s question, appears to have been treated differently in various decisions of this Court: see discussion at *Chowdhury (2022)* at paras 30–31. This may not alone justify the certification of a question, although it may suggest an issue that is relevant in more than one decision. In any case, however, I cannot conclude this issue would be dispositive of an appeal in light of the conclusions discussed above.

[8] I am therefore not satisfied that the question posed by the Minister meets the requirements for certification as a serious question of general importance under paragraph 74(d) of the *IRPA*.

SUPPLEMENTARY JUDGMENT IN IMM-7876-19

THIS COURT'S JUDGMENT is that

1. No question of general importance is certified.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7876-19

STYLE OF CAUSE: RAFAEL CHOWDHURY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

SUBMISSIONS CONSIDERED AT OTTAWA, ONTARIO

**SUPPLEMENTARY JUDGMENT AND REASONS
AS TO CERTIFIED QUESTION** MCHAFFIE J.

DATED: MARCH 24, 2022

WRITTEN REPRESENTATIONS BY:

Alp Debreli FOR THE APPLICANT

David Cranton FOR THE RESPONDENT

SOLICITORS OF RECORD:

Alp Debreli FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario