CANADA / JUDGMENT

Babu v. Canada (Public Safety and Emergency Preparedness)

2022 FC 510

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Decision Content

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Docket: IMM-3426-20

Citation: 2022 FC 510

Ottawa, Ontario, April 20, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

NAZRU L ISLAM BABU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Nazrul Islam Babu, seeks judicial review of a decision of the Immigration Division (ID) of the Immigration and Refugee Board that found him inadmissible on security grounds because he had been a member of the Bangladesh Nationalist Party (BNP). The ID found his membership in the BNP brought him within paragraph 34(1)(f) of the Immigration and Refugee Protection Act, S.C. 2001, c 27 [IRPA] because the organization had engaged in terrorism. The ID further found that the BNP had engaged in violence for political purposes by the time the Applicant had joined it and continued to do so while he was a member. Therefore the fact that he left the organization in 2011, before some of the worst violence happened, did not shield him from the application of paragraph 34(1)(f) of IRPA.

[2] For the reasons that follow, the application for judicial review will be granted. The ID's decision fails to address a key issue, namely whether the violence attributed to the BNP before and during the Applicant's membership meets the definition of terrorism. The ID addressed this question in some detail for the period after the Applicant ceased being a member, but did not explain how the evidence and reasoning also applied to the earlier period. In the circumstances of this case, that is a sufficiently serious flaw in the decision to warrant the Court's intervention.

I. Background

[3] The Applicant is a citizen of Bangladesh. There is no dispute that in 1994 he joined the Janiotabadi Judo Dal [JJD], the BNP's youth wing. There is some dispute as to how long he was a member of the BNP, because of inconsistencies in the Applicant's evidence. The ID concluded that he became the Secretary of the JJD/BNP in 1996-1997, was promoted to General Secretary in November 1998, and remained a member until 2011. The Applicant had claimed that he was only a member from 1994 until 1999.

[4] The Applicant left Bangladesh to work in Singapore from 2006 – 2009, after which he returned to Bangladesh. In July 2011, he went to Canada on a work permit that was valid until July 2014. He remained in Canada following the expiry of his work permit, and made a refugee claim in late 2017. In December 2018, a removal order was issued against the Applicant for failing to leave Canada at the end of his work permit; his refugee claim was suspended pending the outcome of his admissibility hearing.

[5] On July 14, 2020, the ID determined that the Applicant was inadmissible on the grounds of security for being a member of an organization that engaged in terrorism, contrary to paragraph 34(1)(f) of IRPA. Consequently, the ID issued a deportation order against him.

[6] The ID found that the BNP was a terrorist organization within the meaning of section 34 of IRPA, largely because of its involvement in general strikes – known as hartals in Bangladesh – which were often associated with widespread violence and disruption. The key findings and conclusions on this question are set out in the following extracts from the decision:

[82] ... Hartals, in the context of Bangladesh, go beyond the mere expression of political activity or advocacy as generally understood. Because of the history of decades of violence associated with such political demonstrations, there is a direct link between hartals and human rights violations. Hartals, more often than not degenerate and as a result, people are killed or seriously injured during those protests. A call for a hartal, in the context of Bangladesh, is intended to cause death or serious bodily harm. There is a clear and documented pattern that the hartals lead to violence and economic chaos. It is equally clear that the acts of violence perpetrated during those hartals amount to acts of terrorism.

...

[89] ... There are instances where central leaders of the BNP have denounced or condemn the acts of violence occurring during the hartals. However, this has not deterred those leaders from continuing to use those means to achieve their political objectives. The disapproval or condemnation of the violence was not followed by concrete actions that would demonstrate that the BNP, as an organization, fundamentally opposes such violence. By continuing to call for hartals, the BNP leadership intentionally continued to use violence resulting in deaths and serious bodily harm to support its political demands.

....

[93]...given the documentary evidence, there are reasonable grounds to believe that the BNP, for political purposes, intentionally tried to compel the [Awami League (AL)] government to restore the caretaker system and to hold elections under a caretaker government, using hartals as a means to achieve their political objectives. Consequently, it has endangered the lives of persons and in some cases has caused death or serious bodily harm by the use of violence.

[7] In addition, the ID found that by the time the Applicant joined the BNP, the organization had already demonstrated it would resort to violence to attain political objectives and was on a trajectory of increased use of violence. It also found there were clear indications the BNP was engaged in the use of violence during the period he was a member. The ID therefore rejected the Applicant's argument that based on the decision in El Werfalli v Canada (Public Safety and Emergency Preparedness), 2013 FC 612 [El Werfalli], he should not be captured by paragraph 34(1)(f) because he had left the BNP before it began to engage in terrorism.

[8] Based on this, the ID concluded that the Applicant was inadmissible to Canada on security grounds.

II. Issues and Standard of Review

[9] The only issue in this case is whether the ID's decision is reasonable. In particular, the issue revolves around the ID's conclusion that the Applicant's membership in the BNP makes him inadmissible pursuant to paragraph 34(1)(f) of IRPA because it is an organization that engaged in terrorism. There is no allegation that the Applicant himself was involved in acts of violence amounting to terrorism.

[10] The standard of review that applies to this question is reasonableness, under the framework established in Canada (Minister of Citizenship and Immigration v Vavilov, 2019 SCC 64 [Vavilov]. That standard has been applied in other decisions of this Court to judicial review of admissibility findings (see Canada (Public Safety and Emergency Preparedness) v Hamid, 2021 FC 288 at paras 28-29; Islam v Canada (Public Safety and Emergency Preparedness), 2021 FC 108 [Islam 2021] at paras 11-12), and there is no basis to depart from those (and other) precedents.

[11] Regarding the appropriate remedy, the Applicant argued that because there cannot be more than one answer to the question of whether the BNP is an organization that engages in terrorism, the range of reasonable conclusions on this point is reduced to one, and thus there is no point to remit this case back to the ID if he is successful. I will address this question below.

III. Analysis

A. The legal framework

[12] The provision that governs this case is paragraph 34(1)(f) of IRPA, which provides:

Security

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

[...]

(c) engaging in terrorism;

[...]

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

Sécurité

34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants:

[...]

c) se livrer au terrorisme;

[...]

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

[13] There is no dispute about the following aspects of the legal framework that governs the interpretation of this provision:

The standard of "reasonable grounds to believe" requires more than mere suspicion, but less than proof on a balance of probabilities. "[R]easonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information..." (Mugesera v Canada (Minister of Citizenship and Immigration), 2005 SCC 40, at para 114, citing Sabour v Canada (Minister of Citizenship and Immigration), [2000] FCJ No 1615, 100 ACWS (3d) 642 (TD));

The concept of membership in an organization must be given a broad interpretation, and does not require formal indications of membership or participation in acts of terrorism (Poshteh v Canada (Minister of Citizenship and Immigration), 2005 FCA 85 at paras 27, 29; Kanagendren v Canada (Citizenship and Immigration), 2015 FCA 86 at paras 22-27);

The meaning of the term "terrorism" for the purposes of determining admissibility under paragraph 34(1)(f) of IRPA is set out in Suresh v Canada (Minister of Citizenship and Immigration), 2002 SCC 1 [Suresh], at paragraph 98:

In our view, it may safely be concluded... that "terrorism" in s. 19 of [IRPA] 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... to do or to abstain from doing any act." This definition catches the essence of what the world understands by "terrorism."

It is not, in itself, a reviewable error for the ID to also refer to the definition of "terrorist activity" set out in s 83.01 of the Criminal Code, R.S.C. 1985, c c-46 [Criminal Code], as long as the decision maker is alive to the significant distinctions between the criminal and immigration contexts, as well as the differences between the definition applicable to criminal conduct as opposed to that governing immigration inadmissibility (Rana v Canada (Citizenship and Immigration), 2018 FC 1080 [Rana] at paras 43-50);

There must be proof of a specific intention to cause death or serious injury for a finding of terrorism, whether the decision-maker applies the Suresh or the Criminal Code definition. This must be more than simply "an awareness of the likelihood that [such acts] will occur, or a recklessness or wilful blindness to their resulting from conduct, even violent conduct" (Chowdhury v Canada (Citizenship and Immigration), 2022 FC 311 [Chowdhury 2022], at para 12; see also Miah v Canada (Public Safety and Emergency Preparedness), 2020 FC 38 [Miah], at paras 34-35 and Rana at para 66).

[14] The parties do not agree, however, on the principles that guide the analysis of the temporal aspect. They rely on different strands in the jurisprudence in support of their positions.

[15] The Respondent starts with the wording of paragraph 34(1)(f) of IRPA, noting that Parliament deliberately chose very open-ended language in this provision. The clear intention was to ensure that membership in an organization "that there are reasonable grounds to believe engages, has engaged or will engage in [acts of terrorism]" is sufficient to make a person inadmissible to Canada on security grounds. The Respondent relies on Sittampalam v Canada (Citizenship and Immigration), 2006 FCA 326 at paragraphs 19-20 for the proposition that consideration of the timing of the claimant's membership must not circumscribe the provision's application, in disregard of Parliament's intention.

[16] The Respondent also cites the decisions in Gebreab v Canada (Public Safety and Emergency Preparedness), 2009 FC 1213 [Gebreab] (aff'd 2010 FCA 274), and S.A. v Canada (Public Safety and Emergency Preparedness), 2017 FC 494 [S.A.] in support of the assertion that there is no temporal component to the analysis. In Gebreab, the applicant was a member of an organization that had previously engaged in subversion and terrorism but had ceased doing so. There, Justice Snider applied her previous decision in Yamani v Canada (Public Safety and Emergency Preparedness), 2006 FC 1457 [Yamani] at paragraphs 11-12, that "there is no temporal component to the analysis in s. 34(1)(f)... Membership by the individual in the organization is similarly without temporal restrictions. The question is whether the person is or has been a member of the organization. There need not be a matching of the person's active membership to when the organization carried out its terrorist acts." This supported her finding that the tribunal had applied the correct test in not considering a temporal element (Gebreab at paras 23, 28-29).

[17] The Respondent argued before the ID that the Applicant "joined an organization that was already violent at the time of his membership." Pointing to the documented episodes of violence in the 1980s as well as the early 2000s, the Respondent argued that the record demonstrated a nexus between the Applicant's period of membership and the terrorist activities of the BNP. "According to the Minister, there is no period of time where the BNP was a non-violent organization." (ID Decision at para 23)

[18] As he did before the ID, the Applicant relies on El Werfalli on this question. He argues that this decision supports his claim that he should not be found inadmissible under paragraph 34(1)(f) of IRPA because the BNP only began to engage in acts of terrorism after he left the organization and moved to Canada. The Applicant submitted that the evidence and jurisprudence cited by the Minister refer to activities of the BNP after 2014.

[19] The facts in El Werfalli were different from those in Yamani and Gebreab, because the applicant in El Werfalli had ceased to be a member before the organization had engaged in terrorism. Justice Mandamin concluded that the prior jurisprudence did not apply to this situation, because otherwise "any permanent resident or foreign national who is a member of any organization [...] has a Sword of Damocles suspended indefinitely over his or her head should the organization they once had been a member [of] become engaged in terrorist activities in the future" (El Werfalli at para 62). Justice Mandamin therefore concluded that where the acts of terrorism were subsequent to the applicant's membership, there had to

have been “reasonable grounds to believe” that the organization may engage in terrorism (El Werfalli at paras 73-76).

[20] The Applicant submits that he left the BNP and moved to Canada before the acts of violence the ID relied on to find it was a terrorist organization occurred, and therefore the El Werfalli case directly applies. He argues that the ID’s decision should be overturned on this basis.

[21] The issue in this case centres on two questions:

whether the ID’s finding that the specific intention requirement was met on the evidence is reasonable; and

whether the ID’s conclusion that the principles affirmed in the El Werfalli decision did not apply to the Applicant’s situation is reasonable.

[22] For the reasons set out below, I find that there is a degree of overlap between the two questions in the circumstances of this case and therefore I will analyze them together. In summary, while the ID’s analysis of the specific intention question is in many respects a comprehensive review based on the relevant case law, the panel did not apply that approach to the analysis of whether it was reasonably foreseeable that the BNP had the required intention to engage in terrorism at the time of the Applicant’s membership. This flaw in the analysis relates to a key element of the case before the ID, and is sufficiently central to the decision to make it unreasonable (Vavilov at para 100).

[23] It will be useful to review the ID’s analysis of the intention question, and the evidence that relates to it, before examining the consideration of the temporal element.

[24] The ID decision begins with a review of the legal framework, noting the jurisprudence on the definition of terrorism has found that both the Suresh and Criminal Code definitions can be applied, while also citing Rana for the proposition that these do not operate in tandem when it comes to defining terrorism for the purposes of immigration inadmissibility decisions. In the end, the ID considered both definitions.

[25] The decision then traces the unfortunate history of political violence in Bangladesh, citing evidence that shows that such acts have become commonplace and that a culture of armed violence had become institutionalized within the two main political parties - the BNP and the AL. The ID then reviewed the use of hartals – a general strike that became a commonly used political weapon in Bangladesh and was part of the political landscape for decades. The decision cites several reports that show that hartals are synonymous with violence. For decades now, those general strikes called by different political parties almost inevitably end with violence. The ID found that “(t)here is an element of predictability that once a hartal is called, violence will occur.”

[26] I pause to note that, in several previous cases, the ID had relied on similar conclusions to support a finding that a BNP member was inadmissible because of the association between hartals and violence, and that it was foreseeable that violence would erupt when one was

called. In several of these cases this Court has found the decisions were unreasonable because the ID failed to apply the specific intention requirement, and instead relied on concepts such as “foreseeability” or “wilful blindness” or “recklessness” (see Rana at paras 23-26; Islam v Canada (Public Safety and Emergency Preparedness), 2019 FC 912 at para 23; M.N. v Canada (Public Safety and Emergency Preparedness), 2019 FC 796 [M.N.] at paras 10-12; Islam v Canada (Public Safety and Emergency Preparedness), 2021 FC 108 at para 22; Foisal v Canada (Citizenship and Immigration), 2021 FC 404 at paras 14-15). In other cases, this Court has found the evidence and reasoning sufficient to support the reasonableness of the decision (see, for example: S.A. at para 19; Saleheen v Canada (Public Safety and Emergency Preparedness), 2019 FC 145 at paras 46-47; Miah v Canada (Public Safety and Emergency Preparedness), 2020 FC 38 [Miah] at paras 43-44).

[27] In this case, the ID continued with the analysis, reviewing the evidence of the use of hartals by the BNP. The BNP was the ruling party in Bangladesh from 1991 to 1996, after which the AL took power and the BNP became the main opposition party. The ID reviewed the documentary evidence showing that during its time in opposition, the BNP resorted to hartals to pressure the government to meet various political demands. This evidence showed a long-standing reliance on hartals by the BNP, but also a significant upsurge in their use, and the violence associated with them in late 2013 and in the period surrounding the 2014 general election.

[28] Turning to the question of intention to cause acts amounting to terrorism, the ID relied on the numerous documents in the record that recounted the situation in Bangladesh over the period from 1996 to 2015. It found that the violence associated with hartals included “killing people who refuse to honour the blockades, attacking democratic institutions, such as polling stations and election officials and throwing petrol bombs at buses and vehicles.” The ID continued at paragraph 80:

When children and innocent bystanders are the victims of indiscriminate violence, we can conclude that actions taken by the perpetrators amount to terrorism. The violent acts perpetrated by BNP members and supporters were for political purposes and aimed at disrupting civilian life. Hartals were frequently called by the BNP to put pressure on the AL government to hold elections under a caretaker government. The hartals have had a profound impact on the economy of Bangladesh... and resulted in numerous violations of human rights.

[29] The ID then cited recent decisions of this Court that have reiterated that the “notion of intention to cause death or serious bodily harm by the use of violence is crucial to determine if this constitutes terrorist activity and engagement in terrorism contemplated in s. 34 of IRPA” (at para 81, citing Rana and Miah). Applying this guidance to the case before it, the ID concluded:

[82] In the present case, the tribunal concludes that violence was used to achieve political objectives, the link between the calls for hartals and the perpetration of terrorist acts is established. Hartals, in the context of Bangladesh, go beyond the mere expression of

political activity or advocacy as generally understood. Because of the history of decades of violence associated with such political demonstrations, there is a direct link between hartals and human rights violations. Hartals, more often than not degenerate and as a result, people are killed or seriously injured during those protests. A call for a hartal, in the context of Bangladesh, is intended to cause death or serious bodily harm. There is a clear and demonstrated pattern that the hartals lead to violence and economic chaos. It is equally clear that the acts of violence perpetrated during those hartals amount to acts of terrorism. Deaths, random bombings, economic shutdowns, serious injuries [are] all a direct result of a political decision to call a hartal.

[83] The tribunal infers that by calling a hartal, the political leaders intended to cause chaos, social disturbances and violence, they also expected that their sympathizers or members would enforce hartals with lethal force if necessary. 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 (Khan v. Canada (Minister of Citizenship and Immigration), 2019 FC 899, Saleheen v. Canada (Minister of Citizenship and Immigration), 2019 FC 145) and Miah v. Canada (Minister of Public Safety and Emergency Preparedness), 2020 FC 38). Calling for a hartal is synonymous to endangering people's lives. Political leaders bare (sic) a certain responsibility.

[30] Next, the ID applied the four factors for assessing whether an organization has the requisite specific intention to cause acts amounting to terrorism set out in the M.N. decision: (i) the circumstances in which the violent acts were committed; (ii) the internal structure of the organization; (iii) the degree of control it exerted over its members; and (iv) the organization’s knowledge of the violent acts and whether it denounced them or indicated its approval.

[31] On the evidence before it, the ID concluded that the acts of violence were committed in a political context, and they were used to promote the BNP’s political agenda in order to influence the decisions taken by the AL government. It found that this corresponds to the circumstances captured by the Suresh definition of terrorism. The ID also found that the BNP is a centralized organization, and that the evidence shows that the decision to call a hartal was made at the highest level of the organization. On the degree of control, the ID found that the evidence showed that hartals were more frequent and more brutal when the BNP was in opposition. The panel concluded that this demonstrated the degree to which the organization was able to mobilize its members and supporters to carry out these activities, which in turn reflected its degree of control over them.

[32] On the final element, the ID found that violence had become enshrined in the political culture of Bangladesh and the violence associated with hartals was well documented. Although there are instances where central leaders of the BNP have denounced or condemned the violence, this did not deter them from continuing to call for hartals to advance their political agenda. The ID found that “[t]he disapproval or condemnation of the violence was not followed by concrete actions that would demonstrate that the BNP, as an

organization, fundamentally opposes such violence. By continuing to call for hartals, the BNP leadership intentionally continued to use violence resulting in deaths and serious bodily harm to support its political demands" (para 89).

[33] In many respects, the ID's decision reflects an application of the recent jurisprudence of this Court on the question of whether the BNP had the specific intention to carry out acts amounting to terrorism. The decision cites and applies the relevant case law, and considers the ample documentary evidence that was filed (in contrast to some other cases where it appears the documentary record was thin – see, for example, M.N. at para 14). In my view, however, the key problem with this decision is that this analysis was not applied with sufficient care and attention to the evidence on the temporal aspect.

[34] This problem arises in this case because the Applicant's membership in the BNP ceased in 2011. As noted above, the ID found the evidence supported the conclusion that the BNP engaged in political violence when it was the governing party, and that this carried on and escalated during the period it was in opposition (commencing in 1996). The ID also found, however, that the period from 2012-2014 was one of the most violent in the history of Bangladesh, and during that time, the BNP was calling hartals and promoting social disorder to achieve its political ends. That supported the ID's conclusion that "[i]t is not plausible that there was not an underlying intention to achieve these goals through violence. The consequences of calling a hartal as well as the use of such a method to achieve political goals leaves little doubt of the intentions of political leaders calling for such actions" (para 84).

[35] The ID addressed the Applicant's argument that he should not be captured by paragraph 34(1)(f) of IRPA because of the El Werfalli decision in a brief analysis. It found that "[t]he organization [he] joined in 1994 had already demonstrated that it would resort to violence to attain political objectives." While the violence "might have culminated in 2013-2014, [the Applicant] cannot escape that he was a member of an organization that had increasingly relied on violence to promote its political objectives."

[36] The ID noted that the El Werfalli decision "creates an exception for people who were members of an organization that changed course after their departure to become a terrorist organization" and that it requires "that there must be a nexus between the time of the membership and the terrorist activities..." (para 92). The key conclusion on the temporal aspect is set out in the following passage, at paragraph 92:

In the case of organizations where there is reasonable grounds to believe the organization will engage in terrorism in the future, I am satisfied the point of reference must be during the time of membership" [citing El Werfalli at para 78]. The situation of Mr. Babu falls within that purview. There were clear indications during the period Mr. Babu was a member of the JJD/BNP, that this organization was engaged in the use of violence to attain political objectives and was on a trajectory of increasing the use violence for its political purpose.

[37] The problem with this aspect of the ID's decision is that it fails to engage in any analysis of how the acts of violence it ascribes to the BNP during the time of the Applicant's membership demonstrated the specific intention that the tribunal acknowledged was crucial to support a finding that acts of violence amounted to terrorism. The fact that the BNP engaged in political violence, or that it can be inferred that it knew that calling hartals would result in violence, has been found to be insufficient to support an inadmissibility finding under paragraph 34(1)(f) of IRPA (see, for example, Rana, Foisal, M.N., Islam 2019; Islam 2021; Chowdhury v Canada (Minister of Citizenship and Immigration), 2017 FC 189 [Chowdhury 2017]).

[38] In some respects, this decision involves a similar situation to the facts in Chowdhury 2022 and in Chowdhury 2017. In both of those cases, the claimants had ceased to be members of the BNP prior to the spike in political violence in 2013-2014. In the former case, Justice McHaffie noted at paragraph 25 that while the ID member did not cite the El Werfalli decision, the key question was whether the analysis applied the temporal issue and used an interpretation consistent with the relevant jurisprudence, citing Chowdhury 2017 at paras 23-26. He concluded that the member had not applied the correct legal approach to this question, and therefore the decision was unreasonable because it applied paragraph 34(1)(f) of IRPA without regard to binding precedent and thus stepped outside of the legal constraints that applied to its decision (Chowdhury 2022 at para 24, citing Vavilov at para 112).

[39] A key failing in the ID's decision in Chowdhury 2022 was that:

The officer did not distinguish between information and analysis regarding the BNP and its tactics in hartals in 2012 and before [when the applicant was still a member] and in 2013 and after [when he was not]. This was significant, as much of the evidence pertained to violence by opposition party members from the end of October 2013 onwards as part of 'the most violent [Parliamentary elections] in the country's history' (para 26).

[40] I find that the ID's decision here is marred by the same flaws as found in Chowdhury 2022, and also in Chowdhury 2017. In this case, the analysis of the intention of the BNP leadership to call for acts that constituted terrorism is focused mainly on the period surrounding the 2014 elections, but it is agreed that this was several years after the Applicant ceased to be a member. The ID's conclusion that there is a nexus between the time of his membership and the terrorist acts committed by the BNP is founded on more general references to earlier acts of violence, without analysis of the requirement for specific intent set out in cases such as Rana, or consideration of the four elements that can assist in determining whether an organization had the requisite intent described in M.N.

[41] While the ID was only required to find that there were "reasonable grounds to believe" that the BNP had engaged in terrorism, a crucial element of that finding was that the BNP – as an organization – had demonstrated the specific intention required to support a finding that the acts of violence amounted to terrorism. That is to say, the ID had to have "reasonable

grounds to believe" a very specific thing, and in this case, it is not possible to know whether or how the panel's analysis of the intention of the BNP around the time of the 2014 election can be applied to the earlier period when the Applicant was a member. Nor is it possible to know whether such a conclusion is supported by the evidence that the ID relied on relating to that earlier period, because the issue is not discussed in the decision.

[42] Judicial review on the reasonableness standard does not demand perfection, nor is it to be a "treasure hunt for error" (Vavilov at para 102). The reviewing Court is to examine the decision as a whole, looking both at whether the decision maker applied the binding law to the key facts, and whether there is a sufficiently serious gap in the logic of the analysis that it is not possible to have confidence in the outcome (Vavilov at paras 99-101). In my view, this case suffers on both counts: the ID did not apply the binding case law requiring proof of an organization's specific intention to cause acts of violence amounting to terrorism to the key temporal element of its analysis; in addition, the ID's analysis is marred by a logical gap that cannot be bridged by resort to the rest of the decision or the record.

[43] For these reasons, I find the decision to be unreasonable.

[44] As noted earlier, the Applicant submitted that because there can only be one reasonable answer to the question of whether the BNP is an organization that engaged in terrorism, there would be no point in remitting the matter back for reconsideration. I do not agree. The assessment of the intention of the BNP at the relevant time is a question of mixed fact and law that is suffused with a factual analysis and it does not admit of a single answer in all cases. The matter is not within the limited exception recognized in Vavilov at para 142.

[45] I am therefore remitting this case back to the ID for reconsideration by a differently constituted panel.

[46] There is one final procedural point to address. The Applicant named the Minister of Citizenship and Immigration as the Respondent in his Notice of Application, but the parties agreed that the appropriate Respondent is the Minister of Public Safety and Emergency Preparedness. The style of cause will therefore be amended, with immediate effect, to reflect this change.

[47] There is no question of general importance for certification.

JUDGMENT in IMM-3426-20

THIS COURT'S JUDGMENT is that:

The application for judicial review is granted.

The matter is remitted back to the Immigration Division for redetermination by a differently constituted panel.

There is no question of general importance for certification.

The style of cause is amended, with immediate effect, to name The Minister of Public Safety and Emergency Preparedness as the Respondent.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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IMM-3426-20

STYLE OF CAUSE:

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PENTNEY J.

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