



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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York, PA 17402**

Name: K [REDACTED] - [REDACTED], M [REDACTED]

A [REDACTED] 691

Date of this notice: 3/9/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

**Panel Members:
Pauley, Roger
Guendelsberger, John
Kendall Clark, Molly**

schwarzA
Userteam: Docket

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5107 Leesburg Pike, Suite 2000
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[REDACTED] 691
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3400 Concord Road
York, PA 17402

Name: K [REDACTED] - [REDACTED], M [REDACTED]

A [REDACTED] 691

Date of this notice: 3/9/2017

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Pauley, Roger
Guendelsberger, John
Kendall Clark, Molly

schwarzA
Userteam: Docket

Falls Church, Virginia 22041

File: [REDACTED] 691 – York, PA

Date:

MAR - 9 2017

In re: M [REDACTED] K [REDACTED] - I [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sandra Greene, Esquire

ON BEHALF OF DHS: Jeffrey T. Bubier
Senior Attorney

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum; withholding of removal; Convention Against Torture

In a decision dated February 29, 2016, the Immigration Judge denied the respondent's application for asylum under section 208(b) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b), and withholding of removal pursuant to section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A). The Immigration Judge granted the respondent protection under the Convention Against Torture ("CAT"), 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18. The respondent has appealed from the denial of asylum and withholding of removal. The Department of Homeland Security (DHS) has filed a cross-appeal challenging the Immigration Judge's credibility finding and the grant of protection under the CAT. The record will be remanded.

We review an Immigration Judge's factual determinations for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, judgment, and all other issues in appeals from the decisions of Immigration Judges. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is a native and citizen of Bangladesh. He testified that he joined the Bangladesh Nationalist Party ("BNP") in 2010, when he was 19 years old (Tr. at 24-25). The respondent was a general worker for the party, participating in public relations, meetings, and rallies (Tr. at 25). The respondent testified that he left Bangladesh in November 2014 based on problems he had with members of the ruling party, the Awami League ("AL") (Tr. at 25-26). The respondent testified that he was threatened multiple times and was also assaulted by members of the AL (Tr. at 26-33, 37-39, 41-42, 69-71). The respondent twice tried living in Dhaka with an uncle but he did not feel safe there (Tr. at 40-41).

The Immigration Judge specifically found that an adverse credibility finding was not warranted in this matter (I.J. at 6). The Immigration Judge then concluded that the respondent's

eligibility for asylum and withholding of removal depended on whether the terrorism bars applied (I.J. at 15-16). The Immigration Judge further concluded that the respondent was barred from receiving asylum and withholding of removal but she granted the respondent deferral of removal under the CAT. *See* 8 C.F.R. § 1208.17(a).

The DHS challenges the Immigration Judge's credibility finding, arguing that the inconsistencies in the respondent's various accounts of what happened to him in Bangladesh warrant an adverse credibility finding. The DHS contends that the credibility finding in this matter is clearly erroneous. On appeal, the DHS identifies various inconsistencies and omissions in the respondent's accounts of what took place in Bangladesh (DHS Br. at 14-21). According to the DHS, the respondent provided different accounts as to which eye was injured in an attack, the number and timing of threats and assaults suffered by the respondent, and the respondent's reasons for joining the BNP. The DHS further argues that the affidavits submitted into evidence contradict the respondent's claims (*Id.* at 20-21).

A credibility determination must be made "[c]onsidering the totality of the circumstances." Section 240(c)(4)(C) of the Act, 8 U.S.C. § 1229a(c)(4)(C). The Immigration Judge's credibility determination consists of one paragraph in which she states that the respondent was not able to explain certain inconsistencies, that some of the discrepancies in the record are troublesome, but that the discrepancies do not warrant an adverse credibility finding. She noted that some of the documents in Exhibit 6 and the country conditions evidence adequately corroborate the respondent's "protection claims" (I.J. at 6). We find the credibility determination inadequate for our review, and we therefore find it necessary to remand the record so that the Immigration Judge may further explain her reasoning. We note that the respondent has advanced a number of arguments on appeal as to why his testimony was credible (Respondent's Br. at 28-33). However, without additional findings by the Immigration Judge, we are unable to properly review the credibility finding in this matter.

The respondent challenges the Immigration Judge's finding that he is barred from asylum and withholding of removal based on the terrorism bars. The Immigration Judge concluded that the BNP is a Tier III undesignated terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act, 8 U.S.C. § 1182(a)(3)(B)(vi)(III) (I.J. at 22-25, 29); that the respondent engaged in terrorist activity by becoming a member of a terrorist organization and by providing material support to a terrorist organization (I.J. at 27-28); that the respondent did not prove by clear and convincing evidence that he did not know and should not have known that the BNP was a terrorist organization during the time he was a member and supporter (I.J. at 26-7, 29); and there were reasonable grounds to believe the respondent is a danger to the security of the United States (I.J. at 29). Accordingly, the Immigration Judge found that the respondent was ineligible for asylum and withholding of removal. *See* sections 208(b)(2)(A) and 241(b)(3)(B) of the Act.¹ It

¹ Where "the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of providing by a preponderance of the evidence that such grounds do not apply." 8 C.F.R. § 1240.8(d); *see also Matter of R-S-H*, 23 I&N Dec. 629, 640 (BIA 2003).

appears that but for the finding that the respondent was not eligible for asylum, the Immigration Judge would have granted him asylum under section 208(b) of the Act (I.J. at 15-16, 30).

Central to the appeal before us is the Immigration Judge's finding that the BNP is an undesignated terrorist organization. Ultimately, whether a group, such as the BNP, falls within the definition of an undesignated terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act is a legal issue we review de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

Generally under the Act, a group is designated as a "terrorist organization" either by the Secretary of State pursuant to section 219 of the Act, 8 U.S.C. § 1189, or by publishing the designation in the Federal Register after the Secretary determines, in consultation with the Attorney General or Secretary of Homeland Security, that the group engages in "terrorist activity."² See sections 212(a)(3)(B)(vi)(I), (II) of the Act. However, even if not so designated, a group may qualify as an undesignated "terrorist organization" if it is composed of "a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in [terrorist] activities." Section 212(a)(3)(B)(vi)(III) of the Act.

Unlike with designated terrorist organizations under sections 212(a)(3)(B)(vi)(I) and (II), a determination regarding a group's status as an undesignated terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act must be made on a case-by-case basis, in connection with an individual application for immigration benefits. See U.S. Citizenship and Immigration Servs., Dep't of Homeland Security, *Terrorism-Related Inadmissibility Grounds (TRIG)*, uscis.gov (follow "Laws" hyperlink; and then follow "Terrorism-Related Inadmissibility Grounds" hyperlink); see also Melanie Nezer, *The Material Support Problem: Where U.S. Anti-Terrorism Laws, Refugee Protection, and Foreign Policy Collide*, 13 Brown J. World Aff. 177, 179 (2006). For this reason, any determination regarding the BNP's status as an undesignated terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act is case-specific and must be based on the facts presented in each individual case. We note however, that we are unaware of any published decision from the Board or the Federal courts of appeals which has concluded that the BNP—a widely recognized and longstanding political party in a democratic political system—qualifies as an undesignated terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act.

The Immigration Judge found that the preponderance of the evidence shows that the BNP is an undesignated terrorist organization (I.J. at 23, 29). The Immigration Judge based her finding in part on evidence that during the time the BNP was in power in Bangladesh, it gave "dangerous terrorist groups space in which to thrive" and that while out of power, the BNP maintained

² "Terrorist activity" is defined as including an activity "unlawful under the laws of the place where it is committed" and which involves one of six enumerated activities, including an assassination and the use of any "biological agent, chemical agent, or nuclear weapon or device, or [] explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property [or] [a] threat, attempt, or conspiracy to do any of the foregoing." Section 212(a)(3)(B)(iii) of the Act.

alliances with Islamic political parties and extremist groups that shared its goals (I.J. at 6-14, 23). The Immigration Judge found that the BNP-led opposition alliance espoused the use of violence in destabilizing the secular government so that a BNP-led regime could be installed and that the BNP's support of terrorist groups "leaves no doubt that it condones and supports domestic and international terrorism" (I.J. at 14, 23). The Immigration Judge found that the BNP provided material support to extremist and terrorist organizations (I.J. at 23). The Immigration Judge further found that "the evidence unequivocally shows that not only has the BNP endorsed the use of violence by the opposition alliance, "its own leadership has advocated and carried out opposition activities that escalated into violence causing numerous fatalities" (I.J. at 23). The Immigration Judge further stated that "the BNP itself has perpetrated violence on its political opponents, the AL-led coalition government, during take-over attempts (I.J. at 23). In support of this last conclusion, the Immigration Judge cited to evidence of events that took place in June 2010, August 2004, April 2013, and January 2015 (I.J. at 23-25; Exh. 2, Tab F, Exh. 7 Tabs Q, R, S, T, U, W).

The Immigration Judge's determination that the BNP qualifies as an undesignated terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act rests in part on her determination that the BNP has affiliated with recognized terrorist organizations (I.J. at 14). While there is no clear error in the Immigration Judge's finding that the BNP has politically affiliated with such groups, we disagree with her legal determination that the BNP is itself a terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act as a consequence of these affiliations (I.J. at 9-14, 23; Exh. 2, Tab E at 72-76).

The plain language of section 212(a)(3)(B)(vi)(III) of the Act does not provide that a group becomes an undesignated terrorist organization as a consequence of its "affiliation" with a terrorist organization, whether designated or undesignated. Further, interpreting this provision to include groups who are merely affiliated with recognized terrorist organizations would run afoul of the presumption that Congress acts deliberately when it "includes particular language in one section of a statute but omits it in another section of the same Act." *E.g., Russello v. United States*, 464 U.S. 16, 23 (1983).

We observe that Congress outlined two separate grounds of inadmissibility under section 212(a)(3) of the Act, not applicable here, which render an alien inadmissible if he or she is "affiliated" or "associated" with certain groups. *See* sections 212(a)(3)(D)(i), (F) of the Act (rendering inadmissible an alien "affiliated with the Communist or any other totalitarian party," or who is "associated with a terrorist organization" *and* who intends to engage in activity which could endanger the welfare, safety, or security of the United States, respectively). These provisions reflect that Congress knew how to render inadmissible certain aliens, or groups, affiliated with or associated with terrorist organizations, but it chose to exclude such a provision from section 212(a)(3)(B) of the Act.

Accordingly, the plain language of section 212(a)(3)(B) suggests that a group's mere affiliation with a terrorist organization, without more, will not bring it within the ambit of section 212(a)(3)(B)(vi)(III) of the Act. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006) (holding "that a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute"). Holding otherwise would

lead to absurd results—namely, an alien who directly affiliates or associates with, but is not a member or representative³ of, a terrorist organization would not be inadmissible under section 212(a)(3)(B) of the Act, while an alien who indirectly associates with a terrorist organization, by way of his or her membership in a political party which, in turn, affiliates or associates with a terrorist organization, would be inadmissible. See *Matter of Fajardo Espinoza*, 26 I&N Dec. 603, 606 (BIA 2015) (holding that the Board may only deviate from the plain meaning of the statutory text when it is necessary “to avoid absurd results”).

This point is significant because, while the language of section 212(a)(3)(B)(vi)(III) of the Act does not reach political parties that merely “affiliate” or “associate” with a terrorist organization, a party would clearly fall within the definition of an undesignated terrorist organization set forth under this provision if any “subgroup” of the party “engages in” terrorist activity. The Act does not define “subgroup,” and case law does not illuminate the meaning of this term. We therefore consider legislative history to help discern its meaning. See, e.g., *Matter of L-A-C-*, 26 I&N Dec. 516, 518 (BIA 2015) (“Where the statutory language is unclear, we consider legislative history to help discern congressional intent.”).

Section 212(a)(3)(B)(vi)(III) was added to the Act in October 2001 by section 411(a)(1)(G) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, 348 (effective Oct. 26, 2001). A report issued by the House Judiciary Committee regarding this provision indicates that it was intended to encompass “any group which has a *significant* subgroup that carries out [terrorist] activities.” H.R. Rep. No. 107-236, pt. 1, at 63 (2001) (emphasis added). The Foreign Affairs Manual likewise provides that a subgroup relationship exists under section 212(a)(3)(B)(vi)(III) of the Act only “where there are reasonable grounds to believe that [a subgroup] is subordinate to, or affiliated with, [the larger group] *and* the [subgroup] is dependent on, or otherwise relies upon [the larger group] in whole or in part to support or maintain its operations.” Vol. 9 Foreign Affairs Manual § 302.6-2(B)(3)(h) (CT:VISA-67 03-01-2016) (emphasis added).

We find this explication of the term “subgroup” to be persuasive. We therefore conclude that an alleged affiliation between a political party, such as the BNP, and a recognized terrorist organization is insufficient to establish that the party is itself an undesignated terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act, unless it is shown that the party *significantly* affiliates with the terrorist organization such that the terrorist organization may be considered a “subgroup” of the party or vice versa. See H.R. Rep. No. 107-236, pt. 1, at 63. Evidence of significant affiliation, or a “subgroup” relationship, includes proof that a terrorist organization or party is subordinate to or is dependent on, or otherwise relies in whole or in part, on the terrorist organization or party to support or maintain its operations. See Vol. 9 Foreign Affairs Manual § 302.6-2(B)(3)(h). For example, under this definition a student or military wing

³ Section 212(a)(3)(B)(v) of the Act defines a representative of a terrorist organization as “an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.”

of a political party may qualify as a “subgroup” within the meaning of section 212(a)(3)(B)(vi)(III) of the Act. *See Viegas v. Holder*, 699 F.3d 798 (4th Cir. 2012) (finding that a group qualified as a terrorist organization because most members of its “military wings” engaged in terrorism).

Here, the record lacks evidence that the BNP significantly affiliates with the terrorist groups described in the Immigration Judge’s decision such that these organizations would qualify as subgroups of the BNP within the meaning of section 212(a)(3)(B)(vi)(III) of the Act. Notably, the Immigration Judge’s decision indicates that many of the BNP’s affiliations existed at the time the BNP was the ruling party, and the record establishes that while in control, the BNP arrested and prosecuted members of these extremist groups who carried out acts of violence and that the BNP even banned certain groups (I.J. at 9-14; Exh. 2, Tab E at 76). Additionally, as observed by the respondent on appeal, the Immigration Judge’s decision is largely based on vague assertions concerning the BNP’s support to various extremist groups, but the exact nature of the support is not specified (Respondent’s Br. at 12-13; I.J. at 23). Nor are we able to identify sources in the record that credibly describe the specific nature and extent of the BNP’s support of these groups.

We further observe that some of the Immigration Judge’s findings concerning links between the BNP and extremist groups are not fully supported by the record. For example, the Immigration Judge states that “the BNP has been linked to various militant extremist groups such as the Jama’atul Mujahideen Bangladesh (JMB) and the Harkat ul Jihad al Islami (HuJI),” and the Immigration Judge cites to a page from a Congressional Research Service report (I.J. at 12; Exh. 2, Tab E at 75). The cited page, however, does not specifically state that the BNP was linked with either of the two groups, and a page that follows reports that, although the BNP government at one point denied the presence of significant terrorist elements in the country, the government later moved to suppress terrorist groups, including the JMB (Exh. 2, Tab E at 76).

The Immigration Judge also focused largely on the alleged ties of the BNP while it was the ruling party of the country. As observed by the respondent, however, the record contains no evidence that the United States government ended diplomatic relations with the BNP-controlled government, and we have no authority to determine that the government of Bangladesh at that time was illegitimate. *See Matter of S-K-*, 23 I&N Dec. 936, 940 (BIA 2006).⁴ Furthermore, the Immigration Judge does not explain when the BNP allegedly transitioned from being the legitimate ruling party of Bangladesh to being a terrorist organization. The record before us does not demonstrate that the BNP is a terrorist organization based on the affiliations described by the Immigration Judge.

⁴ This case was later remanded to the Board for further proceedings by the Attorney General in *Matter of S-K-* (“*Matter of S-K- II*”), 24 I&N Dec. 289 (A.G. 2007). Subsequent to remand, we held that *Matter of S-K- II* did not affect the precedential nature of the Board’s conclusions in *Matter of S-K- I* regarding the applicability and interpretation of the material support provisions in section 212(a)(3)(B)(iv)(VI) of the Act. *Matter of S-K-* (“*Matter of S-K- IIF*”), 24 I&N Dec. 475 (BIA 2008).

The Immigration Judge further found that the “BNP itself” perpetrated violence on the AL-led coalition government during take-over attempts (I.J. at 23). Insofar as the Immigration Judge found that certain BNP members have participated in violent conduct in Bangladesh, there is no clear error in that finding (Exh. 4, Tabs A, B, C, D; Exh. 5, Tabs K, L; Exh. 7, Tabs Q, R, S, T, W). Nevertheless, even assuming that these acts qualify as “terrorist activity” within the meaning of section 212(a)(3)(B)(iii), that does not necessarily establish that the BNP is a group that engages in such activity. *See* section 212(a)(3)(B)(vi)(III) of the Act.

The United States Court of Appeals for the Seventh Circuit has concluded that the phrase “a group . . . which engages in” terrorist activity under section 212(a)(3)(B)(vi)(III) of the Act is ambiguous because it remains unclear whether a group which contains some members who resort to terrorist acts, without the group’s sanction, has “engage[d] in” terrorist activity. *Hussain v. Mukasey*, 518 F.3d 534, 538 (7th Cir. 2008). After reviewing cases relating to the constitutional right of free association and agency law, the court concluded that the phrase “engages in” terrorist activity under section 212(a)(3)(B)(vi)(III) of the Act necessarily requires an undesignated terrorist organization to authorize, ratify, or otherwise approve or condone terrorist activity committed by its individual members. *See id.* (citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 930-32 (1982)).

We concur with the Seventh Circuit’s reasoning and conclude that the phrase “a group . . . which engages in” terrorist activity under section 212(a)(3)(B)(vi)(III) of the Act requires some evidence that a group authorizes, ratifies, or otherwise approves or condones terrorist activity committed by its members. *Id.* Absent such evidence, a political party such as the BNP cannot be deemed an undesignated terrorist organization under section 212(a)(3)(B)(vi)(III) of the Act. *Khan v. Holder*, 766 F.3d 689, 699 (7th Cir. 2014) (“An entire organization does not automatically become a terrorist organization just because some members of the group commit terrorist acts. The question is one of authorization.”) (citing *Hussain v. Mukasey*, *supra*, at 538 (holding that “[a]n organization is not a terrorist organization just because one of its members commits an act of armed violence without direct or indirect authorization”)).

Evidence of authorization may be direct or circumstantial, and authorization may be reasonably inferred from, among other things, the fact that most of an organization’s members commit terrorist activity or from the failure of a group’s leadership to condemn or curtail its members’ terrorist acts. *See Viegas v. Holder*, *supra*, at 802 (stating that the DHS had met its initial burden of establishing that the terrorism bar may apply based on evidence that “most, if not all,” of the factions in the Front for the Liberation of the Enclave of Cabinda, of which the alien was a member, “include military wings [that] engaged in violence”); *see also Hussain v. Mukasey*, *supra*, at 539 (finding that, where members of an organization to which an alien belonged “committed a number of acts of armed violence” against a rival group, and the group’s leadership “did not criticize, or make efforts to curb, that violence[,] an inference that it was authorized is inescapable”). An Immigration Judge’s finding that a group authorizes terrorist activity is subject to a clearly erroneous standard of review. *See, e.g., Matter of G-K-*, 26 I&N Dec. 88, 97 (BIA 2013) (holding that determinations regarding an actor’s motives, and the link between his or her motives and actions, are findings of fact which the Board reviews for clear error).

The record reflects that some BNP members—as well as members of other opposition groups, with which the BNP has been politically aligned—were involved in violent acts in Bangladesh (Exh. 4 Tabs A, B, C, D, G; Exh. 5 Tabs K, L; Exh. 7 Tabs Q, R, S, T, W). The Immigration Judge did not, however, identify evidence showing that the BNP instigated or authorized the violent acts committed by its members. Moreover, we disagree with the Immigration Judge insofar as she found it sufficient that the BNP leadership advocated and carried out opposition activities that resulted in reasonably foreseeable violence (I.J. at 25). The Immigration Judge specifically referenced strikes where violence ensued, and she found that “[t]he violence was, and should have been, a foreseeable consequence of the BNP’s calls-to-action, in view of its long-standing ideologically-driven hostility toward the ruling AL government, as well as the personal animosity” displayed by the opposition leader toward the prime minister when the BNP was out of power (I.J. at 25). The Immigration Judge went on to conclude that “because many of the opposition activities did result in outbreaks of violence that were reasonably foreseeable and the violence can be attributed to the BNP’s calls-to-action, I must conclude that the BNP’s advocating the use of force to overthrow the ruling government is tantamount to terrorism” (I.J. at 25, n. 28). The fact that certain condoned political activities eventually escalated into violence, however, is not a sufficient basis for finding that the BNP leadership advocated violence. To conclude that an organization’s leadership is responsible for violence that is “reasonably foreseeable” by any of its members or supporters would, in our view, sweep far too many organizations into the “terrorist” definition.

The Immigration Judge’s conclusions that the “BNP itself” perpetrated violence are based on accusations by AL-government officials that the BNP leadership instigated violence, evidence that the AL-government has arrested BNP leaders for their role in violent attacks, evidence that BNP leaders have been charged with authorizing violence, and various other sources attributing violence to BNP members (Exh. 4 Tabs G, I; Exh. 5, Tab L; Exh. 7 Tab U). We must question the reliability of the accusations however, in light of the significant history of antagonism and reprisal between the AL-controlled government, the BNP, and its political partners (Exh. 2, Tab E; Exh. 4 Tab A; Exh. 5 Tabs I, K, L). The record establishes that when either the BNP or AL wins an election, both parties entrench their power by staffing the judiciary and security forces with their own supporters and use the justice system to harass and marginalize their political opposition (*Id.*). Thus, the fact that the Bangladeshi government has arrested and initiated prosecutions against the BNP’s leaders and accused them of being responsible for violence is not a reliable basis for concluding that BNP leaders have actually authorized violence. We further observe that the record contains some evidence that the BNP has condemned violence (Exh. 4, Tab P at 104; Exh. 5, Tab L at 90).

It is also worth noting that the State Department’s 2014 Human Rights Report does not mention terrorism concerns with respect to the BNP. *See* United States Dept. of State, Bureau of Democracy, Human Rights, and Labor, *Bangladesh 2014 Human Rights Report* (Exh. 11). The Third Circuit Court of Appeals has held that the State Department Reports are the most appropriate and perhaps best resources for determining the current political situation in a particular country. *Kayembe v. Ashcroft*, 334 F.3d 231, 235 (3d Cir. 2003).

Based on this record, we conclude that insofar as the Immigration Judge determined that the BNP leadership perpetrated, instigated or authorized violence, that conclusion is clearly erroneous (I.J. at 23-25). *See Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (“[A] finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.”).

We will reverse the Immigration Judge’s conclusion that the BNP is an undesignated terrorist organization.

Accordingly, we will remand the record to the Immigration Judge for further proceedings.

ORDER: The appeal is sustained with respect to the Immigration Judge’s finding that the BNP is an undesignated terrorist organization.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.


FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
3400 CONCORD ROAD, SUITE 2
YORK, PA 17402

Law Office of Daniel Pell
Pell, Daniel Max
2550 Kingston Road
Suite 305
York, PA 17402

IN THE MATTER OF
[REDACTED] - I [REDACTED], M

FILE A [REDACTED] 691

DATE: Mar 3, 2016

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:
BOARD OF IMMIGRATION APPEALS
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5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
3400 CONCORD ROAD, SUITE 2
YORK, PA 17402

X OTHER: _____ WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE _____

BLS
COURT CLERK
IMMIGRATION COURT

FF

CC: DISTRICT COUNSEL, C/O YORK PRISON
3400 CONCORD ROAD
YORK, PA, 17402

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HEARING LOCATION: YORK, PENNSYLVANIA

IN THE MATTER OF:

M [REDACTED] K [REDACTED] I [REDACTED],

Respondent.

IN REMOVAL PROCEEDINGS

File No.: A [REDACTED] 691

Date: February 29, 2016

RECEIVED
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2016 FEB 29 PM 3:55
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
ARLINGTON, VIRGINIA

CHARGE:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA or "the Act"), pertaining to an intending immigrant who, at the time of his application for admission, was not in possession of a valid unexpired immigrant visa or other valid document for a lawful admission.

APPLICATIONS:

Asylum pursuant to INA § 208; Withholding of Removal pursuant to INA § 241(b)(3); Withholding of Removal pursuant to Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), and pursuant to 8 C.F.R. §§ 1208.16-18 (2015); and, in the alternative, Deferral of Removal pursuant to the CAT and implementing regulations.

ON BEHALF OF THE RESPONDENT:

Daniel M. Pell, Esq.
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ON BEHALF OF THE GOVERNMENT:

Office of the Chief Counsel
U.S. Department of Homeland Security
3400 Concord Road
York, Pennsylvania 17402

DECISION AND ORDER OF THE IMMIGRATION JUDGE

This is a removal proceeding brought under Section 240 of the Immigration and Nationality Act. On March 2, 2015, the Respondent arrived in the United States near the Hildago, Texas port of entry. Exhibit 1. He was apprehended by U.S. Immigration after he crossed the Rio Grande River on a raft and tried to enter the United States on foot. Exhibit 1B. He did not have any valid documentation for admission. Id. During the inspection process, the Respondent expressed a fear of persecution or torture in Bangladesh. Id. An Asylum Officer interviewed the Respondent and determined that his fear was reasonable. Exhibit 1A. Through the filing of a Notice to Appear with the Immigration Court on April 15, 2015, the Department of Homeland Security commenced removal proceedings against the Respondent. Exhibit 1. The Notice alleges that he is subject to removal from the United States as an alien who, at the time that he sought admission to the United States, was not in possession of a valid immigrant visa,

border crossing card, or any other documentation that would have permitted a lawful admission.
Id.

Previously, in the presence of another immigration judge, the Respondent admitted the factual allegations and conceded the charge of inadmissibility stated in the Notice to Appear. The Respondent declined to designate a country for removal, and the prior judge directed the designation of Bangladesh. The Respondent then applied for the following forms of relief and protection: asylum under Section 208(a) of the Immigration and Nationality Act ("INA"), withholding of removal under INA § 241(b)(3) and the regulations implementing the Convention Against Torture (CAT), and, in the alternative, deferral of removal under the CAT. His applications were referred to the undersigned judge for adjudication.¹

For the reasons stated in this decision, I conclude that the Respondent is subject to removal as alleged in the Notice to Appear, and that the evidence supporting the charge of removability is clear and convincing. In addition, I conclude that because the Respondent is subject to the terrorism bars to asylum and withholding of removal, his application for asylum will be denied by pretermission, and both of his applications for withholding of removal under the INA and under the CAT will be denied by pretermission. However, as the Respondent has demonstrated a clear probability of future torture with the acquiescence of his government, his alternative application for deferral of removal under the CAT will be **GRANTED** on the merits. A grant of deferral of removal under the CAT still subjects the Respondent to removal from the United States. 8 C.F.R. § 1208.17(a) (2015). The United States Government may seek to remove the Respondent to Bangladesh or to a third country, provided that the United States Government obtain assurances from the country of removal that he would not be subjected to torture in that country. 8 C.F.R. 1208.18(c). Accordingly, an order of removal to Bangladesh is entered, subject to the GRANT of deferral of removal.

QUESTIONS PRESENTED

1. Whether the Respondent is ineligible to apply for asylum and withholding of removal, because he was a member and supporter of the Bangladesh Nationalist Party, an organization that he knew or should reasonably have known was a terrorist organization.

2. Assuming that the Respondent is not eligible for asylum and withholding of removal, whether he is eligible for a deferral of his removal to Bangladesh under the Convention Against Torture.

SUMMARY OF THE EVIDENCE

A. Respondent's Testimony

The Respondent, Mohammed Kamrul Islam, testified that he was born in Nokhali,

¹ The undersigned judge was not assigned to hear any applications for release from immigration custody that were filed with the Immigration Court in York, Pennsylvania.

Bangladesh on April 6, 1991. He is currently 24 years old. He is not married and has no children.

The Respondent testified that both of his parents and his four siblings currently live in Nokhali. The family owned a small farm on which the Respondent worked. The family farm produced vegetables, rice, and other crops. The Respondent had attended school up to the eighth grade. After he stopped attending school, he began working on his family farm. The Respondent's written statement in Exhibit 3, however, indicates that he also "was studying politics." Exhibit 3, p. 1.

In 2010, when he was approximately 19 years old, the Respondent joined the Bangladesh Nationalist Party (BNP). He testified that he was motivated to join the BNP because he "liked the ideology" of the BNP. He was drawn to the BNP's goals of establishing democracy, improving human rights, developing the country's infrastructure, and advancing social programs such as education and health care. His activities as a BNP member included serving as a "general worker," handling public relations, participating in meetings, and participating in rallies. He stated that one of his duties was to talk to people face-to-face and urge them to attend BNP meetings. The Respondent was unable to recall how many meetings the BNP held each year.

As a result of his work on behalf of the BNP, the Respondent began to have problems with members of the BNP's main opposition party, the Awami League (AL). The Respondent testified that the AL pressured him to join the AL party and harmed him when he refused. He stated that the AL wanted him to join the AL because they wanted him to "engage in terrorism." He also stated that the AL was "jealous" of the BNP's political influence in the Noakhali region. He was not able to explain why the AL was "jealous."

The Respondent stated that his first encounter with the AL occurred on February 21, 2014. (When asked why his written statement at Exhibit 3, p. 2 states that this incident occurred on February 2, 2014, the Respondent replied that he was unsure about the date). On the day in question, the Respondent participated in a BNP procession. He did not testify about the purpose of the procession; however, his written statement indicates that the "procession was called by the Central Committee of the BNP throughout the country to protest against Awami League's arbitrary and brutal policy of harassing BNP members using the security forces and police to incite the false cases against BNP members to torture and kill them extra-judicially." Exhibit 3, pp. 2-3. The Respondent stated that as the procession reached the mid-point point, the BNP members encountered the police. The police stopped the BNP marchers and told them to disperse and go home. The Respondent testified that the BNP leader, however, instructed the BNP marchers to continue with the procession. As they did so, the police began to beat the BNP marchers. Members of the AL party who were present also participated in the attack. The Respondent sustained a cut on his forehead that was about three inches wide. He also was cut on the right side of his head. His written statement also indicates that his chest was slashed with a knife. Exhibit 3, p. 3. He recalled that he was stabbed with sharp objects such as knives. He fell to the ground and became unconscious.

The Respondent testified that he remained unconscious for two days. His colleagues in the BNP brought him to a hospital for medical treatment. He stated that he remained in the hospital for 25 days. He recalled that his left eye was throbbing and that he was unable to see. He has since regained his eyesight. He recalled that the medical procedures that were performed on him included stitching up the lacerations on his head and hand, x-rays of his right hand and chest, and a physical examination of his head. He also was given medications to take for approximately two months. Even though his wounds have healed, he has tissue scars on his head, chest, and right arm. Several neighbors and friends have provided affidavits and letters attesting to the Respondent's participation in the rally and procession, the police's response to the BNP crowd's refusal to disperse, and the injuries that the Respondent sustained as a result of the attack and beating. See Exhibit 6, Tabs A-H.

The Respondent testified that he had another encounter with the AL on May 5, 2014. On that date, he intended to participate in another BNP procession. While on the way, several AL members stopped him on the street. One of them pulled out a pistol and pointed it at him. The AL member who held the gun to his head asked whether or not he was going to the procession. The Respondent replied "yes." At that moment, the AL members began harassing and verbally abusing the Respondent. Another of the AL members demanded that the Respondent take off his shirt. They all started laughing and told him that he should go home or else they would take off his pants, too. On direct examination, the Respondent testified that the AL members asked why he had not quit the BNP. The Respondent also stated that several police officers who were standing nearby were laughing at him. One of the officers told him to tell his father that the Respondent could have been shot dead, but instead his life was spared.

The Respondent testified that he went home. He and his father then went to the nearest police station to complain. The police officers at the station laughed at the Respondent and his father. They told the Respondent that he should join the AL if he wanted to avoid problems. Once he returned home, the Respondent began receiving threatening phone calls from unidentified AL members. He believed that they were mad that he had complained about them to the police. On cross-examination, the Respondent was asked whether he received telephone calls before the second encounter on May 5, 2014. He replied that he did receive threats before the second encounter, but he was not able to recall when those threats were communicated.

After returning home from the police station, the Respondent stayed indoors for a few days. He testified that he felt hopeless. While at home, he received more threatening phone calls from AL members. He decided to leave Noakhali and go to Dhaka. In Dhaka, the Respondent stayed with an uncle for three months. After three months, he returned to Noakhali. The bus that transported him from Dhaka dropped him off about two kilometers from his home. As he was walking toward his house, he noticed that several AL members were following him. One of them, a person named Sobuj, invited the Respondent to join the AL. He declined the invitation and began to walk away. At that moment, about seven to eight AL members began chasing him. They had knives and hockey sticks. The Respondent fled back to his uncle's house in Dhaka and stayed there for two more months. During that time, his father sold a piece of land and used the proceeds to pay a smuggler to help the Respondent leave Bangladesh. The smuggling fees were \$15,000 (US).

The Respondent testified that he left Bangladesh in November 2014 to “save his life.” On his way to the United States, the Respondent traveled through eleven countries, including Dubai, Brazil, Peru, Ecuador, Colombia, Panama, Costa Rica, Nicaragua, El Salvador, Guatemala, and Mexico. He did not apply for asylum in any of those countries. He stated that he cannot return to Bangladesh because he was in danger. He stated that the local chapter of the BNP was never involved in any kind of violence. To his knowledge, the national BNP was never involved in perpetrating violence.

B. Documentary Evidence Concerning the Respondent

The Respondent introduced into evidence a number of documents that his father and a friend named Ector Hussein had obtained for him. Mr. Hussein, who lives in the United States, helped the Respondent obtain some of the affidavits from family members, friends, and BNP officials. Mr. Hussein also helped the Respondent obtain translations of some of the documents. The Respondent testified that he had not seen or read the affidavits; however, he stated that he agreed with everything stated therein.²

² The exhibits in the Record of Proceedings are:

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| Exhibit 1 | Notice to Appear, filed April 15, 2015; |
| Exhibit 1A | Record of the Reasonable Fear Determination, prepared on March 19, 2015; |
| Exhibit 1B | Record of an Interview with a CBP agent, prepared on March 3, 2015; |
| Exhibit 2 | DHS’s First Submission of Evidence, Tabs A-G, filed June 10, 2015; |
| Exhibit 3 | Respondent’s Form I-589 -- Applications for Asylum, Withholding of Removal, filed July 20, 2015; |
| Exhibit 4 | Respondent’s “First Set of Exhibits: Country Conditions And Evidence That Bangladesh Nation [sic] Party Is Not An FTO,” Tabs A-S, filed July 30, 2015; |
| Exhibit 5 | DHS’s Second Submission of Evidence, Tabs H-L, filed August 24, 2015; |
| Exhibit 6 | Respondent’s “Second Set of Exhibits,” Tabs A-I, filed August 31, 2015; |
| Exhibit 7 | DHS’s Third Submission of Evidence, Tabs M-X, filed September 24, 2015; |
| Exhibit 8 | DHS Brief on Bars to Relief, filed October 15, 2015; |
| Exhibit 9 | Respondent’s “Memorandum In Opposition To a Finding that Respondent Is Barred From Asylum and Withholding on Account of His Membership in and Support of the Bangladesh Nationalist Party (BNP),” filed in court on September 15, 2015; |
| Exhibit 10 | Respondent’s “Page By Page Certified-Translated Selected Documents From Bengali to English As Requested By the Immigration Judge,” filed on October 30, 2015. |

With respect to Exhibit 10, the undersigned judge informed Respondent’s counsel of the regulatory requirement that translations of foreign-language documents be made by a certified, competent translator, and that the translator must provide a certification. See 8 C.F.R. § 1003.33 (2015) (“Translation of Documents. Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed. *Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and*

The Respondent was not able to explain certain discrepancies between his oral testimony and his documentary submissions. For example, the Respondent testified that his right eye was swollen shut, but one of the affidavits states that his left eye was swollen. Moreover, on cross-examination, the Respondent was asked whether he had received any threats in the days before the first attack. He replied that he had received many threats over many years; however, when asked why the record of the reasonable fear interview indicates that he did not tell the interviewing Asylum Officer that he had been threatened before the first attack, the Respondent was not able to provide an explanation for this discrepancy. Although the discrepancies are troublesome, they do not warrant an adverse credibility finding. In addition, some of the documents in Exhibit 6 and the country conditions evidence adequately corroborate the Respondent's protection claims.

C. Documentary Evidence Concerning the BNP

All the documents concerning country conditions in Bangladesh that both parties introduced into evidence also have been admitted and considered. Because they are voluminous, only the most relevant and probative documents have been summarized. See Fed. R. of Evid. 401, 702-706. When necessary, I have taken administrative notice of updated information regarding the designations of various terrorist organizations. The internet-based citations to the updated information are provided.

The political power struggle between the ruling Awami League and the main opposition party, the BNP, provides a backdrop for the Respondent's protection claims. The animosity between the two parties dates back to the formation of the independent Republic of Bangladesh in 1971, following a violent war of independence with Pakistan. Exhibit 7, Tab O, pp. 43-70.³ Since that time, Bengladeshi politics have been characterized by the mutual enmity between Khaleda Zia, leader of the BNP, and Sheikh Hasina Wazed, leader of the AL. Id. at 45. The country's first elections were held in 1991, after 16 years of military and authoritarian rule. Id. Zia led the country from 1991 to 1996, and from 2001 to 2006. Id. Hasina led the country from 1996 to 2001, and since 2009. Id. Each has tried to undermine the other by leading hartals or political strikes to destabilize the government and by using "anti-terrorism" and "anti-corruption" legislation to imprison each other's activists. Id. Many scholars believe that the animosity between the country's matriarchs is related to the struggle for Bangladesh's identity. Id. Hasina is the daughter of Sheikh Mujibur Rahman, the country's first democratically elected leader who was assassinated in 1975 during a military coup. Id. Khaleda Zia is the widow of General Zia ur-Rahman, the military leader and BNP founder who took power following Sheikh Mujibur Rahman's assassination in 1975. Id. The arguments over the role of the two women in

accurate to the best of the translator's abilities." Id. (emphasis added). As many of the documents in Exhibit 10 do not have the required translator's certification, their reliability cannot be confirmed. Nevertheless, I have considered the information in deciding whether or not it corroborates the Respondent's protection claims.

³ IHS Jane's, Internal Affairs, "Bangladesh" (October 17, 2012).

Bangladesh's short history reflect ideological differences between the two main parties but also stem from personal animosity between the two matriarchs. Id.

Both parties have been accused of rigging elections. Exhibit 4, Tab D, pp. 10-14.⁴ In 2006, as she was heading toward the end of a "particularly corrupt and incompetent" stint in office, Zia tried to rig the election polling system that was overseen by the caretaker government, which was installed in 1996. Id. The army intervened and backed a non-party "technocratic" government. Id. After two years, the technocratic government held an election in which Hasina and the AL won by a landslide. Id. Upon assuming power in 2006, Hasina tried to prevent the BNP from ever assuming power again by abolishing the caretaker system in 2011, and by banning the BNP's largest coalition partner, the Jamaat-e-Islami, on the ground that the Jamaat supported a decidedly pro-Islamic platform. Id. at 10-11.

The BNP was created in 1978 by Bangladesh's military ruler, General Zia ur-Rahman. Exhibit 7, Tab O, p. 47. It has followed a policy of Islamization, albeit not as comprehensive or as doctrinal as many fundamentalists would like. Id. The BNP endorses the notion that all Muslim majority provinces of British India must be united in a single, Muslim state of Pakistan. Id. at 45. In its foreign policy, the BNP has historically demonstrated antipathy toward India. Id. The BNP's opposition to India stems from an historical link between India and the opposition AL, dating back to the 1971 war of independence from Pakistan. Id. The BNP's survival has largely depended on pro-Pakistan fundamentalist parties such as the Jamaat-e-Islami (JeI). Id. at 48.

When in power, the BNP-led government was plagued by mounting lawlessness and violence. Exhibit 7, Tab O, p. 48. In 2007, Prime Minister Khaleda Zia and her son, Tarique Zia, were arrested as part of the government's anti-corruption campaign. Id. Zia and her son were later released on medical grounds. Id. By that point, the BNP's leadership was in much turmoil. The BNP fared poorly in the December 2008 elections, winning only 30 out of 300 seats in parliament. Id. The BNP alleged electoral fraud, and disputes over this issue led the BNP and its coalition partners to boycott parliament between June 2009 and February 2010. Id. After the BNP returned to parliament, the party continued its vehement opposition to the AL government's policies. Id. Since June 2010, political strikes (hartals) have been held in increasing frequency as part of the BNP's ongoing attempts to destabilize the government and to force a new election. Id.

In the months preceding the January 2014 elections, the BNP announced a boycott to protest the AL government's 2011 decision to suspend the interim caretaker government. Exhibit 4, Tab A, p. 4.⁵ The BNP protesters were angry that Prime Minister Hasina refused to allow a neutral caretaker administration to oversee the January 2014 elections. Exhibit 4, Tab I, p. 45.⁶ Pursuant to the Bangladesh Constitution, a caretaker government was installed in 1996 to

⁴ The Economist: "Why Bangladesh's Politics Are Broken" (April 22, 2015)).

⁵ The Economist: "The Minus-One Solution: Electoral Farce in Bangladesh" (May 15, 2015).

⁶ BBC News, "Bangladesh Opposition Leader Zia Calls for Blockade" (January 5, 2015).

oversee elections. Exhibit 4, Tab A, p. 4. When the AL decided to suspend the caretaker government for the upcoming 2014 elections, four out of five Bangladeshis decried this move as “self-serving on the part of the AL” and a “bad idea.” Id. Due to the suspension of the caretaker government and the BNP boycott, the AL won the 2014 elections by a landslide. Id.

As the first anniversary of the January 2014 elections approached, the BNP called for nationwide strikes and protests against the AL. Exhibit 4, Tab A, pp. 10-14.⁷ BNP opposition leader Zia called for a mass rally on December 29, 2014, but the police banned it. Exhibit 4, Tab A, p. 3. The police cut transportation links to the site of the rally and arrested more than 1,000 opposition activists. Id. In response, Mrs. Zia also called for a three-day nationwide strike to begin on February 1, 2015. Exhibit 4, Tab A, p. 10. The nationwide blockades of roads, railways and waterways crippled the country. Id. Violence also broke out in many parts of Bangladesh. Exhibit 4, Tab I, at p. 44. By May 2015, more than 120 people had died on the streets. Exhibit 4, Tab A, pp. 1-2.⁸ Most were killed by firebombs thrown by the BNP-led opposition. Id.

The police and AL government have aggressively responded to the February 2015 blockades. In December 2014, 50,000 troops were deployed to provide extra security for the nation’s capital. Exhibit 4, Tab A, p. 4. The police also prevented Mrs. Zia from leaving the BNP headquarters offices in Dhaka until she called off the strikes. Exhibit 4, Tab I, pp. 43-47. She refused. Id. In a televised address to the nation, Hasina condemned the BNP for the violence and urged BNP leaders to stop the bomb and grenade attacks, acts of sabotage, killings, arson, and damage to property. Id. at 44.

The U.S. State Department reported that the Bangladesh government resorted to arbitrary arrests, detentions, disappearances, and even extra-judicial executions to crack down on the violence. Exhibit 11, p. 3.⁹ The government held persons in detention without specific charges, sometimes in an attempt to collect information about other suspects. Id. On January 7, 2014, police arrested BNP advisor Khandaker Mahbub Hossain shortly after a public event in which he called the 2014 elections “stigmatized” and “farcical.” Id. Hossain, a prominent attorney, was charged with arson and vandalism during a March 2013 protest. Id. He was released on bail on February 3, 2014. Id. Police dropped the charges in August 2014, citing no evidence of Hossain’s involvement. Id. Earlier, in December 2013, a group of alleged BNP and Jamaat-e-Islami (JeI) supporters attacked the motorcade of AL politician Asaduzzaman Noor, now the cultural affairs minister. Id. While Noor survived, five other persons died in the clash. In the weeks following the 2014 elections, local residents found the bodies of three prime suspects in

⁷ The Economist: “Why Bangladesh’s Politics Are Broken” (April 22, 2015).

⁸ The Economist: “Politics in Bangladesh: On the Boil” (May 5, 2015).

⁹ U.S. Department of State / Bureau of Democracy, Human Rights, and Labor, Report on Human Rights Practices for 2014, Bangladesh.

the attack roadside and behind buildings. Two bodies bore marks of multiple injuries, while the third had a single gunshot wound.¹⁰ Id.

The government's crackdown has severely weakened the BNP. Exhibit 4, Tab I, at p. 44. Many opposition members were shot by police, while others were killed in clashes. Id. Dozens of BNP workers have disappeared. Id. at 45. Human rights groups blamed the government for the disappearances. Id. More than 10,000 opposition activists were arrested. Exhibit 4, Tab A. Most of the BNP leaders have landed in jail, while others have gone into exile or hiding. Id. They face criminal charges that will probably bar them from running in the next election. Id.

The political tensions between the two parties have led to the rise of religious militancy in Bangladesh. Exhibit 4, Tab A, pp. 1-14. A further deterioration of Bangladesh's democracy and political stability could create additional space within which Islamist militants may operate not just for domestic terrorist activity but for preparing international plots as well. Id. Hasina is known for "her fierce opposition to Islamist extremism." Exhibit 5, Tab A, pp. 1-2. This posture has earned her the support of the country's most important foreign partners, including the United States, India, and Saudi Arabia. Id.

The BNP's alliance with the JeI. Historically, the BNP formed alliances with Islamist political parties to win elections. Its major ally, the Jamaat-e-Islami (JeI), is the third largest political party in Bangladesh and is the largest religious party. JeI grew out of the Jamaat-e-Islami of Pakistan, which advocates for an Islamic theocracy. Exhibit 2, Tab C, pp. 49-55.¹¹

¹⁰ According to an Australian government report, the ruling party has been able to attack opposition supporters with a certain level of impunity; and "the broad powers the law gives the government have made control of police one of the spoils of an electoral victory." Exhibit 5, Tab K, p. 69. For example, when the BNP was in power from 2001 to 2006, many opposition leaders were killed in elections-related violence. Id. at 67. Clashes between BNP and AL activists (including the AL's affiliated student wings) were reported on a weekly basis in the Bangladesh national press. Id. Clashes between competing factions within the BNP were reported almost as frequently. Id. The violence was short-term and was often brought to an end by the intervention of police. Id. The violence declined during the period when the interim caretaker government was in operation, from October 2006 to December 2008. Id. Significantly, the report notes that there have been no reports of the Awami League actively employing the police against its political rivals since the AL government assumed power in 2009. Id. However, there have been BNP claims that the police have failed to take action against AL acts of aggression. Id.

¹¹ Hindu American Foundation, "Jamaat-e-Islami Bangladesh: A Nexus of Terror" is an authoritative source of information. The author, Dr. Sajjan Gohel, is a respected, well-known researcher and scholar in the field. Dr. Gohel is the International Security Director at the Asia-Pacific Foundation, a London-based think tank. He is also a Visiting Teacher at the London School of Economics and Political Science, where he had received his Ph.D. in International History. His doctoral thesis was titled "The Evolution of Egyptian Radical Ideological Thought from Hasan al-Banna to Ayman al-Zawahiri." Dr. Gohel's primary research interests include security challenges in South Asia, the Middle East and the Horn of Africa and their implications

During the 1971 war of independence, the JeI opposed the AL's call for Bangladeshi independence and fought on the side of Pakistan. Id. at 50. After Bangladesh gained independence and in 1974, the JeI was banned and forced into exile in Pakistan. Id. In 1976, General Zia – then ruler and leader of the BNP party -- introduced legislation to legalize the Islamic Democratic League and other political parties that were banned in 1974, thus paving the way for JeI members-in-exile to return to Bangladesh. Id. In 1979, JeI was founded and allied itself with the regime of General Zia. Id. When the BNP government was in power between 2001 and 2006, the JeI and another Islamist party, the IOJ, were allowed to expand their Islamist influence in Bangladesh, creating space within which terrorist and extremist groups operated. Exhibit 2, Tab E, p. 75.¹²

In the December 2008 elections, the JeI did not fare as well as the AL or the BNP; this was attributed to the fact that probably 40 percent of the electorate were first-time voters who were put off by JeI's links to Islamic extremists. Exhibit 2, Tab C, at p. 50. From 2012 to 2013, JeI faced further pressure as the AL government created a war crimes tribunal to try those accused of siding with the Pakistani military during the country's 1971 war of independence. Id. The trials were conducted in 2010, and the charges included allegations of mass killings, rapes, tortures, arsons, lootings and abductions. Id. Fourteen people were brought to trial by the International Crimes Tribunal of Bangladesh; twelve of them were members of the JeI. Id. A second round of charges was lodged against other JeI members in mid-2012. Id. On February 28, 2013, the International Crimes Tribunal sentenced to death several prominent leaders of the JeI for their roles in committing mass killings and war crimes during the 1971 war. Exhibit 2, Tab B, p. 44.¹³ Backlash ensued. Id.

Members of JeI, its militant student wing (the Islami Chhatra Shibir or ICS), and an offshoot faction of the ICS known as the Ansarullah Bengali Team (ABT) took to the streets of Dhaka to protest the death sentences. Exhibit 2, Tab B, p. 44. The ABT allegedly killed a prominent civil rights activist who had helped to coordinate the Shahbag protests in Dhaka that also occurred in February 2013, which brought hundreds of thousands of young Bangladeshi out onto the streets of the capital city, seeking punitive action for war crimes allegedly committed by JeI members during the war of independence. Id. at 43. The police arrested five university students who were allegedly responsible for killing the civil rights activist. Id. at 44. The arrestees were members of the ABT, a militant group that is "ideologically motivated by the al-Qaeda doctrine and has been trying to resuscitate the local extremist groups in Bangladesh." Id. Despite these arrests, the problems of extremism showed no sign of abating in Bangladesh. Id.

for the West; radical ideological thought, both present and historical; and the role that the "new media" plays in transnational terrorism. Id. at 46.

¹² Congressional Research Service, "Bangladesh: Political and Strategic Developments and U.S. Interests" (April 1, 2010).

¹³ Terrorism Research Initiative, Perspectives on Terrorism: "Bangladesh: An Emerging Centre for Terrorism in Asia" (2014). This publication was authored by Dr. Gohel, see note 12, supra.

The student wing of the JeI, the Islami Chhatra Shibir (ICS), has been involved in increasing violence since 2009. Exh. 2, Tab C, p. 50. Both JeI and ICS have frequently carried out indiscriminate bombings and attacks on civilians at public places, in order to create fear and panic among the general population and to disrupt normal life. Id. JeI and ICS have engaged in anti-minority violence since the 1971 war, when their members joined paramilitary militias and collaborated with the Pakistani army in committing mass human rights violations against the Hindu minority. Id. at 51. Subsequently, they carried out large-scale attacks on minorities in 2001, which led to the exodus of an estimated 500,000 Hindus from the country. Id. In February 2010, over 100 ICS members were arrested in Dhaka and Chittagong as part of a nationwide sweep against religious militants and student agitators. Id. In 2012, JeI and ICS activists began again to escalate their attacks on minorities. Id. In early 2013, JeI and BNP supporters attacked Hindu villages following the International Crimes Tribunal convictions of JeI leaders for their roles in committing atrocities during the 1971 war. Id. at 52. The attacks destroyed more than 50 temples and approximately 1,500 homes. Id. Violence again broke out following the 2014 elections, as mobs of JeI, ICS, and BNP activists systematically attacked Hindu homes, businesses, and temples. Id. at 51-52. As a result, 495 Hindu homes were damaged, 585 shops were attacked or looted, and 169 temples were vandalized. Id.

The JeI could not function effectively without its student wing, the ICS, which remains its main recruiting ground. Exhibit 2, Tab B, p. 44. During its time in the BNP-led coalition government of 2001 to 2006, the JeI placed its party members at crucial positions in universities and the Public Service Commission. Id. It was able to appoint its cadres and sympathizers to various universities in Bangladesh and civil services, marking its presence in the educational institutions and bureaucracy. Id. The JeI used its political and religious ties with Saudi Arabia and other Persian Gulf nations to help its supporters obtain employment in those countries, as well as to provide a platform for supporters seeking further ideological guidance. Its workers tended to contribute generously to the coffers of the JeI. Id. The estimated amount of annual net profit generated by these enterprises was \$200 million. Id.

The BNP's alliance with the IOJ. The Islami Oikya Jote, or IOJ, is the other Islamist party that benefited from the BNP-led government during the period 2001 to 2006. Exhibit 2, Tab E, pp. 64-87. The IOJ is reported to have ties to the radical Harkat ul Jihad al Islami (HuJI), which has had ties to al-Qaeda. Id. Established in 1990, the IOJ comprised seven parties: Khelafat Majitis, Nezam-e-Islam, Faraizi Jamaat, Islami Morcha, Ulama Committee, a splinter group of National Awami Party (Bhasani) and Islami Shashantantra Andolo. Exhibit 7, Tab J, p. 50.¹⁴ Its main aim is to establish an Islamic polity based upon Islamic jurisprudence and the Khilafat. Id. The IOJ's chairman, Mufti Fazlul Haque Amini, advocates the implementation of sharia (Islamic law) in the country and has routinely issued fatwas (religious opinions) against the media. Id. For example, in 1998 the IOJ campaigned for a death warrant to be issued against the writer Taslima Nasreen. Id. In August 2002, the IOJ called for the arrest of those involved with a play on sex trafficking in the town of Faridpur. Id. As a result, police arrested the playwright and two journalists identified as supporters of the play. Id. Despite its nominal representation in parliament (it won 2 seats in parliament in the 2001 election), the radical IOJ

¹⁴ IHS Jane's, Internal Affairs, "Bangladesh" (October 17, 2012).

managed to exercise significant hold over the then-ruling BNP's policies. Id. at 53. For instance, throughout 2004, the IOJ spearheaded a campaign to ban publications of the religious minority Ahmaddiya community, which finally resulted in the ban being enforced in January 2005. Id. The IOJ failed to gain any seats in the 2008 elections and is unlikely to reach its former levels of influence in the foreseeable future. Id.

The BNP's alliance with the JMB. In addition to the Islamist parties that formed its coalition alliance, the BNP has been linked to various militant extremist groups such as the Jama'atul Mujahideen Bangladesh (JMB) and the Harkat ul Jihad al Islami (HuJI). Exhibit 2, Tab E, p. 75. In August 2010, the United States designated the HuJI as a terrorist organization.¹⁵ Earlier, on January 6, 1999, the BNP and the JMB cemented an electoral alliance against the centre-left Awami League. Exhibit 7, Tab N, p. 4-42.¹⁶ JMB voters helped propel the BNP-JMB coalition to power in the 2001 elections. Id. at 4. Upon taking office, the coalition government began promoting the JMB. Id. With the sponsorship of then-Prime Minister Khaleda Zia and her BNP-led government, the JMB set up camp in the village of Naogaon. Id. From there, it served as a powerful propaganda machine that spurred a sharp rise in recruitment in and around the region. Id. The JMB used the Naogaon camp to raise funds and project nationwide publicity. Id.

The goal of the JMB's founder, Shaikh Abdur Rahman, was the establishment of Islamic rule in Bangladesh. Exhibit 7, Tab N, p. 4. In a religious cleansing campaign, the group targeted atheists, apostates, government institutions and officials. Id. at 27. Hindus and AL supporters had been JMB targets since the very beginning, and assassinations had been the tactic of choice. Id. The JMB was behind a month-long campaign that unleashed violence including public beheadings and beatings of local non-Muslims (Maoists, Hindus, Christians) and political opponents. Id. at 5. Although it was aware of the JMB's violent tactics, the BNP deliberately used the JMB to accomplish its political objectives. Id. at 4. Members of the current AL government have been victims of JMB attacks. Id.

Between 2001 and 2005, the JMB was able to grow with either passive disinterest, or sometimes active support, from top officials of the BNP. Exhibit 7, Tab N, p. 4. Cooperating with the BNP-led government gave the JMB two important benefits. Id. at 14. First, the alliance facilitated the integration of the JMB with JeI and its militant student wing, the Islamic Chatra Shabir (ICS). Id. at 9-10, 18. Second, the alliance protected the JMB from arrests until the nationwide bombing attacks on August 17, 2005, and it may have secured the release of

¹⁵ In October 2005, the Bangladesh government banned the HuJI as a terrorist organization operating inside Bangladesh. See http://news.bbc.co.uk/2/hi/south_asia/4350752.stm (last visited February 18, 2016). The U.S. Department of State designated the group as a Foreign Terrorist Organization on August 6, 2010, and the U.S. Department of the Treasury has also designated the group as a Specially Designated Global Terrorist Organization. See <https://sanctionssearch.ofac.treas.gov/> (last visited February 18, 2016).

¹⁶ International Crisis Group, "The Threat From Jamaat-UI Mujahideen Bangladesh" (March 1, 2010).

hundreds of JMB members afterwards. Id. at 18. Court records suggest that local BNP leaders also provided significant financial, administrative and legal support to the JMB in carrying out such violent attacks. Id.

On August 17, 2005, the JMB coordinated bombing attacks across Bangladesh. Exhibit 7, Tab N, p. 9. The JMB detonated 500 synchronized bombs in all but one of Bangladesh's 64 districts. Id. The JMB claimed that the goal was not to kill civilians, although two people died and about 50 were injured. Id. at 20. Rather, the goal was to get publicity for the group and to promote the need for Islamic rule.¹⁷ Id. In October 2005, the JMB carried out attacks against judges of the law courts through a series of bomb blasts in Chandpur, Chittagong, Sylhet and Lakshmipur. Exhibit 2, Tab B, p. 45. The situation escalated when the JMB killed two senior assistant judges and wounded three others in a suicide bomb attack in Jhalakathi on November 14, 2005. Id. Police investigators discovered that the Jhalakathi bomber was an ICS activist, and that he and his family members were closely linked to the JeI. Id. Shortly after these incidents, authorities apprehended more than 700 suspected members of the JMB and its affiliate party, Jagrat Muslim Janata Bangladesh (JMJB). Id.

After the 2005 bombings, the BNP government was forced to act under heavy domestic and international pressure. Exhibit 7, Tab N, p. 20. The police, led by the paramilitary Rapid Action Battalion organized by the BNP government, began arresting JMB members almost immediately. Id. Some of the arrested reported that the founder of the JMB had given orders to "throw bombs" on judges, magistrates, lawyers, and policemen to create panic among people that would ultimately lead to the fall of the government. Id. By 2006, the government had charged approximately 520 JMB members with crimes. Id. In March 2007 and after the AL returned to power, the government executed the entire JMB shura (council), including JMB founder Abdur Rahman. Id. Although severely weakened, the JMB remains committed to an Islamic state in Bangladesh. Id. at p. 27. It has maintained contacts with a wide range of local and international jihadi groups. Id. at p. 28.

The JMB and another extremist group operating in Bangladesh, the HuJI, have collaborated in several carefully orchestrated terrorist attacks. The leader of HuJI, Fazlul Rahman, was the religious leader of the "Amir of Jihadi movement in Bangladesh." Exhibit 2, Tab B, p. 45. Fazlul Rahman endorsed a fatwa calling for a jihad against "the Jews and Crusaders" that was issued by Usama bin Ladin on February 23, 1999. Id. at 45. It took the Bangladesh government a long time to designate HuJI a terrorist organization, because then-Prime Minister Zia of the BNP-led government maintained that HuJI was "not present" in the

¹⁷ JMB distributed leaflets around the country in which it claimed responsibility for the attacks and explained the rationale, as follows: "... the [JMB] rejects the existing judicial system. The constitution, under which the country is currently being ruled, is bound to conflict with the rules of Allah. Therefore, [we urge] all concerned to shun the existing system and the so-called electoral system, and call for the rule of the country according to Allah's command and the Prophet's way. . . ." Exhibit 7, Tab N, p. 19. One of the JMB leaders told the court during his trial in early 2006 that "[o]ur aim was to topple the government through a mass upsurge, then capture power and establish the rule of Islam." Id.

country. Id. This was done at the behest of the JeI, an influential member of the BNP-led coalition government. Id. However, in the wake of the 2005 JMB bombing attacks, the BNP government was forced to ban the JMB and the HuJI in August 2005. Id. In 2010, the United States Government designated the HuJI a Foreign Terrorist Organization. See note 15. The United States also has designated the HuJI a Specially Designated Global Terrorist Organization. See id.

The BNP's alliance with JeI and IOJ, which are linked to extremist groups such as the JMB and the HuJI, has enabled the party indirectly to use violence to push its political agenda while maintaining the appearance of legitimacy. The BNP relies on the resources of these extremist groups to carry out street agitation that often turn violent. In return for their support, the BNP provides funding, shelter, and protection from prosecution. Although the BNP does not publicly condone the groups' ideological goals of turning Bangladesh into an Islamic caliphate, it has used the groups and their resources in attempts to unseat the AL government. In doing so, the BNP has given these dangerous terrorist groups space in which to thrive during the years when the BNP was in power, from 2001 to 2006. The BNP's mutual support of these groups in carrying out their ideological agenda leaves no doubt that it condones and supports domestic and international terrorism.

ANALYSIS, FINDINGS, AND CONCLUSIONS

A. Law Governing Eligibility For Asylum and Withholding of Removal

An applicant for asylum must show that he is a "refugee" within the meaning of INA § 101(a)(42). See INA § 208(a), 8 U.S.C. § 1101(a)(42). To satisfy the "refugee" definition, the applicant must demonstrate that he has suffered past persecution or that he has a well-founded fear of future persecution in his country of origin on account of one of the five statutory grounds: race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(a) (2015). The applicant also must show that one of the five statutory asylum grounds was or will be at least one central reason for his persecution. INA § 208(b)(1)(B)(i). The applicant must show that he fears persecution by the government or an agent that the government is unwilling or unable to control. See Matter of S-A-, 22 I. & N. Dec. 1328, 1335 (BIA 2000). If the applicant establishes that he was persecuted in the past, he benefits from a rebuttable presumption that his fear of future persecution is well-founded. 8 C.F.R. § 1208.13(b)(1). The DHS may rebut this presumption by proving that circumstances in the applicant's country of origin have fundamentally changed, or that the applicant's relocation within that country would be reasonable under all the circumstances. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B). Finally, in addition to establishing statutory eligibility for asylum, the applicant must demonstrate that a grant of asylum is warranted in the exercise of the court's discretion. INA § 208(b)(1)(A); 8 C.F.R. § 1208.14(a).

An applicant for withholding of removal under INA § 241(b)(3) must show a "clear probability" of persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3); INS v. Stevic, 467 U.S. 407, 413 (1984). The clear probability standard means that the threat to the applicant's life or freedom is more likely than not to occur. Thus, the clear probability standard is more demanding than the

“well-founded fear” standard for asylum, which only requires a showing of a reasonable risk of persecution. As with asylum, the threat to the life or the freedom of the withholding applicant must be inflicted by the applicant’s government or an agent the government is unwilling or unable to control. See Matter of S-A-, 22 I&N Dec. 1328, 1335 (BIA 2000). And as with asylum, a showing of past persecution creates a rebuttable presumption of future persecution in the country of removal. 8 C.F.R. § 1208.16(b)(1).

An applicant for withholding of removal under the Convention Against Torture bears the burden of proving that it is more likely than not that he would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). The torture must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1). The term “torture” is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). The term “torture” does not include lawful sanctions imposed for a violation of the law, provided that the sanctions do not defeat the underlying objective of the Convention to prohibit torture. Id. at § 1208.18(a)(3). The term “acquiescence” requires that the public official have prior awareness of the activity and thereafter breach his or her legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7). The term “acquiescence” has been interpreted to mean that government officials remain “willfully blind to torturous conduct and breach their legal responsibility to prevent it.” Valdiviezo-Galdamez v. Attorney General, 663 F.3d 582, 610 (3d Cir. 2011). Finally, an applicant who is not eligible for withholding of removal under the CAT can still apply for an alternative form of protection from torture known as deferral of removal under the CAT. 8 C.F.R. § 1208.17(a).

The Respondent bears the burden of proof in all of his applications for relief and protection from removal. INA § 240(c)(4)(A). In this respect, his credibility is important and may be outcome-determinative. See INA § 240(c)(4)(C). The Respondent’s testimony must be sufficiently detailed, plausible, and consistent. Id. In evaluating the Respondent’s and other witnesses’s credibility, the trier-of-fact considers the totality of the circumstances. Id. A credibility determination may be based on a witness’s demeanor, candor, or responsiveness, and the inherent plausibility of his or her account. Id. The trier-of-fact also may consider the consistency between the written and oral statements of the witnesses; the internal consistency of such statements; and any inaccuracy or falsehood in the statements, regardless of whether any such inaccuracy, inconsistency, or falsehood goes to the heart of the Respondent’s claim. Id. In addition, the trier-of-fact may consider whether the Respondent has adequately corroborated his protection claims with the testimonies of other witnesses or through documentary evidence in the record of proceedings. Id.

As stated earlier, I conclude that the Respondent testified credibly in court and that some of the documentary evidence in the record corroborates his protection claims. Therefore, his

eligibility for asylum and withholding of removal will depend on whether the terrorism bars apply to him.

B. The Terrorism-Based Exceptions To Asylum and Withholding of Removal

The Department of Homeland Security contends that the Respondent is not eligible for asylum and withholding of removal, because he is a member or supporter of an undesignated terrorist organization, and because he has engaged in terrorist activity by providing material support to an undesignated terrorist organization in Bangladesh. In response, the Respondent contends that the BNP was never and is not now a terrorist organization. The Respondent further asserts that even if the BNP were considered an undesignated terrorist organization, he did not know and had no reason to know that the BNP was a terrorist organization during the time that he was involved with that organization. Finally, the Respondent asserts that he did not provide material support to the BNP, and even if he had, he did not know and should not reasonably have known that the BNP was a terrorist organization. As eligibility for asylum and withholding of removal is a threshold issue, it is necessary to address this issue first.

1. The Statutory Scheme

The INA contains several key provisions that prohibit an alien who presents a threat to the security of the United States from applying for asylum and withholding of removal. For emphasis, the language of the statutory provisions that are discussed in this opinion will be italicized.

The bars to asylum relief are found in Section 208(b)(2)(A). The terrorism bar is found in Clause (v) of Section 208(b)(2)(A). Clause (v) provides that an alien is barred from applying for asylum if he is an alien “described in subclause (I), (II), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B) (relating to terrorist activity)[.]” INA § 208(b)(2)(A). Though not pertinent here, Clause (v) contains an exception that allows “an alien described in subclause (IV) of section 212(a)(3)(B)(i)” to apply for asylum if “the Attorney General determines, in the Attorney General’s discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States.”¹⁸ INA § 208(b)(2)(A)(v).

The bars to withholding of removal are found in Section 241(b)(3). Section 241(b)(3)(B) states that an alien described in Section 237(a)(4)(B) “shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States” and who, therefore, is barred from withholding of removal under Section 241(b)(3). See INA § 241(b)(3).

An alien described in Section 212(a)(3)(B)(i). Section 212(a)(3)(B)(i) describes four categories of inadmissible aliens who are ineligible for asylum and withholding of removal. The

¹⁸ Subclause (IV) of Section 212(a)(3)(B)(i) describes a representative of a terrorist organization or of a political, social or other group that endorses or espouses terrorist activity. INA § 212(a)(3)(B)(i)(IV).

four categories are set forth in Subclauses (I), (II), (IV), and (VI).¹⁹ In this case, the DHS contends that the Respondent is an alien described in Subclauses (I) and (VI), which pertain to:

(I) *an alien who has engaged in a terrorist activity;*

....
(VI) *an alien who is a member of a [Tier III terrorist organization, as described in clause (vi)(III) of Section 212(a)(3)(B)], unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization.*

The term “engage in terrorist activity” in Subclause (I) is defined by specific reference to six categories of activities in which a person engages either “in an individual capacity or as a member of an organization.” INA § 212(a)(3)(B)(iv). The term “engage in terrorist activity” includes:

....
(IV) *to solicit funds or other things of value for – (aa) a terrorist activity; (bb) a terrorist organization described [as a Tier I or Tier II terrorist organization]; or (cc) a terrorist organization described [as a Tier III terrorist organization], unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;*

(V) *to solicit any individual – . . . (cc) for membership in [an undesignated terrorist organization or Tier III organization, as described in clause (vi)(III) of Section 212(a)(3)(b)]; and*

(VI) *to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training – (aa) for the commission of a terrorist activity; . . . or (dd) to a terrorist organization described [as a Tier III organization], or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.*

An alien described in Section 237(a)(4)(B) (relating to terrorist activity). The DHS also contends that the Respondent is an alien described in Section 237(a)(4)(B) and thus is ineligible for asylum and withholding of removal. See INA §§ 208(a)(2)(A)(v) & 241(b)(3)(B).

¹⁹ Section 212(a)(3)(B)(i) also describes six additional categories of inadmissible aliens. Those six categories include aliens who have incited terrorist activity with the intent to cause death or serious bodily harm; aliens who are members of a Tier I or Tier II terrorist organization; aliens who endorse or espouse terrorist activity or persuade other to endorse or espouse terrorist activity or support a terrorist organization; and aliens who have received military-style training from or on behalf of a terrorist organization. INA § 212(a)(3)(B)(i)(VII)-(XII).

Entitled “Terrorist activities,” Section 237(a)(4)(B) applies to deportable aliens who pose a threat to the security of the United States. Section 237(a)(4)(B) states that “[a]ny alien who is described in subparagraph (B) or (F) of section 212(a)(3) is deportable.” INA § 237(a)(4)(B). Subparagraph (B) refers back to the definition of “terrorist activities” in Section 212(a)(3)(B)(i), the definition of “terrorist activity” in Section 212(a)(3)(B)(iii), and the definition of “engage in terrorist activity” in Section 212(a)(3)(B)(iv). See discussion above. Subparagraph (F) provides that “[a]ny alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.” INA § 212(a)(3)(F).

As the Department does not contend that the Respondent is an alien described in Subparagraph (F) of Section 212(a)(3), the balance of this opinion will focus on whether the Respondent is an alien described in Section 237(a)(4)(B), which specifically incorporates the “terrorist activity” provisions of Section 212(a)(3)(B)(i), (iii), and (iv). Therefore, a finding that the Respondent has engaged in terrorist activity that fits the definition of “terrorist activity” in Section 212(a)(3)(B) would result in a finding that he is ineligible for both asylum and withholding of removal.

The meaning of “terrorist organization.” The term “terrorist organization” in Section 212(a)(3)(B)(iv) has three statutory meanings. See INA § 212(a)(3)(B)(vi)(I)-(III). First, it may refer to an organization designated as a Foreign Terrorist Organization (“FTO”) by the Secretary of State pursuant to Section 219 of the INA (also known as a “Tier I organization”). See INA § 212(a)(3)(B)(vi)(I). Second, the term may refer to an organization otherwise designated, upon publication in the Federal Register, as a terrorist organization (“Tier II organization”). See INA § 212(a)(3)(B)(vi)(II). Third, the term may refer to an “undesignated” terrorist organization (also known as “Tier III organization”). See INA § 212(a)(3)(B)(vi)(III) (as amended by the REAL ID Act of 2005). An undesignated terrorist organization is statutorily defined as a group of two or more individuals who commit, incite to commit, provide material support for, prepare for, plan, or gather information on potential targets for, terrorist activity. See INA §§ 212(a)(3)(B)(vi)(III). As the language of Section 212(a)(3)(B) makes clear, a group does not have to be designated by the Secretary of State to implicate the terrorism provisions of INA § 212(a)(3)(B). See Singh-Kaur v. Ashcroft, 385 F.3d 293, 300-01 (3d Cir. 2004) (upholding application of the relief bar because the alien was inadmissible for having provided material support to terrorists, even though the terrorists he supported were not part of a designated terrorist organization during the relevant time period).

The general rule is that if an alien provided material support to, or solicited funds or members for, a designated terrorist organization, the alien is deemed to have known that such organization is a terrorist organization. See INA §§ 212(a)(3)(B)(iv)(IV)(bb), 212(a)(3)(B)(iv)(V)(bb), 212(a)(3)(B)-(iv)(VI)(cc), 212(a)(3)(B)(vi). When the alleged terrorist organization is an undesignated organization, the INA requires that the alien to demonstrate, by clear and convincing evidence, that he did not know, and should not reasonably have known, that the organization was a terrorist organization. INA § 212(a)(3)(B)(iv)(VI)(dd). In either scenario, the burden rests on the alien to show that he did not provide material support to a

designated or undesignated terrorist organization. See 8 C.F.R. § 1240.8(d). See also Matter of S-K-, 23 I&N Dec. 936, 939 (BIA 2006) (under the regulations, the DHS has the initial burden of showing that the “evidence indicates” that an asylum bar applies to the Respondent. Once that showing is made, the burden then shifts to the Respondent to show that her organization is not a Tier III organization) (citing 8 C.F.R. § 1240.8(d), Abdille v. Ashcroft, 242 F.3d 477 (3d Cir. 2001); Matter of Annang, 14 I&N Dec. 502 (BIA 1973)).

The Board of Immigration Appeals construed the meaning of “undesignated terrorist organization” in Matter of S-K-, 23 I&N Dec. 936 (BIA 2006). In that case, the Board affirmed an immigration judge’s ruling that the Respondent was barred from receiving asylum because she provided money and other support to the Chin National Front (“CNF”) in Burma, a group that opposed the ruling military junta. Id. at 937. At the time of the Board’s decision in 2006, the CNF had not been designated by the U.S. Secretary of State as a terrorist organization. Id. The applicant in S-K- argued that because she did not know and should not reasonably have known that the CNF was a terrorist organization, her activities in support of the CNF did not constitute terrorist activities.

The Board began its analysis by framing the issues, as follows: (1) whether the term “material support” should be defined narrowly or more broadly, and whether it should take into consideration the mens rea of the provider; (2) to what extent should an organization’s purpose and goals factor into the determination of whether it is a terrorist organization. S-K-, 23 I&N Dec. at 938. Answering the second question required the Board to consider “whether the use of justifiable force against an illegitimate regime and the right of people to self-determination” are relevant considerations. Id. Recognizing that the second issue was outcome-determinative, the Board elected to address the two issues in reverse order. Id.

Based on the evidence that the Department presented, the Board concluded that the CNF fit the definition of a Tier III organization in Section 212(a)(3)(B)(i)(VI). Id. at 938-39. In reaching this conclusion, the Board considered that no United States government agency has published information indicating that the CNF has engaged in terrorist activities. Id. at 939. The Board also considered S-K-’s arguments that the CNF’s “goals are democracy and it uses force only in self-defense,” and that “the CNF is allied with the National League of Democracy, which the United States has recognized as a legitimate representative of the Burmese people and is recognized by the United Nations.” Id. at 938, 939. Furthermore, S-K- argued that the Burmese government was an illegitimate regime that seized power illegally through a coup d’etat. Id. at 938, 939. S-K- described the Burmese government as a “military dictatorship” that “regularly commit[ted] human rights abuses against ethnic and religious minorities.” Id. S-K- further argued that “the military junta rule[d] the country under martial law and crushe[d] any attempts at democratic reform.” Id. S-K- also argued that the U.S. Government had condemned the Burmese military as a “group of thugs” and had passed a law in 2003 that acknowledged that the National League of Democracy was the legitimate representative of the Burmese people. Id. Finally, S-K- argued that “the United States [did] not recognize the Burmese Government’s legislative acts, and therefore the CNF’s actions [should not be considered] unlawful under Burmese law.” Id. at 938, 939.

In concluding that the CNF was a Tier III terrorist organization, the Board rejected S-K-'s arguments that the Burmese government was illegitimate because it seized power by force. Id. at 939-40. First, the Board noted that the United States continued to maintain diplomatic relationship with the Burmese Government, and that the Burmese Government considered the CNF's activities unlawful. Id. at 939 ("Whether the CNF's actions are lawful in Burma is a question of foreign law and is a factual issue on which the respondent bears the burden of proof, inasmuch as the 'evidence indicates' that the terrorism bar to asylum may apply."). Second, the Board stated that it had no authority to determine whether the Burmese government was or was not an illegitimate power. Id. at 940 ("Such a determination is beyond our delegated authority and is a matter left to elected and other high-level officials in this country.").

In concluding that S-K-'s support of the CNF constituted "terrorist activity" under the INA, the Board rejected her argument that she should be not treated as a terrorist, but rather as an individual who has been persecuted on account of her political opinion, for having supported the CNF. Id. at 940 (citing Matter of Izatula, 20 I&N Dec. 149 (BIA 1990), Matter of Rodriguez-Majano, 19 I&N Dec. 811 (BIA 1988)). While recognizing that this argument has merit, the Board elected to examine the terrorist bars in the context of whether or not they provide a specific exemption for a person in S-K-'s situation, *i.e.*, a person whose motive for opposing her government was political. The Board observed that, unlike the "serious non-political offense" and "persecutor" bars to asylum which take into account the applicant's individual motive for committing a criminal or persecutory act, the terrorism bars contain no language that makes an asylum applicant's motive a dispositive factor. Id. The Board further observed that "Congress intentionally drafted the terrorist bars to relief very broadly, to include even those people described as 'freedom fighters,' and [that Congress] did not intend to give [the Board and Immigration Judges] discretion to create exceptions for members of organizations to which our Government might be sympathetic." Id. Thus, contrary to S-K-'s contention, Congress's omission of a "justifiable force" exception from the language of the terrorist bars was intentional, and the Board declined to read such an exception into the statute so as to allow S-K- to apply for asylum and withholding of removal.²⁰ Id. at 941 (citing Singh-Kaur v. Ashcroft, 385 F.3d 293 (3d Cir. 2004)).

²⁰ The Board further stated that while Congress did not give the Board and Immigration Judges the authority to "balance the harsh provisions set forth in the Act with a waiver," it did vest that power jointly in the Attorney General and the Secretaries of State and Homeland Security. S-K-, 23 I&N Dec. at 941. After the Board issued its 2006 decision in S-K-, the Secretary of Homeland Security made a determination in 2007, pursuant to the Secretary's discretionary authority under INA § 212(d)(3)(B)(i), that the "material support" exception to asylum would not be applied to certain aliens who have provided material support to the CNF. See Matter of S-K-, 24 I&N Dec. 289, 290 (BIA 2007). After the Secretary's notice of determination became effective on February 20, 2007, Congress enacted legislation to make the exemption permanent, by providing that certain groups including the CNF "shall not be considered to be a terrorist organization on the basis of any act or event occurring before the date of enactment of" the legislation. Section 691(b) of the Consolidated Appropriations Act, 2008, Div. J of Pub. L. No. 110-161, 121 Stat. 1844, 2365 (enacted Dec. 26, 2007), cited in Matter of S-K-, 24 I&N Dec. 475 (BIA 2008). The Board acknowledged that the 2007 legislative developments may have mooted out S-K-'s case but stated that its interpretation of the terrorist bars in Matter of S-K-, 23

The meaning of “material support.” The INA defines the term “material support” expansively. See Singh-Kaur v. Ashcroft, 385 F.3d 293 (3d Cir. 2004); Sesay v. Attorney General, 787 F.3d 215 (3d Cir. 2015). See also McAllister v. Attorney General, 444 F.3d 178, 186-87 (3d Cir. 2006) (Section 237(a)(4)(B)’s definition of “terrorist activity” is neither unconstitutionally overbroad nor vague, even though it encompasses “more conduct than our society, and perhaps even Congress, has come to associate with traditional acts of terrorism, e.g., car bombs and assassinations.”). However, the INA also prescribes the conditions that make the provision of material support unlawful. The material support must be provided:

- (aa) for the commission of a terrorist activity, or
- (bb) to an individual who has committed or plans to commit a terrorist activity, or
- (cc) to a member of a terrorist organization, or
- (dd) to a terrorist organization.

INA § 212(a)(3)(B)(iv)(VI)(aa)-(dd).

In Singh-Kaur v. Ashcroft, 385 F.3d 293 (3d Cir. 2004), the Third Circuit Court of Appeals affirmed the agency’s determination that an Indian national had engaged in terrorist activity by providing material support to two groups that were fighting the Indian government. Singh-Kaur gave them food and helped set up tents for them. Id. at 296. The court affirmed the Board’s determination that Singh-Kaur’s activities came within the statutory definition of “material support,” notwithstanding his claim that he was never involved in and never supported violent activities against the Indian government. Id. The court also affirmed the agency’s determination that the two organizations Singh-Kaur helped were undesignated terrorist organizations. Id. at 298.

According to the court of appeals, the word “material” means “having some logical connection with the consequential facts.” 385 F.3d at 298. The word “material” also means “significant” or “essential.” Id. The word “support” is defined as “sustenance or maintenance” and includes “articles such as food and clothing that allow one to live in the degree of comfort to which one is accustomed.” Id. The court observed that the statute provides various examples of what constitutes “material support,” but this list is not exhaustive because the statute does not limit “material support” to the enumerated examples. Id. The court further observed that the use of the word “including” suggests that Congress intended the term “material support” to have broad application. Id. Furthermore, the court recognized that the federal statute that criminalizes the provision of “material support or resources” to terrorists contains a longer list of examples, but this does not lead to the conclusion that the INA’s definition of “material support” should be read as an exhaustive list. Id. at 298-99. Given Congress’s intent to give the INA’s “material support” provision an expansive interpretation, the court of appeals concluded that Singh-Kaur’s provision of food and shelter was “material support.” Id.

I&N Dec. 936 retains precedential value. See Matter of S-K-, 24 I&N Dec. 475 (BIA 2008). Therefore, the Board’s reasoning in S-K- is applicable in this case. Id.

The court of appeals then addressed the question whether Singh-Kaur knew or reasonably should have known that he was providing material support to a terrorist organization or any member of such an organization. 385 F.3d at 300. The court examined the statutory definition of “terrorist activity” in Section 212(a)(3)(B)(iv) and concluded that that term refers to “any activity which is unlawful under the laws of the place where it is committed.” *Id.* at 300. According to the court, the evidence clearly showed that, at the time that Singh-Kaur helped the members of the various Sikh militant organizations, he knew that those members were opposed to the Indian government and had committed or had planned to commit terrorist activity. *Id.* The court pointed to Singh-Kaur’s own affidavit which stated that the religious leader whose teachings Singh-Kaur followed was not a militant, but that after the leader’s death the group became militant because of the violence that had been perpetrated on the leader and group members by the Indian military. *Id.* The court also pointed to a 1985 Amnesty International report that stated that the Indian government blamed the religious leader for directing much of the violence in the Punjab in recent years. *Id.*

Significant to this case is the court’s ruling that Singh-Kaur had engaged in terrorist activity even though the two groups to which he belonged had not yet been designated terrorist organizations. *Id.* at 380. Addressing Singh-Kaur’s claim that he knew nothing about the groups’ terrorist activities, the court stated that Singh-Kaur knew that he was providing material support to individual terrorists rather than to terrorist organizations. *Id.* Consequently, the fact that the two organizations were undesignated when he was a member does not change the analysis, “because inadmissibility results from provision of material support *either* to those who have committed or plan to commit terrorist activity *or* to terrorist organizations.” *Id.* at 298 (emphasis in original) (citing INA § 212(a)(3)(B)(iv)(VI) which defines the term “terrorist activity” as activity that is committed in an individual capacity or by a member of an organization). See also *McAllister v. Attorney General*, 444 F.3d 178, 186 (3d Cir. 2006) (stating that “the INA does not expressly require the organization, with which the alien was acting, to be a terrorist organization. The BIA reasonably construed Section 212(a)(3)(B)(iv) to mean that “an alien must be acting either individually or as a member of *an* organization – but not necessarily as a member of a *terrorist* organization.”) (emphasis in original).

More recently, in *Sesay v. Attorney General*, 787 F.3d 215 (3d Cir. 2015), the court of appeals further fleshed out the meaning of “material support.” The court stated that “material support” includes general support given to a group that had terrorist aims, support that is given at “a relatively low-level,” or support that goes beyond the de minimis threshold. *Id.* at 221 (citing *Singh-Kaur*, 385 F.3d at 298-301, and collecting cases from other circuit courts holding that “material support” includes passing out flyers and writing articles; paying dues and hanging posters; using kitchen to make food, giving directions, and letting terrorists stay overnight; collecting funds, passing along secret documents and supplying the terrorist organization with food and clothing; recruiting and soliciting funds for a terrorist group; training terrorists on the use of firearms; carrying firearms and ammunitions for terrorists).

2. Application of the terrorism bars in this case

a. The BNP is a Tier III terrorist organization.

The preponderance of the evidence shows that the BNP is an undesigned terrorist organization. During the time that the Respondent was a member and supporter of the BNP (i.e., from 2010 to November 2014), the BNP was out of power and engaged in terrorist activity with the goal of overthrowing the AL ruling government. The BNP's objective was to regain power and control of Bangladesh. Toward this end, the BNP formed alliances with Islamist political parties and extremist groups that shared its goals. The BNP-led opposition alliance espoused the use of violence in destabilizing the secular government so that a BNP-led regime could be installed. The BNP also supported its allies' goal of turning Bangladesh into a theocracy and creating an Islamic caliphate. Furthermore, the evidence unequivocally shows that not only has the BNP endorsed the use of violence by the opposition alliance, its own leadership has advocated and carried out opposition activities that escalated into violence causing numerous fatalities.

The BNP has engaged in activities that are clearly prohibited by Bangladeshi law. Many of the organization's activities have violated Bangladesh's Anti-terrorism Act (ATA). The ATA prohibits membership in or support of organizations that are engaged or involved in terrorist activities, including the terrorist organizations listed pursuant to U.N. Security Council Resolutions 1267 and 1373. See U.S. DOS, Bureau of Counterterrorism, "Country Reports on Terrorism 2014, South and Central Asia Overview," at p. 4 (located at <http://www.state.gov/j/ct/rls/crt/2014/239408.htm> (last visited on October 27, 2015)). The terrorist finance provisions of the ATA outlaw the provision; receipt; and collection of money, service, and material support where "there are reasonable grounds to believe that . . . the same has been used or may be used for any purpose by a terrorist entity." Id.

The BNP has entered into political alliances with organizations on the U.N. Security Council list and the U.S. State Department's list, including the domestic terrorist groups Jamaat-ul-Mujahideen Bangladesh (JMB), Harkatul Jihad al Islami-Bangladesh (HuJI), and the Ansarullah Bangla Team (ABT) which is an off-shoot of the militant student wing of the Jamaat-e-Islami (JeI). Id. at 4. The BNP has made the politically expedient calculation that the only way it could regain political power is by aligning itself with such extremist groups, whose militant fighters have ties to international jihadi groups such as the Taliban and Al Qaeda. The BNP has provided these groups with material support that enabled them to carry out violent attacks against the secular AL-led government, to advance their goal of creating an Islamic caliphate in Bangladesh. When it was in power from 2001 to 2006, the BNP tolerated the persecution of religious and ethnic minorities that these groups carried out.

Aside from providing material support to domestic terrorist organizations, the BNP itself has perpetrated violence on its political opponents, the AL-led coalition government, during take-over attempts. For example, in June 2010, the BNP called for the strike, the first in Bangladesh in over three years, to protest the governance of Prime Minister Sheikh Hasina. Exhibit 7, Tab U, pp. 81-82.²¹ The BNP accused Hasina of failing to deal with corruption and of suppressing opposition voices. Id. at 81. In Dhaka, between 1,000 to 1,500 activists held demonstrations in small groups. Id. at 82. The largest protest in the city numbered about 300

²¹ www.CNN.com, "More Than 160 Arrested in Violent Bangladesh Strike" (June 27, 2010).

strikers. Id. Violence broke out during the strike in Dhaka, which lasted 12 hours. Id. Among the 160 arrested, five were leaders of the BNP-led opposition. Id. at 81. The BNP leaders were accused of provoking the strikers to damage public property. Id. About 18 police officers were injured when protesters pelted them with stones. Id.

On July 3, 2011, a Bangladeshi court charged Tarique Rahman, the son of BNP opposition leader, Khaleda Zia, over his alleged involvement in the August 2004 grenade attack against AL opposition leaders. Exhibit 7, Tab T, p. 78-80.²² The BNP was in power at the time. Id. Hasina, then the opposition leader, was apparently targeted for assassination and only narrowly escaped. Id. The attack took place after Hasina stepped down from addressing a rally outside the AL party's headquarters in the capital city, Dhaka. Id. The rally of 20,000 people was held in protest to the earlier bombing of the AL's headquarters offices in Sylhet. Id. A series of grenades were detonated at 5 to 7 second intervals. Id. In the ensuing confusion, the assailants fired on Hasina, who was protected by her bodyguards and supporters. Id. She was whisked away from the scene in a bullet-proof car. Id. As most of the attackers were members of the HuJI group, it is widely believed that the attack was carried out by Islamist extremists operating in concert with the BNP. Id. As of 2011, 52 people have been charged, including Zia's son, Tarique Rahman. Id. Tarique Rahman is currently in self-imposed exile in London; he already faced more than a dozen criminal charges, including corruption, making it unlikely that he will return to the country any time soon. Id. He and the BNP have dismissed all previous charges as politically motivated. Id.

On April 10, 2013, twelve people, including 5 police officers, were wounded during violent clashes between police and BNP activists in the Dinajpur district. Exhibit 7, Tab Q, p. 75.²³ Police arrested BNP and ICS members. Id. On the same day, violent clashes between police, ICS, and BNP activists in the Noagaon district left 25 people wounded. Exhibit 7, Tab R, p. 76.²⁴ Five people, including a journalist, were wounded during violent clashes between police and BNP activists in Gazipur district. Exhibit 7, Tab S, p. 77.²⁵

Most recently, in January 2015, the BNP called for a nationwide strike to protest the rule of the AL government led by Prime Minister Sheikh Hasina. Supporters of BNP opposition leader, Khaleda Zia, demanded that the government resign and hold new elections immediately. Exhibit 2, Tab F, pp. 88-95.²⁶ The nationwide strikes began on February 1, 2015, and lasted more than two weeks. Id. at 89. As a result of the strikes, at least 28 people were killed and

²² IHS Jane's, "Bangladesh Opposition Leader's Son Charged Over 2004 Attack" (July 4, 2011).

²³ IHS Jane's, "Clashes Leave 12 Wounded in Bangladesh's Dinajpur" (April 10, 2013).

²⁴ IHS Jane's, "Clashes Leave 25 Wounded in Bangladesh's Noagaon" (April 15, 2013).

²⁵ IHS Jane's, "Violent Clashes Leave Five People Wounded in Bangladesh's Gazipur" (April 15, 2015).

²⁶ Daily Herald, "Strikes, Attacks Bring Turbulence Back to Bangladesh" (Jan. 22, 2015).

nearly 700 vehicles were smashed or torched. Id. at 88. Some of the demonstrations involved stone throwing. Exhibit 7, Tab W, pp. 85-87.²⁷ Several people were wounded, and one person was killed after she was struck in the head with a rock thrown by protesters in Noakhali. Id. Police fired shotgun pellets and tear gas to disperse the protesters. Id. Three police officers were injured after protesters attacked them with cocktail bombs. Id. Much of the country's transportation system was brought to a standstill. Exhibit 2, Tab F, at p. 89. The strike also forced many schools and government offices to close. Exhibit 7, Tab W, at p. 85.

The BNP justified the January 2015 nationwide strike that turned fatal by claiming that the protest was a response to a security force crackdown on the BNP's leaders and supporters. Id. Exhibit 7, Tab W, pp. 85-87. According to a BNP spokesman, 400 party officials and activists had been arrested in the period leading up to the first anniversary of the January 5, 2014 elections, which the BNP boycotted. Id. The BNP had demanded that the AL-led government hand power over to a caretaker government before the elections took place. Id. at 86. The AL government refused to accede to this demand, stating that it won the 2014 elections fairly and freely, and that Prime Minister Hasina would remain in office for the full duration of her five-year term. Id.

Although the BNP has justified the strikes as lawful opposition activities, the ensuing violence is clearly viewed as unlawful under Bangladeshi law, as evidenced by the arrests and prosecutions of those deemed responsible for the personal injuries, deaths, and destruction of property.²⁸ The violence was, and should have been, a foreseeable consequence of the BNP's calls-to-action, in view of its long-standing ideologically-driven hostility toward the ruling AL government, as well as the personal animosity that opposition leader Zia displayed publicly toward Prime Minister Hasina in the years when the BNP was out of power. Because the BNP's use of violence in carrying out its political objectives fits the definition of "terrorist activity" under Bangladeshi law, the BNP is an undesignated, Tier III terrorist organization. See U.S. Department of State, Bureau of Counterterrorism, p. 4 (available at <http://www.state.gov/j/ct/rls/crt/2014/239408.htm> (last visited on October 27, 2015) (the terrorist finance provisions of the ATA outlaw the provision; receipt; and collection of money, service, and material support where "there are reasonable grounds to believe that . . . the same has been used or may be used for any purpose by a terrorist entity.")).

²⁷ DW, "Anti-Government Protests in Bangladesh Turn Fatal" (January 27, 2015).

²⁸ The ATA does not prohibit certain activities that might be considered unlawful under U.S. law. For instance, orchestrating protests, demonstrations, and even strikes (hartals) are not outlawed. The lawful nature of these activities is in recognition of the role that opposition parties play in Bangladeshi politics. As the leading opposition party, the BNP views itself as the standard bearer in the struggle for self-determination, advancement of civil society, and the fight against public corruption. Therefore, in considering whether the BNP has "engaged in terrorist activity" as described in INA § 212(a)(3)(B)(i), I have considered the Respondent's argument that some of the BNP's opposition activities were not prohibited by law. However, because many of the opposition activities did result in outbreaks of violence that were reasonably foreseeable and the violence can be attributed to the BNP's calls-to-action, I must conclude that the BNP's advocating the use of force to overthrow the ruling government is tantamount to terrorism.

**2. The Respondent knew or should have known
that the BNP is a terrorist organization.**

The Respondent has not shown, by clear and convincing evidence, that he did not know and should not reasonably have known that the BNP was a terrorist organization. The Respondent correctly asserts that the BNP was not a designated terrorist organization at the time that he was involved with that party, and that the BNP has never been designated a terrorist organization. This fact, however, does not preclude a finding that the Respondent should have known of the BNP's propensity for terrorism. See Singh-Kaur, 385 F3d. at 300-01 (upholding application of the relief bar because the alien was inadmissible for having provided material support to terrorists even though the terrorists he supported were not part of a designated terrorist organization during the relevant time period). See also Rajabi v. Attorney General of the U.S., 553 Fed. Appx. 251 (3d Cir. Feb. 3, 2014) (the agency properly concluded that the organization was a Tier III organization at the time that the alien was providing material support to it, even though the organization was not designated a Tier I organization until after the alien's arrival in the United States).

During the time that the Respondent belonged to and supported the BNP, the party orchestrated nationwide strikes to protest the AL-led coalition government and to demand the ouster of Prime Minister Hasina. The strikes were carried out in a violent manner, with protesters using firebombs to burn buses and destroy government offices. The strikes directly caused the deaths of hundreds of innocent bystanders and civilians, serious bodily injuries to thousands more, and costly destruction of public properties. At this time, the country is still reeling from the attacks that the BNP and its political allies wrought as recently as January 2015.

Although the Respondent asserts that the BNP is a legitimate opposition political party, the dispositive inquiry for purposes of the terrorism bars is whether a reasonable person in his situation would have considered the BNP a terrorist organization. It would be difficult for the Respondent to show that he did not know and could not have known that the BNP was predisposed to politically-motivated violence. As a student of Bangladeshi politics, the Respondent had to have known about the long-standing animosity between the two dominant parties, the BNP and the AL, that has led to election-time mass protests that often turned violent.²⁹ He was in Bangladesh when the BNP's primary coalition partner, the JeI, allegedly engineered an assassination attempt on Prime Minister Hasina, at a mass rally held in downtown Dhaka in May 2005. He was Bangladesh when the government investigated, arrested, and issued

²⁹ In his counsel's closing statement, the Respondent also suggested that the AL's actions were illegitimate because, in the past, when the AL led the opposition alliance, the AL used force to thwart the political objectives of a BNP-led government. See also Exhibit 9. While this argument is a valid one, the INA contains no "justifiable force" exception that would excuse the Respondent's support of the BNP. See S-K-, 23 I&N Dec. at 939. Furthermore, to the extent that the BNP has been severely weakened by the current ruling government and no longer is politically active, the Respondent has offered no legal authority for the proposition that the material support bar applies only to currently active terrorist organizations. See Dinssa v. Attorney General, 555 Fed. Appx. 182, 184-85 (3d Cir. Feb. 10, 2014).

arrest warrants for JeI and BNP leaders – most notably Tarique Rahman who is the son of BNP leader Khaleda Zia – for orchestrating and carrying out the assassination attempt. The Respondent was in Bangladesh during the period leading up to the January 2014 elections, when the BNP decided to boycott the elections, a decision that prompted thousands to take to the streets of Bangladesh in protest of the AL. In addition, the Respondent remained in Bangladesh during the turbulent one-year period following the 2014 elections when the BNP continued to mount its opposition to the elected government, by calling for nationwide hartals (or strikes) to protest the election results and to demand the ouster of Prime Minister Hasina. Given the extensive publicity and media coverage that such violence received, the Respondent's claim that he did not know about the widespread violence that the BNP leadership instigated, is unreasonable. See S-K-, 23 I&N Dec. at 941 (a reasonable person in respondent's position would know that the use of firearms and/or explosive devices to engage in combat with the government is a terrorist act). Because a reasonable person in the Respondent's situation would have known that the BNP was a terrorist organization, the Respondent is ineligible to apply for asylum and withholding of removal.

3. The Respondent engaged in terrorist activity by becoming a member of a terrorist organization.

The Respondent engaged in terrorist activity by joining the BNP, an undesignated terrorist organization. The bar at INA § 212(a)(3)(B)(i)(VI) provides that an alien who is a member of a [Tier III terrorist organization] is inadmissible as a security threat, and thus is ineligible for asylum and withholding of removal. The bar would not apply if the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization.

The Respondent testified that he joined the BNP in 2010, when he was about 19 years old. He stated that he was drawn to the BNP's progressive goals of advancing the country's economic development, educational system, and infrastructure. But his membership and activities occurred during a time when the BNP was out of power, was vehemently opposed to the AL coalition government which it believed stole the 2014 elections, and was desperately trying to unseat the government through lawful and unlawful means. Under the reasoning of S-K-, the United States Government's diplomatic recognition of the current Bengladeshi government and the fact that the BNP's use of force is deemed unlawful, necessarily lead to the conclusion that the BNP is a terrorist organization. 23 I&N Dec. at 939-940. Although the Respondent may genuinely believe that the goals and objectives of his party are laudable, and that the AL is an illegitimate power because it "stole" the 2014 elections, his beliefs are not relevant to the determination that the BNP has engaged in terrorism. See S-K-, 23 I&N Dec. at 940 ("Such a determination is beyond our delegated authority and is a matter left to elected and other high-level officials in this country."). It is for these reasons that his BNP membership falls squarely within the INA's definition of "engaging in terrorist activity," see INA § 212(a)(3)(B)(i)(VI). And as stated, he cannot show that he did not know and should not reasonably have known that the BNP was a terrorist organization.

4. The Respondent engaged in terrorist activity by providing material support to a terrorist organization.

The Respondent provided material support to an organization or members of an organization that he knew or should have known was a terrorist organization. INA § 212(a)(3)(B)(iv)(VI). The Respondent's activities on behalf of the BNP included joining the BNP as a member, and attending BNP meetings, rallies, and processions such as the one that took place in February 2014. He also spoke with people to garner public support for the BNP. Though his activities were non-violent, they fall within the INA's broad definition of "engage in terrorist activity" in Section 212(a)(3)(B)(iv)(VI). The term "material support" is statutorily defined as "an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training[.]" *Id.* The material support must be provided for the commission of a terrorist activity, or to an individual who has committed or plans to commit a terrorist activity, or to a member of a terrorist organization, or to a terrorist organization. INA § 212(a)(3)(B)(iv)(VI)(aa)-(dd).

Under Third Circuit law, the term "material support" includes general support given to a group that had terrorist aims, support that is given at "a relatively low-level," and support that goes beyond the *de minimis* threshold. *Sesay*, 787 F.3d at 221-22 (citing *Singh-Kaur*, 385 F.3d at 298-301). The Respondent's general support of the BNP and his activities to promote the BNP are conduct that the Third Circuit would consider to be material support. *See generally*, *Singh-Kaur*, 385 F.3d at 296 (the court affirmed the agency's determination that an Indian national had engaged in terrorist activity by providing material support to two groups that were fighting the Indian government, notwithstanding his claim that he was never involved in and never supported violent activities against his government). *See also* *Sesay*, 787 F.3d at 221 (citing out-of-circuit decisions such as *Bojnoordi v. Holder*, 757 F.3d 1075, 1078 (9th Cir. 2014) (holding that an alien provided material support when he passed out flyers, wrote articles, and trained terrorists on the use of guns); and *Viegas v. Holder*, 699 F.3d 798, 803 (4th Cir. 2012) (holding that an alien provided material support when he paid dues and hung posters for a terrorist group)).

The *Cesay* court suggested, but did not hold, that even a *de minimis* amount of support would be sufficient to trigger the material support provision. This suggestion is consistent with the Congressional intent that the term "material support" be given an expansive interpretation. *Matter of S-K-*, 23 I&N Dec. 936, 941 (BIA 2006), *remanded on other grounds*, 24 I&N Dec. 289 (A.G. 2007); *accord*, *Matter of S-K-*, 24 I&N Dec. 475, 477-78 (BIA 2008) (affirming the precedential value of *S-K-*) (citations omitted). *See also* *Hussain v. Mukasey*, 518 F.3d 534, 537-38 (7th Cir. 2008) (finding the statutory definitions of "engaging in terrorist activity" and "material support" are broad but not vague; *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1136 (9th Cir. 2000) (recognizing that Congress explicitly incorporated a finding into the statute [referring to the Antiterrorism and Effective Death Penalty Act's statutory amendments of the INA] that "foreign organizations that engage in terrorist activities are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct. It follows that all material support given to such organizations aids their unlawful goals.")).

Based on a preponderance of the evidence, I conclude that the BNP is a Tier III terrorist organization. The Respondent has not shown, by clear and convincing evidence, that he did not know and should not have known that the BNP was a terrorist organization during the time that he was a member and supporter of the BNP. Therefore, I conclude that there are reasonable grounds to believe that the Respondent is a danger to the security of the United States. The Respondent is thus barred from applying for asylum and withholding of removal. INA §§ 208(b)(2)(A), 241(b)(3)(B).

C. Deferral of Removal Under the Convention Against Torture.

As the Respondent is not barred from applying for deferral of removal under the CAT (8 C.F.R. § 1208.17(a)), I now address the merits of that application. An applicant for deferral of removal bears the burden of proving that it is more likely than not that he would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). The torture must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1). The term acquiescence requires that the public official have prior awareness of the activity and thereafter breach his or her legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7).

The term “torture” is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). The term “torture” does not include “pain or suffering arising only from, inherent in or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include the purpose of the Convention Against Torture to prohibit torture.” *Id.* at § 1208.18(a)(3).

The term “acquiescence” does not require a showing of actual knowledge of the impending torture or even “willful acceptance” of it. Rather, the term “acquiescence” only requires that government officials remain “willfully blind to torturous conduct and breach their legal responsibility to prevent it.” *Valdiviezo-Galdamez*, 663 F.3d 610 (quoting *Silva-Rengifo v. Attorney General*, 473 F.3d 58, 70 (3d Cir. 2011)). In *Valdiviezo-Galdamez*, the court of appeals stated that the agency properly relied on the U.S. Department of State’s country reports in forming the conclusion that the government would not be inclined to let Valdiviezo-Galdamez be tortured, nor would it acquiesce in any torture that he might encounter in his country. *Id.*

In this case, the State Department’s 2014 country report for Bangladesh indicates that the ruling AL government has been actively searching for BNP members who are allegedly responsible for politically-motivated violence. Exhibit 11. When found, those individuals are arrested, taken away, and -- in some cases -- not seen again. *Id.* In February 2014, men in plainclothes but showing police Detective Branch identification took local BNP leader Omar Faruk from his home in the Laxmipur district of Chittagong. *Id.* Faruk’s family said he was

taken away in a truck with RAB markings. Id. Both the police and RAB denied knowledge of his whereabouts; as of November, Faruk was still missing. Id. Earlier, in December 2013, a group of alleged BNP and Jamaat-e-Islami (JeI) supporters in Nilphamari attacked the motorcade of AL politician Asaduzzaman Noor, now the cultural affairs minister. Id. While Noor survived, five other persons died in the clash. Id. In the weeks following the election, local residents found the bodies of three prime suspects in the attack roadside and behind buildings. Id. Two bodies bore marks of multiple injuries, while the third had a single gunshot wound. Id.

The Respondent's past involvement with the BNP might subject him to criminal punishment that would not constitute "torture" within the meaning of 8 C.F.R. § 1208.18, as the State Department's 2014 country report notes that much of the violence involving the BNP could be attributed to ordinary criminal activities, though some of the violence was politically-motivated. See Exhibit 11. The record of evidence, however, does not suggest that the Respondent ever came to the attention of the authorities for a crime. It does not show that he was ever suspected of having committed a crime in Bangladesh. Nor is there any suggestion that the authorities were inclined to arrest him and charge him with a crime, even when his father went to the police to complain about the AL's attack on him and other BNP members. Therefore, any infliction of severe mental or physical pain that the Respondent is likely to encounter in Bangladesh would probably amount to torture rather than lawful sanctions.

Although the Respondent was a "low-level" BNP member and participant, the State Department's information is sufficient to establish a clear probability that the government of Bangladesh would acquiesce in any torture that he might experience at the hands of a third party such as the AL political party. This conclusion is based not only the Respondent's credible testimony that he has experienced politically-motivated violence inflicted by AL members, but also on the objective and reliable information provided by both parties which indicates that the AL government has targeted its political opponents for arrests, prosecutions, detentions, disappearances, and even assassinations. Given the current politically-charged environment in Bangladesh, I conclude that a person like the Respondent would more likely than not be subjected to violence amounting to torture.

As the Respondent has shown a clear probability of torture with the acquiescence of his government, his application for deferral of removal will be GRANTED.

ORDER

The Respondent is subject to removal under INA § 237(a)(2)(7)(A)(i), the charge contained in the Notice to Appear, and is ordered removed from the United States. However, his removal is subject to the GRANT of deferral of removal set forth below.

The Respondent's application for asylum under INA § 208(a) is DENIED by pretermission.

The Respondent's application for withholding of removal under INA § 241(b)(3) is DENIED by pretermission.

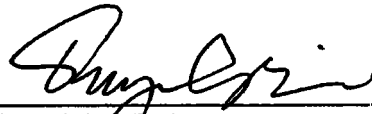
In the Matter of M [REDACTED] K [REDACTED],
A [REDACTED] 691

The Respondent's application for withholding of removal under the CAT is DENIED by pretermission.

The Respondent's alternative application for deferral of removal under the CAT is GRANTED on the merits.

Appeal Rights: Both parties have the right to appeal this decision. Any notice of appeal is due at the Board of Immigration Appeals by March 30, 2016.

Date: February 29, 2016



Quynh Vu Bain
Immigration Judge