

1417195 (Refugee) [2016] AATA 3325 (19 February 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1417195
COUNTRY OF REFERENCE:	Bangladesh
MEMBER:	Tania Flood
DATE:	19 February 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 19 February 2016 at 2:31pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Bangladesh, applied for the visa [in] July 2013 and the delegate refused to grant the visa [in] September 2014.
3. The applicant appeared before the Tribunal on 29 January 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.

CONSIDERATION OF CLAIMS AND EVIDENCE

4. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
8. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for

protection status determination purposes, to the extent that they are relevant to the decision under consideration.

The issue in this case is whether there is a real chance the applicant will suffer serious harm if he returns to Bangladesh for a Convention reason or alternatively whether there are substantial grounds for believing that there is a real risk the applicant will suffer significant harm if returned from Australia to Bangladesh. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Summary of claims

9. In a Statutory Declaration dated [in] June 2013, the applicant claims the following:
10. He is a Bangladeshi, born on [date]. His religion is Islam and he grew up in [town]. His father worked in a [shop] which he owned until his death in 2007. He then took over the shop. His mother was a housewife. He has never been married, has no children and completed [number] years of education.
11. Between one and three times each month, extortionists would come to the shop and ask them to pay an illegal toll. Although they did not identify themselves he knew they were from the Awami League.
12. He was not an Awami League supporter; he supported the BNP in his beliefs, by making donations and attending some large meetings. His father also supported the BNP; donating money, attending meetings and events.
13. Since his father died the extortion became worse. The extortionists visited other shops but they were Awami League supporters. Because he was BNP he had to pay more money.
14. He believes the other shop owners told them he was BNP because they were jealous that his shop was doing better and he was not from Jessore. He made about [amount] taka per month profit.
15. Once in about 2011 he refused to give money and his shop was vandalised and things were taken.
16. [In] January 2013 there was a murder in [location], about [number] mile from Jessore. A boy [who] was about [age] or [age] was killed. He did not know about the murder at the time but later found out that charges had been filed against him that he committed the murder.
17. He believes, and BNP supporters have told him, that Awami League members falsely accused him of the murder. This was because he is BNP and his shop was doing well.
18. The Awami League members and other shop owners targeted him because they wanted him to leave Jessore.
19. He heard about the charge from someone he knew who worked at the police station and he went into hiding. He travelled to Chittagong, which took about 2 days. He left Bangladesh [in] February 2013 and travelled through [various countries] before arriving to [Australia] [in] March 2013.
20. Since he came to Australia his mother has told him that the police have come to their house asking his whereabouts.

21. He fears that if he returns to Bangladesh he will be falsely arrested, interrogated, mistreated by the police, sentenced to life in jail or sentenced to the death penalty.
22. He has nowhere else to go and there is nowhere in Bangladesh that is safe for him.
23. In a submission made by the applicant's representative dated 15 September 2014, a number of reports are referenced in response to the Delegate's concern that the applicant would be able to protect himself in the court system in Bangladesh. Also provided were copies of the applicant's trade licence and a letter from the BNP.
24. In a post hearing submission provided to the Tribunal on 11 February 2016 the applicant reiterates his claims and responds to various aspects of the Delegates decision. Attached to the submission are various documents including a copy of a birth certificate, letter from the BNP, copy of trade license, copy of identification card, certificate from [name], statement by [name], statement by [name], news article from [newspaper],

Findings and reasoning

Country of Reference

25. The applicant has produced a copy of a birth certificate from the People's Republic of Bangladesh which confirms his claimed name, date of birth and citizenship. Further, he has been consistent with his identity and birth details since his arrival in Australia and at the Protection visa interview with the Delegate and before the Tribunal the applicant spoke in the Bengali language which is the principle language spoken in Bangladesh. The applicant stated at hearing that he does not have citizenship of any other country or the right to enter and reside in any other country. In the absence of any information to the contrary the Tribunal accepts that Bangladesh is the applicant's country of nationality for the purposes of the Convention and also the receiving country for the purposes s.36(2)(aa) of the Act.

Credibility

26. During the hearing the Tribunal discussed with the applicant his background, education, family composition and employment in Bangladesh, as well as the reasons he left Bangladesh and his fears of returning.
27. The applicant's responses to many of the questions asked by the Tribunal at hearing were considered to be vague, lacking in detail and inconsistent. At times, the applicant was evasive and vague and unable to provide the level of detail which could be expected in the circumstances about significant events. The applicant continually claimed to have no or little memory about significant aspects of his claims despite such events being well documented and having occurred relatively recently. The Tribunal has serious concerns about the applicant's credibility and finds he has not told the truth in relation to crucial aspects of his claims. The reasons for this conclusion are discussed in more detail below.

BNP Involvement

28. The applicant was asked about his support for, and involvement in BNP activities. He confirmed he was a supporter of the party but rarely attended meetings because he was busy running his business. He said his family always supported the BNP and so did he.
29. The applicant was asked about the BNP's guiding principles and the Tribunal considers from his responses that he had tried, unsuccessfully, to memorise certain facts. Nevertheless, he

was unable to correctly list the four main principles of the party¹. The Tribunal notes the applicant was able to name his local BNP candidate.

30. The Tribunal referred to a statement signed by [two officials] of the BNP, [name] District, which notes the applicant, played a “first role for the sake of the party”. The Tribunal pointed out that this statement appears completely at odds with his own account of his limited involvement in BNP activities. The applicant stated that he attended meetings when asked to do so. The Tribunal put it to the applicant that country information² supports that fraudulent documents are readily and easily obtainable in Bangladesh and as such the Tribunal might form the view the statement from the BNP is not reliable and give it no weight.
31. When asked if he was involved with the BNP in Australia he said he was not. Further, he confirmed he did not intend to get involved in BNP activities if he returns to Bangladesh.
32. The Tribunal considers the applicant demonstrated very little knowledge of the BNP’s political agenda or platforms and no enduring commitment to the BNP as evidenced by the above comments. The Tribunal has taken note of the applicant’s post hearing submission that it is not necessary that he has a detailed understanding of party ideology to be a supporter of the BNP. The Tribunal accepts the applicant may favour the BNP over other political parties but does not find he was engaged in any noteworthy political activity in association with the BNP which is likely to have given rise to him being adversely treated for this reason. Based on his oral evidence, and in view of the country information confirming the prevalence of fraudulent documentation in Bangladesh, the Tribunal has given no weight to the abovementioned statement from the BNP. The Tribunal does not accept the applicant was actively involved in BNP political affairs in Bangladesh.

Applicant’s business

33. While the Tribunal acknowledges the Delegates concerns about inconsistencies in relation to the whereabouts of the applicant’s business, the Tribunal has given the applicant the benefit of the doubt and accepts, on his oral evidence, that his family ran a [business]. The Tribunal accepts the applicant took over the operation of their family shop which is located in [City 1] when his father passed away in 2007.
34. Central to his written claims the applicant states that Awami League supporters frequently came to his shop to extort money from him and when he ultimately refused they vandalised his shop. At hearing, when asked about the difficulties he encountered running his business the applicant spoke at length about coming under pressure from the neighbouring shop owners to vacate his shop. He said this was because he was not from the area and they were jealous that his business was so successful. The Tribunal finds this explanation plausible and has found no cause to discount this version of events.
35. When asked how pressure was applied he provided a somewhat confused account first stating he was tortured and later saying he was indirectly pressured to leave. When asked how he was indirectly pressured he said that the other shop owners would tell their friends to ask him to leave and made trouble for his customers. He said it was only verbal harassment but that later the shop owners brought a false murder case against him (see below for further details). The applicant also said that he was the only shop owner that experienced such problems because he was an outsider.

¹ Bangladesh Nationalist Party (BNP) website, www.bangladeshnationalistparty-bnp.org

² DFAT Country Report, Bangladesh, 20 October 2014

36. The Tribunal put it to the applicant that it appears any problems he had in relation to his business arose from competitive interests and the fact he was from out of town rather than for any politically motivated reason. At this point the applicant conceded he did not know why he was targeted in this way. When asked if he reported the matter to the police he said he did not because it would only cause him further problems.
37. The Tribunal asked the applicant why he had not mentioned the fact that Awami League supporters were extorting money from him despite him being asked several times during the hearing if he had experienced any further difficulties while running his business. He then indicated that people from the Awami League came to his shop and demanded money on a regular basis, up to two to three times a month. When asked whether the shop was still operating the applicant confirmed the business was closed when a murder case was brought against him in January 2012 by the shop owners.
38. The Tribunal put it to the applicant that the Delegates decision record also indicates he claims to have been abducted from the shop in September or October 2012. In this respect the Tribunal noted that he had earlier said the business was closed in January 2012. The applicant insisted he was abducted but couldn't accurately recall the details of what occurred because he said it happened a long time ago. When asked why he could not recall the details of such a serious occurrence he then said he was abducted from the street, was rendered unconscious and released on the street after they took money from him. The Tribunal pointed out that he had told the Delegate he was held for some days. He then agreed he was taken and held for several days. The Tribunal also asked the applicant what he was doing in the area approximately eight to nine months after he said he closed the business and fled the area in fear for his life. The applicant replied that he had shut the shop in January 2012 but was still moving around the area from time to time. Again, the applicant said he could not remember what happened and didn't know who his attackers were. He did not report the matter to the police.
39. The Tribunal is prepared to accept that the applicant may have come under some pressure from fellow shop owners to vacate his premises for the reasons voiced at hearing. Namely, that they were resentful that he was from outside their local area and jealous of his success. However, the applicant has not provided any persuading evidence to convince the Tribunal that these shop owners were affiliated with the Awami League or that Awami League members or supporters extorted money from him and destroyed his shop or that this was due to him being a BNP supporter. Indeed, at hearing, the applicant said he did not know why he was targeted. Based on the applicant's oral evidence, the Tribunal finds that any pressure which may have been applied by his fellow shop owners was restricted to verbal harassment.
40. The Tribunal is also not persuaded that the applicant was abducted as claimed given the unpersuasive evidence outlined above. The Tribunal acknowledges the applicant's post hearing submission that he omitted to mention the abduction during his interview with the Delegate because he was nervous but notes that he also failed to mention it before the Tribunal until it was brought to his attention. The Tribunal considers his evidence in these respects to be inconsistent in relation to timing, vague, lacking in detail and based on speculation that the Awami League was involved in his problems.
41. The Tribunal does not accept the applicant was targeted by Awami League members and his business interfered with because he was a BNP supporter as claimed. Further, the Tribunal does not accept the applicant was abducted as claimed.
42. As to whether the applicant has or will suffer serious harm on return to Bangladesh due to the pressure applied to him to vacate his business in [City 1], the Tribunal first turns to the claimed false murder charge.

Murder charge

43. When asked how he came to know about the murder charge the applicant stated that a friend told him about it. The Tribunal indicated that it was surprising a friend could come to know about it when he himself was not approached by the police. He said that his friend knows somebody in the police department.
44. When asked what he did upon learning about the murder charge the applicant said he left his workers in charge of the shop and left immediately. The Tribunal pointed out that he earlier stated he was still hanging around the area some eight or nine months later when he claims he was abducted. The Tribunal questioned the likelihood of him doing that knowing that a murder case had been brought against him.
45. When asked to elaborate on the particulars of the murder charge the applicant stated that he could not remember anything about it. The Tribunal expressed serious doubt that he could not remember the particulars of such a serious and significant event. The applicant replied that he has provided the evidence before and said he could not recall anything about it now.
46. The Tribunal indicated that the only translated document before it pertaining to the claimed murder charge is a first incident report from the [police] department. At hearing, the applicant produced copies of further translated documents including a post mortem report, a newspaper report, a statement from the [official] of [a] Union Council, [City 1], a statement to the police by the deceased persons father and a statement to the police by a person claiming to have found the deceased person's body.
47. The Tribunal has reviewed these documents and notes the original Bengali documents are attached. The Tribunal can find no reasonable explanation as to why the applicant is unable to speak about the circumstances of the claimed murder other than he does not know and has not taken an interest in the documents in his possession.
48. The Tribunal expressed surprise that the applicant has such documents in his possession and asked whether he has any court documents addressed to him personally, such as an arrest warrant, which would more likely be in his possession. The applicant stated that his good friend was able to get these documents for him. He confirmed that this is a different friend to the friend who first told him about the murder case. When questioned about this friend he said that he is a close [friend] from [name] District. He said they grew up together but [his close friend] is now living in Dhaka and has a good job although he is not sure what that job is. When asked how [his close friend] could access such documents held in [City 1] he said [his close friend] has connections but was unable to elaborate on what these connections were.
49. The Tribunal pointed out that the applicant had told the Delegate his brother obtained these documents from the police station. The applicant said he asked his brother to go and get the documents from his friend. The Tribunal reiterated that this is different to what he has previously claimed.
50. The Tribunal asked the applicant whether he had brought these documents with him to Australia and he said he got them after his arrival in Australia. The Tribunal enquired whether it was the applicant's intention to apply for asylum on arrival in Australia and he said it was. The Tribunal again asked why he had not then brought these important documents with him when travelling from Bangladesh given he left the country about a year after the claimed charge was made. He said that he was not safe in Bangladesh and it was only after his arrival that he sent for the documents.

51. The Tribunal indicated that it was difficult to accept he would wait a year to send for these documents and that it was difficult to accept that a friend could obtain these documents from the police and the mortuary and yet he has no copy of an arrest warrant. He said his family have never told him whether any court papers have been filed with them. He said they do not tell him everything. The Tribunal reiterated the earlier advice about the prevalence of fraudulent documents in Bangladesh and said that this together with the entire circumstances of the matter, including the implausible manner in which the documents were reportedly obtained, could lead to a finding that the documents are not genuine. The applicant asked for further time to determine whether his family has any further documents. The Tribunal agreed but pointed out that for the same reasons it might have the same concerns about the genuineness of any further documents produced.
52. In addition, the Tribunal pointed out that the applicant's claims during his entry interview about the identity of the murder victim are inconsistent with the details contained in his written and oral claims. That is, at the time of the entry interview the applicant stated that it was a business man that was murdered whereas he later claimed it was a [age] or [age] year old boy. Again, the applicant stated that he does not recall anything about the murder charge. The Tribunal referred again to the documents in his possession which refer to the murder victim being a [age] year old boy and the applicant stated he does not know what he said before about this matter. The Tribunal has taken note of the applicant's claims at hearing and his post hearing submission that he was under mental and physical stress at the time of the entry interview. At hearing, the Tribunal acknowledged that an entry interview can be stressful and confusing but that it was nevertheless difficult to understand how he would make a mistake about an incident which is so central to his claims for protection. Again, the applicant stated that he has submitted all the documents to the Department.
53. The Tribunal also pointed out that the applicant stated during his entry interview that he was in hiding for 2 months before leaving Bangladesh whereas he told the Delegate he was in hiding for one year before leaving the country. When this matter was discussed earlier on in the Tribunal hearing the applicant was extremely vague about his whereabouts after closing his store in January 2012. When pressed for even a rough estimation about how long he stayed in Chittagong and who with, he was, in the Tribunal's view, very evasive in the evidence he provided. When asked to account for the differences between his claims the applicant simply reiterated he was in hiding for about a year. When asked how he supported himself during this time he said that he had some money and that he also got money from his brother and also visited his home sometimes. The Tribunal stated that it was difficult to accept he would go home knowing there was a murder case pending against him. He said he only did this when he needed money or there was an important reason to go there for a while.
54. Later in the hearing, when formally invited to comment on or respond to the inconsistencies in his evidence about the identity of the murder victim and the period of time he spent in hiding, pursuant to s424AA of the Act, the applicant stated that if he goes back to Bangladesh he will be killed. He said it has been a long time and he doesn't know what mistakes he has made but that everything he has provided is genuine and legal. He said that during the last three years he hasn't been told everything by his family but they have told him not to go back. The applicant requested and was granted an additional 14 days to ascertain whether his family have any further relevant documentation in relation to the claimed murder charge. No further documentation was provided in the post hearing submission or prior to finalisation of this decision.
55. Having carefully considered all the information before it, the Tribunal is not persuaded by the applicant's explanation as to how he came to be in possession of police statements written by 3rd parties and a copy of a post mortem report in relation to the claimed murder. The applicant was unable to provide any convincing detail about the friend he claims was able to

obtain these documents, not knowing himself which position his friend occupied in Dhaka. Nor did he provide any detail about the claimed connections which enabled this friend to obtain those documents. The applicant has also provided conflicting information in relation to who obtained the documents, first stating it was his brother who obtained them and later stating that it was his friend.

56. The Tribunal has taken account of the circumstances of the entry interview and notes that evidence provided under such circumstances should not necessarily be taken to be conclusive. However, the Tribunal does not accept that the applicant would have confused the identity of the murder victim given the centrality of this claim to his application for protection. In view of DFAT's advice about the high prevalence and ease of obtaining fraudulent documents in Bangladesh the Tribunal considers it likely that the inconsistency about the detail of the deceased person is due to the documents being falsely obtained after the date of the entry interview and the claims which were made at that point in time. For these reasons the Tribunal is not satisfied that the supporting documents are genuine and has given them no weight in arriving at its findings.
57. The Tribunal does not accept the applicant was living in hiding for up to 12 months before coming to Australia. The Tribunal does not accept the applicant would have continued to move around the streets in [City 1] if he feared serious harm from the shop owners or Awami League members or supporters as claimed. The Tribunal also does not accept the applicant would have returned to his home village on occasion to collect money or to attend to other matters if there was a murder charge pending against him as claimed.
58. For all the above reasons, the Tribunal does not accept there is a pending murder charge against the applicant in Bangladesh, brought by either shop owners or members or supporters of the Awami League. The Tribunal does not accept the applicant will be falsely arrested, interrogated, mistreated by the police, sentenced to life in jail or sentenced to the death penalty as claimed. The Tribunal does not consider the applicant has anything to fear on return to Bangladesh for this reason.
59. The Tribunal has previously accepted that the applicant may have come under pressure from other shop owners to vacate his premises but does not accept this was due to his support of the BNP. There is no suggestion, based on his oral evidence, that the applicant was physically harmed for this reason and the Tribunal has discounted the claimed false murder charge. Based on the applicant's oral evidence, the Tribunal finds that any pressure applied to the applicant to vacate his premises by fellow shop owners was restricted to verbal harassment. The Tribunal is not satisfied that the applicant was forced to close his business for this reason or that the verbal harassment he encountered meets the threshold required for a finding of serious or significant harm. Regardless of his reasons for doing so, the applicant maintains he no longer operates a business in [City 1] and he has made no written or verbal claims to want to resume a business in [City 1] in the future. Therefore the Tribunal considers the applicant faces no real chance or risk of serious or significant harm arising from future verbal harassment from the other shop owners in [City 1] on return to Bangladesh.
60. The Tribunal notes that the applicant claimed at hearing and in his post hearing submission that government supporters sometime pressurise his mother and his brothers and take money from them. When asked to provide further detail about this he said that is wasn't really government supporters; that his mother and brothers do not know who these people are. However, he said it is probably related to his political problems. The Tribunal finds the applicant's evidence in this respect to be vague, lacking in detail and speculative. As the Tribunal does not accept the applicant suffered any past harm for reason of his political opinion, and in view of the concerns expressed herein about the reliability of the applicant's evidence, the Tribunal is not satisfied that the applicant's family in Bangladesh are being

pressured as claimed or that there is a real chance or risk he will face serious or significant harm on return to Bangladesh for reasons related to this.

61. The Tribunal has also previously found that the applicant is not an active supporter of the BNP and will not resume such a role on return to Bangladesh. The Tribunal notes the applicant's post hearing submission that any supporter of the BNP can be attacked. However, as discussed with the applicant at hearing, reputable independent country information sources³ indicate that simply favouring the BNP over the opposition party, in and of itself, will not cause the applicant to be adversely treated by political opponents or the Bangladeshi authorities. As reported by DFAT and the UK Home Office, it is higher profile political activists and opposition leaders who face a higher risk of harm from politically motivated violence. In this respect the Tribunal finds it significant that the applicant stated that he does not know if his problems were politically motivated or if it was because his business was doing well. The Tribunal accepts the political environment in Bangladesh is volatile and that there are reported incidences of politically motivated arrests, deaths and injuries, but does not accept the applicant has a profile such that there is a real chance or risk he would suffer serious or significant harm if he returns to Bangladesh for this reason.
62. For the above reasons, having considered the applicant's claims individually and cumulatively, the Tribunal does not accept there is a real chance the applicant will suffer serious harm if he returns to Bangladesh, now or in the foreseeable future, for any of the reasons he has claimed. The Tribunal finds the applicant does not have a well-founded fear of persecution. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) of the Act.
63. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a) of the Act, the Tribunal has considered the alternative complementary protection criterion in s.36(2)(aa) of the Act. For the same reasons already articulated, the Tribunal is not satisfied that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh there is a real risk he will be significantly harmed for the reasons claimed or any other reason. The Tribunal is not satisfied the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa) of the Act.
64. There is no suggestion that the applicant satisfies s.36(2) of the Act on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) of the Act and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) of the Act.

DECISION

65. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Tania Flood
Member

³ DFAT Country Report, Bangladesh, 20 October 2014. UK Home Office, Country Information and Guidance, Bangladesh: Opposition to the Government, February 2015