

1416858 (Refugee) [2016] AATA 4039 (28 June 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1416858
COUNTRY OF REFERENCE:	Bangladesh
MEMBER:	Fraser Syme
DATE:	28 June 2016
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 28 June 2016 at 1:16pm

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. The applicant is [an age] year old man from Bangladesh. According to the applicant, he and his family have been harmed in the past due to a land dispute with Mr B, who is a supporter of the Awami League ("AL"). He fears if he returns to Bangladesh he will be harmed by the party in the land dispute, supporters of AL because of the land dispute, because he supports *Jamaat-e-Islami* ("JEI") and because he is aware of AL corruption.
2. The applicant applied to this Tribunal on 10 October 2014 for review of a decision made by a delegate of the Minister for Immigration [in] September 2014 to refuse to grant him a Protection visa under s.65 of the *Migration Act (1958)*. The applicant included the delegate's decision with the review application.
3. This review application raises the following issues for the Tribunal to determine:
 - a. Does the applicant have a well-founded fear of persecution in the reasonably foreseeable future if he returns to Bangladesh.
 - b. Are there substantial grounds for believing there is a real risk the applicant will suffer significant harm if he is removed to Bangladesh.

HISTORY OF THE APPLICATION FOR REVIEW

4. The applicant entered Australia as an unlawful maritime arrival in March 2013. He applied to the Department of Immigration for a protection visa in June 2013. The delegate conducted an interview with the applicant in October 2014. The Tribunal has listened to a recording of that interview. The applicant provided an untranslated birth certificate and good conduct certificate as well as school records to the delegate.
5. In the decision under review, the delegate found the applicant not to be credible. The delegate did not accept the applicant was involved in any land dispute and did not accept he was a supporter of JEI. The delegate found the applicant therefore did not have a well-founded fear of persecution or a real risk of significant harm if he returned to Bangladesh.
6. The applicant appeared before the Tribunal at two hearings to give evidence and present arguments. The first hearing was rescheduled at the request of the applicant for medical reasons until 21 October 2015. The first hearing was adjourned when an issue arose as to whether the migration agent had a conflict of interest. The migration agent later informed the Tribunal he did not consider himself conflicted and would continue to represent the applicant. The resumed hearing was held on 4 November 2015. Both hearings were conducted with the assistance of an onsite interpreter in the Bengali and English languages. The Tribunal acknowledges there has been a passage of time since it conducted the hearings, however the Tribunal has listened to the electronic recording of the two hearings prior to finalising this decision.
7. As noted above, the applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearings via telephone and provided written submissions prior to, between and after the hearings. The Tribunal has had regard to the migration agent's submissions, which are set out where relevant in more detail below.
8. The applicant provided to the Tribunal prior to the first hearing: a doctor report dated November 2011 and photographs said to be of damage to his family home. At the first

hearing he provided a police report filed by his [relative] and two newspaper reports about his [relative]. Between the first and second hearings the applicant provided a letter from JEI about his father and an English translation of one of the newspaper reports about his [relative]. After the second hearing he provided a letter from JEI about himself and the English translation of the other newspaper report about his [relative].

RELEVANT LAW

9. 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.
10. 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).
11. 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.
12. 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').
13. 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. DFAT have published a country assessment report for Bangladesh, which the Tribunal has had regard to.

CONSIDERATION OF CLAIMS AND EVIDENCE

14. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
15. In making its findings, the Tribunal is mindful the applicant was [age] years old at the time of the hearings and has a high-school level of education. The Tribunal is mindful too that

whenever evidence is received in a language other than the applicant's first language or through an interpreter there is always room for differences in meaning and nuance. The Tribunal is satisfied the standard of interpreting at the hearings was reasonable. The Tribunal considers the applicant was able to communicate effectively, understood the Tribunal proceedings and participated in a meaningful way.

16. The Tribunal finds the applicant is a national of Bangladesh. He provided his Bangladesh birth certificate and school records as well as a good conduct certificate to the department. He made no claim to be a national of any other country. The Tribunal accepts the applicant's claims should be assessed against Bangladesh for the purposes of the Convention in s.36(2)(a) and as the receiving country for the purposes of the complementary protection obligations in s.36(2)(aa). In making the below findings, the Tribunal has considered the applicant's home town, the place he resided prior to departing Bangladesh, to be his home region.
17. The Tribunal accepts that 'applicants for refugee status face particular problems of proof as an applicant may not be able to support his or her statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.' The Tribunal also accepts that 'if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt, (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*). The Handbook further states:

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.
18. The Tribunal acknowledges, while it may have regard to the Handbook, the Handbook is not binding. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220). However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out, see *Randhawa v MILGEA* (1994) 52 FCR 437.
19. During the hearings, the applicant often provided vague and confusing evidence. The Tribunal frequently had to repeat its questions and urge him to discuss with it the issues it identified, the applicant though would often merely repeat earlier claims. The Tribunal put to the applicant that his credibility was an issue.

Well-founded fear of persecution

20. In summary, the applicant claims he and his family have been harmed in the past due to a land dispute with Mr B. He further claims he and his family are supporters of JEI and Mr B is a supporter of AL. The applicant told the delegate Mr B is the brother of a local AL leader and he told the Tribunal Mr B is a powerful member of AL. The applicant's migration agent submitted Mr B is the right-hand man of a local AL politician. The applicant claims on several occasions, Mr B in the company of several dozen AL supporters has demanded the applicant's family give their land to him. The applicant has been threatened and assaulted by Mr B during some of those occasions. Furthermore, in November 2011, the applicant was attacked with a sword/machete while riding a bicycle. He was hospitalised for [number] days, about which he provided a letter from a doctor. Before the Tribunal, the applicant made new claims regarding bomb attacks on his [relative], which he said are related to the land dispute with Mr B. In the pre-hearing submission, the migration agent raised a separate claim the

applicant feared he would be harmed in Bangladesh because he had been witness to corruption by AL.

21. The migration agent submitted the applicant's claims for protection are therefore on the basis of his:
 - a. actual or implied anti-AL political opinion;
 - b. his actual pro-JEI political opinion;
 - c. his membership of a particular social group of parties to land disputes in Bangladesh/land owners in Bangladesh; and
 - d. witness to AL political corruption in Bangladesh
22. The Tribunal discussed each of his claims with him in detail at the hearing. However, the applicant's evidence as to the nature of the land dispute and the harm he and his family have suffered displayed significant inconsistencies, as set out below.

Purchase of land in dispute

23. The applicant provided inconsistent evidence regarding from whom his father purchased the land in dispute and the relationship between Mr B and the applicant's father. In his written statement accompanying his protection visa application, the applicant claimed his father purchased land from Mr B in around [year range] and that Mr B was his father's '[relative]'. Then in 2009, Mr B together with 40-50 supporters of AL demanded return of the land. The applicant's father refused. In April 2011, Mr B together with 40-50 AL supporters again demanded return of the land. On this occasion, the applicant's father relented, agreeing to return half of the land to Mr B. The applicant's father died in August 2011. Mr B together with 40-50 AL supporters demanded the remaining half of the land in August/September 2012 – at which time they attacked the applicant's [relative]. Mr B and 40-50 AL supporters made another demand for the remaining land in November/December 2012 – at which time the applicant was assaulted and received death threats. The applicant then left Bangladesh, after which, Mr B made further attacks against the applicant's family.
24. As set out in the decision record, during his interview with the delegate, the applicant claimed both his father and Mr B bought the same piece of land from a man who is [of a specified religion]. The land was registered in both of his father and Mr B's names. He told the delegate he never said his father bought the land from Mr B. The interpreter must have made a mistake. He further claimed his [relative] was too busy with his business at a bazaar, so it was the applicant who had to deal with Mr B after the death of his father. He thought the land may now be registered in the name of his [relative]. He further told the delegate Mr B forced the applicant's family off the land in April 2014.
25. Prior to the first hearing, the migration agent submitted an interpreting error led to the applicant's statement wrongly stating the applicant's further purchased the land from Mr B. It was not until 2000 did the applicant's family become aware the land was also sold to Mr B. As set out below, the applicant offered the same explanation to the Tribunal during the hearings and in post hearing submissions, the migration agent sought to press the same point, noting there are varying dialects of Bengali.
26. The Tribunal discussed with the applicant at the first hearing the statement accompanying his protection visa stated his father purchased the land from Mr B and that Mr B was a relative of his father's. It noted too during the entry interview shortly after he arrived in Australia, the applicant raised there was a land dispute between Mr B and the applicant's

father. The Tribunal noted his statement was prepared under legal advice and is endorsed that an accredited interpreter interpreted the content of the statement to the applicant prior to the applicant signing the statement. The Tribunal noted there was not only an inconsistency regarding who the applicant's father bought the land from, but also that Mr B was related to the applicant's father. The applicant stated it was an error by the interpreter. The Tribunal noted there was no reference to the applicant's father purchasing the land from a [person of a specified religion]. There was no reference that Mr B bought the same land. It is an absence of that information, rather than an interpreting error as to the meaning that characterises the inconsistencies. The applicant claimed the interpreter was a [specified language] speaker. The Tribunal noted the statement is endorsed that the interpreter was accredited in the English and Bengali languages. The applicant then stated that he understood what the interpreter told him, but what the interpreter said in English to his then lawyer (who is in the same firm as the migration agent), he did not understand. The Tribunal queried whether the applicant was alleging there was purposeful misconduct, he said he could not be certain. The applicant then said it was only after his visa was refused did he know the statement was incorrect. He said he just signed the statement. He did not know what the statement said. The Tribunal noted the document clearly states it was interpreted to him prior to his signing the statement and that was witnessed by his then lawyer. He claimed he was given a document to sign and he signed it.

27. It was at this point the Tribunal offered to adjourn the hearing so the migration agent could consider whether the applicant's allegation he had signed the statement without knowing its content raised a conflict of interest for the migration agent. As noted above, the migration agent later advised he did not consider there to be a conflict of interest and continued to represent the applicant at the resumed hearing.
28. The Tribunal notified the applicant it was offering to adjourn the hearing so that the migration agent could consider whether he had a conflict of interest. The applicant then changed his allegation. He stated in the presence of his then lawyer and with the assistance of a telephone interpreter he read over a draft of the statement and pointed out errors, including errors regarding Mr B selling the land to his father and Mr B being a relative. Later, he returned to sign the statement in the presence of his then lawyer, but the statement was not interpreted to him at that time. The Tribunal noted it was giving the applicant a very slim benefit of the doubt and would proceed with the adjournment. The applicant was still impliedly alleging the content of the document that was interpreted to him and the content of the document he signed are not the same. At the resumed hearing the applicant stated he did not consider his then lawyer was to blame, it was an error by the interpreter which caused his statement to be incorrect.
29. The Tribunal is mindful the applicant's evidence at the entry interview is more consistent with his evidence to the delegate during the interview and at the Tribunal hearings. However, his evidence in the statement accompanying his protection visa application is materially different. The Tribunal considers the applicant has sought to blame both his then lawyer and the interpreter who assisted him to prepare his statement for the inconsistencies. However, the Tribunal rejects either the lawyer or the interpreter is to blame for the applicant's inconsistent evidence. The Tribunal considers the only plausible explanation the statement includes Mr B being a relative of the applicant's father is because the applicant gave those instructions. It is not information of a nature which can be reasonably misinterpreted. Similarly, that the statement states the applicant's further purchased the land from Mr B and there is no mention of the land being sold to the applicant's father and Mr B by a [man of a specified religion] again is not information of a nature which is plausibly misinterpreted. It is two completely different factual scenarios. The difference between the two versions of the applicant's evidence cannot reasonably be explained by an interpreting error, no matter which dialect of Bengali the applicant and the interpreter spoke.

30. The Tribunal considers the applicant providing inconsistent evidence regarding the relationship between his father and Mr B and the nature of how the land dispute arose and the applicant then variously seeking to allege misconduct by his lawyer (which he later resiled from) and to blame the interpreter all weigh in favour of finding the applicant was not a credible witness and that he fabricated his claims regarding a land dispute with Mr B.

Court cases regarding the land

31. The applicant provided inconsistent evidence regarding whether there was any court case between his family and Mr B regarding the land dispute. The applicant's statement is silent regarding any court case regarding the land. During his interview with the delegate, the applicant told the delegate there was no court case regarding the land, because Mr B was too powerful and would not let the applicant's family go to court. He further said that it was hard to say who is the real owner of the land and he was too young at the time to know what authorities were involved in the dispute. His father did not give that information to him prior to his death. He further told the delegate, because of Mr B's links to the police, the police will not take any case. The pre-hearing submissions of the migration agent included that the applicant's father won a court case regarding the land in early 2011. The father refused to sell the land to Mr B, but did agree to transfer half of the land to Mr B.
32. At the first hearing, the applicant told the Tribunal in the late 1990's his father started a court case not long after Mr B claimed the land was his. His father was about to win the case around the time AL came to power in 2008. Mr B then began putting pressure on the applicant's family. In 2010/11, the applicant's father won the court case, but Mr B kept possession of the land. The applicant's father though surrendered half of the land to Mr B to avoid violent confrontation with Mr B. The applicant then said his father was tortured and beaten, when asked when did that happen, the applicant changed his evidence again to say his father was not tortured or beaten up. He had made a mistake to say that. He added Mr B came to their home and threatened them to sign the paperwork for the land and threatened them to join AL.
33. The Tribunal noted in his entry interview, the applicant referred to there being a court case over the land and that Mr B took half of the land. At the resumed hearing, adopting the procedure in s.424AA the Tribunal put to the applicant he told the delegate at the interview his family did not go to court about the land dispute, because Mr B was too powerful and would not let them go to court. That was inconsistent with his evidence to the Tribunal his father started court action against Mr B, that case went for many years and his father won the court case. That inconsistent evidence was reason for the Tribunal to doubt the applicant's credibility, which would be part of the reason to affirm the decision. The applicant elected to respond at the hearing. He said he was confused at the time (of the delegate's interview) and cannot recall it. He added there was a court case. He then stated he thought the delegate was questioning him about a court case regarding the sword/machete attack on him. The Tribunal noted the delegate was not asking him about his assault at the time he told the delegate there was no court case. The applicant then denied that he said there was no court case.
34. In the post hearing submissions, the migration agent submitted the applicant was referring to not going to court about the assault upon him. The applicant gave the response Mr B was too powerful and would not let him go to court within the context of the delegate's questioning.
35. The Tribunal is mindful the applicant's evidence at the entry interview is closer to his evidence before the Tribunal regarding there being a court case. However, his evidence before the delegate was materially different. The Tribunal is not persuaded by the applicant's explanation he was confused by the delegate's questioning. The applicant was clear in

answering there was no court case when being asked by the delegate about the land dispute. He went on to add an explanation for that, namely Mr B was too powerful. The Tribunal considers the applicant's inconsistent evidence regarding a court proceedings related to the land dispute weighs in favour of finding the applicant was not a credible witness and has fabricated his claims regarding the land dispute with Mr B.

Access to the land during the dispute

36. The Tribunal has provided inconsistent evidence regarding who had possession of the land in dispute. During his interview with the delegate, the applicant stated when the BNP was in power, his family and Mr B used the land together. It was after AL formed government in 2008, Mr B became powerful and demanded the land. When asked did the land produce any income, he told the delegate he had heard there was some income, but he was not able to go to the land. The pre-hearing submissions of the migration agent state Mr B had access to the land and the applicant's family were unable to touch the land.
37. The applicant told the Tribunal although his father and Mr B bought the same piece of land in or about [year range]. it was not until AL came to power in 2008 that Mr B made any demand for the land. He said during the intervening period [year range to]-2000, nobody knew about Mr B's claim over the land. The Tribunal commented Mr B must have known, as he had paid for the land. The applicant then changed his evidence that Mr B did not know the land was also sold to the applicant's father. The Tribunal then queried who was using the land between [year range up to]-2008 to which the applicant changed his evidence once more to say only a few months after Mr B bought the land, Mr B began claiming ownership of the land. He added there were competing claims of ownership as from 2000. Prior to that, there were only verbal altercations between the applicant's father and Mr B. In 2000, the BNP came to government and Mr B took no steps regarding the land.
38. The applicant initially said the land was in the possession of his family. Then he said Mr B took the land by force and started farming it. In 2009 Mr B sought to claim the land. When the Tribunal noted Mr B already had the land, the applicant replied Mr B sought written documents to confirm his ownership of the land. Mr B also began threatening the applicant and his father to join AL. The Tribunal put to the applicant his claims at the hearing were inconsistent with earlier claims regarding who had possession of the land. The applicant added Mr B took the land, then was worried that was not in writing, so began threatening his family. The Tribunal noted the applicant had previously claimed his family were farming the land. He replied that was only for a few months, after that, whenever they attempted to access the land, Mr B prevented them from doing so. The Tribunal further noted the applicant had also claimed his family and Mr B each had possession of half of the land. The applicant replied then after 2008, Mr B began pressuring his family to sign documents. As noted above, the applicant also claimed at the hearing after his father won the court case in 2010/11, after which he agreed to surrender half of the land to Mr B. Although, his family did not regain possession of the other half of the land.
39. Adopting the procedure in s.424AA, the Tribunal put to the applicant he provided inconsistent evidence regarding he told the delegate during his interview that his family and Mr B jointly used the land until about 2008 and he told the Tribunal Mr B took control of the land not long after Mr B bought the land in [year range]. That inconsistent evidence was a reason for the Tribunal to have doubts regarding the applicant's credibility which would be part of the reason to affirm the decision. The applicant elected to respond at the hearing. He initially replied Mr B was not a relative of his father's. He then repeated Mr B had control of the land from soon after he bought it. His family thereafter never had access to the land. When asked why he said different information to the delegate, he replied Mr B was a powerful man. He further said he did not recall saying that to the delegate.

40. The Tribunal further notes, the applicant's statement refers to Mr B on multiple occasions after 2009, demanding the applicant's family return all of the land to Mr B. His statement goes on to say sometime in April 2011, the applicant's father returned half of the land to Mr B. His statement therefore is inconsistent too with the applicant's evidence at the hearing Mr B already had control of the land as of not long after [year range]. The applicant's statement is inconsistent too with claims his family and Mr B shared use of the land prior to 2011.
41. The Tribunal considers the applicant has provided materially inconsistent evidence regarding who had possession and use of the land in dispute. The Tribunal considers those various inconsistencies further weigh in favour of finding the applicant was not a credible witness and that he has fabricated his claims regarding the land dispute with Mr B.

Attack on the applicant

42. In the applicant's statement, he claims supporters of AL attacked the applicant with a sword/machete when he was riding his bicycle to market in November 2011. He was hospitalised for [number] days due to his injuries. The applicant provided a letter from a doctor which states the applicant was treated for wounds consistent with an assault. It states the applicant was under the treatment of the doctor for [number] days. The applicant told the Tribunal it was when he was riding his bicycle past the home of Mr B, Mr B and AL supporters attacked him. The Tribunal declined his request to show it scars on his head and body from that attack. In his statement, the applicant made no reference to Mr B being one of the four supporters of the AL he claimed attacked him. Neither does he state the attack took place outside the home of Mr B. He did tell the delegate too that it was Mr B who attacked him.
43. The Tribunal has had regard to the doctor's letter. The contents are consistent with the client's claims he was attacked and injured and required prolonged treatment. The applicant however has again provided inconsistent evidence regarding the nature of the attack on him, where it occurred and whether Mr B was or was not one of the attackers. The Tribunal considers those inconsistencies weigh in favour of finding the applicant was not a credible witness. Those inconsistencies outweigh the corroborative nature of the doctor's letter, so while the Tribunal is willing to accept the applicant was treated by the doctor, it does not accept the applicant required that treatment for injuries suffered in the way the applicant claims.
44. For the above numerous instances of inconsistencies, implausibilities in the evidence of the applicant regarding the land dispute and his non-persuasive explanations, the Tribunal rejects that the applicant or his family has had a land dispute with Mr B. It rejects Mr B has harmed him or any members of the applicant's family in the past. It rejects Mr B attacked the applicant in November 2011. It rejects that Mr B threatened the applicant or his father to join AL. The Tribunal considers the applicant fabricated these claims in order to create a profile upon which to apply for protection.
45. The Tribunal finds the applicant faced no harm in the past and that he or his family were not involved with any land dispute with Mr B. The Tribunal is not satisfied the applicant has a real chance of serious harm from Mr B or supporters or AL or any other persecutor because of the land dispute with Mr B for reason of his membership of a particular social group or any other convention reason, now or in the reasonably foreseeable future, if the applicant returns to Bangladesh.

Attacks on the applicant's family

46. In his statement, the applicant claimed after he left Bangladesh, Mr B continued to attack the applicant's family another 3-4 times. During his interview with the delegate, the applicant

claimed Mr B attacked his family every 2-3 months to give up the land and to join AL. In the month prior to his interview, Mr B attacked the applicant's family at home and tortured the applicant's mother. Mr B was taken away by the applicant's neighbours. His family had to relocate to live with his [sibling] due to damage to their house.

47. The prehearing submissions of the migration agent refer to bomb attacks on the applicant's [relative] in June 2015 as part of an extortion attempt on the applicant's [relative] by Mr B. The applicant provided two newspaper articles at the first hearing. The Tribunal allowed the applicant time between the hearings to arrange English translations.
48. At the first hearing, the Tribunal discussed the police report related to the bomb attacks the applicant provided prior to the hearing. The applicant explained his [relative] made a complaint to the police after the first bomb attack. His [relative] later identified two suspects who the [relative] observed at the second bombing. He explained his [relative] was being extorted and was being pressured to drop the police complaint by AL. The applicant read the news report headlines about the bombings. The Tribunal noted the articles reported the arrest of suspects related to a communist group. The applicant replied the communist group is a terrorist group linked to AL. He understood the suspects were released on bail a few days after arrest because the police are corrupt.
49. The Tribunal queried how the applicant's [relative] could withdraw a complaint about a bombing – the police would proceed with charges for an offence of that nature in any event as a bombing affects the public at large, not only his [relative]. The applicant replied the AL supporters were increasing the pressure on his [relative] even though his [relative] had also told them it was not possible to withdraw his police complaint. The Tribunal noted that would make the threats against the applicant's [relative] empty threats. He had no further comment.
50. The applicant explained he received the two newspaper articles from his [relative]. His [relative] also sent him the photographs of damage to the family home caused by Mr B, but did not provide any photographs of the damage caused by the bomb blasts. When asked why his [relative] did not send any photographs of the bomb blast damage the applicant variously stated: no one asked for photographs (the Tribunal noted it did not ask for the earlier photographs either); it was not possible to photograph something which no longer existed (the Tribunal noted it was possible to photograph the aftermath) and he did not ask his [relative] for photographs, he only asked for the newspaper reports.
51. At the resumed hearing, the Tribunal noted it received an English translation of only one of the newspaper reports about the bomb attacks. The migration agent explained he had received only one newspaper report from the applicant for translation. The Tribunal discussed with the applicant that the translation of the one report it had indicated the bomb attack was part of a larger extortion racket against a number of businessmen by a communist group. It appeared therefore the bomb attack was unrelated to the land dispute with Mr B or AL and that his [relative] was a victim of a crime. The applicant responded the people who carried out the bombing were associates of Mr B. The Tribunal queried why would they also extort other businessmen as part of the land dispute. The applicant stated the bazaar incident was separate. There are two bombings. The suspects who were arrested are associates of Mr B. The Tribunal noted other than his assertion, there was no evidence to support that connection. The applicant explained the communists are a wing of AL in the area of his home village. He added his [relative] had received threats that his [relative's] son will be abducted and pressured his family to join AL. The applicant invited the Tribunal to contact the police in his local area to verify his claims. The Tribunal replied it would not contact the police, the applicant was alleging the local police were complicit in the bomb attacks and the release of the suspects. It would be inappropriate for the Tribunal therefore to contact the police.

52. After the resumed hearing, the Tribunal received the English translation of the second newspaper report. Oddly, the translation states the second report is of the same incident, published in the same newspaper and on the same date as the first report. Contrary to the evidence of the applicant, it states the applicant's [relative] made no complaint to the police at the time of the first bomb blast. Similarly to the first article, it states the bomb blasts were related to extortion. Unlike the first article though, the second article states the police are yet to apprehend any suspect. It is unclear to the Tribunal why the same newspaper would carry two, varying reports of the same event on the same date.
53. The Tribunal has had regard to the police report. Contrary to the applicant's evidence and contrary to the newspaper reports, it states the applicant's [relative] made a complaint to the police about being extorted prior to any bomb attack. It further states two suspects were arrested after the first bomb attack. It makes no reference to a second bomb attack, even though the police report is dated on [a date in] July, almost three weeks after the first bomb attack is reported to have happened on [a date in] June and about a week after the second bomb attack is reported to have happened on [a later date in] June. The Tribunal has had regard to the photographs attached to the pre-hearing submission said to be damage to the applicant's family home caused by Mr B. The applicant explained at the hearing the photographs are not of bomb damage. The Tribunal has concerns the applicant's [relative] provided the applicant with photographs of what is relatively superficial damage, but provided no photographs of the aftermath of the bomb blasts, yet also provided newspaper reports and the police report.
54. Although there is the lack of relevant photographs and there are the above inconsistencies between the two newspaper reports of the same date, the police report and the evidence of the applicant regarding the number of bomb blasts the timeline between arrests and the applicant's [relative] making a police complaint – the Tribunal is willing to give the applicant the benefit of the doubt and accept the applicant's [relative] was a victim of an extortion racket by the communist group because of the [relative] is a businessman. It accepts too that the [relative's] house did suffer two bomb blasts. Mindful of the country information relied on by the migration agent, the Tribunal is willing to accept too the communist group extorting the applicant's [relative] is affiliated to AL. The Tribunal has found above the applicant fabricated his claims regarding the land dispute with Mr B. It therefore rejects too that extortion of the applicant's [relative] and the bomb attacks are related to Mr B. It further rejects that the applicant's claims the suspects were released on bail due to corrupt police, because the police carried out the investigation and made the arrests. It considers the applicant has sought to exaggerate his [relative's] difficulties to be part of the applicant's fabricated claims for protection.
55. The Tribunal rejected above that the applicant and his family suffered any past threats or harm from Mr B as being not credible. It rejects Mr B harmed or threatened the applicant's family after the applicant departed Bangladesh. It rejects too that the applicant's family had to relocate due to fear of Mr B. Although the Tribunal has rejected the applicant's claims the extortion of the applicant's [relative] and the bomb attacks is related to Mr B, the Tribunal has accepted the applicant's [relative] was so extorted and the bomb attacks did occur. The evidence before the Tribunal indicates there was only property damage from the bomb attacks and that the suspects have been arrested. It further notes the applicant's [relative] was targeted for extortion due to his being a businessman. Having regard to the personal circumstances of the applicant, that these events about a year ago and in particular that suspects were apprehended, the Tribunal considers there to be only a remote or speculative chance and therefore not a real chance the applicant would face serious harm from the communist group, supporters or AL or any other persecutor because the applicant's [relative] has been the victim of extortion, now or in the reasonably foreseeable future, if the applicant returns to Bangladesh.

Jamaat-e-Islami

56. The applicant provided inconsistent evidence regarding his connection to JEI. At the interview with the delegate, the applicant stated he was only a supporter of JEI. In the prehearing submission, the migration agent submitted the applicant became involved with JEI after he was unable to find work upon leaving school. It was known in the community the applicant and his father was highly involved in the 2008 election as prominent activists.
57. At the hearing, the applicant did not spontaneously relate to it new claims set out in the migration agent's pre-hearing submission regarding his and his father's involvement with JEI. Only when prompted by the Tribunal did the applicant tell it about involvement with JEI. When asked why he had not raised his claims regarding his own political activities prior to the pre-hearing submissions of his migration agent. The applicant replied he had not been given an opportunity to raise it before. The Tribunal noted it asked him at the beginning of the hearing if he had any new claims discuss with it. He also had opportunities to discuss it with the delegate and when he made his protection visa application. He further said he had always mentioned he was a member of JEI. The Tribunal noted that was not correct. It further noted the pre-hearing submission indicated the applicant was more than just a member. He replied he was only a rank-and-file, ordinary member, but he often accompanied a union level party [official]. He attended meetings and rallies which [that party official] invited him to attend.
58. He told the Tribunal his father was a member of JEI and the applicant joined that party in 2007. He gave documents to his migration agent confirming his membership of JEI. The migration agent was unable to locate that document during the first hearing, for which, the migration agent apologised. The applicant then read the title of the document from his phone that it was issue by JEI in September 2015. He told the Tribunal prior to joining JEI in 2007, he was a student. He sometimes observed his father attend JEI activities. He had done some paperwork to join in 2005, but did not do a final exam about that. The Tribunal noted the submission of his migration agent was the applicant began getting involved in politics between 2005 and 2007 and attended rallies, protests and meetings. The applicant then claimed he ceased study in 2005 and did attend party activities. The Tribunal further put to the applicant the pre-hearing submission of the migration agent stated the applicant and his father were well-known as prominent activists. The Tribunal noted that was inconsistent with the applicant's evidence he was a simple rank-and-file member and noted he also did not tell the Tribunal he and his father were prominent activists.
59. As noted above, between the two hearings, the applicant provided to the Tribunal a letter from JEI about the applicant's father. It is undated and states the applicant's father was a 'regular worker' of JEI.
60. At the resumed hearing, the applicant stated he always claimed his father was a member of JEI. The Tribunal put to him his migration agent's submissions that the applicant was an active and well-known member of JEI. He replied he often accompanied the [local party official]. He was well-known to the extent that he went to different places and meetings with the [local party official]. He told the Tribunal the document it received after the first hearing regarding his father's membership of JEI was signed by the [local party official]. He did not know the date [that official] wrote the letter, but the applicant received it about 4-6 weeks before the first hearing. The [local party official] wrote the letter because the applicant requested it to support his protection visa application. The Tribunal then queried why the letter had no reference to the applicant's membership of JEI or his activities with the [local party official], which should be well-known to [that official]. He said he received a second letter about him at the same time as the letter for his father. The migration agent once more was unable to locate that document. The applicant was unable to access a copy of the second letter on his phone.

61. Adopting the procedure in s.424AA, the Tribunal put to the applicant during his interview with the visa officer he claimed he was only a low-level supporter and although he was questioned about it, the applicant did not display any knowledge of JEI being banned by the Bangladesh courts from participating in the past general election. It noted information about the court ban is in the DFAT report. That was inconsistent with his claims he was a member of JEI since 2007 and had been an active and prominent member of JEI. These were reasons for the Tribunal to doubt the applicant was a member of JEI, which would be part of the reason to affirm the decision. The applicant elected to respond at the hearing. He replied he was unable to articulate about the court ban at that time. The Tribunal noted the court ban was an event of some renown, and that someone who claims to be an active member of JEI should be aware of the court ban. He replied he knew about it, but was unsure why he was unable to mention it during the interview with the delegate. He further stated he accompanied the [local party official] to different events, but he himself was not a high-ranking officer.
62. The applicant further claimed supporters of JEI are being harmed in Bangladesh. His [relative] told him the [local party official] who issued the letter about the applicant's father was arrested on trumped up charges of [specified charges] a few days prior to the resumed hearing. All of the [local party official's] associates are being arrested one by one and the applicant will be next if he returns to Bangladesh. He said his [relative] learnt of this by word of mouth. The Tribunal noted the arrest of a senior political figure for [the specified charges] would be a newsworthy event, the applicant responded he had not seen any news reports about that incident.
63. After the resumed hearing, the applicant provided to the Tribunal a second letter from JEI, this one being about the applicant, together with an English translation. The letter is dated [in] September 2015. It states the applicant filled out a membership form in 2007, but does not state the applicant was a member of JEI. It states too the applicant was an 'appointed worker' of JEI. It makes no reference to the applicant accompanying the [local party official], albeit the letter is signed by the same person who signed the letter regarding the applicant's father – who the applicant told the Tribunal is the [local party official].
64. The applicant has in part claimed the land dispute with Mr B was at least partially related to the applicant's family's support of JEI and Mr B being with AL. But it was not until the pre-hearing submissions did the applicant claim he and his father were well-known activists. His explanation he had no opportunity to provide information about his JEI activities is not persuasive. He was specifically asked questions by the delegate about his JEI activities. The applicant replied he was only a supporter and displayed a lack of knowledge about well-known circumstances of the party being banned by the Bangladesh court from participating in the election of 2014. The Tribunal considers the applicant not raising claims regarding his JEI activities consistently throughout his protection visa application undermines that he was a prominent JEI activist. Further undermining those claims is that the applicant's own evidence at the hearing about what JEI activities he participated in is not consistent with his being a well-known activist. Moreover, the letters from JEI also do not suggest the applicant or his father were well-known activists. The Tribunal considers these reasons weigh in favour of finding the applicant was not a credible witness and has fabricated his claims he and his father were members of JEI or were well-known activists.
65. The Tribunal is willing to accept the applicant may have a political opinion opposed to AL and he may be a low level supporter of JEI. But The Tribunal rejects that the applicant or his father were well-known activists in JEI. It rejects the applicant was a member of JEI. It rejects the applicant was highly involved in politics. It rejects the applicant accompanied the local union [official] to attend any JEI events or that he will be harmed next as [that party official's] associate. It rejects Mr B sought to threaten the applicant to join AL. It finds the applicant has fabricated his claims he was anything more than a low level supporter of JEI.

The Tribunal has had regard to the country information provided by the migration agent and the DFAT report regarding political violence in Bangladesh. However, given it has found the applicant is only a low level supporter of JEI, based on the country information, the Tribunal finds there is only a remote or speculative chance and therefore not a real chance the applicant will face serious harm from supporters of AL or opponents of JEI or any other persecutor for reason of his actual anti-AL and his pro-JEI political opinion, now or in the reasonably foreseeable future, if the applicant returns to Bangladesh.

Witness to official corruption

66. This claim was set out in the pre-hearing submission of the migration agent. At the resumed hearing, the applicant said he did not understand this claim. He had not witnessed any corruption. The Tribunal notes the migration agent's submission is in the context of the applicant having knowledge of the alleged acts of Mr B and Mr B being connected to AL. The applicant did discuss those issues with it during the hearing, albeit, he was unable to discuss this particular claim with it. It therefore will assess this claim on that basis.
67. The Tribunal has found above the applicant was not involved in any land dispute with Mr B and was never threatened by Mr B. It found too the applicant is only a low-level supporter of JEI. The Tribunal is mindful of the country information regarding official corruption provided by the migration agent and in the DFAT report. On the credible evidence before it though the Tribunal though is not satisfied the applicant has been a witness to official corruption in the past. The Tribunal considers there to be only a remote or speculative chance and therefore not a real chance the applicant will face serious harm for witnessing corruption, now or in the reasonably foreseeable future if the applicant returns to Bangladesh.
68. After assessing all the evidence and being mindful of the applicant's personal circumstances, the Tribunal has considered the claims of the applicant individually and cumulatively. For the above reasons, the Tribunal is not satisfied the applicant has a well-founded fear of persecution from Mr B, supporters of AL, opponents of JEI or from any other source for reason of his actual or imputed political opinion, membership of any particular social group or for any Convention reason or combination of reasons, now or in the reasonably foreseeable future if he returns to Bangladesh. Therefore, the applicant does not satisfy the requirements of s.36(2)(a).

Real risk of significant harm

69. The Tribunal has also considered the application of s.36(2)(aa) to the applicant's circumstances.
70. On the evidence before it, the Tribunal considered there was not a real chance that applicant will suffer any serious harm from Mr B, supporters of AL or opponents of JEI or any other persecutor, if he is removed to Bangladesh. Given the real chance test for well-founded fear of persecution imposes the same standard as the real risk test of significant harm, for the same reasons set out above, the Tribunal is not satisfied the applicant faces a real risk of significant harm.
71. The Tribunal therefore considers there are no 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 the applicant will suffer significant harm, in the form of: arbitrary deprivation of life; the death penalty being carried out; torture; cruel or inhuman treatment or punishment, or degrading treatment or punishment.
72. Therefore the applicant does not meet the requirements of s.36(2)(aa).

CONCLUSIONS

73. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
74. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
75. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

Fraser Syme
Member