

1418185 (Refugee) [2016] AATA 3541 (14 March 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1418185
<b>COUNTRY OF REFERENCE:</b>	Bangladesh
<b>MEMBER:</b>	Tania Flood
<b>DATE:</b>	14 March 2016
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 14 March 2016 at 9:38am

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] September 2013 and the delegate refused to grant the visa [in] October 2014.
3. The applicant appeared before the Tribunal on 2 March 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.
4. The applicant was represented in relation to the review by his registered migration agent.

### CONSIDERATION OF CLAIMS AND EVIDENCE

5. 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.
6. 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).
7. 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.
8. 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').
9. 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.

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

### **Summary of claims**

11. In an entry interview conducted [in] June 2013, the applicant provided the following information:
12. He will be hit by leaders of the Awami League if he returns to Bangladesh.
13. His father is involved with Jamaat-e-Islami and was [a senior office bearer] of Jamaat-e-Islami.
14. In a statement attached to his application for a Protection visa, the applicant makes the following claims:
15. He is Bangladeshi and a Sunni Muslim.
16. He helped out on his family farm growing [products] and has also worked in [Country 1].
17. In his village, many people are involved in politics and engaged in criminal activities such as placing drugs in homes and reporting to police. This happened to him in 2006. He wasn't arrested but he had to pay [amount] taka to the leader of the Awami League to get himself out of trouble.
18. His father has been a member of Jamaat-e-Islami since he was [age] years of age. He was [a senior office bearer] for [number] years.
19. His father, and subsequently he, were caught up in a dispute in his village in 2008. A neighbour's son wanted to marry a girl from another village. They both agreed but she didn't want to go to [Country 1]. Her future husband brought her to his house, and beat her as she refused to go to [Country 1]. They were at home and heard the shouts and went to the house. His father tried to intervene but was removed from the house.
20. He went to the border police (BDR) to complain and they responded and went to the boy's house. The girl told the officers what happened. The BDR officers took the girl home and arrested the boy. He was charged and jailed for life because he was involved in sending girls to [Country 1]. This incident has caused his father and him many difficulties because the boy's brother is a member of the Awami League. This incident was not recorded in his entry interview because he wasn't given enough time to say everything he wanted to say.
21. He supported Jamaat-e-Islami in 2006 because the party takes care of people, builds Islamic schools and roads. He attended meetings, placed posters about the party around the village encouraging people to vote for the party.
22. Once he was beaten by members of the Awami League and pressured to join them but he didn't because he believes in the values of the Islamic party. He has been victimised because of his political activities and because of the incident involving his neighbour.

23. In 2009, [number range] members of the Awami League came to the [business] where he was working and asked him to close the shop because he was supposed to be on strike. They damaged the shop and beat him with sticks and fists. He received [number] stitches to his head.
24. He reported the matter to the police but they said they could not take any action and advised him to report it to the village chairman.
25. There has been continuous harassment from these people to join their party and they have also tried to extort money from him because he worked in [Country 1]. He does not feel safe.
26. He fears he will be seriously harmed or killed by the neighbour's son (brother of the person in jail for life) because of the incident in 2008.
27. The person he fears harm from is a member of the Awami League. Power is in the hands of the Awami League and the police are powerless to protect him.
28. He believes he will not be safe in another area because the Awami League has networks around Bangladesh and he believes that his neighbour's son will be able to find him.
29. In a submission dated 29 February 2016, it is claimed:
30. The applicant possesses a well-founded fear of being seriously harmed on return to Bangladesh due to his political opinion as someone who opposes the Awami League and has continued to aid and actively support Jamaat-e-Islami.
31. The applicant's entry interview was conducted in [number] minutes with a [number] minute break. During this time he was required to provide biodata details, employment and address history, details about his travel to Australia and the reasons for leaving his country. The applicant only attended school up to the age of [age] and regards himself as uneducated. It is unlikely that sufficient time was provided to derive an exhaustive account of his circumstances. Therefore, conclusions should not be drawn based on inconsistencies with that interview.
32. The applicant has valid reasons to fear persecution as a son of a high standing member of the opposition party, Jamaat-e-Islami, as a member himself and having been involved in sending an Awami League member to prison. The applicant has on a number of occasions, been harassed and beaten by supporters of the Awami League. His family still receives threats from the imprisoned man.
33. The applicant intends to submit a letter from [a senior office bearer] of the local Jamaat-e-Islami party confirming he was in fact a member of that party and explaining his role.
34. Regarding the Delegates observations about the applicant's failure to vote, it is advised that the applicant was [age] years old when he left Bangladesh for [Country 1] and was not entitled to vote up until that time. When he returned to Bangladesh in December 2007 he was he was [age] years old but in order to vote he required a National ID card which he never possessed. The only election the applicant could have participated in was in December 2008 and he states he was not able to register in time to participate in that election.
35. Political affiliation is a critical survival tool in daily life in Bangladesh. Party membership provides a social network, protection and identity. The applicant's claims are consistent with



country information concerning political affiliation and activity and he should be given the benefit of the doubt in regard to his party membership.

36. In regard to the applicant's account of the incident with his neighbour, a decision on the truth of these matters should not be made solely on their "unlikelihood" especially when the inconsistencies relating to them are minor and based on a rushed entry interview. Based on country information, a claim that Awami League members continually harassed the applicant is neither implausible nor incredible. Various country reports are referenced regarding the extent and nature of political violence in Bangladesh.
37. Because of the lack of effective state protection throughout Bangladesh it would be both impractical and unreasonable to expect the applicant to move to another part of the country. The political situation and the issues that the applicant currently faces are experienced nation-wide, and he fears that he would continue to be targeted regardless of his place of residence in Bangladesh. Given the applicant's expression of support for Jamaat-e-Islami has long been an important part of his life in Bangladesh, that he would wish to continue that support in the same or similar manner should he return there, and that violent Awami League members operate in all parts of the country with impunity, it is not possible for the applicant to relocate to any other area within Bangladesh.

### **Findings and reasons**

#### **Country of reference**

38. The applicant has produced a copy of a birth certificate from the People's Republic of Bangladesh which confirms his claimed identity and date of birth. 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.
39. During the hearing the Tribunal discussed with the applicant his background, education, family composition and past employment, as well as the reasons he left Bangladesh and his fears of returning. The Tribunal found the applicant to be an extremely poor historian. The applicant was unable, despite repeated questioning, to accurately timetable significant events in his past including the dates he lived and worked in [Country 1] and the dates on which certain events occurred. While the Tribunal has some reservations about his inability to account for this lack of recall, it nevertheless notes that he has otherwise been largely consistent in the claims he has made. For this reason, the Tribunal has not discounted his claims in entirety due to the inconsistencies which arise between his written and oral claims around the timing of events.

#### **Supporter of Jamaat-e-Islami**

40. The applicant fears harm from a neighbour and his family who are members of the Awami League. He claims the problems he encountered with the neighbour are intertwined with his political opinion as he is a supporter of Jamaat-e-Islami.
41. At hearing the Tribunal questioned the applicant about his knowledge of Jamaat-e-Islami, his reasons for association with Jamaat-e-Islami and the depth of his involvement with the party. The applicant stated that in Bangladesh everyone has a family history of support of one

party or another. He said his family have a history of supporting Jamaat-e-Islami and this is why he supported that party.

42. The applicant has consistently claimed that his father has a long association with Jamaat-e-Islami having been a member of the party for approximately [number] years and [a senior office bearer] of the local branch for the past [number] years. He said this role required his father to inform followers of upcoming meetings and events and to support the activities of the party in the local area. When asked if his father had encountered any difficulties in performing these activities he said that he was sometimes pressured by the Awami League to join them but other than verbal threats he has not been harmed in any way to date.
43. Before the Tribunal is a translated copy of a membership form which states the applicant's father has been an "assistant member" of Jamaat-e-Islami since [date]. This appears consistent with the applicant's claim that his father has been a member of the party for approximately [number] years. In view of the consistency of his evidence regarding his father's political affiliations, and in the absence of information to the contrary, the Tribunal is prepared to accept the applicant's father is a long standing member of Jamaat-e-Islami.
44. When questioned about his own involvement with Jamaat-e-Islami the applicant stated that he is a member of the party. In his oral evidence he said he joined the party in approximately 2001 whereas his written claims indicate it was in 2006. At differing times the applicant has produced evidence of his party membership in the form of translated copies of membership records. The first of these documents indicates the applicant became an "associate member" of the party on [a date in] 2001. Documents produced prior to the Tribunal hearing indicate the applicant has been an "assistant member" of the party since [a date in] 2002.
45. The Tribunal asked the applicant why there are two sets of documents noting they contain different information regarding the type of membership he has and the date of commencement of his membership. The Tribunal indicated that the inconsistencies between the documents could cause the Tribunal to believe the documents are not genuine. The applicant stated that he does not know why this is the case and that his father is the person who obtained the documents.
46. The Tribunal has had regard to the submission made on the applicant's behalf that he be given the benefit of the doubt regarding his party membership and notes that at hearing the applicant's representative indicated that in fact it did not really matter whether he was a member or not.
47. When asked about his level of involvement in Jamaat-e-Islami political activities the applicant said that in the past he accompanied his father to meetings and processions and helped him to clean up afterwards. He said he sometimes put up political posters in his local area when required. He said he sometimes encountered problems with the Awami League while doing this and once was physically assaulted while trying to put up posters.
48. When asked about his level of knowledge of Jamaat-e-Islami the applicant responded in general terms. He said the party does good works and has an Islamic platform. He was unaware who the founder of the party was but was able to state the name of the current leader. He was aware that Jamaat-e-Islami is a political ally of the BNP.
49. In view of his responses to questions at hearing the Tribunal considers the applicant has only a low level of knowledge of Jamaat-e-Islami's policies and platforms. However, in view of his family history of support for the party the Tribunal is prepared to accept the applicant is a supporter of Jamaat-e-Islami, albeit at a low level, given his described level of activity. The Tribunal is prepared to accept that the applicant may have forgotten the precise year in

which he became a member of the party but does not consider this accounts for the different dates noted on two different membership records. In view of the unexplained discrepancies between the two different membership documents outlined above, and in view of DFAT's advice<sup>1</sup> regarding the availability and prevalence of fraudulent documents in Bangladesh, the Tribunal does not accept the applicant is or ever was a formal member of Jamaat-e-Islami.

### **Incident with drugs and the applicant's neighbour**

50. In his written claims the applicant first refers to an incident in which drugs were planted in his house requiring him to pay a sum of money to the Awami League to resolve the matter with the police. Thereafter the applicant describes an incident which occurred when a fight broke out between his neighbour and a woman he had promised to marry. At hearing, the applicant claimed that these matters were intertwined. He said that the incident with the drugs occurred after the incident involving the fight with the woman and that the drugs were planted out of revenge for the applicant's neighbour being arrested and imprisoned. As noted above, the applicant was an extremely poor historian and the Tribunal is prepared to give him the benefit of the doubt as to the order in which these events occurred.
51. Regarding the incident with the neighbour, the applicant has been generally consistent about the facts of this matter. Namely that his neighbour enticed a woman into agreeing to marry him with the intention of trafficking her in [Country 1]; and when she refused to agree to go to [Country 1] he assaulted her. However, when asked at hearing to name the person responsible for arguing with the woman the applicant first said it was [Mr A]. Further he stated that [Mr A's] brother, [Mr B], was the person responsible for planting drugs in his house and making further threats against his life. When the Tribunal pointed out that a statement provided in evidence indicates that [Mr B] is the person who was arrested and jailed for attempting to traffick women to [Country 1], the applicant then agreed the person responsible was [Mr B]. Whereas the Tribunal believes the applicant was quite clear in his initial responses it nevertheless concedes it's possible the question may not have been clearly understood when first asked. The Tribunal accepts that the person who was reportedly jailed is [Mr B] and that his brother [Mr A] was responsible for planting drugs in his house.
52. The Tribunal also pointed out that the applicant's written claims indicate that [Mr B] was jailed for life whereas the abovementioned statement indicates that [Mr B] was sentenced to [number] years in jail. The applicant responded that in Bangladesh life imprisonment only means imprisonment for several years and stated that [Mr B] will soon be released from jail.
53. Further, the Tribunal pointed out that a statement before the Tribunal from his father indicates that the incident occurred in 1995 whereas his written claims suggest it was in 2008. Again the Tribunal notes that the applicant's inability to recall dates makes it difficult to assess the validity of his claims.
54. The applicant was asked how this incident relates to his political opinions. The Tribunal suggested that it appears he would have encountered similar difficulties for bringing a case of this nature against [Mr B] regardless of what political party he supported. The applicant agreed but stated that people who support Jamaat-e-Islami have had false cases brought against them and because he is a supporter of Jamaat-e-Islami he has experienced a lot of difficulties. He claims that [Mr B's] brother has threatened him and planted drugs in his house both because his family has brought charges upon [Mr B] and because they are supporters of Jamaat-e-Islami who oppose the Awami League.

---

<sup>1</sup> DFAT Country Report, Bangladesh, 20 October 2014



55. The Tribunal noted that in any event [Mr B] is reportedly in jail and asked the applicant why he could not seek police protection against any further harm from [Mr B] or his family. The applicant responded that the police support whichever party is in power. The Tribunal noted that this appears contradictory to the facts because he claims [Mr B] is a member of the Awami League and yet he was charged and imprisoned despite this. The applicant stated that [Mr B] had previous charges pending against him and that in any event it was the Border Police who brought the charges against him. Further he said that the incident involved trafficking and that such cases cannot be easily resolved.
56. The Tribunal has reservations about whether these incidents occurred as claimed and/or if they occurred for the reasons claimed. Due to the inconsistent evidence regarding the date that [Mr B] was arrested it is difficult to assess the likelihood of police protection being obtained or denied at that time as it is not possible to know for certain whether the Awami League was even in power at that time. Also, the differing accounts of when the incident with the neighbour occurred, namely 1995 or 2008, and the lack of clarity about the length of the prison sentence, also makes it difficult to assess whether there is a likelihood [Mr B] will soon be released as claimed.
57. However, because the applicant has been relatively consistent about the principal facts of the matters in question the Tribunal has afforded him the benefit of the doubt and accepts that the applicant and his father attended the house of a neighbour when an argument ensued between [Mr B] and an unnamed woman and that the applicant's father reported the matter to the Border Police which eventually led to the arrest and imprisonment of [Mr B] for several years. Further the Tribunal finds it plausible that [Mr B's] brother might have planted drugs in the applicant's house in a bid to extort a sum of money from him and in revenge for what happened to his brother.

#### **Attack in 2009**

58. The applicant was asked whether anything further happened to him following these events. Again the applicant has been consistent in claiming that he was attacked at his [business] by a group of about [number range] people including [Mr B's] brother. He said that he was threatened for opening his [business] on an industrial action day and attacked. He claims he suffered a blow to the head for which he received [number] stitches from the village doctor. He said he tried to report the matter to the police but was told to speak to the village elders about it. When he did they failed to act because he is a supporter of Jamaat-e-Islami and they support the Awami League. The Tribunal notes that the applicant stated this incident occurred in 2006 whereas his written claims indicate it happened in 2009.
59. When asked whether any other of his family experienced such difficulties the applicant said his father has not because he is elderly but that his brothers have also experienced similar problems. The Tribunal notes a statement provided by the applicant's father indicates that he has two other sons who are living in [Country 1] for reasons related to their political affiliation.
60. The Tribunal is prepared to accept that enmity exists between the applicant's family and the neighbour's family due to the arrest and imprisonment of [Mr B]. As such the Tribunal is also prepared to accept that the applicant was attacked at his [business] by a group of people including [Mr B's] brother and that the applicant's brothers may also be living outside of Bangladesh to avoid similar harm. The Tribunal accepts that the applicant could continue to face harm from [Mr B] in the event he is released from jail in the near future and other members of [Mr B's] family should he return to his local area. In view of his family's support for Jamaat-e-Islami the Tribunal is also prepared to accept that adequate state protection against such harm may not be available in the current political climate.



61. In respect of the above, the Tribunal notes the following:
62. The UK Home Office Report of February 2015<sup>2</sup> notes that high levels of politically motivated violence are perpetrated by the security forces and both opposition and government supporters. The ability to access effective protection from the state of Bangladesh may be limited due to a poorly resourced, overburdened, inefficient police force and endemic corruption. Some members of the security forces reportedly commit serious abuses, including torture, with impunity and members of religious minorities, political opponents and women are often victims of these abuses. A recent report by Odhikar<sup>3</sup> details in part police using torture and ill-treatment of detainees on remand and extrajudicial killing. A further report by Landinfo, the Norwegian Country of Origin Information Centre, dated 4 July 2013 states that the police force in Bangladesh is generally inefficient, and corruption is widespread at all levels. Police investigation of criminal offenses is often inadequate and the police can be reluctant to investigate persons affiliated with the ruling political party. Malicious accusations and fabricated cases occur in order to frame personal and political “enemies” and to achieve financial gain.<sup>4</sup>

### Relocation

63. As the Tribunal accepts there is a chance the applicant could be harmed if he returns to his local area and that state protection may not be available to him in his local area due to his political affiliation, consideration has been given as to whether the applicant can safely and reasonably relocate to another area in Bangladesh in order to avoid such harm.
64. Noting that it appears the incident at the [business] might have happened around 2009 the Tribunal asked the applicant why he only departed Bangladesh in 2013. He stated that after the attack he sometimes went to work in [Country 1] and sometimes went to work near Dhaka. On further enquiry, the applicant confirmed he lived and worked in Dhaka for almost three years before he departed Bangladesh. He said he worked in a [business] and rented a room in a shanty area. He also said he occasionally returned home during this period.
65. The applicant was asked whether he encountered any problems from [Mr B's] family or the Awami League while he was living in Dhaka. He said he did not because only his family knew he was there. The Tribunal therefore asked the applicant why he could not return to live in Dhaka. The applicant stated that [Mr B] is threatening him and his family because he has spent [number] years in jail. The Tribunal pointed out that he claims [Mr B's] other family members were also motivated to harm him yet did not attempt to do so in the three years he lived in Dhaka.
66. The Tribunal asked the applicant how [Mr B] or his family members would be able to find him if he returned to live in Dhaka. The applicant replied that [Mr B's] family will know if he returns because they will hear about it from his neighbours. The Tribunal put it to the applicant that there is no reason to think his family would reveal this information in the circumstances particularly as they did not do so during the three years he spent living in Dhaka previously. The applicant stressed that [Mr B] will be motivated to look for him when he returns from prison. He said that Bangladesh is a small country and he will hear about it from one person or another or he might print pictures of him in a bid to find him. The Tribunal stated that this is difficult to believe given the size of the population and the fact his brother was not able to previously locate him in Dhaka.

---

<sup>2</sup> UK Home Office, Country Information and Guidance, Bangladesh: Opposition to the government, February 2015

<sup>3</sup> Odhikar, Human Rights Monitoring Report, July 1 to 31 2015

<sup>4</sup> Landinfo – Norwegian Country of Origin Information Centre, Report on police and justice, 4 July 2014

67. The Tribunal asked the applicant whether there are other reasons why he could not return to live in Dhaka noting it does not appear unreasonable to assume he could because he had managed to live and work there without incident for three years before departing Bangladesh. The applicant stated that his main fear relates to [Mr B's] imminent release from prison combined with the fact the Awami League is still in power.
68. The Tribunal accepts the applicant is a low level supporter of Jamaat-e-Islami and that the current Awami League government banned the party from participating in the last elections. Further the Tribunal accepts that country information supports that there are reports of Jamaat-e-Islami leaders and high profile activists being arrested and detained by the current government. For instance in 2014 Freedom House<sup>5</sup> reported that members of Jamaat-e-Islami faced pressure in 2013 with police raiding the party's headquarters in Dhaka following violent protests organised countrywide in response to protests calling for the death penalty for war criminals. In February 2013 the International Crimes Tribunal sentenced Abdul Quader Mollah, leader of Jamaat-e-Islami to life imprisonment. The sentencing triggered increased tensions between Jamaat-e-Islami supporters and a coalition of nationalist and secularist forces. Violent clashes erupted between the two factions when the tribunal handed down a death sentence to Jamaat-e-Islami's vice president Delwar Hossain Sayedee leading to the deaths of dozens of protesters, mostly at the hands of the security forces. In September, Mollah's life sentence was changed to the death penalty prompting further protests by Jamaat-e-Islami supporters. He was executed in December. In December 2014 Al Jazeera<sup>6</sup> reported that the BNP and Jamaat-e-Islami claimed the war crimes trials were politically motivated and aimed at eliminating opposition leaders.
69. Notwithstanding the above, the Tribunal put it to the applicant that DFAT<sup>7</sup> assesses that supporters or members of political parties in Bangladesh are not at risk of being arrested or living in fear of violence on a day to day basis due to their political affiliations. Rather, it is reported that opposition leaders or members with high profiles face a higher risk of arrest or detention. The applicant responded that the media only focuses on events involving high profile people but this does not mean that everybody is safe. Further, he stated that everybody knows his family are supporters of Jamaat-e-Islami.
70. The Tribunal has had regard to the submission that the political situation and the issues that the applicant currently faces are experienced nation-wide, and he would wish to continue his support for Jamaat-e-Islami in the same or similar manner should he return there. However, earlier in the hearing when discussing the applicant's political involvement the Tribunal asked the applicant what he would do in the event he is required to return to Bangladesh. The applicant stated that if he returns to Bangladesh he will not support any political party because he does not want any further problems. The Tribunal considers this statement is supported by his further claim that he has had no political involvement since coming to Australia.
71. The Tribunal accepts that the applicant's political affiliations would likely be known in his local area and that this has and may still cause problems for him on return to his village for the reasons expressed above. However, based on DFAT's assessment, and as it is the Tribunal's view that the applicant was only ever a low level supporter of Jamaat-e-Islami and is reportedly no longer interested in, or motivated to, support any political party, the Tribunal is satisfied there is not a real chance the applicant will suffer any serious harm if he relocates to Dhaka for reason of his political opinion. The Tribunal acknowledges that the applicant should not be required to modify his political opinion or activities in order to avoid being harmed. However, based on his oral evidence at hearing and given his expressed lack of

<sup>5</sup> Freedom House, Freedom in the World 2014 – Bangladesh, 8 September 2014

<sup>6</sup> Al Jazeera, Bangladesh sentences Islamist leader to death, 30 December 2014

<sup>7</sup> DFAT Country Report Bangladesh, 20 October 2014

political involvement and interest since coming to Australia, the Tribunal is not satisfied the applicant is motivated to resume any future political involvement or support for Jamaat-e-Islami or any other political party. As such the Tribunal does not accept the applicant will have to modify his political opinions or behaviour in order to avoid being harmed on return to Bangladesh.

72. The Tribunal acknowledges that the applicant's father is a longstanding member of Jamaat-e-Islami but does not consider that this association alone will mean there is real chance the applicant will be seriously harmed by Awami League members or the state if he returns to live in Dhaka. In this respect, the Tribunal notes that the applicant's family support of Jamaat-e-Islami will only be known outside of their local area if they themselves make this information publicly available. The Tribunal can see no reason why he or other family members would do this given there is no history of them doing so previously and given the applicant has stated he will not provide support for any political party if he returns to Bangladesh. Further, the Tribunal finds it significant that the applicant's father has not been seriously harmed in their own village where his political affiliation would be widely known.
73. In view of his demonstrated ability to live and work in Dhaka over a period of three years prior to his departure from Bangladesh in 2013, and as the applicant has raised no other concerns about his ability to live in Dhaka, the Tribunal considers it reasonable that he could do so again on return to Bangladesh.
74. Having carefully considered the applicants claims and his responses at hearing, the Tribunal finds that the applicant could safely relocate to Dhaka where there is no appreciable risk of the feared persecution in his local area. Further, the Tribunal considers it would be reasonable to expect him to do so in the circumstances. Accordingly, the Tribunal finds the applicant does not have a well-founded fear of persecution for reason of his political opinion if he returns to Bangladesh now or in the reasonably foreseeable future.
75. 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).
76. 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 considers it safe and reasonable for the applicant to relocate to Dhaka to void any significant harm he may encounter in his local area from [Mr B] or other members of [Mr B's] family and/or for reasons related to his political opinions. Accordingly, 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 suffer significant harm for the reasons claimed or for 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.
77. 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**

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



Signed by AustLII

Tania Flood  
Member

AustLII AustLII

AustLII AustLII AustLII

AustLII AustLII AustLII AustLII AustLII

AustLII AustLII AustLII AustLII

AustLII AustLII AustLII AustLII