

1418802 (Refugee) [2016] AATA 3829 (3 May 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1418802
<b>COUNTRY OF REFERENCE:</b>	Bangladesh
<b>MEMBER:</b>	Frances Simmons
<b>DATE:</b>	<b>3 May 2016</b>
<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 03 May 2016 at 4:59pm

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 claims to be a citizen of Bangladesh. He has said that he was born in [his home village in] Comilla District, Chittagong Division, Bangladesh on [date]. He claims that he departed Bangladesh from Dhaka [in] November 2012 using a false passport. After arriving in [Country 1], he boarded a boat to [Country 2]. From [there] he travelled to Australia by boat. On the evidence before me, I accept that the applicant is a citizen of Bangladesh and that his identity is as claimed.
2. The applicant applied for the protection visa [in] April 2013. The applicant claims that he will be harmed by the Awami League (AL), which is the ruling party in Bangladesh, and imprisoned by the Bangladeshi police because he has been falsely accused of being involved in a fight that occurred in 2007 where a shop keeper affiliated with the AL was seriously injured. The applicant claims that he is a supporter of the Bangladesh Nationalist Party (BNP) and that, following the fight in which the shop keeper was injured, he was appointed as the [Office Bearer 1] of the [his home village] BNP committee. He claims that he will be harmed if he returns to Bangladesh because of his actual and imputed political opinion.
3. [In] November 2014 the delegate of the Minister for Immigration refused to grant the applicant a under s.65 of the *Migration Act 1958* (the Act) and the applicant applied to the Tribunal for review of this decision. The applicant appeared before the Tribunal on 27 April 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages. The applicant was represented in relation to the review by his registered migration agent.

### RELEVANT LAW

4. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.

#### Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:  
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

7. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
8. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
9. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
10. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
11. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
12. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
13. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
14. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

#### **Complementary protection criterion**

15. 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').

16. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
17. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **Section 499 Ministerial Direction**

18. 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. In assessing the applicant's claims I have considered the DFAT Country Report on Bangladesh dated 20 October 2014 to the extent that it is relevant to the applicant's claims.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

#### *Protection visa application and statutory declaration*

19. According to his statutory declaration dated [in] March 2013, the applicant became involved in the BNP in 2007 after he was introduced to the party by his [Relative A]. At first he would accompany his [Relative A] to meetings and run errands for the party. His [Relative A] was a community leader within the BNP in [his home] village. The town (of around 2000 voters) is dominated by the AL and the BNP is their main rival. In the early days the applicant would do something BNP related around 2-3 days a week. He became known as a BNP supporter in the village. He attended social events, and was part of a social club, where politics were discussed. His political views became stronger as his support and involvement in the party grew. He considered the BNP acted fairly – for example, when government aid was distributed – whereas the AL was corrupt.
20. The applicant claims that there was a major conflict between the AL and the BNP in 2007. The territory of the local [Bazaar] was divided along party lines. At the time he was not too involved in the divisions of the bazaar, he just went there to shop. One day he was at the bazaar when a fight broke out between two AL shopkeepers. One of them was seriously injured and had to be taken to hospital. The applicant was not near the crime scene. He claims that the AL people tried to blame the BNP people for the attack on their men. The police turned their sights to the BNP. His uncle had seen some of the statements alleging that the BNP was behind this 'half murder' (serious injury) and naming those responsible, including the applicant.

21. The applicant claims that when the police started looking for him, he took off for Dhaka. He came and went from his village. They did not manage to track him down. He would also stay at the neighbour's home. When the police spoke to his family and his family said that he was not capable of doing such things. The police blamed him and other BNP people for the attack. He claims that, while the BNP was in power, the problem was not too serious. Once the AL came to power in 2009 they revived every case they had against them. They are still in power and the police do as the AL says. BNP people are hunted and blamed.
22. The applicant stated that the information in his entry interview is not correct. He did not say what is contained in the entry interview. The information in this statement is more accurate.
23. The applicant claims that, if he returns to Bangladesh, he will be killed and/or unjustly blamed for a crime he did not commit. He fears he will be killed by the AL people. He also fears the police; they do the work of the AL. He fears that they will raise the 2007 issue and use that to harm him. He was not involved in any attack but, as a known BNP person, he will be unfairly blamed. The AL may attack him due to the 2007 incident but they may also attack him for the simple reason that he is known as BNP person. Many BNP people have fled because of issues such as this. They are all at risk. The AL has complete power. The authorities are unfairly pursuing him and they do the work of the AL. The applicant was well-known as a BNP person and wherever he goes, his politics will eventually be uncovered and he will be killed. He was unfairly implicated in an attack in 2007 – this is an issue the AL will continue to use against him; the AL will harm him or use the police to harm him.
24. The applicant stated he left Bangladesh using a false passport provided by the smuggler.

*Documents submitted to the department*

25. The applicant provided the following documentation in support of his claims:
  - a. Court 'Order Sheet' dated [in] January 2007.
  - b. 'First Information Report' dated [the same day]
  - c. 'Statement of the complaint' dated [the same day];
  - d. Document and unaccredited translation referring to the 'false conspiracy charge' needing to be withdrawn (undated);
  - e. Excerpt from [Newspaper 1] dated June 2014 in which the applicant appears attending a BNP meeting in [Suburb 1].

*Delegate's decision*

26. The applicant was interviewed about his claims by the delegate [in] July 2014. I have listened to the interview and I am satisfied that the references to the applicant's evidence in the delegate's decision record are accurate.
27. The delegate did not accept the applicant's claims were credible. The delegate was concerned that the applicant's evidence about his involvement in the BNP was inconsistent. The delegate noted that when it was put to the applicant that it was implausible that he would be targeted by the AL within twelve days of becoming a BNP member, the applicant claimed he was with the BNP prior to 2007 but entered the BNP in 2007 with a 'big commitment' and was then targeted by the AL. The delegate noted the applicant had not claimed to have been involved in BNP before 2007.

28. The delegate considered the applicant's evidence that he was the [Office Bearer 1] of BNP was inconsistent and implausible. The delegate noted that applicant told her that the incident in [the] Bazaar occurred on around [a date in] January 2007, that one or two days later he fled to Dhaka, and that between 2007 and 2011 he would return to [his home village] for short periods of time. The delegate notes that, when asked why he had been appointed [Office Bearer 1], he indicated that it was because of the false accusation against him in 2007 and also because of the previous committee leaders had left Bangladesh. When the applicant was reminded that he had said his [Relative A] always lived in [his home village], he indicated that [this relative] was also 'on the run'. The delegate was concerned about the applicant's claims that his [Relative A] was a senior member of the BNP and that his [Relative A] introduced him to the BNP and this, in turn, caused her to have concerns about whether the applicant was a genuine member of the [party]. The delegate also noted her concerns about the applicant's evidence about the activities that he claims he engaged in as the [Office Bearer 1] of the [home village] BNP Committee.
29. The delegate noted that the applicant gave evidence that the AL shopkeeper did not die, but was injured and that the shop-keeper was seen in a marketplace in Comilla five years after the incident in the bazaar. The delegate considered the documentation which the applicant had provided (specifically the Statement of the Complainant' which states "I came to my son and found that my son reached at the stage of death. I at once brought him in a hospital and the duty doctor declared my son as death") contradicted the applicant's evidence that the AL shopkeeper was, in fact, not dead and noted that the applicant has provided inconsistent information about this matter in his entry interview and protection visa application.
30. The delegate's decision notes that when the applicant was asked what he did in his spare time in Australia, he gave evidence he watches Indian movies on the computer. The delegate noted the applicant subsequently provided a newspaper entitled [Newspaper 1] dated June 2013 which he claimed showed a picture of him attending a BNP meeting in [Suburb 1]. The applicant indicated that there have been other meetings where his picture had been taken. He gave evidence the meetings are held one or two months and that he was not involved in any other BNP activities in Australia. The delegate accepted the applicant had some exposure to the BNP in Australia but was concerned that he did not refer to these political activities when given an opportunity to do so or provide any substantial detail about what was discussed at the meeting.
31. The delegate concluded that the applicant is not a BNP member and she did not accept that he was involved in any BNP related activities in Bangladesh. The delegate rejected his claims that he was falsely accused of a crime against an AL member in January 2007 and found that he was not of interest to the AL and the Bangladeshi authorities for this reason. The delegate accepted that, while the applicant has been in Australia, he has had 'some association with the BNP in Australia', however she found that this has been for the sole purpose of strengthening his protection claims. The applicant has not come to the adverse attention of the Bangladesh authorities as a result of this association and there is no information suggesting that such exposure would bring him to the adverse attention of the AL or the Bangladeshi authorities. The delegate rejected the applicant's claims in their entirety and, with respect to the documentation he submitted, noted that country information indicates that document fraud is prevalent in Bangladesh.

### **Application for review**

#### *Pre-hearing submissions and additional documentation*

32. The applicant provided a copy of the delegate's decision with his application for review. In pre-hearing submissions dated 11 March 2016, the applicant's representatives contend that



the applicant fears harm for reasons of his political opinion.<sup>1</sup> It is claimed that he is a supporter of the BNP and formally became a member in 2007. It is claimed the applicant was falsely accused after a fracas involving the two groups which resulted in the serious injury of a man aligned with the AL and that, if the applicant returns to Bangladesh, he will be killed and/or blamed for a crime he did not commit.

33. It is submitted that the situation that the applicant has described in early 2007, where his local bazaar was 'divided along party lines' is 'highly plausible' in light of the available country information about political tensions in Bangladesh during this period. The submissions refer to country information that indicates that the Bangladeshi authorities have been accused of being complicit in the suppression of the BNP supporters. It is submitted that the country information referred to in the pre-hearing submissions, concerning the 'persecution of the political opponents of the Government of Bangladesh', supports the applicant's claims to have been threatened and harmed on the basis of his actual and imputed political opinion.
34. The applicant's representatives argued that the delegate's conclusion that it was implausible that the applicant would have been 'targeted by the (opposition) within approximately 12 days of becoming a member' was illogical as the applicant has not claimed that he was specifically targeted at this time on the basis of his political affiliation, but rather, that an incident occurred which led to a number of BNP supporters being falsely accused, of which he was one. Specifically, it was submitted he applicant had not linked the fact he officially joined the BNP with his being targeted by the AL. It was also submitted that Australian law imposes a high threshold for findings of absolute implausibility and that 'clear and cogent evidence' is necessary to find that the evidence of claimant is implausible or incredible.<sup>2</sup>
35. The pre-hearing submissions note that the delegate pointed to other "inconsistencies" regarding the applicant's claims to have been appointed as the [Office Bearer 1] of the BNP Committee in [his home village]. With respect to the delegate's concern that the applicant did not mention that his [Relative A] 'is also on the run' until pressed further during the interview [in] July 2014, it is noted that the delegate never specifically asked whether [Relative A] had also been falsely accused and that this was, in fact, the case. The applicant adds that [Relative A] fled to [Country 3] a few months after the applicant left for Australia and he was not aware of this fact until after he arrived in Australia.
36. The pre-hearing submissions also take issue with the delegate's finding that the applicant was not a genuine member of the BNP, partly because his testimony was not 'commensurate with his claimed role' (as [Office Bearer 1] in his local area). It is argued that it is 'not appropriate to make assumptions about what would constitute actions 'commensurate with a particular political role in a different culture and that the applicant had never claimed to have a strong intellectual involvement. It was argued that even if the applicant did not genuinely support the BNP it would be sufficient that he was perceived to do so.
37. With respect to the Statement of Complainant provided by the applicant, the submission notes that while the delegate was concerned that the Complainant said his son had 'died' when he had not, the applicant claims that the complainant's claim was a lie; that is, a false accusation.
38. The pre-hearing submission refers to a range of country information about the volatile and often violent political situation in Bangladesh, much of which concerns the dangers facing BNP leaders and activists following the disputed presidential elections of January 2014. It is

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<sup>1</sup> Tribunal file, folio 45-53.

<sup>2</sup> *Thevandram v MIMIA* [2000] FCA 1910 at [59]

argued that this country information supports the conclusion that opposition parties and their supporters have been harassed and targeted in violent attacks, with party activists suffering assaults and abductions; the Bangladeshi state has been accused of complicity in the suppression of opposition supporters, including through politically motivated arrests and charges; and the Bangladeshi state, even where willing to intervene, has failed to protect opposition supporters against harassment, intimidation and persecution and that such conditions prevail throughout Bangladesh.

39. On 20 April 2016, the applicant submitted a copy of a typed letter in Bengali. The accredited translation states it from the Chairman of the [his home village] Union BNP and it states:

This is to certify that [the applicant], father: [name], mother: [name], village: [his home village], Post office: [his home village]: Police station: [Station name], District, Comilla, Ward [Number], held the chair of the [Office Bearer 1] of the said Union with BNP since 2007 till [in] October 2012. After that he could not leave in Bangladesh due to political problems. For that reason he first went to [Country 1] to save his life and then risked his life to flee to Australia by boat. As he is associated with the BNP, the opposition Awami League revengefully filed a false case against him, So, it had become impossible for him to live in his neighbourhood and his country.

40. The applicant attended a hearing on 27 April 2016. What follows is a very brief summary of the applicant's evidence about his claims and circumstances. Where relevant the applicant's evidence at the hearing is discussed in detail further below in the assessment of Claims and Evidence. The applicant confirmed that he left Bangladesh [in] November 2012. He confirmed that in the year before he left Bangladesh he was living in mostly Dhaka. He first moved to Dhaka from his home village of [home village] in 2007. His evidence indicates that after he moved to Dhaka he returned to [his home village] on multiple occasions although the number of trips he made back to [his home village] varied over time. He told the Tribunal he used to visit [his home village] 'very rarely', saying that he went back to his village once a week, or once every two weeks, or once a month -- It varied.
41. The applicant told the Tribunal he lived in Dhaka 'most of the time' and it took about two hours to travel from [his home village] to his village. He said because of the trouble his [siblings] are not living in [his home village]— one is in [Country 3], one is in [Country 4] and one is in [Country 5]. His mother passed away [recently] ago. His father still lives in [his home village] and [relative] also lives in the house. When the applicant was living in Dhaka he used to work in a [business] as [an occupation]. He initially made about [amount] takka and towards the end he was making [more] takka a month. With respect to the cost of travelling to Australia, he claimed his family had sold their land, so he could have safety in Australia. He told the Tribunal he had never applied for a passport and he left Bangladesh using a false passport. This passport was taken from him in [Country 1]. The applicant was also asked whether he ever had had a national identity card, and he provided rather confusing evidence about finding out from his father after he left Bangladesh that the applicant was also no longer on the list of registered voters. He confirmed his father told him this after he left Bangladesh.
42. At the hearing the applicant reiterated his claims that he became involved in the BNP in 2007 and that in 2007 he was falsely accused of being involved with an attack upon an AL shopkeeper. The applicant confirmed that the attack on the AL shopkeeper occurred in the market place while he was doing his shopping and that he did not actually see the fight occur. He gave evidence that at that time it was BNP government so nothing happened but when the AL came into power in 2009 the trouble started. Asked what trouble he had after the AL came into power, the applicant said when they launched the conspiracy case against him there was a risk that the police could come to his house and arrest him. Asked whether they ever went to his family home looking for him, he said several times. Asked when the



last time they went looking for him was, he said after 2011 he came to Dhaka and in that period they used to come to his house and his parents told him.

43. The applicant reiterated his evidence that while, in his entry interview he said the AL shopkeeper was dead, after arriving in Australia he learnt this was not true and the injured shop keeper was now in hiding. The applicant gave evidence that at the time of the attack in 2007 the news was the AL shopkeeper was dead – even the doctor said so – and it was not until he was in Australia that he learnt this was not true. He referred to his mother and [sibling] seeing this person. Asked why it would be recorded that a person was dead when they were not, he said he did not know the answer, the doctor could answer the question – why he said this when the patient was still alive he did not know.
44. The applicant told the Tribunal he got the position of [Office Bearer 1] from 2010-2011. Asked again when he got the position again, he said that is the thing he can't remember. I asked how long he had that position for before he left Bangladesh, he said a very short period: he left the country in 2012. Asked what period of time he had the position for, he said two to two and half years and he added that the situation of the country was not favourable. The applicant gave evidence his position with the BNP was in the Comilla district. Asked whether it was correct to say the position was near [his home village] and he gave evidence it was in adjacent area near [Police Station location]. Asked what his responsibilities were, he said good communication with other people and how to recruit people to their party. Asked how he went about fulfilling these responsibilities, he said he used to teach people to do good communication and maintain good conduct to each other and he used to invite other people to his party. Then the AL came and everything was upside down.
45. The Tribunal explored the applicant's claims about his involvement in the BNP and his past experiences in Bangladesh and invited him to comment upon various concerns the Tribunal had about aspects of his evidence. Where relevant the applicant's evidence is discussed further below in the Assessment of Claims and Evidence. During the hearing the applicant was also invited to comment on country information from DFAT concerning the consequences of departing Bangladesh illegally, the treatment of returnees, and the prevalence of fraudulent documentation in Bangladesh.
46. When asked about his involvement in the BNP in Australia, the applicant said he had attended many meetings. I discussed with the applicant his motivations for involving himself with the BNP in Australia and I asked him about whether he would be interested involving himself in politics if he returned to Bangladesh. The applicant's responses are discussed further below in the Assessment of Claims and Evidence. I explained to the applicant the operation of s 91R(3) of the Act. I put to him that, on one view, I might have concerns that the only reason that he had been involved in meetings of the BNP in Australia, was to advance his claims for protection and I might have doubts that he would be motivated to involve himself in politics if he returned to Bangladesh. He did not want to comment.
47. Towards the end of the hearing there was an adjournment to enable the applicant to speak privately with his representative. After the hearing was resumed, [the representative] submitted that, if the Tribunal should decide the applicant's case was credible, although the country information indicated that no action would be taken against a person for leaving on a false passport, it might be expected that, in the process of investigating whether someone had left Bangladesh illegally, the fact that a person had a police record might come to light.

#### **ASSESSMENT OF CLAIMS AND EVIDENCE**

48. On the evidence before me, I accept that the applicant is a national of Bangladesh. Therefore for the purposes of s.36(2)(a) I accept that Bangladesh is the country of nationality and for the purposes of s.36(2)(aa) I accept that Bangladesh is the receiving country.

## Credibility assessment

49. In determining whether the applicant is entitled to protection in Australia, it is necessary to make findings of facts on relevant matters. In assessing the credibility of the applicant's claims, I accept that the benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims and I have had regard to the guidance provided by the UNHCR about this issue. If the Tribunal 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.<sup>3</sup> 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.<sup>4</sup>

50. The Tribunal has issued guidelines on the assessment of credibility in protection visa cases, which state, in part:

... The rejection of some of the evidence on account of a lack of credibility may not lead to a rejection of an applicant's claim for a protection visa. For example, when assessing an applicant's claims as to whether they meet the definition of refugee, if an applicant is disbelieved as to his or her claims, the tribunal must still consider whether, on any other basis asserted, a well-founded fear of persecution exists. However, the tribunal does not need rebutting evidence before it can lawfully find that a particular factual assertion made by an applicant is not made out.

The tribunal considers all the material before it and is not restricted to claims and evidence considered by the primary decision-maker. If the review applicant raises new claims or presents material for the first time to the tribunal, the tribunal will consider the credibility of what has been provided, including any reasons for why it was not provided earlier in the application process. There may be good reasons why new information or claims are presented by applicants at a later stage in the application process. These reasons may include stress, anxiety, inadequate immigration advice and uncertainty about the relevance of certain information to an applicant's claims [footnotes omitted].

51. In assessing the applicant's evidence I accept that he may have been nervous and anxious appearing before the Tribunal. I have taken these matters into account in assessing his evidence. However, for all the reasons that follow, I have reached the conclusion that the applicant's claims are not credible. In summary, the applicant's evidence about his involvement in the BNP was vague and changed significantly over time. He appeared unsure about whether the BNP was in power in 2007, the year in which he claims that he first became involved in the BNP. He was also unsure of when elections were held in Bangladesh and unable to identify the colours of the BNP party flag. My doubts about the credibility of the applicant's claims were compounded by his highly improbable evidence about the false case that he claims was brought against him in 2007. Also troubling: the applicant's conduct in returning to his home village of [his home village] on multiple occasions between 2007 and 2012 notwithstanding the fact that he claimed he was the target of a false case against him, his inconsistent and unconvincing evidence about when he became the [Office Bearer 1] of [his home village] BNP Committee and the fact that he did not leave Bangladesh until 2012, five years after he claims a false case was brought against him, and three years after the AL came to power.

<sup>3</sup> *MIMA v Rajalingam* (1999) 93 FCR 220

<sup>4</sup> *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547

52. The applicant's evidence about his involvement in the BNP changed over time and, overall, I consider it lacked relevant and persuasive detail. At the hearing the applicant reiterated his claims that he first became involved in supporting the BNP in 2007 after he was introduced to the party by his [Relative A]. When asked if he remembered who was in power when he started supporting the BNP, he said the BNP was in power. However, while this is consistent with his statutory declaration (which refers to the police blaming him and other BNP people for the attack on the AL shop-keeper before stating '[w]hile the BNP was in power, the problem was not too serious'), it is not consistent with the fact that the BNP was last in power in October 2006. When asked again who was in power in 2007, he said he was supporting the BNP. Asked when the BNP lost power, he said the AL was in power in 2009 – that happened after BNP. I put to him that the BNP lost power in 2006 and there was a caretaker government for a while. The applicant then agreed this was correct. I asked what he meant when he said when he started supporting the BNP in 2007, the BNP was in power. He said the BNP was in power and then the caretaker government came. Asked to clarify whether the BNP or the caretaker government was in power when he became involved in the BNP, he said BNP has handed the power to the caretaker government. In my assessment, the applicant's evidence about whether the BNP was in power when he first became involved in the BNP was confused. I note that in October 2006 violent protests erupted over the BNP government's choice of caretaker administration to take over after Premier Khaleda Zia's term expired at the end of this month. The BNP appointed President Iajuddin Ahmed to serve as the Chief Advisor of the Caretaker Government and he did so until early January when, in response to violent protests in the lead up to elections that had been slated for 22 January 2007, the elections were postponed, the army intervened and Fakhruddin Ahmed was installed as the head of a caretaker administration.<sup>5</sup> I consider the applicant's confusion about whether the BNP was in power in 2007 casts doubt upon whether he was actually involved in the BNP in 2007 as claimed
53. My concerns about the credibility of the applicant's claims to have been involved in the BNP were deepened by the fact that the applicant could not identify the colours of the BNP party flag. When asked what the BNP party flag looked like, the applicant referred to the documents he had provided with his application for protection and said the picture is there. He then asked if the Tribunal was referring to the paddy leaf. I acknowledged that the paddy leaf is the symbol of the BNP and that the BNP also has a party flag, which is often seen at processions and rallies, and is also on a lot of BNP material. When asked again if he knew what colours this flag was, he said he didn't know what flag the Tribunal was referring to. I put to the applicant that you could see the BNP party flag on the BNP website or at processions or rallies. The applicant reiterated they use a poster and on that poster there is a paddy leaf. When I put to the applicant that the BNP had a party flag that was green and red, the applicant said there is a square and red in the middle. I put to the applicant that the upper half of the BNP party flag is red, the lower half is green, there is a black wheel in the middle and a golden sheaf of paddy with a white star on top of the paddy.<sup>6</sup> The applicant replied that there is a paddy leaf and a star and all around there is red and green. I noted it was surprising that, if he had been involved in the BNP in the way he had claimed, he would not have been able to describe the BNP party flag. He replied that he said that he knew and he did not think it was significant – their focus point was the paddy leaf. I have considered this response, but I remain concerned that the applicant's evidence about his claimed involvement in the BNP was vague and lacking in detail.

<sup>5</sup> See generally International Crisis Group (ICG), *Restoring Democracy in Bangladesh*, 28 April 2008, Asia Report N°151 – 28 April 2008, available at: <http://www.refworld.org/docid/4816cf692.html> ; see also <http://www.bbc.com/news/world-south-asia-12651483>

<sup>6</sup> BNP Party website < <http://bnpbangladesh.com/en/index.php/b-n-p/party-flag> > (noting 'the upper half of this party's flag will be red and its lower half will be green. An industrial wheel in black will be in the centre of the flag. A golden sheaf of paddy will rise from within the wheel with a white star on top of the paddy'.)



54. Other aspects of the applicant's evidence about his involvement in the BNP were also vague and lacking in relevant detail. For example, when asked whether he ever voted in any elections in Bangladesh, the applicant said yes. Asked when was the last time he voted in elections in Bangladesh, he said he couldn't remember. I noted there was a caretaker government and the AL came to power in 2009, he said there was an election in 2009. I noted that the election was in late 2008 and I asked whether he voted in that election. He claimed he could not go to vote because of the false case that was had been brought against him. Asked to tell the Tribunal about a rally he attended in the Comilla district he referred to walking to the [Police Station name] and, when asked what the rally was about, he said their leader used to come to their place and take a meeting. Although the applicant claimed that from 2007 he used to work for the BNP on a voluntarily basis two to three days a week, when asked what work he did, his evidence was vague: he said in the meeting there was discussion about how they were going to run the party, who they were going to call to their meetings and their work plan – all these things. Asked whether he had to fill out any forms when he joined the BNP, he said not at the beginning. Asked about what happened when he officially joined the BNP as a member, he said yes, he referred to being given an official position as [Office Bearer 2] (I accept he may have meant to say [Office Bearer 1], as this is what he said at all other times in the hearing).
55. The applicant's evidence about when he obtained an official position in the BNP has been inconsistent over time and this detracts from the credibility of his claim that he was involved in the BNP between 2007 and 2012. In his statutory declaration the applicant does not mention he was ever the [Office Bearer 1] of a BNP Committee in [his home village]. However, in his interview with the delegate the applicant claimed he was appointed to the position in late 2007. Before the Tribunal hearing, he submitted a letter which refers to the applicant holding the position of [Office Bearer 1] of the BNP in the Comilla district (Ward [number]) between 2007 and October 2012 he submitted a letter. Then, in oral evidence to the Tribunal, he gave evidence he got the position of [Office Bearer 1] in 2010-2011. Asked when he got the position again, he said that is the thing he can't remember. Asked how long he had that position for before he left Bangladesh, he said a very short period: he left the country in 2012. Asked what period of time he was talking about, he replied two to two and half years. He confirmed his evidence that he had held this position from round about 2010-2011.
56. As I put to the applicant, the delegate's decision records that he told the delegate that he became the [Office Bearer 1] of the BNP committee in [his home village] towards the end of 2007, whereas before the Tribunal he initially gave evidence that he was appointed to this position in around 2010 and that he was doing this position for about two and half years before he left Bangladesh. The applicant replied that he couldn't recall exactly. In 2007 there was the incident and after the incident he got the position. The false case has been brought against him after 2007 and then the conspiracy started. However, in my assessment, there is a significant difference between the applicant's evidence to the delegate, which was that he was appointed to the position of [Office Bearer 1] at the end of 2007, and his evidence to the Tribunal, which was that he thought he held this position from 2010-2011 for around two and half years. I do not accept the applicant has reasonably accounted for this significant inconsistency in his evidence. This casts further doubt over the credibility of his claims.
57. I consider that the applicant's conduct in returning to his [his home village] from Dhaka on multiple occasions between 2007 and when he left Bangladesh in 2012 calls into question his claims that he was afraid of being targeted by AL supporters and the authorities in his home village. I put to the applicant that it was difficult to understand why he would involve himself in a BNP committee in [his home village] if he was trying to avoid the authorities because they were pursuing him over a false case that had been brought against him. The applicant repeated his claim that when the case was brought against him, the ruling party was BNP, not AL but when AL got the power that's when the trouble started. I put to the

applicant that his evidence had been that after the AL came to power in 2009 he kept going back to [his home village]. He replied that he told the Tribunal several times that when he travelled he did so in the darkness of night to see his family. I put to the applicant that this was somewhat difficult to reconcile with his evidence that he was the [Office Bearer 1] of the BNP committee in [his home village] and that he fulfilled these responsibilities by talking to people about the BNP. The applicant said he was involved in the party that's why he had those responsibilities so he used to go for a short period of time – two to three hours – so it was not like he was staying for a long time so other people knew he was there. I have considered the applicant's response but I do not find it persuasive.

58. I do not accept that the applicant's claims that he returned to [his home village] under cover of darkness and so managed to avoid the harm he feared are credible. In particular, I consider the applicant's evidence that he returned to [his home village] after sunset and only saw his parents is difficult to reconcile with his claims that he had responsibilities to fulfil in the Comilla district as the [Office Bearer 1] of a BNP committee. I note that, later in the hearing, the applicant claimed that the meetings in relation to the BNP committee occurred in the [Station name] area in the Comilla district (which he said was adjacent to [his home village]) and the delegate did not ask him whether he went to [Station name] to attend the meetings. Be this as it may, as I put to him, the delegate's decision did record that the applicant was asked about his role as the [Office Bearer 1] and he indicated that he attended meetings to discuss elections, party activities, and how to 'attract people to the party. As I put to the applicant, the delegate's decision record goes on to note:
- a. The applicant said he would communicate with people in the market and coffee shops, telling them how the party is doing the good jobs and good principles.
  - b. The applicant was asked how often he would return to [his home village] from Dhaka and he indicated the timing wasn't fixed – sometimes he returned every two to three weeks. He went there after sunset and left before sunrise to visit his parents and nothing else.
  - c. The delegate was put to him that the provided information contradicted his earlier testimony that he would communicate with people in the market place and coffee shops, and attend meetings as the [home village] BNP [Office Bearer 1].
  - d. The delegate's decision records states that the applicant subsequently indicated that he attended the meetings and communicated with the people *before* the incident [in the marketplace where the AL shopkeeper was attacked] and before he became [Office Bearer 1].
59. I put to the applicant that this appeared to be different again from what he told the Tribunal. The applicant said he was consistent with his version – he said he was in the marketplace but not in that spot – it was a mistake on the delegate's part, not his. I have considered the applicant's response but I am of the view that his evidence about his involvement in the BNP in his home area has changed over time and I am not persuaded that it is reliable.
60. In my assessment, the timing of the applicant's departure from Bangladesh casts further doubt on the credibility of his claims. The applicant's evidence was that he had lived in Dhaka since 2007. As I discussed with applicant, the incident that he said resulted in a false case being brought against him occurred in 2007 and he claimed the situation became more dangerous in 2009, when the AL came to power. However, he did not leave Bangladesh until November 2012. I asked why, if he was afraid of being targeted because of his involvement with the BNP, he didn't make arrangements to leave Bangladesh at an earlier point in time. The applicant said his Dad and his brother were making his travel arrangements; they – he appears to be referring to his would-be persecutors - didn't know he was in Dhaka; they

thought the applicant staying in Bangladesh was dangerous. I do not find these explanations persuasive. I consider the fact that the applicant returned to [his home village] on multiple occasions between 2007 and 2012 and did not leave Bangladesh until 2012, five years after he claims a false case was brought against him and over three years after the AL came to power, supports the conclusion that he did not leave Bangladesh for the reasons he has claimed.

61. I also found other aspects of the applicant's evidence unconvincing and improbable. At the hearing I noted that his evidence had been that he only became involved in the BNP in 2007 and that he had previously said the incident with the AL shop keeper occurred on [a date in] January 2007, at which time he had only just become involved in the BNP. I asked why anyone would want to make false allegations against him because of what was, at that time, his limited involvement in the BNP. He replied that they thought if he continued to support the BNP he would invite other people to join the political group so that is why, in the beginning, they wanted to remove him. I have considered the applicant's evidence that he was targeted along with other BNP supporters but I remain concerned that his evidence that he was the subject of a false case in January 2007 because he was a BNP supporter when he had only recently become involved in the BNP to be improbable.
62. Also of concern: the applicant's evidence about what happened to the AL shopkeeper has changed over time. As the applicant has acknowledged, in the entry interview he said the AL shopkeeper was killed and some of the documents (the Statement of the Complainant and the First Information Report) he has provided in relation to the false case that he claims has been brought against him appear to refer to the shop-keeper being dead. The essence of the applicant's response was this: why would he change his evidence if it was not true – there was no advantage him doing so – he could have consistently claimed the shop-keeper was dead. It is true it is not apparent to the Tribunal why the applicant would change his evidence in this way if his claims had been fabricated. However, I remain of the view that the scenario that the applicant has described (wherein the AL shopkeeper was declared dead by a doctor and the applicant only discovered he was alive some time after he arrived in Australia, five years after the incident) is highly improbable and, having regard to my cumulative concerns about the credibility of the applicant's claims, I am not persuaded that my concerns about this aspect of his evidence can be overcome by the applicant's explanation.
63. I have carefully considered all the documents the applicant has provided to the Tribunal and the Department, but I do not believe that they assist his case. With respect to the copy of the [Newspaper 1], as noted below I am prepared to accept that the applicant attended meetings of the BNP in Australia but, for reasons that are discussed further below, the fact that he has been pictured doing so does not resolve my concerns about his motivation for attending these meetings. With respect to the documentation concerning the false case that the applicant claims has been brought against him, at the hearing I noted that the Statement of Complaint states the complainant's son died and the first information report also refers to unlawful activities and killing and that, on one view, the documents appear to be inconsistent with his evidence now, which is that the shop keeper was injured not killed. The applicant has given evidence that when he was in Bangladesh he thought the shop keeper was dead because this is what he was told but that that this was a false accusation. He told the Tribunal he only discovered the shopkeeper was not dead after he arrived in Australia. He argued that he changed his evidence because he was telling the truth – otherwise his evidence would have been consistent. However, as noted above, I still find the applicant's shifting evidence about the fate of the AL shopkeeper to be highly improbable. In any event, as I put to the applicant, the country information which is available to the Tribunal indicates



that fraudulent documentation is easy to obtain in Bangladesh.<sup>7</sup> In these circumstances, I consider the documents he has submitted to the Tribunal can be given little weight and they do not overcome my significant concerns about the credibility of his claims.

64. Given my significant concerns about the credibility of the applicant's claims to have been involved in the BNP, I had concerns about his motivations for attending BNP meetings in Australia. At the hearing the applicant estimated he had attended more than twenty meetings of the BNP in Australia. He said that it was hard to attend meetings at the moment because of his work commitments (he is presently working at a [business] in [Suburb 2]) whereas at the beginning he was not employed. The applicant said the BNP sometimes call meeting and if the time suits with his schedule he attends. The meetings are held occasionally - like Khaleda Zia's birthday – he attended this meeting. Questioned further, the applicant told the Tribunal he attended 'many meetings' – at the beginning he was unemployed and so could attend many meetings but now he is employed he can only attend evening meetings. While I have some doubts as to whether the applicant has attended as many meetings of the BNP in Australia as he says, I am prepared to accept that he may have done so.
65. I have considered the applicant's evidence about what motivated him to attend meetings of the BNP in Australia, but I do not find it persuasive. When asked what motivated him to attend these meetings, the applicant said they are discussing the current situation of our country, what is happening, and the celebration of Khaleda Zia's birthday takes place so he was interested to attend. When asked whether he knew when national elections were last held in Bangladesh, he said he was not sure most probably December 2009. He confirmed this evidence. Asked what about since he arrived in Australia, the applicant said no other party had a chance – the AL took all the power. I put to the applicant that, if he was interested in what was happening in the BNP since he arrived in Australia, he might know what happened at the 2014 national election. The applicant reiterated BNP didn't get a chance to go to the elections. He said according to Bangladesh system the caretaker government will call for elections and the other party will stand for the election but only the AL stood in the elections, no other party. I noted the BNP boycotted the 2014 elections. In my assessment, the applicant's own evidence does not indicate that he is interested in political developments in Bangladesh.
66. Furthermore, I did not find the applicant's evidence about whether he would be motivated to involve himself in politics if he returned to Bangladesh persuasive. When asked if he would want to be involved in politics if he went to Bangladesh, he said yes, if on his return he sees the political situation is favourable and the government is doing the right thing than he will start being involved in politics again. Asked what would happen if the AL was still in power, he said he wouldn't be able to enter into the country. Asked whether, if he could enter into the country, he would want to be involved in supporting the BNP in Bangladesh, he said if the political unrest went away, if everything was normal and if there was a fair election. He requested that he be allowed to stay in Australia for three years – if the political situation was calm then he had no intention to stay here, he could go to his country and see his family who he loved. While I acknowledge the applicant would like to remain in Australia, at least temporarily, I am not persuaded that he wishes to do so because he fears political persecution in Bangladesh.
67. In this context, I am drawn to the conclusion that the applicant attended BNP meetings in Australia for the sole purpose of strengthening his claims for protection. I am not persuaded that the applicant has now, or has ever had, any genuine interest in, or active political commitment to, the BNP. On the evidence before me, I do not accept that the applicant was

<sup>7</sup> DFAT Country Report - Bangladesh, 20 October 2014, p.23-24; see also Canada: Immigration and Refugee Board of Canada, *Bangladesh: Reports of fraudulent documents (2011-2015)*, 20 August 2015, BGD105263.E, available at: <http://www.refworld.org/docid/560b92654.html>.

ever involved in supporting the BNP in Bangladesh in the past or that his claimed support of the BNP is genuine. I do not accept that the applicant is now or was ever a genuine BNP supporter and I reject any suggestion that he would have to modify his political beliefs and activities to avoid harm if he returned to Bangladesh. I do not accept that the applicant would be motivated to involve himself in supporting the BNP if he were to return to Bangladesh.

*Conclusions on the credibility of the applicant's claims*

68. For all the reasons that are set out above, I have reached the conclusion that the applicant's claims are not credible. I am not satisfied that he was ever actively involved in the BNP as claimed and, because I do not accept that he is now, or was ever a BNP supporter, I do not accept that he was ever the subject of a false case that was brought against him as claimed. I do not accept that the applicant was ever introduced to the BNP by his [Relative A] or that he was a BNP member or supporter in Bangladesh or that he had any special role in BNP in the Comilla district. Specifically, I do not accept that the applicant was ever the [Office Bearer 1] of a BNP committee in [his home village]. Nor, on the evidence before me, do I accept that the applicant ever participated in meetings of the BNP, rallies, protests, and other public political activity in support of the BNP in Bangladesh. Because I do not accept that the applicant was ever the subject of false case, I do not accept that the authorities ever went to the applicant's family home looking for him in relation to this matter. I do not accept that the applicant was ever removed from the list of registered voters or otherwise targeted by the Bangladeshi authorities in any way.
69. I do not accept that, at the time the applicant left Bangladesh, he was of adverse interest to the authorities or to the AL or to any other person or group in Bangladesh. While the applicant may have a number of relatives (including [siblings] and cousins) who are currently living abroad, because I do not accept that the applicant was ever involved in the BNP or targeted by the AL supporters or the authorities as claimed, I do not accept that the fact that the applicant's relatives has anything to do with the problems the applicant's claims he has experienced in Bangladesh. While I am prepared to accept that that the applicant may have attended meetings of the BNP in Australia as claimed, on the evidence before me I am not satisfied that he has done so otherwise than for the sole purpose of strengthening his claims to be a refugee. Accordingly, I have disregarded his conduct in attending meetings of the BNP in Australia for the purpose of assessing whether he meets the criteria in s36(2)(a). Furthermore, for the reasons set out above, I do not accept he was ever an active BNP member, as claimed, and I do not accept that he would be motivated to be active in support of the BNP if he returned to Bangladesh now, or in the reasonably foreseeable future.

**Other matters**

70. The applicant's evidence indicates that he left Bangladesh illegally using a false passport before seeking asylum in Australia. While I accept that the applicant left Bangladesh illegally and sought asylum abroad, as I discussed with him, the country information available to the Tribunal does not indicate that there is a real chance that he will be harmed for these reasons. According to DFAT, thousands of Bangladeshis enter and leave the country every day and the return of failed asylum seekers is unlikely to be reported by airport authorities to the Department of Immigration and Passports, Ministry of Home Affairs or other agencies beyond the normal processes whereby returning nationals have their entry and exit from Bangladesh recorded.<sup>8</sup> As I put to the applicant, DFAT assesses that people who return to Bangladesh, voluntarily or involuntarily, are unlikely to face adverse attention on their return. DFAT reports that the return of failed asylum-seekers is unlikely to be reported to other agencies by the airport authorities, beyond the normal processes whereby returning

<sup>8</sup> DFAT Country Report - Bangladesh, 20 October 2014, p.23, paragraph 5.32.

nationals have their entry and exit from Bangladesh recorded.<sup>9</sup> DFAT also does not believe political activity undertaken whilst out of Bangladesh is generally noted by the Bangladeshi authorities.<sup>10</sup> On the evidence before me, I do not accept that there is a real chance that the applicant will face harm of any type if he returns because he will be identifiable as a failed asylum seeker and/or because he has attended BNP meetings in Australia.

71. I accept that the applicant departed Bangladesh illegally and that the authorities will be aware of this when he returns. As I discussed with the applicant, while the law which proscribes that leaving Bangladesh unlawfully can result in a penalty of imprisonment of up to a year or a fine, DFAT is not aware of these penalties being enforced.<sup>11</sup> I place weight on DFAT's assessment. While there are reports about the large numbers of people who leave Bangladesh illegally by boat, as I put to the applicant, I have been unable to locate, any information that would support the conclusion that people who depart Bangladesh illegally are subject to penalties upon their return.<sup>12</sup> The applicant responded by indicating that he wanted to remain in Australia for one more year. As noted above, on the evidence before me, I do not accept that the applicant was ever of adverse interest to the Bangladeshi authorities in the past for any reason and, as I do not accept that he has a police record in Bangladesh, it follows that I do accept that such a fact would come to light upon his return to Bangladesh. On the evidence before me, I am not satisfied that there is real chance that the laws that prohibit illegal departure would be enforced against the applicant on his return to Bangladesh. Because I do not accept that there is a real chance that the law will be enforced against him, it follows that I do not accept that there is a real chance that he will be imprisoned or otherwise subject to treatment that amounts to serious harm or significant harm for this reason if he returns to Bangladesh.

**The applicant is not a refugee and nor is he owed complementary protection**

72. I have concluded that the applicant is not a credible witness. I do not accept that he was ever a member or supporter of the BNP. I have rejected, in their entirety, his claims to have been involved in supporting the BNP in the Comilla district. I do not accept that a false case was ever brought against him as claimed. I do not accept that he was ever the [Office Bearer 1] of a BNP committee in [his home village] or that he was known as a 'BNP person' in his home area or elsewhere. I do not accept that he is now, or ever was, of adverse interest to the AL supporters, or to the authorities, or to any other persons or groups in Bangladesh because of his actual or perceived political opinion or for any other reason. While I am prepared to accept the applicant has attended meetings of the BNP in Australia, I have disregarded his conduct in doing so under s 91R(3) of the Act.
73. While I am prepared to accept that the applicant left Bangladesh illegally and that he will return to Bangladesh as a failed asylum seeker, having regard to my findings of fact and the available country information, I do not accept that there is a real chance he will suffer serious harm for any of these reasons or a combination of these reasons. Having considered his claims individually and cumulatively, and having regard to my findings of fact and what I have accepted of his claims and circumstances, I do not accept there is a real chance that he will suffer serious harm if he returns to Bangladesh, now or in the foreseeable future, for any of the reasons he has claimed. On the evidence before me, I do not accept that he has a well-founded fear of being persecuted for his real or imputed political opinion or any of the other Convention reasons if he returns to Bangladesh now or in the reasonably foreseeable future. The applicant is not a refugee.

<sup>9</sup>DFAT Country Report - Bangladesh, 20 October 2014, p.23, paragraph 5.32.

<sup>10</sup> DFAT Country Report - Bangladesh, 20 October 2014, p.23, paragraph 5.33.

<sup>11</sup> DFAT Country Report - Bangladesh, 20 October 2014, p.23, paragraph 5.28.

<sup>12</sup> Sources consulted: CISNET, European Country of Origin Information Network (ecoi.net), Refworld, United Kingdom Border Agency, Google.



74. Having found that the applicant not a refugee, I have considered whether he meets the criteria for complementary protection. I note that I have accepted that the applicant attended meetings of the BNP in Australia. Section 91R(3) of the Act does not apply to complementary protection criteria and, accordingly, I have considered his conduct in Australia in assessing whether the applicant is entitled to complementary protection. However, because I do not accept that he has any genuine interest in, or commitment to, the BNP, while I accept he may have attended some BNP meetings in Australia, I do not accept that he would involve himself in BNP if he returned to Bangladesh. Because I do not accept that the applicant would seek to actively support the BNP in any way if he returned to Bangladesh, I do not accept that there are substantial grounds for believing that there is a real risk he will face significant harm for this reason.
75. The applicant has not claimed, and having regard to the country information set out above, I do not accept, that he will face harm of any type, including significant harm, because he has attended meetings of the BNP in Australia and nor, on the evidence before me, am I satisfied that there is a real risk that he would suffer significant harm because he would be perceived as supporting the BNP for any other reason. Having regard to the country information and what I have accepted of his claims and circumstances, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his removal from Australia to Bangladesh, there is a real risk he would suffer significant harm for these reasons. Having considered the applicant's claims singularly and cumulatively and having regard to my findings of fact, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his removal from Australia to Bangladesh, there is a real risk that he will suffer significant harm for any of the reasons claimed. The applicant does not satisfy the criteria for complementary protection.

### CONCLUSION

76. 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).
77. 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).
78. 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

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

Frances Simmons  
Member