

1506185 (Refugee) [2016] AATA 4033 (24 June 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1506185
COUNTRY OF REFERENCE:	Bangladesh
MEMBER:	Fraser Syme
DATE:	24 June 2016
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 24 June 2016 at 3:56pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. The applicant is [an age] year old man from Bangladesh. According to the applicant, supporters of the Awami League ("AL") harmed him and his family in the past for reason of his family's support of Jamaat-e-Islami ("JEI") and because the applicant was in a relationship with the sister of one of the AL supporters. He fears he will be harmed again by supporters of AL if he returns to Bangladesh. He further fears harm from the Bangladesh authorities because he departed Bangladesh illegally.
2. The applicant applied to this Tribunal on 6 May 2015 for review of a decision made by a delegate of the Minister for Immigration [in] April 2015 to refuse to grant him a Protection visa under s.65 of the *Migration Act (1958)*.
3. This review application raises the following issues for the Tribunal to determine:
 - a. Does the applicant have a well-founded fear of persecution in the reasonably foreseeable future if he returns to Bangladesh.
 - b. Are there substantial grounds for believing there is a real risk the applicant will suffer significant harm if he is removed to Bangladesh.

HISTORY OF THE APPLICATION FOR REVIEW

4. The applicant entered Australia as an unlawful maritime arrival in May 2013. He applied to the Department of Immigration for a protection visa in August 2013. The delegate conducted an interview with the applicant in September 2014. The Tribunal has listened to a recording of that interview. The applicant provided his birth certificate, citizenship certificate and medical records to the Department.
5. In the decision under review, the delegate found the applicant had no political profile and did not accept as credible the applicant's claims he and members of his family were harmed in the past by supporters of AL. Therefore the delegate found the applicant did not have a well-founded fear of persecution or a real risk of significant harm if he returned to Bangladesh.
6. The applicant appeared before the Tribunal on 29 March 2016 to give evidence and present arguments. The hearing was conducted with the assistance of an onsite interpreter in the Bengali and English languages.
7. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing and provided written submissions prior to the hearing. The Tribunal has had regard to the migration agent's submissions, which are set out where relevant in more detail below.
8. The applicant provided to the Tribunal: eight character references; a certificate of appreciation, and his medical and school records. He provided two news reports and a blog entry about the political situation in Bangladesh.

RELEVANT LAW

9. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in

respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.

10. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
11. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
12. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
13. The applicant applied for a Protection (Class XA) visa. However, by operation of s.45AA of the Act and r.2.08F of the Migration Regulations 1994, from 16 December 2014 the application is taken to be, and to have always been, a valid application for a Temporary Protection (Class XD) visa and is taken not to be, and never to have been, a valid application for a Protection (Class XA) visa.
14. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration. DFAT have published a country assessment report for Bangladesh, which the Tribunal has had regard to.

CONSIDERATION OF CLAIMS AND EVIDENCE

15. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
16. In making its findings, the Tribunal is mindful the applicant was [age] years old at the time of the hearing and has an incomplete high school level of education. The Tribunal is mindful too that whenever evidence is received in a language other than the applicant's first language or through an interpreter there is always room for differences in meaning and nuance. The applicant addressed the Tribunal for a substantial part of the hearing in competent English and relied on the interpreter where need be. On occasions, where the Tribunal was unclear whether it had properly understood the applicant's evidence, it

encouraged him to rely on the interpreter too, which he did. The Tribunal is satisfied the standard of interpreting at the hearings was reasonable. The Tribunal considers the applicant was able to communicate effectively, understood the Tribunal proceedings and participated in a meaningful way.

17. The Tribunal finds the applicant is a national of Bangladesh. He provided his Bangladesh identity documents to the department. He made no claim to be a national of any other country. The Tribunal accepts the applicant's claims should be assessed against Bangladesh for the purposes of the Convention in s.36(2)(a) and as the receiving country for the purposes of the complementary protection obligations in s.36(2)(aa). In making the below findings, the Tribunal has considered the applicant's home town to be his home region.
18. The Tribunal accepts that 'applicants for refugee status face particular problems of proof as an applicant may not be able to support his or her statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.' The Tribunal also accepts that 'if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt, (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*). The Handbook further states:
The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.
19. The Tribunal acknowledges, while it may have regard to the Handbook, the Handbook is not binding. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220). However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out, see *Randhawa v MILGEA* (1994) 52 FCR 437.
20. During the hearing, the Tribunal put to the applicant that his credibility was an issue. The Tribunal has had regard to the reference letters he provided. It accepts the authors are praiseworthy of the applicant's voluntary activities in Australia and genuinely hold the opinions they consider him a person of good character. The letters though do not outweigh the inconsistent and implausible evidence of the applicant so that the Tribunal is able to give the applicant the benefit of the doubt regarding his claims.

Well-founded fear of persecution

21. In summary, the applicant has two interrelated claims. The first is a dispute between him and Mr R due to the applicant's relationship with Mr R's sister, Ms S. The second is the applicant and his family are supporters of JEI. Mr R and his family are supporters of AL. These two claims are interrelated because the applicant further claims his family's support of JEI is the reason Mr R was able to use his influence to persuade AL supporters to harm the applicant and his family. The applicant has a third claim which he raised during the hearing, that he will be harmed by the Bangladeshi authorities because the applicant departed Bangladesh illegally.
22. The applicant's claims of past harm are that at the end of December 2012, he was Mr R saw the applicant speak to Ms S at a [public event]. Mr R and other supporters of AL attempted to abduct the applicant, but the applicant was able to evade them from harming him. When

walking home from the [public event], the applicant was caught by Mr R and other supporters of AL who then detained the applicant in a vacant house, where the AL supporters beat and threatened him. The applicant overheard the Mr R and the AL supporters speaking on the phone to a local AL politician, Mr T. The applicant was able to escape from the vacant house, but when running home re-caught by the AL supporters. The AL supporters beat the applicant in the street, but ceased doing so after passers-by intervened and took the applicant home. His family arranged medical treatment for the applicant. While he was being treated, AL supporters attacked the applicant's home. After his release from hospital, the applicant relocated to live with his [Relative A]. At the end of February 2013, the [business] of the applicant's father was attacked by supporters of AL. His father was beaten too. The police refused to take the complaint of the applicant's father. The AL supporters later attacked the applicant's family home, doing property damage and stealing his family's [property]. The AL supporters began asking the applicant's siblings and neighbours about the applicant's whereabouts. Somehow, the AL supporters learnt of the applicant's staying at the home of his [Relative A] and came there looking for him. The applicant hid and was not found. The AL supporters harmed the applicant's [Relative A]. The applicant then arranged to depart Bangladesh. AL supporters have continued to harm the applicant's father, his father is in hiding and his mother and siblings have relocated.

23. During the hearing, the Tribunal discussed the applicant's claims in detail. For the following reasons the Tribunal found the applicant was not a credible witness.

Relationship with Ms S

24. The applicant claims he will be harmed by Mr R and AL supporters because the applicant was in a relationship with Ms S. For the following reasons, the Tribunal rejects that the applicant was in a relationship with Ms S.
25. History of relationship: The applicant told the Tribunal he had known Ms S since childhood, but that her family and his family had disliked each other since the time of their grandfathers. He sometimes saw her walk past his workplace on her way to and from school. About a month before they started a relationship, Ms S confessed a long-held love for the applicant. They began a relationship in December 2012. They would clandestinely arrange a meeting place via mobile phone. The applicant's evidence about how they did that and the number of times they met was evasive and vague. The applicant talking to Ms S at the [public event] was the catalyst for Mr R to attack the applicant at the end of December 2012. After that attack, the applicant did not see Ms S again. Her family took her mobile phone from her. So they only had contact when she used the phone of her friend. He is no longer in contact with Ms S.
26. The applicant has consistently claimed Ms S was his girlfriend but conceded at the hearing his relationship with Ms S was very short-lived, being less than a month and comprised of only a small number of dates with her. He provided no plausible explanation why he would enter a relationship with Ms S given the claimed history of animosity between his and her families, stating she approached him and was nice to him. The Tribunal considers the implausible nature of the commencement of the relationship and the applicant's vague details about their relationship weigh in favour of the Tribunal finding the applicant has fabricated his claims he was in a relationship with Ms S.
27. Attacks after the [public event]: The applicant told the Tribunal, Mr R and about 16 other AL supporters, who were carrying hockey sticks and cricket stumps, tried to drag the applicant away at the end of the [public event]. But the applicant was able to evade Mr R and the AL supporters by mixing with other spectators, including some of the applicant's friends. He explained further his home was two villages away from the [venue]. It was about a [time] journey by cycle-van or a [time] walk. After checking to see no one was following him, he

parted from his friends and walked home alone. The Tribunal questioned why he would walk home alone after armed men attempted to abduct him. He replied he had checked to see he was not being followed and he was unsure he was being targeted specifically. The Tribunal considers it implausible the applicant would venture on a more than one hour walk home, alone, immediately after there was an attempt by armed men to abduct him, particularly given his claims of animosity between the applicant and Mr R's families.

28. About 30 minutes after he left the [venue], while he was walking through the streets of the first village, he encountered on the road in front of him some of the AL supporters riding motorcycles, who must have taken a different route. They accosted him and took him to a house they had arranged. The Tribunal queried how in the intervening 30 minutes since he left the [venue] were the AL supporters able to arrange a house to take the applicant to. He replied the AL supporters were familiar with the area, so they knew which house was vacant. He then said they just took him to a nearby vacant house and he was unsure whether that was pre-arranged. More AL supporters arrived on motorcycles and tried to take him. He was still unsure he was being targeted or not, but was sure after he was taken into the house and he overheard them calling Mr T. He explained he escaped through a window in the bathroom at the rear of the house. He began running for about 2-3 minutes. He described his surrounds as nearby a paddy field, but later said he ran for 10-15 minutes. When queried the difference he replied had he run for 10 minutes, he would have reached the paddy field. The Tribunal considers it implausible the AL supporters would have had sufficient time to pre-arrange a place to take the applicant to, but notes the applicant also conceded his earlier evidence of a pre-arranged place was supposition on his part. The Tribunal further considers it implausible the applicant would have no reason to be unsure he was being abducted, as this was now the claimed second attempt to do that.
29. The applicant told the Tribunal he was caught in the street by two AL supporters. They beat him on the legs with sticks and he fell to the ground. Other AL supporters then arrived and continued to beat him with sticks for 8-10 minutes. He began crying for help. Some ladies in a house 2-3 houses away began shouting, then other villagers came out and the AL supporters started to leave. The villagers took him home. The Tribunal queried why did the applicant wait 8-10 minutes to begin crying for help, and did not do so when the AL supporters began attacking him. He replied he started shouting as soon as they began hitting him. He then said it was 8-10 minutes after he started shouting that the villagers arrived. The Tribunal queried if the ladies were 2-3 houses away, why would it take 8-10 minutes for the villagers to arrive. He replied the ladies only came after they had gathered some other villagers. The Tribunal queried how the applicant could know the thought processes of the ladies. He replied while he was on the ground being beaten, he saw the ladies talking to others. The Tribunal put to the applicant it had concerns regarding the credibility of his evidence. The Tribunal considers it implausible the applicant, while being beaten, would be able to observe the ladies 2-3 houses away talking with other villagers. The Tribunal further considers if the ladies were concerned enough to intervene, that they would wait 8-10 minutes to intervene.
30. He told the Tribunal the AL supporters attacked him with sticks, hockey sticks and he was kicked and punched. He explained the sticks were wooden poles used to herd cattle. He added he was hit by metal bars, like those used in construction. The Tribunal put to the applicant in his written statement he claimed he was attacked with knives. He replied he saw the AL supporters carrying knives, but did not cut him. The Tribunal further noted in his written statement he further claimed he was cut on his arms and chest. He said he was unsure what he was hit with. He saw them with knives and metal bars and he saw the bruises on his body. When asked was he cut, his answer was vague, before agreeing he was cut. The Tribunal queried why did he not raise he was cut by knives when it asked him to describe the attack on him. He replied he was unsure what he was attacked with. The Tribunal noted a stick, hockey stick, metal bars or wooden poles would eventually split his

skin if he was hit repeatedly, but would not cut him, they were not bladed weapons. He replied that he wrote knives in his statement because he saw them holding knives when he was laying on the ground covering his head. It was only after they stopped beating him did he realise what injuries he had. He had mentioned earlier in his statement the AL carried sticks and bars. The Tribunal put to him being attacked for 8-10 minutes by any of the claimed weapons would likely to have killed him, if not at least cause fractures or loss of consciousness. He replied they beat him without the intention of killing him. The Tribunal put to him it was difficult to accept someone would attack him with a knife without an intention of killing him and it was difficult to accept he could survive the attack he claims to have gone through. The Tribunal considers the applicant has provided inconsistent evidence regarding whether he was attacked with knives, or not and whether he suffered cutting injuries or not. The Tribunal further considers it implausible the applicant would suffer only bruising if he was attacked for 8-10 minutes by any combination of the weapons he claims to have been attacked with.

31. The Tribunal put to him if he had been beaten for 8-10 minutes and cut with knives, why would the villagers take him home and not to a hospital. He said there were bruises on his hands and marks on his body. When asked about his knife wounds he said the villagers put bandages on his hands and put pressure on his chest wounds to stem the blood flow. The Tribunal put to the applicant it was difficult to accept the villagers would not take him to a hospital if he had bleeding knife wounds. He said his home was closer than the hospital. When he got home, his parents took him to a clinic next to his house. The Tribunal again considers the applicant has provided inconsistent evidence regarding whether he suffered only bruising or cut wounds. The Tribunal considers it implausible the villagers would take the applicant to his home, and not to a hospital, if the applicant was bleeding from cuts. It is not persuaded by his explanation his home was closer because his evidence is the clinic his parents took him to was next to his home.
32. Adopting the procedure in s.424AA, the Tribunal put to him his evidence at the hearing regarding the lady 2-3 houses away seeing him and calling other villagers to intervene and halt the attack and his being attacked for 8-10 minutes was inconsistent with his earlier evidence. He told the delegate during his interview he was attacked in a place where there were no houses and that is why it took 10-15 minutes for anyone to come to help him. The Tribunal told the applicant his inconsistent evidence gave it reason to doubt his credibility, which would be part of the reason to affirm the decision. The applicant elected to respond at the hearing. He said it was about 10-15 minutes later that someone came from a place 2-3 houses away.
33. The Tribunal put to the applicant information from the DFAT report regarding the prevalence of fraudulent documents in Bangladesh and that would be a reason for it not to put weight on the medical records he provided. He invited the Tribunal to telephone the doctors in Bangladesh or [Country 1] to verify the information. The Tribunal declined to do that because it would not be able to identify whomever it was the Tribunal spoke with. The Tribunal noted it had other country information ¹ regarding the prevalence of fraudulent documents in [Country 1] too. Having regard to the Tribunal's concerns regarding the applicant's credibility generally and the country information as to the prevalence of fraudulent documents in both [Country 1] and Bangladesh, the Tribunal is not able to be satisfied the medical records the applicant provide for himself or his father are genuine and therefore places no weight on any of those documents.
34. The applicant has consistently claimed Mr R unsuccessfully attempted to abduct him at the [venue], then AL supporters caught him on the street and detained him in a house, from which he escaped, then re-caught him and beat him on the street. However, as set out

¹ [Information deleted].

above, the applicant provided numerous instances of inconsistent and implausible evidence as to the detail of those events. His explanations for those inconsistencies and implausibilities resulted in further inconsistencies and implausibilities. The Tribunal considers the inconsistent and implausible evidence of the applicant together with his non-persuasive explanations weigh in favour of finding the applicant was not a credible witness and that he fabricated his claims he was attacked by Mr R and AL supporters after the [public event].

35. Attacks on his parents' and [Relative A's] home and his father's [business]: The applicant claimed while his parents accompanied him at the clinic for treatment, AL supporters attacked and damaged his parents' home. The Tribunal queried how the applicant knew who attacked his parents' house if at the time he was being treated at the clinic. He said it was shortly after he was attacked, so it must be the same group. He then added friends of Mr R had come to speak with the applicant's father to persuade the applicant not to make a police complaint. He further explained, when they were destroying the house, neighbours overheard the attackers shout threats that next time they would burn down the house if the applicant made a complaint to the police. The Tribunal questioned how the applicant could know the intention of the friends of Mr R who came to the house, and even if he was correct and it was their intention to speak with his father to persuade him not to make a police complaint, why would they then proceed to damage the applicant's house because the applicant's father was absent. He said that is what he assumed was the case because of the anger the AL supporters had towards him. The Tribunal put to the applicant it had difficulty accepting his evidence. He said he guessed that is what happened. The Tribunal noted his earlier evidence was he asserted something had happened, not that he guessed something happened.
36. The applicant told the Tribunal during the time he was living at the home of his [Relative A], none of the AL supporters returned to the home of the applicant's parents. However, AL supporters asked neighbours and the applicant's siblings about the applicant's whereabouts. His siblings ceased attending school to avoid being harassed. The Tribunal noted in his written statement he claimed supporters of AL continued coming to the applicant's home and threatened his family. He then said AL supporters did come, but his father was away, so the AL supporters shouted threats which were overheard by the applicant's mother and the neighbours. The Tribunal noted that was different again to his earlier evidence the AL did not return to his home. He said it was a long time ago and there was only a small difference in his evidence. The Tribunal noted whether the AL supporters came or not was not a small difference. He replied he never said in the past that AL supporters came to his home. He then said the AL supporters came several times because they were curious about him. The Tribunal again he claimed in his written statement AL supporters continued coming to his house and the statement was endorsed that the contents were interpreted to him before he signed it. He replied that happened while he was at the clinic. The Tribunal noted the statement clearly states it is about events after he went to live at his [Relative A's] house and the AL supporters going to his home was the reason he did not return to his family home. He then said, yes, they came while he was in the clinic, but later on, they did not come. The Tribunal again noted that was a further inconsistency from his earlier evidence the AL supporters did not come to his home. He responded that he meant to say further down the track the AL supporters did not come again. The Tribunal was concerned the applicant was re-inventing his evidence to explain the inconsistencies in his evidence as he had already given several versions of explanations. The Tribunal further put to the applicant his evidence his family home was attacked after the bomb attack on his father's [business], damaging his kitchen and stealing [property]. It noted that was inconsistent with his evidence the AL supporters only came while the applicant was in hospital but later on stopped coming to his family home. He replied that time, they did not come looking for the applicant. AL supporters were just looking for JEI supporters. He said the AL supporters returned again while his father was in hospital. The Tribunal considers the applicant provided inconsistent evidence regarding the number of attacks on his parents' house and implausible evidence regarding

the AL supporters coming to persuade the applicant's father not to make a police complaint about the attack on the applicant turning into the AL supporters attacking his parents' house. The Tribunal considers the applicant providing inconsistent and implausible evidence weighs in favour of finding the applicant fabricated his claims AL supporters attacked his parents' home while the applicant was in the clinic or while the applicant was residing with his [Relative A].

37. The Tribunal discussed with the applicant the bomb attack damage to his father's [business]. He said it was done by AL supporters following the handing down of a war crimes verdict against JEI leaders. He said his [Relative B's] shop was ransacked too. His father's [business] was not the target of the bomb attack, but it suffered damage from a roadside bomb attack on 2-3 shops opposite the [business]. The Tribunal asked about if there were Molotov cocktail attacks, He said that is what he meant by the bomb attack, he had heard there were hand bombs. The Tribunal noted his earlier evidence there was no news reports of the attack on his father's [business] because the news was dominated by the attacks on the shops. The Tribunal noted it had searched for news reports for any attack in the applicant's home town at that time and it could find no reports of any attacks on the shops. He replied he has seen reports in district level newspapers and his family has seen reports too. The Tribunal conducted searches of several databases and well as through internet search engines without locating any reports of bomb or Molotov cocktail attacks in the applicant's home town on the relevant date. The Tribunal is mindful though reports may exist in non-English publications. Although he is not obliged to do so, the Tribunal notes the applicant did not provide it with any Bengali news reports of any bomb attacks in his home town.
38. The Tribunal discussed the attack on his [Relative A's] home. He did not think it probable Ms S divulged his location to Mr R, albeit at that time the applicant and Ms S were in contact via phone. He told the Tribunal he did not see any of the AL supporters on the day of the attack. When he heard the sound of the approaching [vehicles], he thought something bad was about to happen, so he went to hide in [location] in the back garden. The Tribunal queried why he would take that action. He replied he was living in fear at the time and it had never happened before that a group of [vehicles] arrived simultaneously at his [Relative A's] village. His [Relative A] told him that the AL supporters questioned his [Relative A] about the whereabouts of the applicant and searched the home of his [Relative A]. But they found none of the applicant's clothing because the applicant was actually living in [a nearby] building on the same land, with his [Relative B]. The Tribunal queried whether the applicant was concerned about the safety of his [Relative A]. He replied he did not know who was coming or why, he was concerned for his own safety. The Tribunal considers it implausible that the noise of multiple [vehicles] arriving in the village of the applicant's [Relative A] would lead to the applicant leaving his elderly [Relative A] alone to hide in a [location] in the garden.
39. Due to the multiple and material inconsistencies and implausibilities in the applicant's evidence together with his non-persuasive explanations, the Tribunal finds the applicant was not in a relationship with Ms S. It finds Mr R and other AL supporters did not attempt to abduct the applicant at the [venue]. It finds Mr R and other AL supporters did not abduct the applicant on the street, nor did they take him to a vacant home, nor did they beat or threaten him. It finds the applicant did not escape from Mr R and the AL supporter and he was not beaten in the street by AL supporters. The Tribunal further finds the applicant was not taken by his family for medical treatment. The Tribunal finds too that AL supporters did not attack the home of the applicant's parents at any time, nor did they attack the [business] of the applicant's father or the applicant's father and nor did AL supporters come to the home of the applicant's [Relative A]. The Tribunal further finds AL supporters did not harass the applicant's siblings or ask the applicant's neighbours about his whereabouts. For reasons set out below in more detail, the Tribunal rejects too that there is any animosity between the

family of the applicant and the family of Ms S. The Tribunal finds the applicant has fabricated these claims in their entirety so as to create a profile upon which to apply for protection.

40. The Tribunal has found the applicant's claims of past harm are not credible. The Tribunal is not satisfied there is a real chance the applicant will face serious harm from Mr R or other members of the family of Ms S or AL supporters because of the applicant's claimed relationship with Ms S, now or in the reasonably foreseeable future, if the applicant returns to Bangladesh.
41. For the sake of completeness, the records that during the hearing it put to the applicant it appeared the essential and significant reason Mr R and the AL supporters targeted the applicant for harm was due to a personal dispute between the applicant and Mr R, which was not a Convention reason. The applicant argued and the migration agent submitted that but for the applicant's family being supporters of JEI, Mr R would not have harmed the applicant. However, as the Tribunal has rejected above that Mr R or AL supporters attacked the applicant or his family, it is no longer necessary for the Tribunal to make any finding regarding the existence or not of a Convention reason.

Supporter of JEI

42. The applicant claims he will be harmed by supporters of AL because he is a supporter of JEI and his father is a prominent member of JEI.
43. At the commencement of the hearing, the applicant provided new information. His father and [Relative B] are named in a court case in October 2015 and his father is now hiding in [Country 1]. His mother has moved to live with the applicant's [Relative A]. His [Relative B] is in hiding too. He did not know the outcome of the court case.
44. The applicant told the Tribunal he was a supporter of JEI. He explained that meant he would attend JEI meeting with his father if the meeting was hosted at his father's [business]. The Tribunal put to the applicant information from DFAT regarding the prevalence of political violence in Bangladesh, but that low level supporters of any political party did not face a real chance of harm. He replied his [Relative A], father and [Relative B] were in JEI and his [Relative B] held a high position in the area of his hometown. His family had a long association with JEI.
45. At the hearing, the Tribunal discussed with the migration agent it had difficulty understanding his written submissions and their relevance to the applicant's claims regarding attacks on JEI operated religious schools. The migration agent conceded the applicant had no connection to JEI operated religious schools and that country information was not relevant to the applicant's claims. The migration agent further conceded the applicant was not a leader of JEI nor had he been charged with any criminal offences, nor was he an active JEI worker. There were the profiles of people referred to in the reports the applicant provided regarding harm to JEI supporters in Bangladesh. The migration agent submitted though that country information was relevant to the applicant's claims due to his father's profile as an active JEI member. When asked for country information which supported the proposition family members of people involved with JEI were targeted for harm, the migration agent was unable to identify and supporting country information. He submitted from the point of view AL supporters, the applicant would be implied to be a JEI activist. When asked why that would be the case, the migration agent submitted because the applicant had a relationship with Ms S. As noted above, the Tribunal has rejected the applicant was in a relationship with Ms S.
46. The applicant then made new claims at the hearing that he had filled out a form to become a member of JEI. He clarified he was not a member of JEI. He then said he filled out forms to join the party officially. When asked why did he then say he was not a member of JEI he said

he had a voter ID, but was only a supporter of JEI. He explained the difference between member and supporter was that JEI members could hold a position, but supporters only assisted the party. He filled out the form to say he would conduct his business in accordance with the national religion. Installing Islamic law is a policy of JEI. When asked again the purpose of the form he said it was to become a member of JEI. The Tribunal asked why then did it say he was not a member of JEI. He replied it was to become officially connected with the JEI. He then said it was a membership form. The Tribunal asked why he had not raised before that he was a member of JEI. He said he could not be a member until he got an ID card. But he had worked in support of JEI before. He filled out the form a long time ago, with his father in or about [year] when he was still under 18. The Tribunal noted it asked him earlier in his hearing what his role with JEI was, he said he attended meetings with his father, but he did not say he had filled out JEI membership forms. He then said he was not a member of JEI because he does not have a voter ID card.

47. The Tribunal considers the applicant has provided inconsistent evidence as to the nature of his role with JEI. He has variously said he was a supporter, had filled out a form to say he would do his business in accordance with the national religion and that he had filled out membership forms, that he was not a member because he did not have an ID card, that he was not a members because he did not have a voter card, that he has a voter card and that he was a member of JEI. The numerous inconsistencies in the applicant's evidence regarding his role with JEI was. His evidence at the hearing is inconsistent too with his written statement that he did not know what his father's role was with JEI, but that his father was known to be a supporter of JEI. The Tribunal considers the multiple inconsistencies in the applicant's evidence and his explanations for those inconsistencies leading only to further inconsistencies weighs in favour finding this to be another instance of the applicant manufacturing claims to create a profile upon which to apply for protection.
48. The Tribunal is willing to accept the applicant's father is a devout Muslim who attended Mosque. However, the Tribunal rejects the applicant was a supporter or member of JEI. It rejects he attended any JEI meetings with his father at his father's [business]. It rejects his father was a supporter or member of JEI. The Tribunal rejected above that AL supporters attacked the [business] of the applicant's father and rejected they attacked the applicant's father. The Tribunal finds neither the applicant nor his father had any connection to JEI. It follows that the Tribunal rejects there was any animosity between the applicant's family and the family of Ms S due to political reasons or for any other reason. It further rejects that the applicant's father or [Relative B] have been named in any court case nor that his father is in hiding or his mother and siblings have relocated. The Tribunal considers has fabricated these claims in their entirety.
49. The Tribunal has found above the applicant's claims of past harm are not credible. The Tribunal has rejected the applicant and/or his father has any connection to JEI, including arising from the applicant's father being a devout Muslim who frequently attended Mosque. While mindful of the country information regarding the prevalence of political violence in Bangladesh, as the Tribunal has found the applicant has no political profile, the Tribunal is not satisfied the applicant faces a real chance of serious harm due to any actual or imputed political opinion in favour of JEI or opposed to AL, now or in the reasonably foreseeable future, if the applicant returns to Bangladesh.

Illegal departure

50. During the hearing, the applicant made a new claim regarding his departing Bangladesh illegally. When asked to explain that fear, he said his fear was of harm from supporters of AL. He was unsure if he would harmed because he departed Bangladesh illegally. He then added it was common for members of JEI to be arrested and then a case brought against JEI supporters. He said many JEI leaders have false allegations made against them. He

then said he did not fear he would be harmed because he departed Bangladesh illegally. To be fair to the applicant, the Tribunal put to him country information from the DFAT report it is a crime to depart Bangladesh without a passport. However, such laws are a law of general application, so any penalty the applicant faced for breaking that law would be prosecution, not persecution of significant harm.

51. The Tribunal accepts the applicant departed Bangladesh illegally and according to the DFAT country report, may be subject to a fine or imprisonment of up to 3 months. However the DFAT report further states there are no reports of the Bangladesh authorities enforcing that law. Having regard to that country information the Tribunal is not satisfied there is a real chance the applicant will suffer serious harm from the Bangladesh authorities because he departed Bangladesh illegally, now or in the reasonably foreseeable future if he returns to Bangladesh.
52. After assessing all the evidence and being mindful of the applicant's personal circumstances, the Tribunal has considered the claims of the applicant individually and cumulatively. For the above reasons, the Tribunal is not satisfied the applicant has a well-founded fear of persecution from Mr R, other members of Mr R's family, supporters of AL, the Bangladesh authorities or from any other source for reason of his claimed relationship with Ms S, or his actual or imputed political opinion, or his illegal departure from Bangladesh or for any Convention reason or combination of reasons, now or in the reasonably foreseeable future if he returns to Bangladesh. Therefore, the applicant does not satisfy the requirements of s.36(2)(a).

Real risk of significant harm

53. The Tribunal has also considered the application of s.36(2)(aa) to the applicant's circumstances.
54. In relation to all of the applicant's claims, the Tribunal found above the applicant did not have a well-founded fear of persecution on any ground as he does not face a real chance of serious harm. Section 36(2)(aa) refers to a 'real risk' of an applicant suffering significant harm. The 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition: *MIAC v SZQRB*.² Given the test is the same, for the same reasons set out above in relation to real chance, the Tribunal is not satisfied the applicant has a real risk of significant harm
55. The Tribunal therefore considers there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh there is a real risk the applicant will suffer significant harm, in the form of: arbitrary deprivation of life; the death penalty being carried out; torture; cruel or inhuman treatment or punishment, or degrading treatment or punishment.
56. Therefore the applicant does not meet the requirements of s.36(2)(aa).

CONCLUSIONS

57. 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).
58. 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

² [2013] FCAFC 33

that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

59. 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

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

Fraser Syme
Member