

1421124 (Refugee) [2016] AATA 3926 (2 June 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division
CASE NUMBER: 1421124
COUNTRY OF REFERENCE: Bangladesh
MEMBER: Gabrielle Cullen
DATE: 2 June 2016
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 02 June 2016 at 2:50pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, a citizen of Bangladesh and born in [a] District, departed Bangladesh for [Country 1] in approximately March 2012. He fears return as he claims his brother was [Office Bearer 1] of Jamaat-e-Islami (JeI) in his local area and both he and his brother were targeted by the Awami League through extortion and threats.
3. The applicant arrived in Australia by boat [in] March 2013, via [another country] after spending approximately twelve months in [Country 1] and was interviewed by the Department for his entry interview [in] April 2013.
4. [In] November 2014 the applicant was interviewed by the Department. The Tribunal has listened to the tape of that interview and where relevant the evidence from that interview appears in this decision.
5. The delegate refused to grant the visa [in] December 2014 on the basis that the applicant was not a credible witness as to his claims.
6. The applicant appeared before the Tribunal on 1 June 2016 to give evidence and present arguments and where relevant the evidence from that hearing appears in this decision. The applicant was assisted with an interpreter in the Bengali and English languages.
7. The issues to be considered in this case are as follows.
 - Is the applicant credible as to his claims?
 - Does the applicant have a well-founded fear of persecution in relation to Bangladesh and meet the protection obligations under the Refugees Convention?
 - Does he meet the protection obligations under the complementary protection provisions of the Migration Act?

RELEVANT LAW

8. 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

9. 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).

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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

19. 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').
20. '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.
21. 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

22. 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.

CONSIDERATION OF CLAIMS AND EVIDENCE

23. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. This includes, but is not limited to, the following.
 - The applicant's protection visa application [in] June 2013, attached statement and identity documents.
 - Oral evidence provided at the entry interview by way of written notes held [in] April 2013, oral evidence at the Department interview held [in] November 2014 and Tribunal hearing held on 1 June 2016.
 - Oral submission from the applicant's former representative at the Department interview.
 - DFAT *DFAT Country Report Bangladesh* 20 October 2014.

- Department of Immigration – PAM3 Refugee and Humanitarian – Complementary Protection Guidelines and PAM3 Refugee and Humanitarian – Refugee Law Guidelines.

24. For the reasons that follow, the Tribunal has concluded that the decision under review should be affirmed.

Is the applicant credible as to his claims?

The Applicant's Claims

25. The applicant claims in his statement, attached to his protection visa application, that in [year] his [brother] on completing High School joined Jel and in 1999 he was elected [Office Bearer 1] of the village branch. He claims his brother's duties were to maintain the local office, hold public meetings and rallies and he was in this position until he departed Bangladesh in 2011.
26. He claims in 2004 he, the applicant, began work [for] his brother at his [business] and in 2004 he started attending Jel meetings. He claims he was not a member of the party but believed in its policies.
27. He claims on the occasions his brother could not attend the Jel meetings due to business engagements he would attend as his proxy. He claims he would listen to the decisions made and relay them to his brother. He claims when large public meets were held he would put up Jel banners and posters in the market, schools and on main roads in [the] District, Dhaka province.
28. He claims in 2011 the Awami League (AL) demanded a small donation from his brother. He claims the AL targeted his brother due to his successful business as well as his membership and position as [Office Bearer 1] with Jel. He claims the AL threatened his brother with harm if he did not pay. He claims due to his relationship with his brother, including working at his [business] and assisting Jel he was also at risk of harm. He claims his brother paid the donation out of fear for their safety.
29. He claims four to five months later the AL returned and demanded a larger sum of approximately [amount] Lakhs. He claims his brother tried to negotiate and pay a lower amount but they did not agree to the terms and demanded the entire amount.
30. He claims when his brother refused to pay the amount, the AL said he could not run his [business] or open a [business] anywhere in Bangladesh until he paid the full amount.
31. He claims his brother decided to close his [business] and then the AL came to their home demanding the money. His brother responded that he would try and provide the money the following day. However, as his brother did not have the money he did not pay and 1-2 days later the AL broke into their [business] and looted valuable items.
32. Shortly after his brother went into hiding at his friend's home in [Town 1], Dhaka and the applicant went into hiding at his father's friend's home in [Town 2], Dhaka. Their father advised them it was no longer safe to remain in Bangladesh and his brother fled to [Country 2] and the applicant fled to [Country 1].
33. He claims he rang his father who advised the AL had come to their home asking for his and his brother's whereabouts.

34. He claims in about March 2013 his father advised them the AL had again come to their home looking for them.
35. He claims he fears being threatened, extorted, assaulted and/or killed by the AL based on an actual/imputed political opinion of being opposed to the AL and his brother's outstanding donation of [amount] Lakhs.
36. At the Department Interview [in] November 2014 the applicant reiterated his claims. He said and confirmed he fled his home village in March 2012 and spent one week at the home of his father's friend in [Town 2], Dhaka before he departed Bangladesh for [Country 1] in March 2012. He said he had been involved in 2/3 protests or demonstrations for Jel and the last was in 2011 in the main town in his [area] and he held slogans at these rallies protesting at the harassment of Jel members and demanding points they wanted. As to his involvement in the Jel he said at the time of election he put up banners and posters around his home area in the schools and on the main roads. He said he was not a member of the party. He said on 3 or 4 occasions he attended meetings of the party when his brother could not attend and he would listen on his behalf. He said he did not vote in any election in Bangladesh as he did not have an ID. He said after he departed he has had no involvement in Jel. He reiterated that members of the Awami League have come searching for both he and his brother since their departure and that he thinks he will be killed on return because of an actual/imputed political opinion and as they have not paid the money requested. He said the Awami League last came looking for them [in] March 2013.
37. At the end of the interview the applicant's representative submitted that the applicant will face a real chance of serious harm and real risk of significant harm on the basis of his political affiliation with Jel, and because of his brother's position within the party and as his brother failed to pay the bribe. The representative referred to country information. The representative submitted that country information indicates that people in opposition to the main political party in Bangladesh are at risk of harm, and referred to the UK Home Office report of 2013 that reports that political opponents are subject to killing, arrest and arbitrary deprivation of life. She noted that harassment of political opponents is widespread and limitations are placed on rallies and processions. She referred to the 2013 US Department of State report on Human Right in Bangladesh that indicates 109 people were killed and injured in political violence up until September, that Freedom House notes corruption is endemic. She also made submission as to relocation to another area in Bangladesh to avoid the harm feared is not reasonable.
38. At the Tribunal hearing held on 1 June 2016 the applicant repeated his claims and said he feared harm because of his and his brother's involvement in Jel. The Tribunal questioned him in detail regarding the difficulties he had faced and his involvement and that of his brother in Jel. He said the Awami League continue to come to his home, harassing his parents as to the whereabouts of he and his brother. Concerns raised, where relevant, have been outlined below.

Assessment of Credibility of Claims

39. Having sighted a copy of the applicant's identity documents, and on the basis of the applicant's evidence at hearing, the Tribunal accepts that the applicant is a national of Bangladesh for the purposes of s.36(2)(a). For the purposes of s.36(2)(aa) the Tribunal accepts that Bangladesh is the receiving country.
40. As to the applicant, his brother, and his family having faced the difficulties he claims in Bangladesh, for the reasons that follow the Tribunal does not accept that the applicant is a credible witness and suffered the harm or difficulties in his country that he claims for the reasons that he claims, which lead him to leave Bangladesh and why he fears return.

41. It follows it does not accept that either he or his brother were involved in the Jel in the manner claimed or that either he or his brother, or any of his family members were questioned or targeted by the Awami League for the reasons he claims. It follows it does not accept the Awami League activists sought donations on two occasions, the second requesting [amount] Lakh, that as they did not pay the Awami League looted their [business], they ever threatened or harmed the applicant or any member of his family and he fled Bangladesh as he and his brother could not pay and because he feared the Awami League. It finds his testimony to be inconsistent as to these claims, and is of the view that he has fabricated claims and concocted evidence to achieve an immigration outcome.

Applicant and his brother's involvement in Jel

42. Central to the applicant's claim as to why he fears return and why he departed Bangladesh is both his and his brother's role with Jel. He claims this as a reason why he and his brother were extorted for money by the Awami League. However for the reasons that follow, including his inconsistent evidence between the Department and Tribunal, the Tribunal does not accept the applicant is a credible witness in this regard and that either he or his brothers were ever involved or interested in the Jel in the manner he claims. This adds to the finding the applicant is not a credible witness.

As to his involvement in the Jel the applicant indicated at the hearing before me that he would attend Jel meetings on his brother's behalf when his brother could not attend. He claimed his brother was the [Office Bearer 1] in the local area. He said the only time he would attend such meetings was when his brother could not attend and said he attended such meetings approximately 20 times. However as raised with him, in contrast at the Department interview he said on 3 or 4 occasions he attended Jel meetings when his brother could not go. When the inconsistency was raised with him the applicant did not respond. The Tribunal views this inconsistency as significant and is of the view that if he attended Jel meetings on behalf of his brother he would be consistent as to the number he attended. This adds to the finding that the applicant is not credible as to his claimed involvement with Jel.

- Further, the applicant indicated at the hearing before me that he would attend meets, protests, rallies and demonstrations for Jel. He said he did this from when he became interested in Jel which was about the same time he started work with his brother. He confirmed as per his statement that this was in 2004. He said he attended many protests/rallies about every two weeks or once a month, but only in his local area, from 2004 until 2011. When asked the last protest/rally he attended he said it was in early 2011 at it was one held in [a certain district] and the protest was in [a] town and started from in front of [a location] and finished in the same town.

However as I raised with him, in contrast at the Department interview he said he attended rallies/demonstrations for Jel on only 2 or 3 occasions. Further when asked the last protest he attended, while he said it was in 2011, he said it was in [the] District and that it started in [one location] and finished at [another location].

When the Tribunal raised the inconsistency with him as to the number of protests he had attended in Bangladesh as a supporter of Jel and where the last protest he attended was held, he did not respond.

The Tribunal views this inconsistency as significant and is of the view that if he attended Jel rallies, demonstrations or protests he would be consistent,

even approximately as to the number he attended and where the last one he attended was held. This adds to the finding that the applicant is not credible as to his claimed involvement with Jel and adds to the finding he is not a credible witness.

- Further, at the hearing before me, despite claiming he placed posters up at the time of national elections on schools, main roads and around his area, the applicant could not recall the time of the national election before he departed Bangladesh in 2011. When asked how long the election was before he claims he departed his home area in late 2011, he said approximately one year before. However as raised with the applicant the national election held prior to his departure was [in] December 2008, approximately three years before he departed his village. As raised with the applicant the Tribunal has concerns that he could not recall, even roughly, when the national election was held prior to his departure in 2011 and may lead it to find he was not involved in putting up posters for the party as claimed, particularly as it is his claim he had been actively involved. The applicant did not respond. The Tribunal is of the view if the applicant was as actively involved as he claims to the extent he was putting up posters in his home area at schools and on the main road that he would be roughly able to advise when that was,
- The Tribunal also views as of concern that the applicant did not vote in the national election in Bangladesh and why he did not vote, despite claiming to be an active supporter of Jel. He claims it was because he did not have a voter card. When asked why he did not have a voter card, he said he had not applied for it. The Tribunal views this as casting doubt on his claim to be genuine in his support for Jel in the manner claimed, including attending protests and putting up posters at election time. It expects that if he was prepared to put up posters, attend rallies and meetings as a supporter of Jel, he would apply to vote. When the Tribunal's concern was raised with him he did not respond. This adds to the finding the applicant is not credible as to his claim of being a supporter of Jel.
- Further the applicant provided evidence lacking in detail as to his brother's activities in the party and what he did. While he has been consistent that he was [Office Bearer 1] of the local Jel branch when asked for details at the hearing before me as to what he did as [Office Bearer 1], the Tribunal found his answers vague and lacking in detail. When asked he said the responsibility was given to his brother and he handled the matters of the party. When asked for detail as to his brother's activities, he said problems of the party but could not describe in any detail the problems. The Tribunal views his lack of detail significant as it is his evidence that he attended meetings on his brother's behalf and would report back to him. The Tribunal is of the view if the applicant's brother was as active in the party as claimed by the applicant, the applicant would be able to provide more detailed evidence as to his activities and the matters he did and handled for the party. When the Tribunal raised with him its concern he did not respond. This adds to the finding the applicant is not credible as to his claim of being a supporter of Jel, and his brother being involved and the applicant attending meetings on behalf of his brother.

43. For the above reasons, including inconsistencies in his activities for the Jel as a supporter between the Department and Tribunal, his lack of detail as to his brother's role despite his evidence he attended meetings on his behalf leads the Tribunal to find that the applicant

was personally never involved in the Jel at all, in any of the manners outlined, nor was his brother. This adds to my finding the applicant is not a credible witness.

Extortion and threats by the Awami League

44. Also central to the applicant's claims and why he departed is the two extortion attempts he claims were made against his brother, and also him by the Awami League. He claims as they could not pay the second payment request of [amount] Lakh, his brother closed the [business], the Awami League looted the [business] and both he and his brother left their home village and fled Bangladesh. However for the reasons that follow, including his inconsistent evidence between the Department and Tribunal, the Tribunal has concerns that he is credible in this regard and that either he or his brother faced the difficulties he claims. This adds to the finding the applicant is not a credible witness.
45. Firstly, at the Department interview the applicant indicated he was not present in the [business] at the time of the first extortion demand when the Awami League came to the [business], whereas in contrast at the hearing before me he said he was present in the [business] and saw his brother hand over money to the Awami League members but did not know how much it was. When the inconsistency was raised with the applicant he chose not to respond. The Tribunal views this matter to be of significance and expects that he would be consistent if he was present or not in the [business] at the time of the first extortion demand. This adds to the finding the applicant is not credible as to these claims and adds to the finding he is not a credible witness.
46. The applicant has also provided confusing and inconsistent evidence between the Department and Tribunal as to when these extortions occurred which led him to depart Bangladesh. At the hearing before me the applicant indicated that the second extortion occurred one month before he departed Bangladesh in December 2011, and agreed that was in November 2011. He said the first extortion attempt was three to four months prior to the second request for money. However in contrast in his Department interview he said he departed [his home village] in March 2012 directly after the second looting and the first extortion attempt occurred 4/5 months before that around end 2011. When the inconsistency was raised with him he did not respond. While not in itself determinative it adds to my cumulative concerns as to the applicant's credibility.
47. Thirdly, the Tribunal has difficulty accepting that the applicant's father would pay [amount] Lakh for the applicant's journey to Australia via [Country 1], by selling their property in the village rather than use the money from the property sale to pay the [amount] Lakh to the Awami League. When the applicant as questioned in this regard, he said his father did not understand the situation. The Tribunal has difficulty accepting his response as it is his evidence that his father advised he and his brother to travel and abroad and arranged the applicant's departure. While not in itself determinative it adds to the finding the applicant is not credible as to these claims.

Hiding at his Father's friend's house in [Town 2] Bangladesh

48. The applicant claims that after the [business] was looted he travelled to his father's friend in [Town 2], Dhaka Division to go into hiding. At the hearing before me he said this father's friend helped him to escape Bangladesh by organising a visa to [Country 1] and he said he spent one month there and he travelled there in approximately November 2011. However in contrast at the Department interview he said and confirmed he only spent one week there and travelled there in March 2012. In contrast in his statement he said his brother departed Bangladesh in 2011 and his evidence is he and his brother left the village at the same time. He said he travelled to his father's friend's house and lived there in hiding as it was not safe and departed Bangladesh in March 2012. When the inconsistency was raised with the

applicant he did not respond. The Tribunal is of the view that if the applicant went into hiding at his father's friend's house he would be able to recall consistently between the Department and Tribunal the length of time he was in hiding. This leads the Tribunal to find that he did not go into hiding at this father's friend's house. It adds to the finding he is not a credible witness.

Threats by the Awami League since he departed his home village

49. It is the applicant's claim that since he has departed his home village in Bangladesh the Awami League members have come to his home seeking the whereabouts of both he and his brother, seeking the [amount] Lakh and threatening them through his family. However, as raised with the applicant, he has provided inconsistent evidence between the Department and Tribunal as to when and how often they came.
50. Firstly, at the hearing before me the applicant indicated and confirmed that the Awami League members only came to his home after he and his brother had departed their home village. He said that after the request for [amount] Lakh was made, and the decision to close the [business] for 2 to 3 days, his brother then went to [location] to meet with the Awami League members to see if they would give him more time to obtain the money. The applicant confirmed that his brother went to the [location] and that the Awami League only came to his home looking for them after they had fled their village. He said they fled on the day their [business] was looted.
51. However, as raised with the applicant, in his statement attached to his protection visa application he states the following:
 13. My brother decided to close his [business] for about 2-3 days. The Awami League then came to our home demanding money. At this point, my brother was under a lot of pressure and said he would try and provide the money the following day. However, as my brother did not have that large sum of money, he did not pay. Another 1-2 days later, the Awami League broke into the [business] and looted valuable items from the [business].
 14. Shortly after, my brother went into hiding at his friend's home in [Town 1], Dhaka Division and I went into hiding at my father's friend's home in [Town 2], Dhaka Division.
52. When the inconsistency was raised, the applicant chose not to respond. The Tribunal views the inconsistency in this matter as significant and expects if the Awami League came to his home before he departed or after and his brother went to the market to meet them, that he would be consistent in his evidence between the Department and Tribunal. This adds to the finding the applicant is not credible as to the Awami League having any interest in him or his brother going to meet with the Awami League at the markets and adds to the finding he is not a credible witness.
53. Further, the applicant has provided inconsistent evidence as to the Awami League's interest in them and visits to their family home in [his home village] after he and his brother departed Bangladesh. At the hearing before me the applicant indicated and confirmed that since his departure in late 2011 to date, the Awami League visits his home regularly, approximately once a month, sometimes every two weeks asking for the money. He said they had come two weeks before the hearing, However as raised with the applicant, at the Department interview held [in] November 2014 the applicant indicated that the last time the Awami League came to his family home was [in] March 2013. He confirmed, at the Department interview that it was approximately 18 months prior to the interview that the Awami League had last visited his home. When the inconsistency was raised with the applicant and that it may lead the Tribunal to find he is not credible as to the Awami League visiting his home

looking for him and his brother, he did not respond. The Tribunal views the inconsistency as significant and expects if the Awami League was coming to his home that he would be consistent as to how often they came.

54. These inconsistencies lead the Tribunal to find the Awami League has not been to the applicant's home and questioned his parents as to he and his brother's whereabouts, asked for the [amount] Lakh or threatened him and his brother directly or indirectly through his parents, either before he departed his home village or since.
55. This adds to the finding the applicant is not a credible witness.

Credibility Summary

56. For all the above reasons, considered cumulatively, the Tribunal does not find the applicant to be a credible, truthful and reliable witness. The Tribunal is of the view that the applicant has fabricated claims and concocted evidence to achieve an immigration outcome. On the basis of the above cumulative credibility concerns the Tribunal therefore does not accept that the applicant is a credible witness and cannot be satisfied on the evidence before it that the applicant is a truthful witness as to his claims as to why he departed Bangladesh and why he fears return.
57. In making these findings, the Tribunal has allowed for the possibility of discrepancies arising because of genuine lapses of memory, nervousness and the manner in which responses can differ depending on the nature and manner of which a question is asked. It is also sensitive to the various cultural differences that can impact on an applicant's responses to questioning, as discussed in the Tribunal's 'Guidance on the Assessment of Credibility'. The Tribunal does not accept that any of these factors explain or excuse the concerns which, cumulatively, have led it to find that the applicant is not a reliable witness as to these claims.
58. In making this finding the Tribunal has also considered that some information has been consistent over time, including basic matters as outlined in his statement, including that his brother was [Office Bearer 1] of the Jel, he was a supporter of Jel by attending meetings for his brother, while working at his brother's [business] there were two extortion attempts by the Awami League, the second which was for [amount] Lakh which his brother could not pay, the [business] was closed, his brother tried to seek more time to pay and the [business] was looted and he and his brother then fled their home village and ultimately Bangladesh and the Awami League have come to their home seeing their whereabouts. However the Tribunal considers that these matters are relatively easy matters to recall and his consistency in these matters does not outweigh the significant credibility aspects outlined above and does not lead the Tribunal to change its view that the applicant is not a credible witness.
59. Accordingly, for all of the above reasons, in light of its findings that he was not a reliable witness, the Tribunal has no confidence in accepting that key aspects of his claims was based on his personal or actual experiences and considers it was fabricated to create a claim to be owed protection. On the evidence before it, the Tribunal does not accept the applicant ever was threatened directly or indirectly or faced any of the difficulties he claims at the hands of Awami League or that either he or his brother or any family member were ever a supporter, member, held higher office, such as [Office Bearer 1], were involved with the Jel at all or voted for the Jel or were ever perceived as supporters of Jel or were or are perceived as opposed to the Awami League.
60. It follows the Tribunal does not accept as true his claim that his brother joined Jel after he finished High School and in 1999 he was elected [Office Bearer 1] of the village branch, that his brother maintained the local office, and held public meetings and rallies and he was in this position until he departed Bangladesh in 2011.

61. Based on its findings as to the applicant's credibility, the Tribunal does not accept as true the applicant started attending Jel meetings in 2004, when his brother could not attend the Jel meetings due to business engagements he would attend as his proxy, he attended demonstrations and rallies held by Jel holding up slogans or Jel banners at any place or any time and put up posters for Jel at any time in the market, schools and on main roads.
62. Based on its finding that the applicant lacks credibility, the Tribunal does not accept that in 2011 or at any time the Awami League (AL) demanded a small donation from his brother due to his successful business as well as his membership and position as [Office Bearer 1] with Jel, or that the AL threatened either the applicant or his brother with harm if the money was not paid. It follows the Tribunal does not accept as true that due to his relationship with his brother, including working at his [business] and assisting Jel he was also at risk of harm.
63. Based on its finding that the applicant lacks credibility, the Tribunal does not accept that at any time later the AL returned and demanded a larger sum of approximately [amount] Lakhs, his brother tried to negotiate and pay a lower amount but they did not agree to the terms and demanded the entire amount, his brother closed the [business], the AL came to their home, the applicant's brother tried to negotiate payment but as the money was not paid the AL members looted the [business], and the AL said he could not run his [business] or open a [business] anywhere in Bangladesh until he paid the full amount. It follows it does not accept as true that shortly after his brother went into hiding at his friends home in [Town 1], Dhaka and the applicant went into hiding at his father's friend's home in [Town 2], Dhaka and with the help of his father, his brother fled to [Country 2] and the applicant fled to [Country 1].
64. Based on its findings as to the applicant's lack of credibility the Tribunal does not accept as true that the Awami League at any time either before or after the applicant and his brother departed their home village or after the fled Bangladesh have visited their [business] or their home, harassed their parents, as to the whereabouts of the applicant and his brother, demanded payment of the [amount] Lakh or threatened the applicant and his brother directly or indirectly or threatened the applicant's parents.
65. It follows based on the applicant's lack of credibility that it does not accept as true that he fled Bangladesh as he feared being harmed or killed by the Awami League associates, members and activists or anyone acting on their behalf. It follows it does not accept as true that since arriving in Australia in March 2013 he has spoken to his family in Bangladesh who advised that members of the Awami League continue to ask about his whereabouts or that they have harassed or threatened any member of his family.
66. The Tribunal rejects the entirety of the applicant's claims.
67. It follows that the Tribunal does not accept as true that at the time he departed Bangladesh in 2011/2012 he held any concerns for his safety or feared being harmed for any of the reasons he claims.

Does he have a well-founded fear of persecution in relation to Bangladesh and meet the protection obligations under the Refugees Convention and does he meet the protection obligations under the complementary protection provisions of the Migration Act?

68. Based on its findings as to the applicant's credibility and findings of fact outlined above the Tribunal has found that neither the applicant nor his family are not now or never were supporters, members, held high office, associated, involved or perceived to be associated with the Jel or in opposition to the Awami League or faced any of the difficulties he claims for the reasons he claims. It follows it does not accept were he to return to Bangladesh now or in the reasonably foreseeable future the applicant will be killed, harmed, face further extortion demands, be economically harmed, be physically abused, threatened, harassed,

be unable to work throughout Bangladesh or own a [business] face any of the difficulties he claims from the Awami League or anyone else for the reasons he claims.

69. As the Tribunal has found that the applicant was never involved with the Jel in the manner he claims in Bangladesh and his evidence is he has not been involved while in Australia, it follows that the Tribunal is not satisfied that the applicant will participate in any Jel activities in any way on return or will suffer persecution by being prevented from being involved. It does not accept as he has not been involved in the past that he will continue to work for the Jel wherever he lives in Bangladesh. Similarly as it does not accept that his family, including his brother, has ever been involved or associated with the Jel in anyway it follows that the Tribunal is not satisfied they will participate in any such activities in the future which would place the applicant at any risk of harm.
70. As a result the Tribunal does not accept that the applicant faces a real chance of persecution involving serious harm if he returns to Bangladesh in the reasonably foreseeable future at the hands of the Awami League, or anyone acting on their behalf or the police or the authorities or anyone else due to his or his family's political opinion or imputed political opinion associated with Jel, including his brother, and either the activities of both he and his brother, their support or membership of the Jel, or he or his family being viewed as in opposition to the Awami League or the government or because he and/or his brother are business owners or successful business owners, or as he worked in a [business] or because he and his brother promised to pay the Awami League [amount] Lakh BDT or as there is an outstanding donation or for any of the reason he claims.
71. Similarly based on my findings above and on the information before me I am therefore not satisfied on the basis of the evidence before me that there is a real risk that he will suffer significant harm on his return to Bangladesh at the hands of the Awami League, or anyone acting on their behalf or the police or the authorities or anyone else due to his or his family's political opinion or imputed political opinion associated with Jel, including his brother, and either the activities of both he and his brother, their support or membership of the Jel, or he or his family being viewed as in opposition to the Awami League or the government or because he or his brother are business owners or successful business owners, or as he worked in a [business] or because he and his brother promised to pay the Awami League [amount] Lakh BDT or as there is an outstanding donation or for any of the reason he claims.

Conclusions regarding the Refugees Convention

72. The Tribunal has considered whether the combination of each of the individual claims raised by the applicant would together create a real chance of him being subjected to serious harm in Bangladesh in the reasonably foreseeable future. Having carefully considered the cumulative effect of these factors and attributes in light of the information and evidence before it, and given its reasons in relation to each factor, the Tribunal does not accept that there is a real chance the applicant would face serious harm for these reasons if he returns in the reasonably foreseeable future.
73. Based on all the evidence before it, including the applicant's claimed past circumstances and his current personal and family circumstances and profile in Bangladesh, the Tribunal is not satisfied that the applicant faces a real chance of serious harm for any of the reasons claimed or arising on the evidence, either singularly or cumulatively, for a Convention reason, in the reasonably foreseeable future. It follows that the Tribunal is not satisfied that the applicant faces a well-founded fear of persecution in Bangladesh for a Convention reason in the reasonably foreseeable future. Accordingly, the Tribunal is not satisfied that the applicant is a refugee under section 36(2) (a) of the Act.

Complementary Protection

74. The Tribunal has also considered whether the applicant is eligible for complementary protection. Findings have been made above in this regard.
75. The Tribunal has considered whether the combination of each of the individual claims raised by the applicant would together create a real risk of him being subjected to significant harm on return to Bangladesh. Having carefully considered the cumulative effect of these factors and attributes in light of the information and evidence before it, and given its reasons in relation to each factor, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there is a real risk that he will suffer significant harm as defined in subsection 36(2A).

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.

Gabrielle Cullen
Member