

0902782 [2009] RRTA 968 (30 October 2009)

DECISION RECORD

RRT CASE NUMBER: 0902782

DIAC REFERENCE(S): CLF2000/47262

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Amanda MacDonald

DATE: 30 October 2009

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Bangladesh, arrived in Australia [in] April 1994. He first applied for a protection visa in July 1994 and he subsequently withdrew that application, before it was determined, in January 1996. The applicant applied for several other visas while remaining in Australia. He again applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2000. The delegate decided to refuse to grant the visa [in] November 2000 and notified the applicant of the decision and his review rights. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
3. The applicant sought review of the delegate's decision and the Tribunal, differently constituted, affirmed the delegate's decision in November 2002. The applicant sought judicial review of that decision. The application was dismissed by the Federal Magistrates Court but [in] August 2006 the Federal Court allowed the appeal and set aside the Tribunal's decision. In November 2006 the Tribunal again affirmed the delegate's decision. The applicant sought review of the Tribunal's decision and in March 2007 the Federal Magistrates Court set aside the Tribunal's decision. In July 2007 the Tribunal again affirmed the delegate's decision and in December 2007 the Federal Magistrates Court set aside the decision and remitted the matter to the Tribunal to be determined according to law. In May 2008 the Tribunal again affirmed the delegate's decision. The applicant sought review of the Tribunal's decision and in November 2008, the Federal Magistrates Court dismissed the application but [in] March 2009, the Federal Court set aside the Tribunal's decision. [Judge deleted: s.431(2)] found that the Tribunal departed from the procedure to afford procedural fairness mandated by ss 424A and 424AA of the Act by not drawing to the applicant's attention the significance it proposed to give to the failure of [Person 1] to discuss with him the efforts she had made to explore obtaining a visa. The matter is now before the Tribunal pursuant to the order of the Federal Court.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
5. Section 36(2) of the Act, as in force before 1 October 2001, provided that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of ‘refugee’

7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
8. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
9. 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. These provisions were inserted on 1 October 2001 and apply to all protection visa applications not finalised before that date.
10. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
11. 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)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: 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.
12. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
13. 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.

14. 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 persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. 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.
15. 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.
16. Whether an applicant is a person to 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.

CLAIMS AND EVIDENCE

17. The documentary material before the Tribunal is contained in Tribunal case files 0902782, 071969781, 071358996, 060736060 and N00/36065 and the Departmental case file CLF2004/44432 relating to the application for the protection visa and various other Departmental case files relating to other visa applications. 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.
18. The previously constituted Tribunal set out the evidence from the Tribunal case files 071969781, 071358996, 060736060 and N00/36065 and the Departmental case file CLF2004/44432 in considerable detail. Having reviewed the material contained in these files, the Tribunal is of the view that the following accurately reflects that material.

Protection visa application

19. According to the Protection visa application the applicant is a male born in [date deleted: s431(2)] in Comilla, Bangladesh. He is of Bengali ethnic group and Muslim religion. He stated that he resided in South Africa between February 1992 and April 1994, that he holds a South African passport which he obtained illegally and that he travelled to Pakistan, Kenya, Tanzania, Zimbabwe and Zambia He has completed twelve years of schooling. With respect to his employment the applicant stated that he worked in Sales, as a Cook and a Chef.
20. The applicant stated on the application form that he was politically a Jatiya Party youth leader in Bangladesh and the BNP became angry with him for his contribution and involvement and were after him, eventually forcing him to leave Bangladesh and that the current ruling party, the Awami League, has the same view against his party. He states that his political colleagues have been harassed, intimidated and killed and he is concerned about the political situation of his party in Bangladesh. The applicant's advisor in his submission accompanying the application confirmed the applicant's migration history and the basis of his claims. The application also contained a copy of the applicant's passport, which indicates that it was renewed by the Bangladeshi authorities in Australia in 1996.

21. [In] November 2000 the delegate refused to grant the visa to the applicant. The delegate accepted as plausible the applicant's claim that he was a member of the Jatiya party but the delegate did not accept that the applicant faced a real chance of Convention-based persecution if he were to return to Bangladesh.

Evidence before the first Tribunal

22. The applicant sought review of the delegate's decision [in] November 2000. He did not provide any further written claims when making the application for review. [In] October 2002 the Tribunal wrote to the applicant inviting him to attend a hearing [in] November 2002. The applicant did not attend the hearing and [in] November 2002 the Tribunal affirmed the delegate's decision. In July 2005 the Federal Court remitted the application to the Tribunal.

Evidence before the second Tribunal

23. In October 2006 the applicant provided a detailed statement to the Tribunal which was accompanied by a copy of a birth certificate for [name deleted: s431(2)], born on [date deleted: s.431(2)] 2000, naming the applicant as the father of the child.
24. The applicant's submission is summarised in the Tribunal's decision 060736060. Essentially, the applicant set out his background, noting that he grew up in a strict religious Muslim family and had completed twelve years of religious education. The applicant states that he was involved in the student wing of the Jatiya party and encountered political clashes and that in February 1992 he fled to South Africa, where he stayed for two years. While there, he obtained a false citizenship and passport through a conman to secure his stay there but the law and order in that country was not good especially for people of the applicant's race and he had to look for another sanctuary. He arrived in Melbourne in April 1994 and he has nowhere to go. He set out his immigration history since arriving in Australia. The applicant stated that his life turned a different way when he began a relationship with a Roman Catholic girl in Sydney and had a child born from that relationship. He stated that in August 1999 he was introduced to his de facto spouse through a friend and their relationship developed. In October 1999 she moved in with the applicant and they started living in a de facto relationship. The relationship was known to friends and relatives. At the time his de facto, [Person 1], was an unlawful non-citizen in Australia and she was located in January 2000 and detained at VIDC. The applicant paid a bond for her release and [in] January 2000 the applicant sent her home with the hope that he could call her back after the grant of his skilled visa application. The applicant continued to call and write to her and to send her money. In March 2000 [Person 1] informed the applicant that she was pregnant with his child and their daughter was born in October 2000.
25. The applicant states that he informed his mother about his relationship and his intention to return home with his partner. His mother had forbidden him to do so. His mother reminded the applicant of his cousin's fate. His cousin had a relationship with a Hindu girl which outraged the Muslim society, they were thrown out of their house and a Fatwa was declared and both partners were punished while the police took no action. Later his cousin committed suicide and the girl was driven out from the locality and later moved to India. He said that situation occurred because the majority of people in Bangladesh are God-fearing Muslims and fanatics and are influenced by the Islamic teachings. The applicant stated that he tried to convince his mother but was told by her to abandon the relationship. His mother could not accept his relationship and warned the applicant that no one in the society would accept his de facto and baby without a formal marriage. She told the applicant that he could only return

home if he would abandon the relationship. His uncle was also furious and forbid the applicant to return home and his local council chairman also refused protection to the applicant. His relationship with a Christian girl and a baby without marriage is now 'hot-gossip' in the applicant's area and is no longer private. The applicant referred to his friends who inter-married and faced harassment on return to Bangladesh.

26. The applicant states that in 2002 he learned from his mother's letter that she was served a Fatwa notice by the local mosque to disown him as he was declared a fallen Muslim and one who betrayed Islam. The applicant's whole family was ostracised from the society until his mother agreed to disown him. A verdict was declared that the applicant will be seriously punished if he intended to bring his daughter and his de facto to Bangladesh and his mother was required to attend the mosque for penance for his sin. He learned this through letters and phone calls from friends and family. He states that his friends and family write to him at his work's address but he is unable to disclose these letters to the Tribunal. The applicant states that if he returns to Bangladesh, he would be treated worse than anyone else by the Muslim fanatics. It would be difficult for him and his de facto to find employment or operate a business because of his non-religious belief and inter-racial relationship with a Christian girl without marriage. His daughter would not be able to continue her studies in a school in Bangladesh if her parents' marital status is disclosed. It would be easy to pick on her because of her complexion and she would not be treated equally as others and tormented, which would be disgraceful to him and therefore internal relocation would not be a viable choice. He and his family will suffer and will be continuously discriminated against for his relationship and attitude against the rigid Muslims, the family will be ostracised and in any religious agitation fingers will be pointed at them. The present situation in Bangladesh makes it dangerous for him to go back, he will be killed psychologically and physically by the superstitious Muslims, he will be unable to get safe accommodation for the family as it would not be long before the non-practising Muslim attitude would reach to his landlord and he will be thrown on the street, which would happen over and over. He will be unable to get a fair judgment if any harm comes to him or his family because the real strength lies with the Muslim fundamentalists. His experience in inter-religious relationship reassures him that the administration would not be able to protect him from the fanatics, his de facto and child will not get a fair justice if he is killed by an Islamic mob to whom he is a sinner.
27. In oral evidence to the Tribunal, the applicant stated that he did not wish to pursue his claims relating to his political activities in Bangladesh. The applicant repeated the history of his relationship with [Person 1], which was set out in his written submission to the Tribunal. The applicant provided evidence of financial transfers to [Person 1] and of the couple's correspondence. He stated that he told his family about his relationship with [Person 1] and the birth of his daughter and that the family was angry with him and did not accept the relationship. He stated that he had had no contact with his family since about 2003. The Tribunal's hearing was adjourned to enable the Tribunal to take evidence from [Person 1] and her relatives in Australia. [Person 1]'s relatives, who gave oral evidence to the Tribunal when the hearing resumed, confirmed that the applicant maintained a relationship with [Person 1].
28. During the hearing the applicant provided evidence of his relationship, including photographs and evidence of communication and further evidence was provided following the hearing. The applicant explained in a letter dated [in] November 2006 that he initially used Telstra and subsequently started using telephone cards. The applicant provided to the Tribunal printouts of the calling cards showing calls made to a number of overseas and a statement from [name deleted: s.431(2)] confirming calls made, evidence of monetary transfers which do not

indicate to whom the funds are transferred, a statement from [company deleted: s431(2)] confirming that the applicant was transferring money to [Person 1].

29. The second Tribunal accepted that the applicant maintained a de facto relationship with [Person 1] but found, on the basis of the country information, that there was no real chance that he would suffer persecution as a result of that relationship.

Evidence before the third Tribunal

30. The applicant provided to the Tribunal photographs of his daughter and her school records, phone bills showing calls to the Philippines, evidence of monetary transfers and a statement, dated [in] May 2007. He states that he is a Muslim by birth and a Bangladeshi national and that he is a Madrasa academic and Islamic scholar. He states that since 1994 he had never returned to Bangladesh. His belief and way of life has changed. He states that he has a daughter from a de facto relationship with a person of Roman Catholic background and he would be unable to live peacefully anywhere in Bangladesh with his wife and daughter because of his previous religious education and identity in the fanatical society. He states that his claims fit within the Convention due to religion and membership of a particular social group. He claims that he will be persecuted, humiliated and intimidated by the typical society in Bangladesh and having constant fear in his mind he is now unwilling to return to his country. He stated that he loves his wife and daughter very much and is always in contact with them. He refers to the various documents relating to his relationship with his de facto spouse, as well as the documents previously provided to the Tribunal.
31. The applicant attended the hearing before the Tribunal [in] June 2007. He repeated in oral evidence the claims he made elsewhere. He stated that he was concerned about the fundamentalist Muslims in Bangladesh. He stated that he would not be accepted by the society because Bangladesh is a Muslim country and there is no place for a de facto relationship. He would not be able to stay with his wife anywhere in Bangladesh. He stated that he belonged to a particular social group and would also face persecution due to his religion. He read statements to the Tribunal outlining his circumstances and claims. He stated that he did not work after completing twelve years of secondary studies and that he did not work initially in South Africa as he had money from the family. The applicant spoke about his relationship with [Person 1] and stated that he wanted to live together with her but that he did not believe in marriage. The Tribunal questioned the applicant about his failure to mention his claims relating to the de facto relationship and the birth of his child in the protection visa application. The applicant noted that he did not have the opportunity to present his evidence orally. The Tribunal also discussed with the applicant, and had given to the applicant, the country information relating mixed marriages in Bangladesh, noting that the information suggested that there are no problems with mixed marriages in Bangladesh. The Tribunal also noted that there is a Mixed Marriage Act in Bangladesh permitting mixed marriages and in such circumstances marriages are conducted by a magistrate. The applicant said that he had information about people in his circumstances but he had not provided it earlier because nobody asked him for it. He said that he has also been disinherited from the family. The applicant noted that his wife is Chinese and whenever they go, people will ask her questions. The applicant presented to the Tribunal his telephone records and other evidence of the relationship. The Tribunal noted that it was questionable whether such a relationship constituted a de facto relationship under the Australian law. The Tribunal also invited the applicant to provide further information concerning the situation in Bangladesh.

32. [In] July 2007 the applicant provided a further submission to the Tribunal. He again confirmed that he was not relying on the previous statement submitted to the Department in September 2000 with his protection visa application. The applicant explained the reasons why he fled from Bangladesh. He states that his immigration status and livelihood in South Africa are completely irrelevant to his claims which are now under review. The applicant stated that in his first application in September 2000 he was ill-advised by his former migration agent who advised him that his new claim would not be considered by the Department and that it would be wise for him to stick with the initial claim and not to raise new issues. Accordingly, he did not forward the issue relating to his de facto relationship and child but he did not realise the consequence of the child's birth and the inter-religious relationship until he confessed to his mother at around the end of 2000. The applicant confirmed that he was the father of the child and had suggested that he would undertake a DNA test. With respect to the country information provided by the Tribunal, the applicant states that it is not relevant because he does not believe in marriage and the child was born from an unmarried relationship and is regarded as an illicit child in Bangladeshi context. The applicant referred to several decisions of the RRT dealing with similar circumstances. The applicant stated that although he is an Islamic academic and a born Muslim, after being estranged from his culture and ritual for many years he now does not have faith in Islam and he does not have any intention of asking his de facto partner and his child to convert to Islam at any stage of their lives. He and his de facto would like to maintain the relationship permanently and they do not believe in a marriage which requires some formalities and documents.

Evidence before the fourth Tribunal

33. [In] January 2008 the Tribunal wrote to the applicant pursuant to s 424A of the Act and also in compliance with its common law procedural fairness obligations inviting his comments on the information which the Tribunal considered may be a reason or part of the reason for affirming the decision under review. The Tribunal set out the applicant's immigration history, noting that the applicant initially put forward claims relating to his political involvement which he subsequently decided not to pursue. This information was considered to be relevant as it may indicate that the applicant had no intention of pursuing his protection visa when he came to Australia and that the claims made in his protection application did not reflect his true position in Bangladesh. The Tribunal also noted that the applicant did not refer to his relationship or the birth of his child, or made any claims arising from these matters, in his application made in September 2000 or at any time before 2006. The Tribunal set out certain independent country information concerning the relocation in Bangladesh and also concerning the current political situation.
34. The applicant responded [in] February 2008. He stated that he fled South Africa, where he obtained false documents in order to stay and also in order to travel to Australia. He intended to obtain sanctuary in Australia and applied for a protection visa and he was advised by his former agent that he was qualified to apply for permanent visa on the basis of his skills and that it would be faster and better. As a result, he withdrew his application as he was confident he could remain in Australia on the basis of his skills. Everything he claimed about his political involvement in Bangladesh and the consequences of this involvement was true. He stated that he did not attend the first Tribunal hearing in 2002 because his roommate called the Tribunal on the day of the hearing and explained the situation but the following day when he rang, he was told that he would not have another hearing. The applicant confirmed that he did not wish to pursue his claims relating to his political involvement with the Jatiya party as

it is now over 16 years since he fled Bangladesh and he never returned, there had been many changes of government since he left and he is no longer involved with politics in Bangladesh. He feared persecution when he fled but he no longer fears persecution for his political past.

35. The applicant stated that he told his mother about his relationship with his partner and about their child and his mother told him to stop the relationship and to begin a new life with a Muslim girl in Bangladesh. He told his mother about the relationship with [Person 1] because he was concerned that he would be forced to return to Bangladesh and hoped that she would take a softer attitude towards his partner, particularly since she was pregnant and they would have needed his family's help. At that time he still feared persecution due to his political past but he was concerned that he would be forced to return to Bangladesh.
36. The applicant confirmed that he had renewed his Bangladeshi passport. He has not told the Bangladeshi authorities about his partner and his child and is not required to do so as long as he remains in Australia.
37. The applicant confirmed that he completed 12 years of schooling at a Madrasa for the purpose of getting an Islamic education. He described the subjects he had undertaken. Then, against his parents' desire, he attended [name deleted: s431(2)] College in Comilla which was not a Madrasa. Because of his education at Madrasa, he is knowledgeable about Islam and about fundamentalist Muslim values and attitudes. He stated that he is no longer a Muslim and he does not believe in Islam. He noted his concerns with an interpreter provided for one of the earlier hearings.
38. With respect to the political situation in Bangladesh, the applicant stated that he was born a Muslim but has rejected Islam and no longer believes or practises Islam. His partner is a Roman Catholic and neither of them wants her to convert to Islam. He and [Person 1] are not legally married and their daughter was born out of wedlock. His family will not accept him unless he abandons his relationship with [Person 1] and they will not accept her and his rejection of Islam. People in his area are aware of this relationship with a Christian girl and of the child being born outside of the marriage and he would be seriously harmed or killed if he were to return to [location deleted: s431(2)] and his wife and child will also be persecuted. Further, his wife is a Chinese-Filipino and looks different from Bangladeshis and if they relocate, it would be obvious to everyone that she is racially different and that their daughter is not Bengali and that [Person 1] is not a Muslim. This will be evident wherever the family goes and that he is a lapsed Muslim while his wife is not a Muslim. In the close-knit nature of Bangladeshi society, people will be aware that he daughter was born out of wedlock and is not a Muslim and such a child is forbidden. He and his partner will be persecuted whenever they locate in Bangladesh Muslims in Bangladesh are generally extremely hostile to people who have rejected them and will see the family as insulting Islam. Most of the local police who themselves will normally be Muslims will also detest the applicant. He cannot expect effective protection from the police or authorities. The applicant states that, like the Ahmadiyya, they would be seen as traitors of Islam and persecuted.
39. With respect to his failure to refer to his partner or child in his application in September 2000, the applicant stated that he told his migration agent about his partner and child and the agent did not include these details in the application because he did not consider them relevant. His partner had left Australia and they were not married, his partner was not an Australian citizen or resident and at the time his fear centred around political persecution.
40. The applicant requested the Tribunal to take evidence from his partner and other witnesses.

41. The applicant included a declaration from [Person 2] and [Person 3], in which they outline the nature of the relationship between the applicant and [Person 1]. The applicant enclosed photographs and evidence of communication between him and his partner. The applicant also provided a declaration from his former migration agent who confirmed that the applicant did inform him of his relationship with [Person 1] and of her pregnancy and also that the applicant spoke about his fear that his family would not accept his inter-religious relationship. He stated that he did not realise that such a relationship would be a possible reasons for a Convention based fear of persecution and did not include details of the relationship in the application. The applicant also included a letter purportedly from the Imam of the [suburb deleted: s431(2)] Mosque. It stated that if a person does not follow the religious and does not act upon the religious system of any religion, he is badly ignored in society by others who follow the religion. The people in Bangladesh are very strict in their religion, either Muslim or Christian or Hindus or Buddhist and a person who changed his religion or does not follow the religion cannot live in society in Bangladesh. There is no proper system in Bangladesh to give a person effective protection. If the person has an illegitimate child, he always will be in depression by the harm of people [sic] and there will be no choice except suicide.
42. [In] February 2008 the Tribunal gave the applicant a further letter inviting his comments on independent country information which the Tribunal considered may be relevant to his application. The applicant provided his response [In] February 2008. The applicant reiterated that he left Bangladesh a long time ago and was no longer pursuing his claims relating to his political involvement in this country. He stated that he was not married but in a de facto relationship with his partner and that neither he nor his partner wanted for his partner to convert to Islam. With respect to internal relocation he stated that his partner and child, who was born out of wedlock, looked different. With respect to external relocation, he stated that the law of the Philippines, referred to by the Tribunal, related to marital and not de facto relationships. He also stated that he was no longer a believer in Islam.
43. The applicant appeared before the Tribunal [in] February 2008 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's partner. The applicant had nominated other witnesses but the Tribunal did not consider it necessary to take evidence from them.
44. The applicant confirmed his immigration history set out above. He said that he withdrew his first protection visa application because his agent advised him that he could apply for a skilled visa and he was advised to withdraw the protection visa application as he could not have two applications simultaneously. The applicant confirmed that he reapplied for the protection visa in September 2000. He said that at the time he spoke to his adviser who told him that since he applied on the basis of the political situation, it would be better not to mention his partner. The Tribunal asked the applicant why he had not mentioned his de facto relationship on the application. He said that he told his migration agent. The Tribunal noted that it was not referring to the applicant's claims, but to the question on the application form regarding the applicant's marital status. He said that he told his agent about his relationship but the agent did not put it in.
45. The applicant confirmed that his de facto relationship commenced at the end of 1999. He said that they started living together in September 1999 and [Person 1] left the country in January 2000. The Tribunal invited the applicant to describe his relationship with [Person 1] from January 2000 to the present. The applicant presented a number of telephone bills indicating his calls made to the Philippines, cards, letters and photographs of his family. He said that they always speak on the phone and he sends money. He said that he had already presented

some evidence of transfers and sometimes he sends money with friends. He used to send money every month but because his partner is working, she told him that she was getting money and that he should save his money and he now sends about \$350 or \$400 every two months. On the last occasion he sent \$2000 with his uncle. This money is used to buy clothes for his daughter. He said that they speak on the phone three to four times a week.

46. The Tribunal asked the applicant if he had considered living in the Philippines. He said that he did not. He has been in Australia for many years and what would he do there? Also, they are not married. The applicant said that he did not know if he could stay there and he does not even know if he could get the visa as he did not ask if he could get the visa. The Tribunal asked the applicant if he wanted to stay with the family in the Philippines. He said he did not know if he could stay there and if he could not, he would have to return to his country and then he may not see his partner and daughter alive.
47. The Tribunal asked the applicant why he thought he would have to go to his country if he were to go to the Philippines. The applicant said that it was difficult to explain that. The Tribunal noted its concern that the applicant had been in a relationship for close to ten years but had not made any effort to see his partner or child. The applicant said that he wanted to go there but he could not return to Australia; he cannot live there. The Tribunal asked the applicant why he thought he could not live in the Philippines. He said he did not know if he would be allowed to stay there. The Tribunal noted that he said that he had not made any inquiries about it. The applicant said that he spoke to his partner. The Tribunal asked him if he had spoken to the Philippines embassy. He said that he had not. The Tribunal again noted that he had not made any inquiries about remaining in the Philippines. The Tribunal asked the applicant if [Person 1] had made any inquiries about coming to Australia. He said he did not. The Tribunal noted that the fact that he was here may indicate that [Person 1] may have at least made some inquiries about coming to Australia. He said that they did not. He then said that she could not apply for five years because she was detained before. The Tribunal pointed out that it was not the case. He said that he also had not made any inquiries about his partner coming to Australia. The Tribunal pointed out that [Person 1] appeared to have good qualifications and spoke English and may have had a good opportunity to come to Australia, but despite that no inquiries had been made. He said that he already applied for the protection visa. When he talked to her, he never asked her to try to come here.
48. The Tribunal noted that, given that he and [Person 1] have not been with each other for eight years and have not taken any steps to be together and, despite the financial support and communication between the parties, it seemed that they had no intention to travel to Bangladesh together if the applicant had to return to Bangladesh. The applicant said that they love each other and want to be together. The Tribunal again pointed out that this was not apparent from their conduct. He said that maybe she tried but did not tell him. He said that he applied for the protection visa and that is why he did not ask her to apply. The Tribunal noted that there was no connection between his protection visa and [Person 1]'s application.
49. The Tribunal noted that part of the applicant's claim was based on [Person 1] and his child travelling to Bangladesh but it was not apparent from their conduct that they would travel with him to Bangladesh. The Tribunal invited the applicant's comments on this issue. He said that he cannot take them to Bangladesh, they cannot live there together. The Tribunal asked the applicant what would happen if he did not get the protection visa. He said that he did not know, they have not thought about it. If he does get the protection visa, he will sponsor his partner and child the next day.

50. The Tribunal asked the applicant when he mentioned his relationship and child to his family in Bangladesh. He said that after his application for migration was rejected, in about July 2000. His mother told him that he could not come to Bangladesh and could not bring his partner to Bangladesh. The Tribunal asked the applicant about the nature of his contact with Bangladesh in recent years. He said that he sometimes calls his mother every few months and asks her if she needs any help. He does not speak to anybody else from his family but he speaks to a friend every three to six months. He said that these are the only two people he speaks to in Bangladesh. The Tribunal noted that in a previous hearing the applicant stated that he had no contact with his family in Bangladesh since 2003. He said that he speaks to his mother as she is old. He said since 2000 that he does not speak to the family but he speaks to his mother, he re-established contact with her at the end of last year. He said that for two or three years he had not contacted his family but recently he started to contact his mother. The applicant could not state his mother's or friend's telephone number. The Tribunal pointed out that his phone bills which he presented to the Tribunal show a lot of phone calls to Bangladesh. He said that he shares the phone with his flatmate and these may be his flatmate's calls.
51. The Tribunal asked the applicant what would happen if he were to return to Bangladesh. He said that he cannot return to Bangladesh because he is not a Muslim and his partner is not a Muslim, she is a Christian and they are not married. The Tribunal asked the applicant why he objected to marriage. He said that they have been in a relationship for almost nine years and already have a child. He does not believe in marriage. The Tribunal pointed out that he comes from a strict society which supports marriage. The Tribunal asked the applicant why he did not believe in marriage. He said that there was no point in marriage, they are already in a relationship. He said that he would not marry his partner. The Tribunal asked the applicant if they would consider marriage if his partner came to Australia. He said that if she were to come to Australia, they would think about it. The Tribunal noted that saying that they would think about it was different to him saying that he objected to marriage. He said that he does not believe in marriage but they would think about it. The Tribunal asked him if his partner wanted to get married. He said that she did not. The Tribunal noted that as a Catholic, she may also support marriage. He said that last time they discussed marriage, she said 'what for?' They already have a child and want more children and do not need to marry for that.
52. The applicant stated that he did not have any other relationships since [Person 1] left in 2000 and that she has not had any other relationships.
53. The Tribunal again asked the applicant what would happen if he had to return to Bangladesh. He said that he cannot go and stay there. If he goes to Bangladesh, they would see him and his partner and his daughter, who look Chinese. They look different and they would find out who they are. They are not practising Muslims. They would find out who they are and they would find out that they are not married. There will be problems, his daughter may be kidnapped. It is not only Muslim people who object to de facto relationships but also the Hindu people.
54. The Tribunal asked the applicant about the persecution he fears as a non-practising Muslim. He said that he no longer practises or believes in Islam. He rejected Islam because he no longer believes in it. Even before he came to Australia, he learned about Muslims and how they behave and treat others. He said that he did not engage in any religious activities after coming to Australia. The Tribunal asked the applicant how he obtained the statement from the Imam of the [suburb deleted: s431(2)] Mosque, which he presented to the Tribunal. He said that a friend of his obtained that statement for him. The applicant's representative

pointed out that the Imam was asked some questions and he provided a statement in response to these. The applicant said that the Imam was from Bangladesh but he could not state how long he has lived in Australia.

55. The Tribunal referred to the country information given to the applicant previously and invited the applicant's comments. He said that he had already provided comments in writing. The Tribunal asked the applicant why he thought the de facto relationships were treated differently if inter-religious and inter-racial marriages were recognised under the law. He said that they were not married but they wanted to live together. His daughter was also born out of wedlock. They cannot live there together.
56. The Tribunal asked the applicant whether people recognise his relationship and the fact that he is not a practising Muslim if he were to return to Bangladesh. He said that they will see him with his partner and daughter and will find out whether or not he is a Muslim. The Tribunal asked the applicant about the Hindu and Christian communities and whether their treatment of the applicant may be different. He said that they will find out that he is a Muslim and that his partner is a Christian and they will ask the same questions. The Tribunal asked the applicant how he will be recognised as a non-practising Muslim and how he will be treated by Muslims and non-Muslims. He said that people go and pray in the mosques but he will not go and pray and they will find out. The Tribunal asked the applicant how he would be treated by non-Muslims, for example Christians or Hindus. He said that there were not many Hindus and Christians. He said that the Hindus will go to pray in a Temple and Muslims pray in a Mosque but he cannot go anywhere.
57. The representative submitted to the Tribunal further country information about the situation in Bangladesh. He also noted that the inter-religious legislation provides that the marriages are possible only if one of the parties declares that they are not religious and if the applicant had to declare that he was not a Muslim, he would be in a lot of trouble.
58. The Tribunal asked the applicant to describe when he stopped believing in Islam. He said that when he was in Madrasa, he studied the Koran and he thought it was not true and he stopped practising. He said that while he was studying, he had to attend the mosque and wear the special clothes. He did not want to stay in the Madrasa but his family forced him. He could not tell his family that he did not believe in Islam, so he ran away from the Madrasa. He stayed with his uncle for two years. His uncle and father told him that he should become an imam and study at the Madrasa. He decided to run away from the family and he went to South Africa. His father had a heart attack and passed away and his uncle blamed him for it. He was in South Africa for two years but it was hard to live there, there was a lot of violence. He got help from someone to get the passport. He got the Australian visa but he decided to return to Bangladesh. The situation there had not improved, he still had problems and he left. He said that he spent about six weeks to two months in Bangladesh.
59. The applicant confirmed that after he left the Madrasa, he did not go to the mosque and did not continue his religious education. The applicant said that he went to South Africa in 1992 and that he finished his studies at the Madrasa in 1989. The Tribunal asked the applicant how he managed to live in Bangladesh between 1989 and 1992 while being a non-practising Muslim. He said that he used to go the mosque on Fridays. He had to go to the Mosque on Fridays because his family were a religious family, but he did not go as often. The applicant said that because he did go to the mosque but not as often as he should, he was considered to be a non-practising Muslim. The Tribunal asked him why it took him more than three years to leave the country. He said that he did not have the financial support. The Tribunal asked him

if he received the financial support from his family while he was in South Africa He said that he did receive support from his mother. The Tribunal asked him why his mother was not willing to support him to leave the country for three years if he was in danger as a non-practising Muslim, if she was willing to support him in South Africa. He said that his mother knew that it would happen but she had kept quiet because of his father and uncle.

60. The Tribunal noted its concern that the applicant remained in the country as a non-practising Muslim for three years after 1989. He said that he attended the mosque three times a day every day after 1989 because the Muslims were calling each other to prayer. The Tribunal noted that the applicant first said that he was not attending religious activities at all, then he stated that he was attending on Fridays and he then said that he was attending three times a day every day. The Tribunal noted that the applicant also said initially that he had a limited involvement with religion and that he was a non-practising Muslim in 1989, which is different to his later evidence. The applicant said that he stopped completely in 1994. After 1989 he used to go to the mosque three times a day but not five times. The Tribunal asked him if he was practising Islam in South Africa. He said that he was not. The Tribunal noted that he went to South Africa in 1992 and not in 1994 but he said that he stopped practising in 1994. He said that he stopped practising in 1992. The Tribunal noted that the applicant gave very confused evidence about his practise of Islam and that may cause the Tribunal to find that he was not being honest in his evidence. The applicant said that he was being honest. He left the country because of the pressure from the parents and also because of the political pressure.
61. The applicant said that when he met his partner, she knew from his name that he was a Muslim but she said that she did not see him going to pray or to the Mosque and he told her that he did not believe in it.
62. The Tribunal asked the applicant why his passport does not mention that he has a child. He said that if he did mention his child, he would have to mention the relationship and the daughter and to provide a birth certificate and he did not want to tell them.
63. At the request of the applicant's advisor, the Tribunal asked the applicant if his partner or child would travel with him to Bangladesh if he had to return to Bangladesh He said that his partner does not want to travel to Bangladesh because it is a Muslim country. He said that he would not go without his partner. He also said that if he had to return, they would have the same problem.
64. The Tribunal noted that it did not think it was necessary to take evidence from the witnesses as they provided statements and the Tribunal and the Tribunal accepted that the applicant had contact with his partner and sent money to her but had to consider whether his partner would travel to Bangladesh with the applicant if he had to return to Bangladesh.
65. The Tribunal took evidence from the applicant's partner. [Person 1]. She said that their relationship started about nine years ago. She said that they are in constant communication and the applicant speaks to their daughter. There is continuous support from him. He sends money every month for her daughter's schooling. The Tribunal asked if she had made any inquiries about coming to Australia since 2000. She said that she had not because she is waiting for him to come to the Philippines. The Tribunal asked if the applicant intended to travel to the Philippines She said that she is scared if they are there together because of their different nationalities and different beliefs, she is scared that people will not like him. The Tribunal asked why she was waiting for the applicant to go to Philippines if she was scared of

him doing so. She said that the applicant could come but he cannot stay for long. The Tribunal asked why she made no inquiries about coming to Australia. She said that she did make inquiries about the points system and made an online assessment but she was told that her points were not enough. She said that this was about two years ago. The Tribunal asked if she had taken any other steps to be with her partner. She said that she wanted to get more experience, she was told that she had to be employed for at least five years. The Tribunal asked why the applicant did not know about the inquiries she made about coming to Australia. She said that she did not tell him because she did not think it necessary, as she could not get it anyway. The Tribunal noted that it was strange that they spent eight years apart and did not take many steps about being together, but when she made inquiries about coming to Australia, she did not tell her partner. She said that he may get too excited and depressed and as she failed, she did not tell him.

66. The Tribunal asked what would happen to the relationship if the applicant had to return to Bangladesh. She said that he thought he could not do so because of the cultural differences. She said that the relationship will go on and she will travel with him. She intends to go with him if he has to return. The Tribunal asked if she had tried coming to Australia, to be with her partner, for example as a tourist. She said that it was hard to get a tourist visa, she was thinking about it but it is very hard. There are too many requirements and she did not apply. The Tribunal asked if she had made any inquiries about what she will need if the applicant had to return to Bangladesh. She said that she did not. The Tribunal asked her why she said that she intended to travel with him to Bangladesh if she had not made any inquiries. She said that if he goes, she will go with him.
67. The Tribunal outlined its concerns to the applicant and invited the applicant's comments with respect to these issues. The Tribunal noted that the parties had been apart for eight years and have made little, if any, attempts to be together. The Tribunal stated they had also made very few inquiries about the applicant travelling to the Philippines or his partner coming to Australia (and while [Person 1] appears to have made some inquiries, the applicant was unaware of these) or about travelling to Bangladesh together. The Tribunal stated that this may cause it to find that the applicant's partner and child will not be travelling to Bangladesh if he had to return to Bangladesh and this may affect the applicant's claims. The Tribunal noted that the applicant gave very confused evidence about when he became a non-practising Muslim. He stated initially that it was when he finished school, then he said that he went to the mosque once on Fridays and he then stated that it was three times, he also referred to 1992 and 1994 as the time when he stopped practising. The Tribunal stated this may cause it to question his evidence and, if he did become a non-practising Muslim, to question why he remained in Bangladesh for three years after that. The Tribunal stated this may affect the findings about the applicant's religious involvement in the future. The Tribunal stated it must consider whether it may be reasonable for the applicant to relocate within Bangladesh and the Tribunal referred to the country information previously provided to him.
68. With respect to the first issue, the applicant said that he did not want to take his family to Bangladesh because they would be harmed. The Tribunal explained that the issue before it was not whether the applicant wanted to take his family to Bangladesh and, if they were not to come with him, the Tribunal asked the applicant if he would still suffer harm as a result of his relationship. He said that they would still know. He said that his mother knows. The Tribunal asked him how the others will know. He said that he does not want to return to Bangladesh and he does not know what will happen because of the politics. The Tribunal asked the applicant if he was now pursuing his claims relating to his political involvement.

He said that he was not. He said that he had been waiting for his partner for nine years and they had been waiting for a better life. He said that he did not want to return to Bangladesh.

69. With respect to the Tribunal's second concern that the applicant had given inconsistent answers about his religious involvement, which may cause the Tribunal to find that he was not being honest, the applicant said that he stopped practising when he left the country. The applicant said that he had no other comments. The applicant's representative noted that the applicant may not have understood the Tribunal's question 'when did you become a non-practising Muslim' and who was to determine that. The representative pointed out that the applicant may have responded with respect to his family's expectations, as his family insisted that he become an imam, for example, and he was suggesting that his family perceived him as being a non-practising Muslim. The Tribunal noted that it was the applicant's claim and he may be expected to know what the term 'non-practising Muslim' meant and, further, he failed to provide the explanation offered by the representative in response to Tribunal's questions.
70. With respect to internal relocation, the applicant said that no matter where he goes, they will find out the race as his partner and child look different. If he returns but does not attend a mosque, they will find out. When they see him and his partner and daughter, they will find out who they are.
71. [In] February 2008 the Tribunal received a further submission from the review applicant's representative. The representative noted that the applicant made it clear that his partner and child were likely to be seriously harmed or killed if they live in Bangladesh with him and had provided compelling evidence of this. If the applicant was unable to live in Bangladesh with his partner and child, this will impose permanent separation of the applicant from his spouse and child. The representative referred to the Revised Explanatory Memorandum to the Migration Legislation Amendment Bill (No 6) 2001, which introduced s 91R, which emphasised that the examples of serious harm were not exhaustive and that the serious harm test does not include serious mental harm. The representative referred to Justice Tamberlin's reasoning in *NBCY v MIMIA* (2004) 83 ALD 518 at [25] which suggests that persecution or serious harm to a person could arise from a threat to a person's family and to those the person is strongly attached to by bonds of kinship, love, friendship or commitment. It is stated that the applicant cannot have his family with him in Bangladesh because of the threat of serious harm both to him and to them. The representative also refers to the comments of Justice McHugh in *MIMA v Haji Ibrahim* (2000) 204 CLR 1 at [55] relating to what may constitute persecution. It is stated that the applicant cannot be expected to tolerate permanent separation from his spouse and child and that his circumstances have also to be considered cumulatively.
72. The representative submitted that the applicant is not a practising Muslim and [Person 2]'s declaration, which was provided to the Tribunal, recounts [Person 2]'s conversation with the applicant in which the applicant stated that he does not believe in Islam and does not follow it in any way and it is clear that [Person 2], who knows the applicant well, believes the applicant not to be a practising Muslim. In addition to ceasing to be a Muslim, the applicant has broken other 'tenets' of Islam. He had a sexual relationship with a woman to whom he is not married and had a child out of wedlock. His partner does not wish to convert to Islam and he does not wish her to convert. There is a real chance that the applicant's transgressions, individually or cumulatively, against Islam will result in his persecution if he is forced to return to Bangladesh and he will be persecuted even if his spouse and child do not join him in Bangladesh and even if he is able to relocate within Bangladesh. The representative refers to the country information about murders and violence on people believed to be un-Islamic by militant Islamist organisations and the information indicates that there is an increase in

intolerant Islamic fundamentalism in Bangladesh and makes it clear that the applicant cannot expect effective protection from the police or authorities. The representative referred to *S395/2002 v MIMA* (2203) HCA 71 as to whether the applicant can be discreet about his lack of belief in Islam and/or his family circumstances.

73. Following the hearing, the Tribunal sought advice from DFAT concerning the situation in Bangladesh of those who no longer practice their religion. The Tribunal received advice from DFAT on 8 April 2008 (DFAT Report 803) and the advice is cited below. [In] April 2008 the Tribunal wrote to the applicant in compliance with its procedural fairness obligations to seek his comments on the information contained in the report.
74. The applicant replied [in] April 2008 through his representative. The representative noted that the DFAT report quoted in the Tribunal's correspondence relies on the US State Department International Religious Freedom Report 2007. The representative noted that it is not surprising that DFAT did not find any documentation about violence in Bangladesh against an atheist or non-believer, given the extreme rarity of atheists or non-believers and, as the US State Department Report confirms, the 2003 survey confirms that religion was the first choice by a non-citizen for self-identification and atheism was extremely rare. The representative submitted that in that situation of rarity, the failure by the post to find relevant documentation is not sufficient or reasonable basis for concluding that there is no real chance that atheists or non-believers will be persecuted. The DFAT report acknowledged occasional reports of violence against religious minorities and it is not fanciful to suggest that a non-believer would be subjected to violence from Islamic groups. The US State Department report confirmed that the applicant, his partner and his child face the level of persecution that will go beyond social alienation. The representative quoted from the US State Department International Freedom Report. He stated that the applicant could not be characterised merely as a non-believer living in a de facto relationship but that he is an apostate. He has a mixed de facto relationship with a Chinese – Filipino woman who is a Catholic and is a father of an illegitimate child and these factors should be considered cumulatively in assessing the chance that the applicant, his partner and their child would be persecuted. The US State Department report confirmed the risk of persecution in the form of extra judicial punishment for moral transgressions. The representative also referred to the information from Dr Kazi Nurul Islam, quoted in the Tribunal's correspondence [in] February 2008. It is stated that it is not a matter of the applicant, his spouse and child not making their non-adherence to Islam or their circumstances an issue for those around them. Any non-adherence to the societal norms for Muslims and for a Muslim family, including norms regarding dress, behaviour, attendance at mosque and prayers will identify the applicant, his spouse and child as not being proper Muslims. The representative also referred to the reasoning in *S395/2002*. He quoted from the DFAT report which stated that Bangladesh is a conservative country although the younger generation tends to be more liberal. He stated that in view of the situation as described in the US State Department report, some degree of acceptance of liberal norms by some sections of the population did not eliminate the real chance of persecution faced by the applicant, his partner and child.

Evidence to the fifth Tribunal

75. The applicant submitted additional evidence in support of his application, including a submission, recent photos of his de facto partner and their daughter, copies of letters the applicant's de facto sent him from when she returned to the Philippines in 2000, notes written by the applicant's daughter and an IELTS test for the applicant's de facto. The submission is as follows:

1. A letter [Letter # 1] with scribble from my only daughter lives with my de facto in the Philippines Also enclosed the envelope which came by hand with my de-facto's aunt in Australia.
2. A colored photograph of my daughter [Photo # 1] with her mother following a graduation ceremony in her school. My daughter is holding her Certificate of Recognition showing her name clearly bearing my surname `[name]`
3. A colored photograph of my daughter [Photo # 2], during her school graduation parade in 2008.
4. A letter (Letter # 2] from my daughter thanking me for the money I sent for her enrolment in the school and a few words expressing her dream meeting her father whom she never saw. The letter came to me along with her mother's document that was sent to me by EMS.
5. Original 7 copies bank transactions of the remittance to my daughter and the de-facto in the Philippines.
6. Copy of my daughter's recent progress report from the school which she has been sending me always and keeping me update of her studies there.
7. Certified copy of my daughter's birth certificate issued by the respective authority in the Philippines. The certificate bears both her parents name.
8. Copy of the IELTS report of my de-facto. She sat for the test last year with a view to apply for migration to Australia on skilled ground as a registered nurse. Her IELTS score does not meet the required level which should be individually 7 for migration purpose. She has been intending for many years to to reunite with me, on her own accord, and bring our child along with her. However, the Tribunal must be aware that there was a mandatory banned for 5 years for her to reenter in to Australia because of her previous unlawful status here. This was also an issue for my de-facto not to approach the Australian consulate there in those years and she knew that she will never be granted even a tourist visa if she would have tried after that ban. I hope the Hon. Tribunal would realize our situation.

I also refer to all the materials that were forwarded to three previous tribunals in relation to the evidence of my ongoing relationship with my de-facto [name] and our only child [name]. I hope the Hon. Tribunal would accept that our relationship is genuine and ongoing and we are strongly committed to our common interest. The Hon. Tribunal would accept that we are close and in loving relationship. The reality is that our current separation is not permanent; we are simply the victims of the circumstance. I have submitted enormous number of documents and information to the Tribunal in relation to our continuous relationship. However, I will be able to provide further materials, e.g. DNA test report of my daughter and information to the tribunal if it is required.

I would like to reiterate that I relied on the following claims for a protection visa before the last tribunals, my well founded fear of persecution if I was to return to Bangladesh based on:

- I am an apostate, having previously been a practicing Muslim and Islamic academic in Bangladesh.

- I am not being married to my de-facto and having a child out of marriage which is an unforgivable sin in a predominantly Muslim country Bangladesh.
- The persecutory harm which would be suffered by my de-facto and our only child as a result of the ill treatment by the religious fanatics, based on the perception by the majority in Bangladesh that:
 - My de-facto and my daughter are Chinese looking and hence racially distinct from and do not belong to the majority
 - My de-facto and I are not married and have a child
 - My de-facto's different religion (R.C) to that imputed to me, namely Islam or apostasy.

My de-facto and I are still looking forward to reunite wherever it is safe in this world. I have earlier mentioned why I would not be able to live unharmed in Bangladesh if I were to take my daughter and my partner there. I also have expressed my concern, to the Tribunal, not to approach the Philippines embassy in Australia. It was my fear that the respective authority of the embassy would not grant me a visa to live there permanently because of my emigrational status here and my non-marital relationship with my de facto.

The Tribunal must be aware of the conditions that are stipulated in my current and previous bridging visas where one of those does not allow me to travel outside Australia. This means I locked myself in Australia for uncertain period of time. This 'Condition' was always clearly mentioned in all my interim visas since the first one granted in 1994. If I would voluntarily travel outside Australia then I would not be able to reenter again. So intending to migrate to the Philippines is not be a viable option for me and in worse situation there will be no option for me but to go back to my country of nationality, Bangladesh, where I do not want to go without my daughter and de-facto.

In all my written and oral submission, to the Hon. Tribunal, I have explicitly described the reasons for me not to dare to take my de-facto and daughter to Bangladesh. Therefore it was pointless for me considering in discussing with Bangladeshi High Commission here or made enquiries with any officials about the requirements for my de-facto and my daughter to obtain residence for them in Bangladesh. I hope the Hon. Tribunal would realize my situation and would accept that my desire to remain in Australia is only for the sake of my family and their welfare. I am fully committed to living a life together with my de-facto and our daughter.

I have earlier stated that I am no longer a Muslim and I do not believe in Islam. The Hon. Tribunal may have in their record that earlier in every occasion I have asked for an interpreter who is not Muslim and who is not a Bangladeshi background as I do not want to be further embarrassed in Bangladeshi expatriate community in Sydney.

In my earlier submissions I also have stated, to the Tribunal, that my parents' family, in Bangladesh, will not accept me unless I abandon my relationship with my de-facto. Which is absolutely unthinkable for me as I do not wanted to see my daughter being raised without her mother. The fanatic and the God-fearing Muslims will not accept my rejection of Islam. The people in my area are now aware of my relationship with a Christian girl and our child outside marriage. I will certainly be seriously harmed,

even killed if I go back to my home town. My wife and the child will also be similarly persecuted.

Internal relocation for my de-facto and my daughter would not be a viable option in Bangladesh as they looked racially different. Therefore people would immediately single out them in the society regardless of the density of the population there, It will also become very evident that my partner is not a Muslim. Muslims in Bangladesh are generally extremely hostile to people who are apostate. They will see me, my partner and our child as insulting Islam. The majority officials in the police force who themselves will normally be Muslims will similarly detest me. I can not expect effective protection from the police or authorities.

Given the particular circumstances in my case, internal relocation is not an option for anyone like me in Bangladesh It ignores the reality of Bangladesh Although there are 155 millions people in the country but it is geographically very small. Word would soon spread of my return and living with my family anywhere in Bangladesh. Furthermore, I am not a single person and this would extend the ease of our identification. It is simply inappropriate to compare the situation in Bangladesh with the situation in Australia, where it is not uncommon for a person to live for a considerable period of time without even knowing the identity of one's neighbor. Having regard to the importance of the family in Bangladeshi society and as noted by [name] in her comments to Immigration officers in April 1993, internal relocation for my family and me would clearly not be a viable option. [Name] has commented that "People in Bangladesh do not generally migrate around the country except on marriage or when sent to different places for employment." The presence of an outsider would immediately create interest, especially once it is established that I am maintaining an inter-religious relationship and our daughter was born out of the marriage. A child out of wedlock is forbidden in Bangladesh.

The Hon. Tribunal must be aware of 2008 Human rights report, about Bangladesh, assessed and prepared by the U.S Department of State. A particular piece of report is always remained unchanged for many years which recently again stated that:

"Although the government was secular, religion shaped the platforms of certain political parties. Discrimination against members of religious minorities existed at both the governmental and societal levels, and religious minorities were disadvantaged in practice in such areas as access to government jobs, political office, and justice. - - - Religious minorities were disadvantaged in seeking government jobs and political office. Selection boards for government services often lacked minority group representation."

I again refer to a series of Bangladeshi protection visa applications that were set aside by the Refugee Review Tribunal. The Hon. Tribunal has made some valuable comments in deciding those applications and a clear picture of human rights, in relation to inter-religious marriage, has reflected in their decisions. The file numbers are: (RRT Ref # N05/52321), (RRT Ref # N05/52321), (RRT Ref # N04/48131), (RRT Ref # N99/30814) and (RRT Ref # N94103929).

I would like to remind the Hon. Tribunal that though I am an Islamic academic and a born Muslim after this many years estranged from my own culture and ritual now I do not have faith in Islam, I do not have any intention of asking my de facto partner and my only child to convert in to Islam either. My de facto and I both would like to maintain our relationship permanently like thousands other Australian as de facto and we do not believe in a marriage which requires simply some formalities and produces some documents only.

I request the Hon. Tribunal to give a fresh look to my claim and review the matter completely in Bangladeshi context.

I have provided the Hon. Tribunal all relevant and possible materials, which are available with me, in connection with my convention based claim. However, if there any other avenues the Tribunal would like to peruse please advice me.

In conclusion I would like to state that I also do have the rights, like million other in this world, to walk about the streets conduct my business or employment; look after my family without having to constantly look behind me all the time.

I hope you can see your way to processing my application in the quickest possible time so giving my family and me peace of mind. I am thanking you in anticipation.

76. The applicant appeared before the Tribunal [in] June 2009 to give evidence and present arguments. When asked why he fears returning to Bangladesh now, the applicant said he has been in a de facto relationship [Person 1], who is a Catholic, since 1999 and they have child together. Although he told he agent originally about his relationship with [Person 1], he did not include the details of the relationship. The original claim related to political persecution, which he no longer claims. The applicant said that when he spoke to his mother about brining [Person 1] to Bangladesh to live with him, she told him it would not be possible. She said he could come alone but not with [Person 1] This was in February/March/April. When he said she was pregnant, his mother said she would consult the rest of the family. She said it was not possible because he is Muslim and studied in a Madrasa. She said he could return to Bangladesh but without [Person 1] The applicant said he told his lawyer about it and asked him to include it in the information to the Department. He then had no contact with his mother until recently when she became ill. He said he knows the situation in Bangladesh and is very worried about what would happen if he took [Person 1] and his daughter there.
77. The applicant set out how he and [Person 1] came to live together and commenced a de facto relationship. He provided detail about the day [Person 1] was detained and what happened to arrange for her departure. He said he thought he was in a committed relationship with [Person 1] before she left. He said [Person 1] was very nice and loving towards him. He said they discussed that he was no longer a practising Muslim. He confirmed that he continued to pray whilst in Bangladesh when he had to do so. When asked about identifying himself as a Muslim, the applicant said he would describe himself as a non-practising Muslim. The applicant said he could return to Bangladesh but pressure would be applied. He would also be taunted about [Person 1] and his daughter. The applicant said he had thought about going to the Philippines but knew the Department would not give him a visa to return. He said he did not think he would be able to remain in the Philippines. [Person 1] had enquired about coming to Australia but had not told him when it was not successful.
78. The Tribunal noted that the website for the Bureau of Immigration, Philippines indicated he would not able to remain in the Philippines unless he was married. When asked why they did not marry, the applicant said he does not believe in marriage. When asked about the contact with [Person 1], the applicant said he goes to the home of [Person 1]'s aunt and uncle about once a fortnight and they are able to see and talk to one another using a webcam. He said that sometimes he and [Person 1] talk every day but at times it is only for a minute or two to check that everything is ok. He tries to speak to his daughter every day. The last time they spoke using the webcam they spoke for an hour and a half. The applicant talked in detail about his daughter and her interests. He explained she likes drawing and playing on the computer. He talked about his daughter's school and the teaching. They have both paid for

the school in the past but now that [Person 1] has been working, she said not to send money. He and [Person 1] have talked about not seeing one another for so long and with him not having seen his daughter. [Person 1] is to sit a further IELTS test and is aiming for the required score to apply for a visa to Australia. She thought she could not make an application until after the 5 years from her deportation had elapsed. She then made enquiries about Australia and other countries such as the United Kingdom.

79. The Tribunal took evidence from [Person 1]'s uncle, [Person 2], who said he had known about the relationship between the applicant and his niece from the beginning. He described the relationship as strong and told the Tribunal about the applicant communicating with [Person 1] and his daughter through his webcam. He said that he thought the relationship in 2000 was strong and he has been in the Philippines on about 7 occasions since then taking presents from the applicant. He said he thought their relationship is very strong. They keep in constant contact. He said he thought their relationship was like a marriage. He was aware his niece was trying to return to Australia but her English was a problem. He said he had seen them communicating and considered them to have a very strong relationship and that the applicant had a very good relationship with his daughter.
80. The Tribunal was unsuccessful in taking evidence from [Person 1] and adjourned to do so [in] July 2009 [Person 1] described how her relationship with the applicant developed from when they first met. She said they fell in love and her family in Australia were happy for them. She said they moved in together about a month or two after they met. She described having to leave Australia in January 2000. She was detained for 2 or 3 days with the applicant visiting her everyday and then arranging for her release. When asked whether they discussed their future before she left Australia, she said they had. She said the applicant said that after he was successful with his visa application, he would sponsor her to return to Australia. She explained that she found out she was pregnant about 3 months after she left Australia. She said they were very happy because they had wanted a child. She explained they keep in constant contact by phone and letter. He speaks to their daughter and knows everything about her. She confirmed their daughter considers the applicant to be her father. Her daughter misses him very much and wants to see him. She explained that she tried to achieve the required score in an IELTS to return to Australia. [Person 1] explained that she was told when she left she would not be able to return to Australia for 5 years and so in 2004 she looked for opportunities to come to Australia. She sat the IELTS test but did not achieve the required score. She then tried again 2 years later and then 2 years later. She said she needs a score of 7 on each component. She confirmed she had sought information about migrating to Canada from the Canadian Embassy but when she explained the situation, she found it was not possible. She confirmed it is her intention to live with the applicant permanently when possible. She said she could not sponsor the applicant to travel to the Philippines because they are not married. She confirmed they had discussed marriage but neither thought it was anything more than a piece of paper. She confirmed the applicant is a non-practising Muslim and she is a practising Catholic. She is raising her daughter as a Catholic and she has been baptised.

Information from other sources

81. The available information indicates that de facto or 'common-law' relationships are considered socially unacceptable in Bangladesh; unmarried couples attempting to live together would face immense familial pressure to marry, or at worst face ostracism and/or be subjected to physical abuse. No available legal reference indicates that couples in 'common-law relationships' could face prosecution, though one source notes that certain displays of

affection constitute a public offence in Bangladesh. Reported incidents of women being publicly flogged and/or killed for having sexual relations outside of marriage exist in rural areas.

82. The Immigration and Refugee Board of Canada (IRB) addressed the issue of “common-law” or de facto relationships in a 2003 Response to Information Requests (RIRs) for Bangladesh. The pertinent extracts follow in detail.

According to a representative of the Bangladesh National Women Lawyers Association (BNWLA), an organization that provides legal support, counselling and advocacy for women, common-law relationships are non-existent in Bangladesh (3 Aug. 2003). Even in the capital city of Dhaka, a common-law relationship is considered both socially and legally to be an “‘unsocial activit[y]’ that creates [a] public nuisance” (ibid.). However, no legal reference was provided to support the representative’s statement.

The representative added that because a couple wishing to live in a common-law relationship would “face a lot of trouble,” they would likely choose to live as if they were a married couple (ibid.). Moreover, if a common-law union was exposed, the “social elites” may demand that the couple marry (ibid.).

The representative also mentioned a 2002 case of a common-law couple studying at Rajshahi University who were evicted from their rented house and arrested after the owner of the house complained that the couple had lied to him about their relationship (ibid.).

According to the representative, there is no legal protection offered to common-law couples in Bangladesh (ibid.) (Immigration and Refugee Board of Canada 2006, *BGD41764.E – Bangladesh: Treatment and protection available to common-law couples, especially in Dhaka*, 5 August).

83. A number of articles from international news sources discuss the conservative attitudes of Bangladesh’s predominant Muslim society; the ostracism faced by unmarried women and mothers; and subsequent abandonment or killing of “illegal” children born to unmarried mothers due to fear of familial rejection and/or violent repercussion.
84. On 1 February 2007, *Reuters* published an article describing Baldah park in Dhaka in relation to its reputation as a haven for “young lovers... to escape the watchful eyes of a conservative, predominantly Muslim society where kissing and hugging is a public offence” (‘Downtown Dhaka park offers a fine romance for lovers’ 2007, *Reuters News*, 1 February).
85. A January 2007 article by *Reuters* illustrates the enforcement of moral behaviour in Cox’s Bazar, south-eastern Bangladesh, allegedly by members of Jamaat-e-Islami. While discussing the world’s longest stretch of beach and the lack of tourism in the area – allegedly due to the rise of the Islamist political parties – Jamaat-e-Islami’s district chief states that “[a] couple can do anything if they are married... but we wouldn’t allow unmarried pairs to come to the beach”. The report continues:

Although Jamaat does not patrol the beach enforcing the Islamist party’s moral code, local people say its mere influence was enough to ensure compliance at a time when fears of religious extremism have risen in Bangladesh (Rajesh, Y.P. 2007, ‘Feature-World’s longest beach hidden in Bangladesh’, *Reuters News*, 31 January).

86. The following 2004 article, published by the *Journal of Marriage and Family*, contains a pertinent section on the stigmatization of unmarried mothers in Bangladesh and the importance of marriage within society and the family. The researchers interviewed 120 mothers employed in garment factories in Bangladesh, most of whom were married and some unmarried. Although the section addresses “separated and deserted mothers”, the content is relevant in terms of the societal implications for unmarried mothers and their children. The pertinent extracts follow in detail.

Unlike married mothers who are challenging the patriarchal system from within, the separated and deserted mothers of minor children are, by definition, outside the patriarchal system. In Bangladesh, every woman is expected to be under the authority of her husband until his death, when she is then expected to be under the authority of her adult son. In Islam, there is no monastic life available as an alternative. An unmarried daughter is a sign of failure on the part of her parents. Muslim law permits a man to marry more than one woman so that, in theory, every family can provide a husband for their daughter, even though she may be the second wife. Muslim law also permits a man to divorce his wife. In case of divorce or desertion, the woman returns to her family of origin, and her parents arrange for another marriage. Her father is responsible for the divorced or deserted daughter’s remarriage. There is no traditional role for the unmarried daughter to care for her parents in their old age (e.g., Hareven, 2000) because that is the responsibility of the daughter-in-law (Ahmed, S. & Bould, S. 2004, “‘One Able Daughter Is Worth 10 Illiterate Sons’: Reframing the Patriarchal Family’, *Journal of Marriage and Family*, Volume 66; Issue 5, 1 December).

87. On 10 August 2004, the *United News of Bangladesh Limited* reported the sentencing of an unmarried couple to life imprisonment for the murder of their eight-month-old baby near Naogaon, around 200km north of Dhaka. The couple allegedly killed the child due to the “illegitimate” nature of their relationship (‘Murder-Trial’ 2004, *United News of Bangladesh Limited*, 10 August).
88. In October 1999, the *Journal of Comparative Family Studies* published a report illustrating the reasons why women abandon infants in Bangladesh. The most common reason given by women is the child was born “out of wedlock” and the subsequent stigmatization the child and mother would suffer by society. The pertinent extracts follow in detail.

...Being born “out of wedlock” is the most common reason given. Throughout this paper, the term “out of wedlock” child is used to designate a broad category of infants routinely abandoned to the CTRDW including: 1) those born to unmarried mothers and 2) those “illegal” infants born to married women but of extramarital unions.

...In 10 of 54 cases (19%), the family demanded that the child be abandoned. The majority of these cases (6 or 10) are also “out of wedlock” children and many of these mothers remarked that they “cannot go home” with the child and expressed fear that they would be “stigmatized by society.”

...A pattern emerges from these data which demonstrates separate constellations of related reasons given for the abandonment of “out of wedlock” and “legal” infants. “out of wedlock” pregnancies are often referred to as “unmarried” pregnancies, a reference to the mother’s marital status at the time of conception. Following this reference, separated and divorced women are also considered to be unmarried—a condition generally unacceptable for any woman let alone one who is pregnant—and therefore deserving of the stigma which accrues to both mother and child.

...The two Bangladeshi terms commonly used to describe an “out of wedlock” child aptly reflect prejudices toward these children: *oboidho* (a derogatory term) translates as “illegitimate” or “bastard,” while *jaroj* (an extremely derogatory term) translates as “perverted.” An “out of wedlock” child provides tangible evidence of a woman’s sexual indiscretion and of her family’s inability to effectively curtail her sexuality. In Bangladesh, women’s behaviour and more specifically their sexual behaviour is taken as a metaphor for family and community honour. A woman who behaves in an unacceptable way places the reputation of her family members and community at risk. Beyond this, sexual behaviour is considered to be inherently polluting (even within the marriage bond) and sexual intercourse outside of marriage confers a non-reversible, permanent form of pollution on the woman and any child born of such a union (Maloney, Aziz and Sarkar 1981). Pollution contagion radiates along lines of kinship and physical proximity placing the family, friends, employers and communities of such women or children at risk as well.

A sexual double standard allows men, on the other hand, considerably more sexual freedom. If caught in sexual indiscretion (that is, if a pregnancy occurs) men may dissipate any resulting stigma (which is rarely permanent) through purification rituals and/or by rendering an apology. Although risk of pollution exists in this case too, it is more easily set aside. In the case of a young unmarried man, a speedily arranged marriage to another woman whose honour has not been sullied is the most likely course of action. In this way, family and community honour is preserved. In the case of a more mature man, a public apology usually suffices although occasionally a cash settlement is required as well (Aziz and Maloney 1985). For the man, then, sexual indiscretion renders him merely foolish, never responsible.

...Similarly, society also refuses to accept the unmarried mother and her “out of wedlock” child. Unmarried mothers are routinely evicted from their place of residence and fired from their jobs as their dishonour would reflect badly on the community or their employer. Government attitudes regarding “out of wedlock” pregnancies range from indifference to outright denial and one official has said that although this problem does not exist in Bangladesh, if it did, those women should be stoned in front of the mosque (Wilson, M. 1999, “Take this child”: Why women abandon their infants in Bangladesh’, *Journal of Comparative Family Studies*, Volume 30, Issue 4, 1 October).

89. A December 1998 article by the *South China Morning Post* reported the arrest of an unmarried mother for the murder of her newborn baby, “apparently fearing ostracism and public flogging”. The report continues by stating:

In this conservative, predominantly Muslim society, sexual relationships between unmarried couples are considered sinful.

In many cases, especially in rural Bangladesh, couples face public flogging (Mahmud, A. 1998, ‘Mother in fear kills newborn’, *South China Morning Post*, 23 December).

90. Similarly, a 1997 article by the *Inter Press Service* states that “[i]n traditional society, unmarried women are considered a social embarrassment [in Bangladesh]” (Islam, T. 1997, ‘Bangladesh: Young women are choosing careers before marriage’, *Inter Press Service*, 1 April).
91. There appears to be no legal barrier to inter-religious marriages, and such marriages are reportedly becoming more common in the larger cities of Bangladesh. However, couples in inter-religious marriages still experience problems, ranging from family pressure to physical attacks. The sources suggest that the more extreme instances of violence occur in rural areas. Inter-religious marriages are reportedly recognised under the Special Marriages Act of 1872.

Information indicates that a non-Muslim woman wishing to marry a Muslim man is required to convert to Islam. However, if she refused to convert to Islam, and the family accepted this decision, the marriage may be reportedly solemnised under the Special Marriages Act.

92. On 28 November 2005, information on the situation for persons in mixed marriages was received from Dr Kazi Nurul Islam, Professor and Chairman of the Department of World Religions, University of Dhaka. Dr Islam stated the following in relation to inter-religious marriage:

Bangladesh has been a country of interreligious harmony for centuries. But in the recent past particularly after the change of the Govt. in 2001 the fanatics have got an upper hand. It is unfortunate that some fanatics have been made even ministers in the present Govt.

Interreligious marriage is not uncommon in Bangladesh But according to Muslim rule the non-Muslim spouse will have to be converted into Islam first. If a Muslim boy marries a Christian or Jewish girl conversion is essential. If they are not converted, neither the family members, nor the society nor even the civil court accept this marriage. As a result the couples concerned face immeasurable harassment and there are certain cases where they are kidnapped and killed.

Not only as President of International Association for Religious Freedom, Bangladesh but also as a man of conscience I feel that this kind of discrimination, torture, harassment in the name of religion has to be stopped.

At this moment the situation in Bangladesh is very grave. The entire world knows that the fanatics are killing even the judges. The nation is heading towards a civil war between Fanatics and Moderate Muslims. That is why I do hereby strongly urge upon you to help this couple and save them from an absolutely uncertain life (Nurul Islam, Dr Kazi 2005, Email: 'Re: Refugee Review Tribunal Information Request: BGD17686', 28 November).

93. In October 2006 the Tribunal posed several questions to the Department of Foreign Affairs and Trade (DFAT) for comment. Following are pertinent extracts from DFAT's response addressing the legal and social situation for persons in inter-religious marriages:

A. The Post talked to the Chief Metropolitan Magistrate and the Deputy Attorney General of Bangladesh to seek statistical information about mixed religious marriages. Both sources indicated that no official statistics are available on the incidence of mixed religious marriage in Bangladesh. Marriages are registered at the District level and not recorded centrally.

B. The High Commission routinely monitors the media in Bangladesh including the major Bangla and English language newspapers. While the focus of the monitoring is on political and economic affairs, the three officers who undertake this task cannot recall any reports of problems arising out of mixed religious marriages. Media reports on difficulties in marriages reflect the broader problem of violence against women in Bangladesh, particularly at the hands of their spouse, in-laws or disgruntled suitors.

C. Since the 1999 report, there have been two additional high-profile mixed religious marriages between celebrities in Bangladesh In early 2000 two popular Bangladeshi singers were married – the woman being a very famous music artiste from a Muslim family, and the man from a Hindu family. Another celebrity mixed marriage was between a leading female television actor, a Muslim, and an Indian model/actor, a Hindu. While both the marriages ended in divorce there was no indication that these marriages broke up for social, religious or

political reasons. These marriages both attracted public attention on the basis of the celebrity nature of the union, rather than the religious identities of the people involved.

D. We are not aware of public comment on this issue from religious leaders. Post contacted a number of respected religious leaders of the Christian and Hindu communities and were advised that there had been no public comment on this issue from their denominations. We have been informed by Christian church leaders that mixed religious marriages are neither encouraged nor discouraged. Since there is no legal barrier for mixed religious couples to get married, the Churches have an understanding approach to the issue. Hindu individuals have informed us that Priests do conduct mixed religious marriages at temples. The Post was not able to get a response from the Director of the Islamic Foundation Dhaka because of his tight schedule during Ramadan.

E. Marriages between people from different religions are recognised under the Special Marriages Act of 1872. Two marriage acts exist in Bangladesh. Generally, a non-Muslim wishing to marry a Muslim is required to convert to Islam and then the pair can be wed under the Muslim Marriages Act. However, if the non-Muslim party declines to convert to Islam, the marriage may take place under the Special Marriages Act. This Act was enacted during the British colonial era specifically for inter-caste and inter-faith couples. Marriages under the Special Marriages Act are registered before the Metropolitan Magistrate, to whom the inter-faith couple declares, “We do not follow any particular religious denomination and therefore want to marry each other before the Metropolitan Magistrate” The Magistrate then solemnises the marriage and registers it on a standardised Registration Form. There are no statistics or data on the impact of mixed religious marriages. While it is possible that in rural Bangladesh communities may not look upon such marriages favourably, in the urban areas such a pairing is not considered a big taboo. If problems arise in such marriages, it is generally personal first and familial second. Post is not aware of any incidents of social, religious or political repercussions towards these mixed marriages in Bangladesh... (Department of Foreign Affairs and Trade 2006, *DFAT Report 552 – Bangladesh: Mixed Marriages: RRT Information request IND30692*, 19 October).

94. A 2003 special feature by *Alochona*, a Bangladeshi lifestyle magazine, describes some of the issues surrounding inter-religious marriages, such as adverse reactions from family, conversion, children born in to “mixed marriages” (‘Mixed Marriages’ 2003, *Alochona Magazine*, February – <http://magazine.alochona.org/magazine/2003/february/special/special2.asp>)
95. The issue of internal relocation in Bangladesh for people who fear harassment or violence in their local community was addressed by the Department of Foreign Affairs and Trade (DFAT) in October 2006. The pertinent extracts follow in detail.

A. Is relocation to Dhaka an option for people who fear harassment or violence in their local community? What social or other impediments might there be to relocating from rural to urban areas?

While individual circumstances may provide some impediment to relocating from a rural to urban area, there is ample evidence to indicate there is a large and sustained movement of people from rural into urban areas. The current rate of growth of the urban areas within the six major metropolitan areas of Bangladesh is around 3.5 percent per annum. Given that the natural rate of population increase in Bangladesh is estimated to be 1.3 percent per annum, the difference (ie 2.2 percent per annum) can be attributed to rural-urban migration. The growth rate for the Dhaka urban area indicates that in absolute terms the population of the Dhaka metropolitan area is growing at around 320,000 people per annum.

On the basis of our discussions in Dhaka we are not aware of any legislative or official impediment for a person moving from a rural to urban area.

B. Is relocating from one rural area to another rural area an option? What social or other impediment might there be to such a move?

Relocating from one rural area to another could not be ruled out as an option. According to a 2002 UN report, rural-rural migration between 1982 and 1996 accounted for approximately 10 percent of all migration movements in Bangladesh (cf 24 percent for international, and 63 percent for rural-urban). However, to undertake such a move successfully would most likely require the person to have some social connection to the receiving rural area. For example, some rural-rural movements can be attributed to women relocating for the purpose of marriage.

There are no official impediments for a person moving from a rural to rural area.

C. Under the current emergency situation, have there been restrictions or otherwise on freedom of movement within Bangladesh? Is this likely to change in the near future?

There are no restrictions to movements within Bangladesh under the current State of Emergency. We would not expect this arrangement to change in the near future, and although the political situation remains fluid, the imposition of further restrictions appears unlikely. We would note that at the commencement of the State of Emergency a curfew was enacted, but was lifted within 24 hours. The curfew did not restrict internal movement, but rather required people to be off the streets after a certain time.

Additional Comments

Internal migration in Bangladesh should also be seen in the context of its demographic profile, being one of the most densely populated countries in the world with strong population growth. The population is overwhelmingly Muslim with minorities of Hindus (10.5 percent), Buddhists (0.6 percent), Christians (0.3 percent) and other religions (0.3 percent). The Buddhists are largely concentrated in the Chittagong area while the other religious communities are spread across the country. There are 27 indigenous groups, accounting for 1.13 percent of the population concentrated in the Chittagong Hill Tracts and northern areas of Bangladesh. With a strong feeling of homogenous Bengali nationalism among the people, mixed societies are very common (Department of Foreign Affairs and Trade 2006, *DFAT Report 641 – Bangladesh: Mixed Marriages: RRT Information request: BGD31606*, 19 October).

96. A research response by the Canadian IRB in August 2006 discusses the situation for Christians in Bangladesh, including the availability of internal relocation. The pertinent extracts follow in detail.

Availability of internal relocation

Christian Freedom International (CFI) reports that in July 2005, a Bible school was forced to move from its location in Khulna District due to threats from Islamic militants (CFI 17 Oct. 2005). The school relocated to South Sayabithi, 15 kilometres north of Dhaka; however, once at the new location, the school reportedly received new threats from local Muslims (ibid.).

No further information on the availability of internal relocation for Christians could be found among the sources consulted by the Research Directorate.

In its 2006 annual report, Human Rights Watch (HRW) claims that, due to the rise of religious intolerance, hundreds of thousands of Christians, Hindus, and Buddhists have fled Bangladesh over the past few years (Jan. 2006) (Immigration and Refugee Board of Canada 2006, *BGD101510.E – Bangladesh: The situation of Christians; the availability of state protection and of internal relocation (2004 – 2006)*, 9 August).

97. Information found suggests that for a person to have any right of residency in the Philippines as a result of a relationship with a Filipino national, they must be married. According to the Republic of the Philippines Commission on Filipinos Overseas website, the spouse and/or children of a Filipino national are entitled to a 'visa-free entry to the Philippines for a period of one (1) year, among other privileges'; under the Balikbayan Law. The spouse may also be granted an immigrant visa that entitles him/her to permanent residency. The pertinent details follow.

As a Filipino citizen, can one's spouse who is a foreign national live in the Philippines?

An immigrant visa may be issued to a Filipino citizen's foreign spouse which entitles him/her to permanently reside in the Philippines. Said visa may be obtained by applying at Philippine Embassies or Consulates. The validity of the visa, however, is contingent upon the Filipino citizenship of his/her spouse.

If a Filipino citizen chooses to travel to the Philippines with his/her foreign spouse and children, do the spouse and children need to secure additional travel documents from the Philippine Embassy or Consulate General beforehand?

98. Under the Balikbayan Law, a Filipino citizen's foreign spouse and children traveling to the Philippines with him/her, do not need to secure other travel documents because they are entitled to a visa-free entry to the Philippines for a period of one (1) year, among other privileges ('Dual Citizenship' (undated), Republic of the Philippines Commission on Filipinos Overseas http://www.cfo.gov.ph/dual_citizenship.htm).

99. The October 2009 US Department of State report on religious freedom in Bangladesh provides the following:

The Constitution establishes Islam as the state religion. It provides for the right to profess, practice, or propagate all religions, subject to law, public order, and morality. It also states that every religious community or denomination has the right to establish, maintain, and manage its religious institutions. Although the Government publicly supported freedom of religion, attacks on religious and ethnic minorities continued to be a problem during the reporting period. There were no reported demonstrations or attempts to attack institutions of the Ahmadiyya Muslim Community, but there were isolated instances of harassment. Demands that Ahmadis be declared non-Muslims continued sporadically, but the Government generally acted in an effective manner to protect Ahmadis and their property. Religion exerted a significant influence on politics, and the Government was sensitive to the religious sentiments of most citizens.

There was no change in the status of respect for religious freedom by the Government during the reporting period. On December 29, 2008, the Awami League (AL), an avowedly secular party that enjoys broad support from religious minorities, won power in the first parliamentary elections since 2001. These elections were largely free of the violence and intimidation against religious minorities that had characterized earlier ones. The new Government appointed members of minority communities to several senior leadership positions. The Government initiated efforts

to reform the curriculum of Islamic religious schools, known as madrassahs, to standardize education. Citizens generally were free to practice the religion of their choice. Government officials, including police, nonetheless often were ineffective in upholding law and order and sometimes were slow to assist religious minority victims of harassment and violence. The Government and many civil society leaders stated that violence against religious minorities normally had political or economic dimensions and could not be attributed solely to religious belief or affiliation.

There were reports of societal abuses and discrimination based on religious affiliation, belief, or practice during the period covered by this report, although figures suggested such incidents declined significantly in comparison to the previous reporting period. Hindu, Christian, and Buddhist minorities experienced discrimination and sometimes violence from the Muslim majority. Harassment of Ahmadis continued.

...

The Constitution establishes Islam as the state religion but provides for the right to practice, profess, and propagate any religion, subject to law, public order, and morality. There are no laws against blasphemy, although religious political parties have pledged to enact such laws should they gain power. Since coming into power, the new Government has not publicly commented on this issue.

The Government publicly supported freedom of religion; however, attacks and discrimination against religious and ethnic minorities continued during the reporting period. In general, government institutions and the courts protected religious freedom.

On December 29, 2008, the Awami League (AL), led by Sheikh Hasina Wazed, won 230 of 299 parliamentary seats in elections that international and domestic observers considered generally free and fair. The elections and the peaceful transfer of power that followed ended two years of rule by an unelected Caretaker Government.

The Government ran training academies for imams (Islamic clergy) and proclaimed Islamic festival days but generally did not dictate sermon content or select or pay clergy. However, the Government has the authority to appoint or remove imams and exercises a degree of indirect influence over sermon content in government mosques, including the national mosque, Baitul Mukarram. The Government monitored the content of religious education in Islamic religious schools, or madrassahs, and announced its intention to make changes to the curriculum, including modernizing and mainstreaming the content of religious education.

Shari'a played an influential role in civil matters pertaining to the Muslim community; however, there is no formal implementation of Shari'a and it is not imposed on non-Muslims. For instance, alternative dispute resolution was available to individuals for settling family arguments and other civil matters not related to land ownership. With the consent of both parties, arbitrators relied on principles found in Shari'a for settling disputes. In addition, Muslim family law was loosely based on Shari'a.

In 2001 the High Court ruled all legal rulings based on Shari'a known as fatwas, to be illegal. However, the ban was not implemented because a group of Islamic clerics filed an appeal, which remained unresolved at the end of the reporting period.

Although Islamic tradition dictates that only muftis (religious scholars) who have expertise in Islamic law are authorized to declare a fatwa, village religious leaders at

times made declarations in individual cases. Sometimes this resulted in extrajudicial punishments, often against women, for perceived moral transgressions.

The Constitution guarantees the right to propagate the religion of one's choice; however, local authorities and communities often objected to efforts to convert persons from Islam.

Family laws concerning marriage, divorce, and adoption differed slightly depending on the religious beliefs of the persons involved. Each religious group has its own family laws. For example, Muslim men may marry as many as four wives; however, a Muslim man must get his first wife's signed permission before marrying an additional woman. Society strongly discourages polygamy, and it is rarely practiced. In contrast, a Christian man could marry only one woman. Under Hindu law unlimited polygamy is permitted, and although there is no provision for divorce and legal separation, Hindu widows could legally remarry. The family law of the religion of the two parties concerned governs marriage rituals and proceedings; however, marriages also are registered with the state. There are no legal restrictions on marriage between members of different religious groups.

On March 8, 2008, the head of the Caretaker Government announced a women's development policy, triggering violent protests from some Islamist groups that argued the policy sought to give men and women equal inheritance rights that would contravene principles in Shari'a and Muslim family law. Key features of the policy included reserving one-third of parliamentary seats for women and their direct election, as well as new laws to ensure equal opportunity of women in terms of control of their earned property. Although government advisers (ministers) publicly refuted the claim, the Government formed a committee of Islamic scholars to review the policy. The committee, headed by the top religious leader at the national mosque, recommended a set of changes to the policy. Although the Caretaker Government thereafter was silent on the issue, government officials privately reported that implementation of elements of the women's development policy had occurred through other mechanisms, such as the poverty reduction policy. The new Government has its own policy, formulated when it was last in power, but it had not announced its intention to restore that policy by the end of the reporting period.

...

There were reports of societal abuses and discrimination based on religious affiliation, belief, or practice during the reporting period. Clashes between religious groups occasionally occurred. Violence directed against religious minority communities continued to result in the loss of lives and property, but the true motives--whether religious animosity, criminal intent, personal disputes, or property disputes--were often unclear. Religious minorities were vulnerable due to their relatively limited influence with political elites. Like many citizens, they usually were reluctant to seek recourse from a criminal justice system they perceived as corrupt and ineffective. Police frequently were ineffective in upholding law and order and sometimes were slow to assist religious minorities. This promoted a greater atmosphere of impunity for acts of violence against minorities. However, persons who practiced different religious beliefs often joined each other's festivals and celebrations such as weddings. Shi'a Muslims practiced their religious beliefs without interference from Sunnis.

Reported incidents against religious minorities during the reporting period included killings, rape, torture, attacks on places of worship, destruction of homes, forced evictions, and desecration of items of worship. Most of these reports could not be

independently verified. There also were reported incidents of members of the Muslim community attacking each other on holidays due to a perception that some events were un-Islamic. The Government sometimes failed to investigate the crimes and prosecute the perpetrators, who were often local gang leaders.

Attacks against the Hindu community continued, although numbers dropped significantly from the previous year. According to the Bangladesh Buddhist-Hindu-Christian Unity Council (BHBCOP), during the period from April 2008 to March 2009, there were three killings, 10 attacks on or occupation of temples, 12 incidents of land grabbing, two cases of rape, and three kidnappings.

100. The February 2009 US Department of State report on human rights in Bangladesh provides the following information about the treatment of women:

Women

Laws specifically prohibit certain forms of discrimination against women, provide special procedures for persons accused of violence against women and children, call for harsher penalties, provide compensation to victims, and require action against investigating officers for negligence or willful failure of duty; however, enforcement of these laws was weak. In 2003 parliament passed an amendment to the current law, weakening provisions for dowry crimes and addressing the issue of suicide committed by female victims of acts of dishonor.

The law prohibits rape and physical spousal abuse but makes no specific provision for spousal rape. According to Odhikar, there were 454 reported incidents of rape during the year, including 202 against women and 252 against children. According to human rights monitors, the actual number of rape cases was higher because many rape victims did not report the incidents due to social stigma. Prosecution of rapists was not consistent.

Domestic violence was widespread, although violence against women was difficult to quantify. Research showed that as many as 50 percent of women experienced domestic violence at least once in their lives. The Bangladesh National Women Lawyers' Association (BNWLA) reported 622 incidents of domestic violence. Some of the reported violence against women was related to disputes over dowries. There was an increase in the number of dowry-related killings during the year. Odhikar reported 188 dowry-related killings although other NGOs place the figure much higher, at 300 to 500. Domestic violence is not criminalized.

There were no developments in the case of Tajul Islam, a businessman accused in 2006 of raping a 12-year-old girl who was working in his home. Islam fled the village when neighbors filed a case against him, and was at large at year's end.

Female prostitution was legal. Male prostitution was illegal, although local NGOs claimed it was common in the major cities. The authorities generally ignored the minimum age of 18, often circumvented by false statements of age, for legal female prostitution. The government rarely prosecuted procurers of minors, and large numbers of underage girls in prostitution worked in brothels. Local NGOs estimated the total number of female prostitutes was as many as 100,000. The UN Children's Fund (UNICEF) estimated in 2004 that there were 10,000 underage girls used in commercial sexual exploitation in the country, but other estimates placed the figure as

high as 29,000. Trafficking of women internally and internationally remained a problem.

NGOs such as BNWLA ran facilities to provide shelter to destitute persons and distressed women and children. According to BSEHR, persons in safe custody were no longer housed in prisons. Courts sent most of them to shelter homes. In a few cases they were sent to prison as a transit for short periods.

A High Court ruling in 2001 banned fatwas. Islamic tradition dictated that only those muftis (religious scholars) who have expertise in Islamic law are authorized to declare a fatwa. Despite these restrictions, village religious leaders sometimes made such a declaration in an individual case and called the declaration a fatwa. Such declarations could result in extrajudicial punishments, often against women for alleged moral transgressions.

Incidents of vigilantism against women--sometimes led by religious leaders by means of fatwas--occurred. According to ASK, 20 incidents of vigilante justice against women occurred during the year. The punishments included whipping, hilla or forced marriage, exclusion from the community, and other forms of physical and mental repression. Acid attacks remained a serious problem. Assaultants threw acid in the faces of women and sometimes men, leaving victims disfigured and often blind. The acid attacks often related to allegations of spousal infidelity. During the year, according to Odhikar, 133 persons were attacked with acid. Of these, 73 of the victims were women, 34 were men, and 26 were children.

According to press accounts documented by ASK and BSEHR, on September 11, Mahmuda, a mother of two children in South Kalikapur, was verbally divorced by her husband during a quarrel. After the couple reconciled, several local influential persons, including a madrassah teacher, issued an edict stating that Mahmuda was divorced from her husband and was required to marry another person and divorce him after physical consummation to be eligible to remarry her original husband. As Mahmuda refused to undergo this ritual known as "hilla," the local community shunned her and her family and threatened to drive them out of the village.

The law provides for speedier prosecutions of acid-throwing cases in special tribunals and generally does not allow bail. The Women and Child Repression Control Act (2000) also seeks to control the availability of acid and reduce acid violence directed toward women, but lack of awareness of the law and poor enforcement limited its effect. Although the special tribunals were not entirely effective, according to the Acid Survivors Foundation, tribunals convicted 444 persons for acid attacks since 2002, including 216 during the year.

Women remained in a subordinate position in society, and the government did not act effectively to protect their basic rights. Employment opportunities increased at a greater rate for women than for men in the last decade, largely due to the growth of the export garment industry. Women constituted approximately 80 percent of garment factory workers. Pay was generally comparable for men and women.

On March 8, the head of the caretaker government announced a women's development policy that included reservation of approximately one-third of parliamentary seats for women, with direct election, and new laws to provide women with greater access to property. However, several Islamist groups argued that the policy sought to give men and women equal inheritance rights, contravening Shari'a and the existing Muslim Family Law. Although government advisers publicly refuted the claim, the government formed a committee of Islamic scholars to review the

policy. The committee, headed by the senior religious leader at the national mosque, recommended changes to the policy. Government officials reported, however, that elements of the women's development policy were implemented through other mechanisms, such as the poverty reduction policy.

FINDINGS AND REASONS

101. The applicant travelled to Australia on a Bangladeshi passport and claims to be a national of Bangladesh. The Tribunal accepts that the applicant is a national of Bangladesh and has assessed his claims against Bangladesh as his country of nationality.
102. The application was initially made on the basis of the applicant's political involvement in Bangladesh. The applicant informed the second Tribunal that he was no longer pursuing this claim. He confirmed in his submission [in] February 2008, in his oral evidence to the fourth Tribunal that he no longer feared persecution from his past political activities due to the length of time he spent away from Bangladesh and that he was no longer pursuing this claim.
103. The applicant's claims he is in a de facto relationship with [Person 1], who is a citizen of the Philippines, a Catholic and who is ethnically Chinese. He claims he has a daughter from this relationship born in the Philippines [in] October 2000. He claims he is fearful of harm if he were to return to Bangladesh with [Person 1] and their child. The applicant also claims that he is fearful of harm because he is no longer a practising Muslim or an apostate.
104. The applicant presented evidence to the second, third, fourth and fifth Tribunals of his ongoing relationship with [Person 1]. The applicant presented declarations from third parties, evidence of his communication with [Person 1] and their daughter, photographs and other materials. There is also oral evidence before the Tribunal from the applicant, [Person 1] and third parties. On the basis of the entirety of such evidence, the Tribunal accepts that the applicant is in a de facto relationship with [Person 1]. The Tribunal is satisfied the applicant and [Person 1] have a mutual commitment to a shared life as husband and wife to the exclusion of all others; the relationship between them is genuine and continuing and they do not live separately and apart on a permanent basis.
105. The Tribunal accepts that the applicant and [Person 1] were in a committed relationship before she had to depart Australia in January 2000. They met in August 1999 and started living together in a de facto relationship from October 1999. They presented themselves as being in a committed relationship to [Person 1] family in Australia. The applicant visited [Person 1] daily whilst she was in detention and arranged to pay the security bond required for her release. The Tribunal accepts their evidence that when [Person 1] departed Australia it was on the basis that the applicant would sponsor her when he was granted a visa. The Tribunal accepts their evidence that they were pleased when they found out [Person 1] was pregnant with their daughter.
106. The Tribunal is satisfied that the applicant told his migration agent of his relationship with [Person 1] before his protection visa application was lodged but the agent did not include her details on the application form. In a statutory declaration the former migration agent confirms that the applicant told him of his relationship with [Person 1], that she was pregnant with his child, that they were not married and she had had to return to the Philippines because she was unlawful in Australia. The former migration agent stated he focussed on the applicant's claims of persecution for reasons of his political opinion. The Tribunal notes that MARA cancelled the registration of the applicant's former migration agent and refused his

application for registration. The Administrative Appeals Tribunal affirmed these decisions [in] March 2005 finding that the former migration was not a fit and proper person to give migration assistance.

107. The Tribunal is satisfied that the applicant has maintained a relationship with [Person 1]. They are in regular contact by telephone and letter. He speaks to [Person 1] and his daughter almost daily and has recently been able to communicate with them for lengthy periods using a webcam. It was clear from their evidence to the Tribunal that they are involved in one another's daily lives and make joint decisions about their daughter. The applicant has provided regular financial support to [Person 1] and their daughter.
108. The Tribunal accepts that [Person 1] thought she could not return to Australia for 5 years because of the circumstances surrounding her departure. The Tribunal notes that [Person 1] would be affected by a risk factor having been unlawful in Australia and leaving Australia as the holder of a Bridging E visa, although the applicable exclusion period would appear to have been 3 years and not the 5 years she believed it to be. The Tribunal accepts that [Person 1] started looking at her skilled migration options when she thought she had served the exclusion period. She has sat 3 IELTS tests since 2004 in an attempt to achieve the required score to make a visa application on the basis of her skilled occupation as a nurse. The Tribunal accepts that [Person 1] did not tell the applicant about her enquiries because she did not want him to be disappointed and she has not made an application for a visitor visa because she does not believe she would be successful.
109. The Tribunal accepts that the applicant does not have a right of residency in the Philippines as a result of his relationship with [Person 1]. They would need to be married for him to have a right of residency. The Tribunal is of the view that if the applicant had left Australia for the Philippines he would have had no right of residency nor would he have had a right to return to Australia, as the Bridging visa he holds would cease on departure from Australia.
110. The applicant confirmed in oral evidence that [Person 1] left Australia in early 2000. The Tribunal questioned the applicant and [Person 1] about the arrangements the parties made about living together since 2000. The applicant appeared unfamiliar with the steps undertaken by [Person 1] to seek residence in Australia which, in the Tribunal's view, brings into question the level of communication between the applicant and [Person 1]. When asked whether he had considered living in the Philippines, the applicant said that he had not because what could he do there. He also said that he had not travelled to the Philippines as he would be unable to return to Australia. The applicant's evidence suggests to the Tribunal that his desire to remain in Australia is stronger than his desire to live with [Person 1] and her child and that brings into question the applicant's commitment to a familial or de facto relationship.
111. Thus, the Tribunal accepts that there is a de facto relationship between the applicant and [Person 1] and the Tribunal is satisfied they are committed to living together as a family. The Tribunal is satisfied that the applicant and [Person 1] intend to live together with their daughter as a family if the applicant were to return to Bangladesh. The Tribunal finds that if the applicant were to return to Bangladesh, [Person 1] and the child would accompany him there. Although the Tribunal accepts that the applicant does not wish for [Person 1] and his daughter to travel to Bangladesh because of his claimed fear of persecution there.
112. It follows that the Tribunal accepts the applicant's claim that if he and his family were to reside in Bangladesh, they would be persecuted because [Person 1] and his daughter look

different and because they would be known as being non-Muslim, of different race and not married. The Tribunal accepts that the harm the applicant and his family would suffer in Bangladesh would constitute serious harm to the applicant.

113. The applicant claims that his mother knows about the relationship and the Tribunal is accepts that claim. Although the applicant has only recently re-established contact with his mother, the Tribunal is of the view that if the applicant were to return to Bangladesh, his relationship and the fact that he had a child from a de facto relationship would be known. At most, these circumstances would be known in the applicant's local area and any harm he fears from such knowledge would be localised. The Tribunal is of the view that such harm could be avoided if the applicant were to live away from his local area. The Tribunal considers it reasonable for the applicant to relocate because he has been able to live independently and to establish himself in Australia and, prior to that, in South Africa and the country information cited above suggests that there are no impediments to relocation in Bangladesh.
114. Although the cited country information indicates that in cities such as Dhaka more liberal norms apply the Tribunal is of the view that the applicant faces a real chance of suffering serious harm even if he relocated to Dhaka. The Tribunal is of the view that even if the applicant were to relocate and live with [Person 1] and their child in a more liberal society in a larger city, there remains a real chance that the applicant will be persecuted due to him being in an unmarried relationship with a non-Muslim, of different race and having a child out of wedlock.
115. For these reasons, the Tribunal finds that there is a real chance that the applicant will suffer persecution for a Convention reason if he were to return to Bangladesh with [Person 1] and their child now or in the reasonably foreseeable future.
116. The applicant claims that he also fears persecution because he is no longer a practising Muslim and that he is an apostate. He also stated that he spent many years away from Bangladesh and his way of life had changed. The applicant has given inconsistent evidence about his involvement with Islam. He stated that he continued to practise religion while in the Madrasa but that he became a non-practising Muslim after that and that is the reason he did not pursue religious education as suggested by his father and uncle. The applicant later claimed that he continued to attend the mosque on Fridays and, when questioned further, that he continued to attend the mosque three times a day rather than five. When asked when he ceased to practise Islam, he initially stated that it was in 1994 and he later said that it was as soon as he left Bangladesh, which was in 1992. The applicant claimed that he had misunderstood the question and his advisor suggested that the concept of 'non-practising Muslim' may have different meanings. While the Tribunal has some concerns about this aspect of the applicant's evidence, the Tribunal acknowledges, on the basis of the fact that the applicant had spent a significant period of time outside of Bangladesh, [Person 2]'s evidence and the applicant's oral evidence, that he may be perceived as having moved away from the strict doctrines of Islam and that he may be perceived to be a non-practising Muslim, an atheist or an apostate. Having regard to the independent information, the Tribunal is not satisfied that there is a real chance the applicant will suffer persecution due to his religion if he were to move away from his local area and relocate to Dhaka or another big city.
117. However, the cumulative effect of the harm the applicant faces from living in a de facto relationship with a non-Muslim of different race, having a child out of wedlock and being a non-practising Muslim amounts to serious persecution for the purpose of s 91R(1)(b).

118. The Tribunal finds that there is a real chance that the applicant will suffer persecution for a Convention reason if he were to return to Bangladesh with [Person 1] and their daughter now or in the reasonably foreseeable future. The Tribunal is not satisfied the applicant has adequate and effective state protection available to him in Bangladesh. The Tribunal is not satisfied the applicant could avoid the persecution he fears by internally relocating within Bangladesh. The Tribunal is satisfied the applicant does not have the right to enter and reside in a country other than Bangladesh. Therefore the Tribunal is satisfied the applicant has a well-founded fear of persecution for a convention reason.

CONCLUSION

119. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

120. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: RCHADW