

**1304034 [2014] RRTA 89 (24 February 2014)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1304034

**COUNTRY OF REFERENCE:** Bangladesh

**TRIBUNAL MEMBER:** Rowena Irish

**DATE:** 24 February 2014

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

### CLAIMS AND EVIDENCE

2. The applicant claims to fear returning to Bangladesh because of his association with the Bangladesh Nationalist Party (BNP). He claims to have been involved with the BNP during the 1991, 1996, 2001 and 2008 elections and to have participated in BNP protests and activities in 2011 and 2012. As a result of his political activities he claims to have been threatened and intimidated by the Awami League. He also claims to have been robbed of 1.7 million taka by a criminal gang supported by the Awami League and that his property was occupied. He states that if he returns to Bangladesh he will be targeted, harmed, possibly killed and extorted for money due to his local political profile.
3. The applicant, who claims to be a citizen of Bangladesh, applied to the Department of Immigration for the visa [in] 2012 and the delegate refused to grant the visa [in] 2013.
4. The application form states that the applicant was born on [a certain date] in [District 1], Bangladesh. He speaks, reads and writes Bengali and English. He lists his religion as Muslim. He is married with a [child]. His wife, [child], father and [brothers] live in Bangladesh. He has ten years education and owned his own business in Bangladesh from 2003 [to] 2012, after which time he was unemployed. He has lived his whole life at the same address in [District 1]. In 2010 he travelled to [three other countries] for tourism.
5. In support of his application the applicant has provided the following documents:
  - Letter from [Mr A], Secretary, [Subdistrict 2], [District 1] and [Mr B], President, [Subdistrict 2], [District 1], BNP, dated 13 November 2012.
  - Letter from [Mr C], Chairman, [Subdistrict 2 Union Parishad], [District 1] dated 10 November 2012.
  - Letter from [Mr D], Member of Parliament [District 1], Bangladesh Parliament dated 17 November 2012.
  - Translated copy of income tax certificate from [Subdistrict 2], [Tax Zone] dated 16 May 2012.
  - Translated copy of Professional & Trade Licence dated 15 May 2012.
  - Letter from [Mr E, official of two Bangladeshi associations in Australia] dated 17 October 2012.

6. The applicant was interviewed by the delegate [in] 2013. The Tribunal has listened to a recording of that interview and sets out below information about the discussions that occurred, where relevant.
7. The applicant appeared before the Tribunal on 25 November 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing but left early.
8. As the representative had left the hearing early the Tribunal agreed to allow time for written submissions to be lodged before 9 December 2013. No written submissions were received. On 19 December 2013 the Tribunal wrote to the applicant pursuant to s.424A inviting him to comment on or respond to information which would, subject to his comments or response, be the reason, or a part of the reason, for affirming the decision under review. On 7 January 2014 the Tribunal received a response from the applicant's representative stating that they had not received any instruction from the client and asking for further time until 14 January 2014. On 9 January 2014 the applicant sent a request for further time until 31 January 2014, stating that he had been away. The Tribunal agreed not to make a decision before 24 January 2014. On 23 January 2014 the Tribunal received a written response from the applicant. As there was an error in the first s.424A letter sent the Tribunal sent a corrected letter on 28 January 2014. The applicant sent a response to this on 10 February 2014.

## **FINDINGS AND REASONS**

9. The law upon which the findings and reasons below are based is set out in Attachment 1.
10. On the basis of the applicant's Bangladesh passport, which was presented at the hearing, the Tribunal finds that the applicant is a citizen of Bangladesh. There is nothing in the evidence before the Tribunal to suggest that the applicant has a right to enter and reside in any country other than Bangladesh. Therefore the Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act. As the Tribunal has found that the applicant is a national of Bangladesh, the Tribunal also finds that Bangladesh is the applicant's "receiving country" for the purposes of s.36(2)(aa).
11. The Tribunal accepts the difficulties of proof faced by applicants for refugee status. In particular there may be statements that are not susceptible of proof. It is rarely appropriate to speak in terms of onus of proof in relation to administrative decision making: see *Nagalingam v MILGEA & Anor* (1992) 38 FCR 191 and *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 357; 6 ALD 6 at 10. The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992, at paragraphs 196-197 and 203-204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless there are good reasons otherwise, be given the benefit of the doubt. Given the particular problems of proof faced by applicants, a liberal attitude on the part of the decision maker is called for in assessing refugee status. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. Moreover,

the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. In addition, the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.

### **Refugee criteria**

12. The Tribunal had concerns about a number of aspects of the applicant's claims which leads it to find that he is not a credible witness. These concerns are discussed below.
13. **First**, the applicant claims to have been [Official F] of the BNP at union level from 2010. However, his evidence was inconsistent in relation to when he ceased to be [Official F]. He stated at the Tribunal hearing that he had resigned his position in [in mid] 2012, before coming to Australia. This was because he informed the committee that he would be coming to Australia and they asked him to resign. However this appears to be inconsistent with his written claims in which he states that he served in that position until he came to Australia. It is also inconsistent with his evidence at the Departmental interview where he stated that he was elected to the position of [Official F in early] 2010 for a term of two years and then there was a further election after which he came to Australia. When this was put to the applicant in the s.424A letter the applicant changed his evidence from that provided at the Tribunal hearing and stated that:

I was elected [Official F] at union level [in early] 2010, the position was for two years then there was another election, by rule I had to resign from my post for new election. The new election was held but the result was not accepted by the majority, so the result became void. It was further decided that previous committee wherein I was [Official F] will run until further fair election is held.
14. This response suggests that the applicant resigned his position because of the election in 2012, not because he was going to Australia and that he then regained his position and continued to hold it at the time he came to Australia. It is inconsistent with his evidence to the Tribunal that there was no election held for his committee for a period of five years after his election and they were not allowed to arrange an election in 2012. The Tribunal considers that the applicant's inability to provide a consistent response in relation to whether he held the position at the time he came to Australia raises concerns in the Tribunal's mind about whether he held the position of [Official F] of the BNP at all.
15. Furthermore, the applicant's evidence that he told his committee that he was going to Australia is inconsistent with his later evidence to the Tribunal that he wanted to keep his departure a secret and told his wife not to disclose it to anyone and that he did not tell anyone other than his wife about his planned departure. When the Tribunal put to him that he had earlier claimed that he told the people in his BNP committee and that is why they asked him to resign he then changed his evidence to stated that he told them he would be leaving the country but he did not mention which country he was going to. This is neither consistent with his earlier evidence that he did not tell anyone about his departure except his wife nor with his evidence that he told the committee he was going

to Australia. The Tribunal formed the view that the applicant was fabricating his evidence in response to the Tribunal's concerns.

16. **Second**, the applicant's evidence in relation to what false charges have been laid against him was inconsistent and unpersuasive. At the Tribunal hearing the applicant was asked when he first had difficulties in Bangladesh as a result of his support of the BNP. He stated that it was in 2008 when he attended a meeting that Awami League activists interrupted. He stated that false charges were laid against him after he came to Australia and that this was the first time that he had any charges laid against him. However when the Tribunal put to the applicant that the letter from BNP Australia states that he had false charges laid against him in 1996-2001 he then changed his evidence and claimed that he was subject to charges in 1996 along with [a number of] other people. When asked why he had stated that the charges in 2012 were the first charges against him he then changed his evidence and said that charges were not laid against him in 1996 but it was just a complaint, there was no arrest or warrant at that time. However he then went on to claim that three of the other people were taken to jail and he fled to another place for two days. The Tribunal does not consider it consistent that there were not charges laid or arrest warrants issued but that three of the other people were taken to jail. It appeared to the Tribunal that the applicant was fabricating his evidence in response to inconsistencies put to him by the Tribunal and this raises doubts in the Tribunal's mind as to whether the applicant has been subject to any false charges in Bangladesh.
17. Furthermore, at the Departmental interview the applicant claimed that there were lots of false charges lodged by the Awami League against him. However at the Tribunal hearing the applicant claimed that there was only one false charge lodged against him. When this was put to the applicant in the s.424A letter he responded:

At the Departmental interview [in] 2013 I stated that the Awami League have lodged many cases against me and at the Tribunal hearing I stated that there has only been one case lodged against me. There was only one case which was not false cases against me but other cases brought against me were false cases. I am a credible witness. I need to add that all cases were not genuine only one case was genuine and other cases were false cases.
18. It is not clear to the Tribunal what the above response from the applicant means. It appears to be suggesting that the case filed against him in 2012 is not a false case. This is inconsistent with his evidence to the Tribunal that a false case was filed against him after he arrived in Australia where he was accused of assaulting activists in the Awami League and [committing a certain crime]. He stated to the Tribunal that the case was not true. If he is referring to the 1996 charges he also stated to the Tribunal that those cases were false, as stated in the letter from BNP Australia. The Tribunal is not satisfied by the applicant's explanation and considers that he has provided inconsistent information about how many charges have been laid against him. The Tribunal would expect him to be able to provide consistent evidence about such an important fact given the significance of false charges for him.
19. **Third**, the applicant's evidence about his activities with the BNP in Bangladesh was inconsistent with both his own evidence and independent country information. In his application form the applicant states:

In 1991, I actively involved in helping in the election campaign supporting the BNP candidate [Mr D]. Due to the active political involvement of the party members including me, [Mr D] was elected to the Parliament in 1991, 1996, 2001 and in 2008. During those elections, I with the help from the other BNP members and the supporters helping the organisers to arrange meeting, mobilise the people for the meeting and collecting donation for the party from its supporters.

20. However at the Tribunal hearing the applicant initially claimed that he was only involved with the 2001 and 2008 elections. When it was put to him that his written claims state he was involved with the 1991 and 1996 elections also he then changed his evidence and stated that he was not very active before 2001 but did sometimes ask other people to vote. The Tribunal did not find this either persuasive or consistent with his written claims which clearly suggest that he was active and instrumental in the 1991 and 1996 elections. This raises concerns for the Tribunal about whether the applicant was involved in any elections in Bangladesh and whether the information he demonstrated about the elections (such as the results and candidates) was merely learnt for the purposes of the protection visa application.
21. The applicant states in his written claims that:

In October 2011, I also participated in the Long March which from Dhaka to Chittagong.
22. When this was discussed with the applicant at the hearing he stated that he remembers that it took place in October 2011 because it was a very big event therefore he remembers it well. He stated that this was when it was planned to take place. However independent country information before the Tribunal states that the BNP's road march from Dhaka to Chittagong which was scheduled to take place on 25-26 October 2011 was postponed until 8 January 2012 because of the holy Hajj and Eid.<sup>1</sup> On 8 January 2012 the march went from Khaleda Zia's Ghushan residence to Chittagong where she was to address a mass rally on 9 January 2012.<sup>2</sup> Vision of the speech from 9 January 2012 is available on You Tube.<sup>3</sup>
23. When it was put to the applicant that the information before the Tribunal states that the march did not go ahead in October 2011 he stated that they went to Dhaka but Begum Zia was not allowed to join in the march so it was postponed but then did not happen. When the Tribunal put to him that the information states that it went ahead on 8 January the applicant then claimed that it went ahead but ended in [District 1] and did not go up to Chittagong. This is not consistent with the above country information. The applicant also stated that the reason it did not go ahead was because Khaleda Zia was not allowed to join the march by the government. Again this is not consistent with the above country information which states that it was postponed two weeks before the march because it clashed with the Hajj. When this was put to the applicant he stated that people were aiming to go to Saudi Arabia but that was not why it was cancelled. The Tribunal prefers the independent country information which seems both credible

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<sup>1</sup> "BNP's Ctg road march deferred" *Bangladesh2day* 3 October 2011 at <http://www.bangladesh2day.com/newsfinance/2011/October/3/BNPs-Ctg-road-march-deferred.php>. Accessed on 17 February 2014.

<sup>2</sup> "BNP takes road march to Ctg" *The Daily Star* 9 January 2012 at <http://archive.thedailystar.net/newDesign/news-details.php?nid=217574>. Accessed on 17 February 2014.

<sup>3</sup> *09 Jan 2012: Khaleda Zia's speech at Chittagong Road march* You Tube 9 January 2012 at <http://www.youtube.com/watch?v=6ybCFPm1jME>. Accessed on 14 February 2014.

and plausible that the march was postponed to enable potential participants to satisfy their religious beliefs. The applicant's claimed participation in the Long March is inconsistent with the country information about that march and the Tribunal finds that he did not participate in the Long March from Dhaka to Chittagong. Furthermore, his lack of knowledge about the event raises concerns for the Tribunal about whether he was involved with the BNP in Bangladesh at all.

24. **Fourth**, the applicant claims to have been threatened in Bangladesh by Awami League members. However his evidence in relation to this was inconsistent and unpersuasive. He initially claimed that he was threatened in [early] 2012. However he then claimed that it was after he was robbed. When the Tribunal put to him that he claimed to have been robbed in [the following month] he then changed his evidence and claimed that he was threatened [during mid]. The change in his evidence about when the threats were received raises concerns for the Tribunal about the truthfulness of the claim.
25. He stated that they warned him to leave the country within one and a half months or else they would kill him. As the Tribunal put to the applicant at the hearing, he did not leave the country within one and a half months but the Awami League did not take any further action against him which raises concerns for the Tribunal about the truthfulness of the claim. The applicant stated that his movements were like he was in hiding, he did not participate in public activities or go out. The Tribunal put to him that he was sleeping at his home during this time (as he had stated earlier in the hearing) so they could easily have located him if they wanted to harm him. He then stated that he used to sleep in different rooms of his house and his father was very watchful at this time. The applicant's earlier evidence suggested that his father was very ill and about to die at the time he left Bangladesh so the Tribunal asked the applicant what his father was ill with at the time. The applicant said he was sick but he was very sensitive to noise and had good hearing. The Tribunal found the applicant's evidence to be unpersuasive and is not satisfied that the applicant was subject to any threats from the Awami League while living in Bangladesh.
26. **Fifth**, the applicant claims to have attacked and robbed of 1.7 million taka, which he had because of his [business], while on his way to Chittagong from [District 1]. He claims that this attack was undertaken by members of the Awami League because of the applicant's political activities and opinions. However, his evidence in relation to how he knew this was inconsistent and unpersuasive. At the Tribunal hearing he stated that his friends told him that this group had done it because they were famous for terrorising activities and were doing many robberies and other violent activities so people knew them. Also he heard their voices and recognised them and saw one person who he recognised as they grabbed him. However at the Departmental interview he stated that he knew the people who robbed him were from the Awami League because his friends in the BNP said there was evidence that members of the Awami League had converted the [money] and were not present in the locality at the time of the robbery. When this was put to the applicant in the s.424A letter he replied that:

The people who robbed me were from Awami League. The location of the robbery was almost 7 kilometres from our locality and my friends told me that they found out that at the time of the robbery they were not present in our locality. These people were member of BNP they are supported by their leaders. They listen to their leaders. I recognised one of the people and voices of the group it was only revealed when I discussed with my friends in BNP about the robbery. There is nothing inconsistent with my evidence to the Tribunal.

27. The Tribunal does not agree that these responses are consistent. It considers that the applicant was providing very different reasons at the Departmental interview and the Tribunal hearing for how he knew that the persons attacking him were from the Awami League. This raises concerns for the Tribunal about whether the applicant was attacked as he has claimed.
28. Furthermore, the applicant claimed at the Tribunal hearing that his shop had been robbed on five occasions since 2009. This was a new claim that had not been previously raised in his written statement or in his Departmental interview. When this omission was put to the applicant in the s.424A letter he replied that:
- I referred to the Departmental interview about the big robbery, when they robbed my \$1.7 million dollars while I was describing about that event I was heavily influenced by circumstances but in the Tribunal I was not caught by the circumstances and apart from \$1.7 million dollars robbery the other robbery were not big. There was robbery and I was truthful in my evidence and I was robbed.
29. Although the Tribunal is willing to accept that the applicant may have been preoccupied at times with describing the most significant of the robberies, nevertheless it would have expected him to have referred at some time to his shop having been robbed on five occasions since 2009. His failure to do so raises concerns in the Tribunal's mind about the truthfulness of this claim.
30. **Sixth**, the applicant claimed to have been [Official F] of the BNP at union level since 2010 and to have been involved with the BNP since 1994. He claimed that he had read and was familiar with the BNP Constitution, as the Tribunal would expect from a person involved at such a high level. However, his knowledge of its contents did not suggest that he had read the BNP Constitution. When this was put to the applicant at the hearing he stated that he had no comment.
31. When asked about fees he stated that there a joining fee of 10 taka but there was no annual membership fee. When asked about what the BNP Constitution says about fees, he stated that there is an annual membership fee for the central committee but at union level the committee pays 10 taka and the secretary pays 200 taka but nothing officially is imposed on members. When the Tribunal put to the applicant that the Constitution states that the joining fee is 5 taka and the annual membership fee is 5 taka<sup>4</sup> and there is no distinction made between committee and non-committee members the applicant then changed his evidence and stated that officially it is 5 taka but they ask members for another 5 taka for expenses.
32. The Tribunal also asked the applicant about what the Constitution states about the representation of women on executive committees. He replied that five positions are reserved for women on the upper level committees, for example, Dhaka committee. He stated that he did not know what targets were set to increase the position of women. However, the BNP Constitution does not refer to any specific number of positions being reserved for women on upper level committees but does state that:

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<sup>4</sup> Article 5(a)(4) of the *Bangladesh National Party Constitution* at <https://bangladeshnationalistparty-bnp.org/content.aspx?tablename=webitem2&id=8&child=null&parentid=null>. Accessed on 18 February 2014.



The number of female members in every committee will have to be increased by 33% by 2020.<sup>5</sup>

33. **Seventh**, the applicant gave inconsistent and unpersuasive evidence about when and why he decided to come to Australia for protection. He initially stated that he decided to come to Australia permanently in [early 2011]. When asked about whether something happened which made him decide to come then he referred to the Awami League occupying his land in [late] 2011. He also referred to being robbed in [2012]. When asked again which event made him decide to leave Bangladesh he then changed his evidence and stated that he was threatened at the end of 2010 by the Awami League to leave business or they would murder him. Not only is this inconsistent with his previous response that he decided to leave because his land was occupied but it is also inconsistent with the fact that he did not apply for a visa to Australia until 2012. When this was put to the applicant at the hearing he stated that his father was sick and admitted to hospital so the applicant did not think of applying for a visa. When asked what made him then decide to apply in 2012 he stated that his father was about to die and the applicant was staying in his father in law's house. When the Tribunal put to the applicant that it did not understand why he would say that his father's illness was both the reason that he did not apply for a visa and also the reason that he did apply for a visa he then changed his evidence and stated that he decided to apply because the Awami League got very aggressive and his father said he was going to die soon so the applicant should do what was necessary for himself. The Tribunal found the applicant's changing and vague evidence about when and why he decided to come to Australia to be unpersuasive and it raises concerns in the Tribunal's mind that the applicant decided to come to Australia for an undisclosed reason not related to his political opinion or activities.
34. **Eighth**, the applicant claims to own a [business] in Bangladesh called [name deleted]. He has provided a translated copy of an income tax certificate and a translated copy of a Professional & Trade Licence in support of this claim. On the basis of these documents the Tribunal is willing to accept that the applicant owned a [business] in Bangladesh. However, his evidence about when he sold his business was inconsistent and unpersuasive. He initially claimed at the hearing that he sold his business on [a particular date in] 2012. He stated that he supported his family during the remainder of his time in Bangladesh by spending money from his savings. When the Tribunal put to him that his application form states that he owned the business until [later in] 2012 and asked if this was a mistake he then stated that he sold the business on [the day he left Bangladesh in] 2012 and denied that he had previously claimed to have sold it [on the initially claimed date]. When the Tribunal put to him that it found it surprising that he would sell the business on the same day that he left to come to Australia he did not provide a direct response but merely stated that he had prepared all the necessary documents to transfer ownership and just signed the documents. The Tribunal considers that there has been a significant change in the applicant's evidence about when he sold the business. If the applicant had sold the business on the day he left Bangladesh the Tribunal considers he would not have stated that he supported his family from savings for the remainder of his time in Bangladesh. The Tribunal considers that the applicant was clearly initially claiming to have sold his business [on the particular date in] 2012 and changed his evidence in response to concerns raised by

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<sup>5</sup> Article 6(b)(9) of the *Bangladesh National Party Constitution* at <https://bangladeshnationalistparty-bnp.org/content.aspx?tablename=webitem2&id=8&child=null&parentid=null>. Accessed on 18 February 2014.

the Tribunal. This raises doubts in the Tribunal's mind about whether the applicant has sold the business as a result of his claimed difficulties in Bangladesh.

35. The Tribunal found the above concerns so numerous and significant that it is not satisfied that the applicant is a credible witness.
36. The applicant has provided letters of support from [Mr A], Secretary, [Subdistrict 2], [District 1] and [Mr B], President, [Subdistrict 2], [District 1], BNP, dated 13 November 2012; [Mr C], Chairman, [Subdistrict 2 Union Parishad], [District 1] dated 10 November 2012 and [Mr D], Member of Parliament [District 1], Bangladesh Parliament dated 17 November 2012. As discussed with the applicant at the hearing the information available to the Tribunal indicates that forged or fraudulently obtained documents are readily available in Bangladesh<sup>6</sup> which raises doubts in the Tribunal's mind about the genuineness of the documents.
37. Furthermore, the letter from [Mr D] states that the applicant left Bangladesh in 2006 to come to Australia. As discussed with the applicant this is not only inconsistent with the applicant's movements but also suggests to the Tribunal that the applicant was not personally involved in [Mr D]'s 2008 election campaign as the applicant has claimed. When this was put to the applicant at the hearing he merely stated that he is familiar with the applicant and the date was probably a mistake. In light of the significance of the letter for the applicant's claims the Tribunal finds it surprising that there would be such a fundamental error in the letter. In light of this, the Tribunal's credibility concerns discussed above and the country information about the prevalence of forged and fraudulent documents, the Tribunal is not satisfied that the letter is a genuine document from [Mr D] and places no weight on it in support of the applicant's claims.
38. The letter from [Mr C] is written in two different fonts. The paragraph setting out the details of the applicant is in a much smaller and lighter font than the rest of the letter. When this was discussed with the applicant he stated that the personal secretary probably made a mistake. The letter is signed by [Mr C] personally and there is nothing to suggest any error by a secretary. In light of this, the Tribunal's credibility concerns about the applicant and the country information about the prevalence of forged and fraudulent documents, the Tribunal is not satisfied that this is a genuine document and places little weight on it in support of the applicant's claims.
39. The letter from [Mr B] and [Mr A] does not set out any details about the applicant's claimed attack, false charges or threats against his life. The Tribunal finds this very surprising given the seriousness of these claims and the fact that the letter was written after the protection visa application was lodged, suggesting it was for the purpose of supporting the protection visa application. In light of this, the Tribunal's credibility concerns about the applicant and the country information about the prevalence of forged and fraudulent documents, the Tribunal is not satisfied that this is a genuine document and places little weight on it in support of the applicant's claims.

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<sup>6</sup> see Research Directorate, Immigration and Refugee Board of Canada, 'Bangladesh: reports of fraudulent documents', 20 September 2010, BGD103532.E; Research Directorate, Immigration and Refugee Board of Canada, 'Bangladesh: Prevalence of fraudulent, forged or fake documents and genuine documents obtained by fraudulent means ...', 8 August 2005, BGD100388.E; UK Home Office, *Country of Origin Information Report - Bangladesh*, 11 August 2009, paragraph 35.02; Australian Department of Foreign Affairs and Trade (DFAT) cable DA19732, dated 26 July 1988, CX2690.

40. Having considered all of the applicant's evidence and the Tribunal's credibility concerns discussed above, the Tribunal finds that the applicant was not a BNP member or supporter in Bangladesh, that he was not attacked, threatened, robbed or subjected to false charges or accusations by the Awami League, that he was not forced to sell his business, he was not subject to extortion and that he did not flee Bangladesh because of any fear of harm from the Awami League. The Tribunal finds that the applicant's land has not been occupied by Awami League members. As the Tribunal has found that the applicant was not involved with the BNP in Bangladesh before coming to Australia and is not a credible witness, the Tribunal finds that the applicant would not participate in BNP activities if he was to return to Bangladesh. Therefore the Tribunal finds that there is no real chance of the applicant being harmed for reasons of his political activities or opinions in Bangladesh.

#### *Activities in Australia*

41. The applicant claims to have been involved with the BNP here in Australia. He has provided a letter of support from [Mr E, an official] of BNP Australia. However in that letter it refers to the applicant having been subject to a false case filed against him in 1996-2001 which is inconsistent with the applicant's initial evidence that the only case he had filed against him was in 2012. This suggests that [Mr E] is not familiar with the applicant, or that the applicant has provided false information to [Mr E]. The Tribunal has placed little weight on this letter except as evidence that the applicant is a member of the BNP in Australia.
42. As discussed with the applicant at the hearing, as the Tribunal has concerns about the applicant's credibility it has considered why he has undertaken any activities here in Australia. In light of the Tribunal's findings above that the applicant was not involved with the BNP in Bangladesh and the Tribunal's significant credibility concerns discussed above, the Tribunal is not satisfied that the applicant participated in the BNP activities in Australia other than for the purposes of strengthening his claims to be a refugee. Therefore the Tribunal disregards this conduct in assessing the applicant's claims to be a refugee.

#### *Generalised violence in Bangladesh*

43. The applicant stated at the hearing that he also feared returning to Bangladesh because of the general unrest there which means that there are abusive incidents happening all over the country. His representative provided a lengthy submission to the Department setting out relevant country information about the extensive political violence in Bangladesh.
44. The Tribunal accepts that political violence is a frequent occurrence in Bangladesh. The Awami League and the BNP have a long history of conflict.<sup>7</sup> The alternating periods of rule have corresponded with massive demonstrations and strikes carried out by the opposition party.<sup>8</sup> The current BNP-led opposition has intermittently boycotted the

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<sup>7</sup> Amundsen, I 2012, *Parliament of Bangladesh: Boycotts, business, and change for the better*, Chr. Michelsen Institute, *CMI Brief* vol. 11 no. 2, March, p.1 at <http://www.cmi.no/publications/file/4423-parliament-of-bangladesh-boycotts-business.pdf> Accessed 5 July 2013; Freedom House 2013, *Freedom in the World 2013 – Bangladesh*, p.1 <http://www.freedomhouse.org/report/freedom-world/2013/bangladesh> Accessed 6 June 2013.

<sup>8</sup> Freedom House 2013, *Freedom in the World 2013 – Bangladesh*, p.1. <http://www.freedomhouse.org/report/freedom-world/2013/bangladesh> Accessed 6 June 2013; Lansdorf, T (ed)

current parliament since its formation, and continues to organise hartals (mass protests) to oppose the Awami League government's initiatives.<sup>9</sup> A number of reports refer to BNP supporters receiving adverse treatment from supporters of the Awami League, which took government following its victory at the 2008 parliamentary election. Other reports refer to clashes between BNP and Awami League supporters. The Bangladeshi police force is highly politicised and is used by the government of the day as a tool against political opponents. Instances of BNP supporters receiving adverse treatment from security forces are reported, although BNP supporters have also attacked security forces, or received attention from them due to violence committed during demonstrations and hartals. The incumbent Awami League government has withdrawn "politically motivated" cases against their own supporters while leaving those against BNP politicians in place.<sup>10</sup> The Tribunal also accepts that the violence has increased as a result of the election in January 2014.<sup>11</sup>

45. However, as the Tribunal does not accept that the applicant was robbed, attacked, threatened or had false charges laid against him and the Tribunal has found that the applicant is not a BNP member or supporter, does not hold a position in the BNP and would not participate in the BNP if he was to return to Bangladesh, the Tribunal does not accept that there is a real chance he would be harmed as a result of this political violence or for any other reason.
46. To the extent that the applicant was claiming that he would be harmed as a result of other generalised violence, this is a danger faced by everyone in Bangladesh and there does not appear to be any element of systematic or discriminatory conduct as required by s.91R(1)(c) of the Act. When it was discussed with the applicant at the hearing that generalised violence will usually not fall within the refugee criteria he stated that he had no comment on this.
47. For the reasons given above, having considered the applicant's claims individually and cumulatively, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

### **Complementary protection criteria**

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2012, 'Bangladesh', *Political Handbook of the World Online Edition*, CQ Press, Washington, pp.5-6 <[http://library.cqpress.com/phw/document.php?id=phw2012\\_Bangladesh&type=toc&num=15](http://library.cqpress.com/phw/document.php?id=phw2012_Bangladesh&type=toc&num=15) Accessed 5 July 2013.

<sup>9</sup> Amundsen, I 2012, *Parliament of Bangladesh: Boycotts, business, and change for the better*, Chr. Michelsen Institute, *CMI Brief* vol. 11 no. 2, March, p.3 <http://www.cmi.no/publications/file/4423-parliament-of-bangladesh-boycotts-business.pdf> Accessed 5 July 2013; Freedom House 2013, *Freedom in the World 2013 – Bangladesh*, p.2 <http://www.freedomhouse.org/report/freedom-world/2013/bangladesh> Accessed 6 June 2013.

<sup>10</sup> Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May; Human Rights Watch 2011, *World Report 2011 – Bangladesh*, 24 January; Freedom House 2011; 'Bangladesh shuts down pro-opposition newspaper' 2010, *Agence France-Presse*, 2 June; US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Bangladesh*, 8 April, Section 2.a.; 'Conflicts upset grassroots' 2010, *The Daily Star*, 19 December <http://www.thedailystar.net/newDesign/news-details.php?nid=166514> Accessed 13 September 2011.

<sup>11</sup> "Bangladesh to hold election on January 5, opposition protests" *Reuters* 25 November 2013 - at <http://in.reuters.com/article/2013/11/25/bangladesh-election-idINDEE9AO0B820131125>. Accessed on 4 December 2013; "US concerned over political situation" *The Daily Star*, 21 November 2013 <http://www.thedailystar.net/beta2/news/us-concerned-over-bangladesh-polls/>. Accessed 4 December 2013.

48. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). For the reasons discussed above the Tribunal has found that the applicant is not a credible witness and there is no real chance that he would be harmed in Bangladesh for the reasons he has claimed. As the Tribunal found that he would not participate in the BNP if he was to return to Bangladesh, has not been harmed, robbed or threatened in the past, his land has not been occupied by the Awami League and he has not had false charges laid against him, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he will suffer significant harm.
49. The Tribunal has considered the applicant's political activities in Australia. Although it accepts that he has been a member in the BNP Australia it considers that he was motivated by the desire to strengthen his protection visa application. The Tribunal does not consider that his activities in Australia reflect any commitment to continue any such activism once he returns to Bangladesh or that there is any evidence to suggest that he would be harmed because of his activities in Australia. Therefore the Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that he will suffer significant harm as a result of his political opinions or activities if he returns to Bangladesh.
50. The applicant has claimed to fear returning to Bangladesh as a result of generalised violence there. However, under s.36(2B)(c) of the Act there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally. As put to the applicant at the hearing, generalised violence will not usually satisfy the complementary protection criteria. He had no comment on this. There is nothing in evidence before the Tribunal to suggest that the applicant would personally face a risk as a result of generalised violence in Bangladesh other than as a result of his claimed political activities, a claim which the Tribunal has already dealt with and rejected for the reasons set out above. Therefore the Tribunal finds that there is no real risk that the applicant will suffer significant harm as a result of the generalised violence in Bangladesh.
51. Having considered the applicant's claims individually and cumulatively, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
52. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

## **DECISION**

53. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Rowena Irish  
Member

## **ATTACHMENT 1 - RELEVANT LAW**

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

### **Refugee criterion**

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
4. 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.
5. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
6. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
7. 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.
8. 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.

9. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
10. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
11. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

12. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
13. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
14. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.



### **Section 499 Ministerial Direction**

15. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.