

0908436 [2010] RRTA 108 (21 January 2010)

DECISION RECORD

CATCHWORDS: Review of Protection visa refusal - Bangladesh - political opinion - BNP supporter - University lecturer and businessman - membership of particular social group

RRT CASE NUMBER: 0908436

DEPT REFERENCE: CLF2009/117530

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Danica Buljan

DATE: 21 January 2010

PLACE OF DECISION: Melbourne

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

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 (the delegate) to refuse to grant the applicant a Protection (Class XA) visa under section 65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Bangladesh, arrived in Australia [in] April 2009 and departed Australia [in] April 2009. He subsequently returned to Australia [in] July 2009. [In] September 2009 he lodged an application for a Protection (Class XA) visa with the Department of Immigration and Citizenship (the Department). [In] October 2009 the delegate refused to grant the applicant a Protection visa and notified the applicant of the decision and his review rights by letter posted on the same date.
3. 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.
4. [In] October 2009 the applicant applied to the Refugee Review Tribunal (the Tribunal) for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under subsection 411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under section 412 of the Act.

RELEVANT LAW

6. Under subsection 65(1) of the Act 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, in this case 9 September 2009, although some statutory qualifications enacted since then may also be relevant.
7. Subsection 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. The 'Refugees Convention' and 'Refugees Protocol' are defined to mean the *1951 Convention Relating to the Status of Refugees* and the *1967 Protocol relating to the Status of Refugees* respectively: subsection 5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the *Migration Regulations 1994* (the Regulations).

Definition of 'Refugee'

8. Australia is a party to the Refugees Convention and the Refugees Protocol and generally speaking, has protection obligations to people who are refugees as defined in them. Article 1A(2) of the Convention 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.

9. 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) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

10. Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

12. Second, an applicant must fear persecution. Under subsection 91R(1) of the Act persecution must involve “serious harm“ to the applicant (subsection 91R(1)(b)), and systematic and discriminatory conduct (subsection 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: subsection 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.

13. 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.

14. 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: subsection 91R(1)(a) of the Act.

15. 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.

16. 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.

17. 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

18. The Tribunal has had regard to the following material:

- T1 - RRT case file 0908436, folio numbered 1-176.
- D1 - Departmental file CLF2009/117530, folio numbered 1-95.
- D2 - Departmental case papers, V0907018, unfolioed.

The Tribunal has also had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The Applicant's Migration History

19. In March 2009 and July 2009 the applicant applied for Transit visas for Australia (subclass 771) to allow him to travel through Australia to Fiji. Amongst other things, the following relevant evidence was submitted in support of these visa applications:

- A study permit to undertake PhD studies at [Education Provider 1] in Suva, Fiji;
- Copies of the Bangladeshi income tax certificates issued to the visa applicant [in] August 2004 and [in] November 2004 as a lecturer at [Education Provider 2] in [City A], Bangladesh;
- Copies of the bank account statements held by the visa applicant with the Mercantile Bank Limited in [City A] and HSBC;
- A translated copy of a 'Licence for Business Affairs' issued to the visa applicant by the [City A] City Corporation for the period [date] July 2008 to [date] June 2009; and
- A copy of the applicant's family composition indicating that his parents, spouse and 5 siblings all reside in Bangladesh (D2).

20. The applicant was last granted a Transit subclass 771 visa [in] July 2009 and arrived in Australia [in] July 2009; this visa ceased to be valid [in] July 2009 (T1, f.30).

The Protection Visa Application

21. According to information provided in the Protection visa application, the applicant was born in Moulvibazar (also spelt as 'Moulvi Bazar'), Bangladesh on [date deleted: s.431(2)]. In his application the applicant stated that he belongs to the Bengali ethnic group and that he is a Muslim. He also indicated that was married in September 2007 in [City A], but that he had no children. The applicant also set out the details of his family composition in his Protection visa application, indicating that his parents and 4 siblings live in Bangladesh. He also advised that his brother, [name deleted: s.431(2)], resides in Australia (D1, f.8-10).

22. Similarly, the applicant stated in his Protection visa application that he had lived in Australia with his brother [in] April 2009, in Fiji from [a date in] April 2009 to [a date in] May 2009, in [City A], Bangladesh from [a date in] May 2009 to [a date in] June 2009, in Fiji from [a date in] June 2009 to [a date in] July 2009, in Australia [in] July 2009, and in [City A], Bangladesh [in] July 2009. In his 'Personal Particulars for Character Assessment' (Form 80), dated [in] September 2009, the applicant indicated that he had lived in [City A], from April 1996 to April 2009 (D1, f.17 & 21).

23. The applicant also stated that he received 16 years education, and that he had tertiary qualifications in [Subject A] from [Education Provider 2]. He also indicated that he had been employed as a lecturer in [Subject A] from April 2004 to June 2007 and, from July 2007, as an assistant professor of [Subject A] at [Education Provider 2] (D1, f.16-17).

24. In his Protection visa application the applicant stated that he arrived in Australia [in] July 2009, as the holder of a Bangladeshi passport, that was issued [in] September 2008 and which was valid until [a date in] September 2013. The applicant also indicated that he had not had any difficulties in obtaining a travel document in Bangladesh and that he legally left Bangladesh through the Zia International Airport in Dhaka [in] July 2009 (D1, f.13 & 17).

25. In answer to the question "*What do you fear may happen to you if you go back to that country?*" the applicant stated:

I am [sic] fear because of my well founded prose cutation [sic] by the opposition party Bangladeshi Awami League, who are now ruling.

...

I am an active member of Bangladeshi Nationalist Party since long [sic]. I was a member of Jatiotabada Chatra Dal (JCD) when student. Then I joined at the BNP, the main stream of my party in [sic] public forum.

Immediately the current ruling party took over from BNP, and I became a prime target of them. As I have a close involvement in my party's activities in both practically and intellectually.

In March 2009 my home and office has [sic] been destroyed by the member of the ruling party, I strongly decided to leave Bangladesh, and got an offer for PhD from [Education Provider 1], Fiji, so that I may pass these years with study and in the mean time the ruling party may be out of the government.

I am seriously fear [sic] to back my country. The Fiji ([Education Provider 1])'s PhD enrolment has been terminated and they cannot protect me as the [sic] cancelled my visa.

(D1, f.15)

26. In response to the question "*Who do you think may harm/mistreat you if you go back?*" the applicant stated:

I am really fear to be prosecuted by the ruling party, or by the member of that party in hidden way just because of my political believe [sic]. The student front of the ruling party is doing or even using arms without having any complexity and I may be a victim of any one of these.

Also fear of imprisonment from the ruling [sic] without having any cause and I will be a subject of torture and may be killed and this can be done unofficially also as

ruling party's student forums are very strong and out of control by the government as well.

(D1, f.15)

27. In answer to the question "*Why do you think this will happen to you if you go back?*" the applicant stated:

Any member of Bangladesh Awami League in [City A] division may cause my life destroyed [sic]. Because who will destroy me, definitely, he is supported by the government, who are ruling now.

[Person B], ex member of [Education Provider 3] student forum seems to me very harmful and his associates are along with him. Before coming to Australia he and his fellows tried to attack me.

(D1, f.14)

28. In response to the question "*Do you think the authorities of that country can and will protect you if you go back? If not, why not?*" the applicant stated:

I am practically engaged in BNP politics and gave many clues of the crime of current ruling party. Besides, I have been providing intellectual footing to protect our members, and which boost up our activities in my country. So as, if I would be abolished by present government, it will be a great success for them.

I have previously tried to stop the current ruling party from bribery and corruption of political persons, which made me a prime target to assassinate me.

(D1, f.14)

29. In support of his Protection visa application the applicant also submitted copies of the following:

- Extracts from his Bangladeshi passport indicating a exit and entry stamps at Zia International airport in Dhaka, Bangladesh dated [in] April 2009, [in] May 2009, [in] June 2009, [two dates in] July 2009 as well as entry and exit stamps for Fiji and Australia (D1, f.26-39 & 53-61);
- A signed statement dated [in] September 2009 from [Politician 1], ex-member of Parliament, former State Minister to the government of Bangladesh, and ex-president of the [District A] of the Bangladeshi Nationalist Party (BNP). In particular, [Politician 1], stated that the applicant comes from his constituency, is personally known to him and is a member of the Jatiotabadi Chatra Dal (JCD), a front organisation for the BNP. He further stated that the applicant is an active member and leader of the party in [Education Provider 2] and due to his political activities the applicant's "political rivals belonging to the present ruling party are trying to oppress and harass him for political reasons" and that he should take steps to protect himself (D1, f.24); and
- A letter dated [in] August 2009 from [Education Provider 1] terminating the applicant's enrolment for the [Doctorate] program from semester 2 of 2009 and requesting that he make immediate arrangements to return to his home country. In addition, this letter indicated that the Fijian immigration authorities had been advised regarding this matter and the cancellation of the applicant's study permit (D1, f.25).

30. By letter dated [in] September 2009 the applicant was invited to attend an interview at the Department [in] October 2009 (D1, f.62).

31. [In] September 2009 the applicant applied through the Australian Red Cross for Asylum Seekers Assistance (ASA). In the associated application it was stated that the applicant arrived in Australia [in] July 2009 and remained in Australia due to serious health concerns, with the intention of continuing his travel to Fiji. However, whilst in Australia, and due to issues with his PhD supervisor, the applicant's enrolment at [Education Provider 1] was cancelled and he was unable to return to Bangladesh due to his active political involvement and fears for his safety (D1, f.63-72).

The Primary Decision

32. The applicant was interviewed by the Department [in] October 2009 and a copy of the interview record and audio recording appear on the departmental file (D1, f.82-84 and front cover).

33. [In] October 2009 the delegate refused the Protection visa application (D1, f.85-92). In considering the applicant's claims the delegate stated the following:

The applicant claims to be a prominent activist in the Bangladesh National Party (BNP) and therefore a target for political violence perpetrated by the governing Awami League. He further claims that his home and office were destroyed by supporters of the current government as a result of his activities within the BNP to expose Government corruption. He claims to have enrolled in a PhD course in [Subject A] at [Education Provider 1] in Fiji but that the placement was withdrawn following a clash between him and his supervisor at the university. He claims he cannot return to Bangladesh because he would be targeted for imprisonment, physical mistreatment and perhaps being killed as a result of his political activities against the current Government in support of the BNP.

At Interview, the applicant focussed excessively upon his dispute with [Education Provider 1] and his claim that he has disputed the 3 million deaths that are believed to have been suffered in Bangladesh as a result of the 1971 war of independence. Towards the end of the interview, he indicated that he had been extremely active in the BNP in the 2001 elections but that he had not been involved in the 2008 elections which were held last December and resulted in the Awami League forming government. It is from the youth wing of the league that the applicant has stated in his original application that he fears physical harm.

...

Reasons

Country information supports the applicant's claims that there was a high level of political violence in Bangladesh following the December 2008 elections and that this violence was perpetrated by the student wings of both parties against supporters of the opposing principal political party. I accept that given the applicant is an academic and presumably his office is on campus, the applicant's claim that his office was vandalised by student supporters of the Awami League. I am more sceptical of the applicant's claim that his house was also targeted by these students as a result of his known support for the BNP.

There is no evidence that the applicant's claim that less than three million Bangladeshi's were killed in the 1971 war of independence is sufficient to attract physical harm. Country information makes it apparent that there are conflicting views

on the death toll even within Bangladesh. I do not accept that the applicant's statements questioning the death toll make him a target for political violence.

The applicant claimed to be prominent in the BNP and therefore a target of the student wing of the Awami league but at interview the applicant indicated that while he had been extensively active in support of the BNP in 2001, he played no role in election campaign for the December 2008 elections. I am therefore sceptical that he represents anymore than an immediate target of convenience in the immediate aftermath of the election. The fact that the applicant claims that he had no role in the recent election mitigates against any likelihood that he would be a target of future political violence if such violence was to occur.

Country information clearly indicates that while there was widespread political violence in January and February 2009, there is no indication that this level of political violence has continued beyond this period. I therefore find that the political violence feared by the applicant, while indicative of the political situation immediately following the success of the Awami League in the December 2008 elections, is no longer occurring on any significant scale and that therefore there is no reason to believe that the applicant would be a targeted in the near future if he returns to Bangladesh. This conclusion is supported by the applicant's admission that he was not politically active in the most recent elections.

While I accept that the applicant may have been concerned for his safety and the safety of his family in the political violence that followed immediately from the outcome of the 2008 election, I do not accept that such concerns continue to be well founded given the absence of country information indicating the continuation of widespread political violence perpetrated by student supporters of the Awami league.

(D1, f.87 & 89)

34. As a result, the delegate was not satisfied that the applicant had a well-founded fear of persecution.

The Review Application

35. [In] October 2009 the applicant applied to the Tribunal for review of the delegate's decision. A copy of the primary decision was included with the review application. In his covering letter dated [in] October 2009 the applicant stated that he had no security if he returned to Bangladesh and that his life was under threat due to "our opposition". The applicant also included a copy of the statement dated [in] September 2009 from [Politician 1] (T1, f.1-16).

36. The matter was constituted to the Presiding Member [in] October 2009 (T1, f.31).

The Tribunal's Hearing Invitation:

37. By letter dated [in] November 2009 the Tribunal wrote to the applicant advising that it had considered all the material before it relating to his application, but it was unable to make a favourable decision on that information alone. Accordingly, the applicant was invited to appear before the Tribunal [in] December 2009 to give oral evidence and present arguments in support of his claims (T1, f.38-42).

The Applicant's Submissions:

38. [In] December 2009 the Tribunal received a submission (dated [in] December 2009) from the applicant (T1, f.164-166). The applicant's claims can be summarised as follows:

- The applicant had owned and operated since 2003 a non-governmental student consultancy service centre, known as “[Consultancy]”;
- Following the 2008 elections, senior leaders, such as [names deleted: s.431(2)], inspired by the Awami League, motivated their juniors to harass and attack the applicant;
- At first, they came to the applicant's office seeking monetary bribes and the applicant paid them for personal security. The applicant stated that although he informed the police about this incident, the police took did not take any action against the supporters of the Awami League;
- The applicant stated that this routine occurred 3 or 4 times, and on every occasion the Awami League supporters who came to his office demanded more money, which the applicant refused to pay. The applicant claimed that, in retaliation, [in] July 2009 Awami League supporters invaded his office, whilst it was closed, and destroyed all his office equipment. As a result, the applicant stated that he had no alternative other than to close his office. He also stated that the student wing of the Awami League and its supporters harmed him “physically, mentally, financially and socially”;
- The applicant claimed that he had to leave Bangladesh because he was an active member of the BNP, being an activist at the age of 16 and a member of Jatiotabada Chatra Dal since he was a student, and later joining the mainstream BNP;
- The applicant also claimed that, when the Awami League came to power after the 2008 election, he became a prime target because he had a close involvement in BNP activities, at a practical and intellectual level;
- The applicant stated that he was aware that, if the Awami League won the 2008 election, his life would be under threat and so he decided to leave Bangladesh and applied to undertake a PhD course in [Subject A] for 3 years at [Education Provider 1], Fiji, by which time he hoped the Awami League would no longer be in power and it would be safe for him to return to Bangladesh. However, when his PhD enrolment and student visa in Fiji were cancelled, he had no choice but to apply for a Protection visa in Australia;
- The applicant stated that he and his PhD supervisor were experts in [Subject A] and geography and this became a problem. When he approached [Education Provider 1] regarding this matter, he was told [on a date in] July 2009 that he had to leave Fiji and that his student visa was cancelled;
- The applicant claimed he cannot return to Bangladesh because there was high level of corruption in the Awami League from 1996 to 2001 and, as a BNP member, he had distributed hand bills, leaflets, posters and photographic pictures of the activities of the Awami League indicating the extent to which they received bribes during the period they were in government from 1996 to 2001;

- The applicant also claimed that he made fact sheets for his constituency regarding the misdemeanours of the Awami League and that he gave public speeches in respect of these matters;
- However, the applicant claimed that despite all the activities he was engaged in for the BNP during the 2001 election, this all backfired when the Awami League won the 2008 election; and
- As a result, the applicant stated that he feared imprisonment by the Awami League and that he might be subjected to torture and possibly killed. Accordingly, the applicant submitted he was in genuine need of Australian protection.

39. The following additional information was submitted in support of the review application:

(i) *Odhikar and Other Reports:*

- A copy of '*Odhikar's 9-Monthly Human Rights Monitoring Report 01 January - 30 September 2009*' The report refers to the fact that despite the government's declaration of zero tolerance, 97 people had been killed in judicial killings by law enforcement agencies during the preceding 9 months. Of those killed, 83 were allegedly killed due to "crossfire/encounter/shootout/gunfights" and 10 were alleged to have died of torture. In addition, the report refers to the torturing of BDR members in custody; police attacks upon a cultural group (Lamppost) protesting against the construction of the Tipaimukh dam; the continuation of attacks upon journalists; police arrests of members of the Hizbut Tahrir; violence on the India-Bangladeshi border; the working conditions of garment workers; rape, dowry-related violence, acid attacks, illegal fatwas and deaths in custody due to illness. The report refers to the fact that clashes between the Awami League and BNP, or intra party clashes, had resulted in approximately 1285 deaths during the period, the most notable being during the Upazila elections on 22 January 2009 According to this report, 36 people were reported killed due to internal conflicts within the Awami League (T1, f.155-163);
- A copy of '*Odhikar's 9-Month Human Rights Monitoring Report 1 -31 October, 2009*' dated 1 November 2009 This report expresses concern at the fact that a government minister had stated that the extra judicial killings (also referred to as "cross fire") taking place were due to crime not being tackled properly. This report also refers to the banning of Hizbut Tahrir; the torture of a journalist in the custody of the Rapid Action Battalion (RAB); State inflicted persecution of Lamppost members; the comments of the Law Minister on the trial of BDR members; the continuation of torture of those in remand; rape under "political shelter"; the working conditions of garment workers; and the violence on the India-Bangladeshi border. In addition, the report advised that there were 62 instances of Awami League based political violence and 10 instances of BNP based political violence. The Tribunal notes that the applicant highlighted the fact that Odhikar had also reported that 28 people were the subject of extra-judicial killings by law enforcement agencies in October 2009 (T1, f.137-154);
- A copy of the *United States Department of State 'Country Report on Human Rights Practices, Bangladesh 2008'* (28 February 2009) highlighting the role of the RAB, extra judicial killings and specific incidents allegedly involving the RAB. The Tribunal observes that the applicant also highlighted in this report the fact that, under recent

governments the police were generally seen as ineffective and reluctant to investigate the conduct of those affiliated with the ruling party, as well as the mass arrests that took place from May 2008 to June 2008. The applicant noted that legally persons could be detained for 30 days for reasons of national security, but that detainees were often held for longer periods, as well as the fact that journalists were often the subject of abuse. In particular, the applicant noted that this report referred to the fact that: “The government did not limit academic freedom or cultural events; however, authorities discouraged research on sensitive religious and political topics” (T1, f.74-115);

(ii) *News Reports:*

- A report dated 8 May 2009 regarding an attack upon a journalist on 11 April 2009 by men who claimed to be the supporters of a local Member of Parliament, and referring to the fact that individuals linked to armed gangs were allegedly working for local politicians and had frequently attacked journalists who wrote articles criticising politicians in Bangladesh. The report refers to the fact that both the Awami League (1996-2001) and BNP (2001-2006) had failed to stop such attacks whilst they were respectively in power (T1, f.116-117);
- An internet report posted on 2 October 2009 on *Human Rights Today Bangladesh*, regarding protests by Bangladeshi students in Sweden against extra-judicial killings in alleged “cross fire” in Bangladesh (T1, f.135-136);
- An internet report posted 26 July 2009 on *Human Rights Today Bangladesh*, regarding the arrest of 3 RAB personnel who had threatened to kill a man in cross fire (T1, f.132-134);
- Two editorials dated 2 and 19 November 2009 from the *Daily New Age* newspaper, titled “Assurance not enough” and “Govt continues to be in denial vis-à-vis extrajudicial killing” in relation to the government’s stance on extra-judicial killings and the need for this to be matched by active investigations to identify and demonstrably punish the perpetrators of such killings (T1, f.12-124 & 128-131);
- Two reports regarding the detention and beating of a journalist from the *New Age* and the fact that a government minister was promising due action against personnel of the RAB who had been involved in this incident (T1, f.125-127);
- A news article from the *Daily New Age*, dated 18 November 2009, regarding the issue of extra judicial killings and a request from the High Court for the government to explain within 48 hours why two brothers had been killed by the RAB in alleged cross fire, and why extra judicial killings should not be declared illegal (T1, f.118-122);

(iii) *Letters of Support:*

- A copy of the letter dated [in] September 2009 previously submitted to the Tribunal from [Politician 1] (T1, f.73);
- A letter dated [in] November 2009 from [an officeholder], of the district BNP in [City A], stating that the applicant had been participating in the BNP for a long time and that it was their concern that he had become a target of the Awami League, which had destroyed his office and business. In addition, the letter stated that the applicant’s family are under

threat from the Awami League and that the applicant had been an activist as a student in the student wing of the party. It also stated that he had actively taken part in the last election (T1, f.72);

- A medical certificate, dated [in] June 2009, that the applicant had been treated [in] June [year not actually specified] because he had been wounded and that he underwent back surgery (T1, f.71);

(iv) *The Applicant's Employment and Business Activities:*

- A business card identifying the applicant as an assistant professor in the [Subject A] Department of [Education Provider 2], and that he was founding director of the “[Consultancy]” (T1, f.70)
- A cancelled blank cheque from the [City A] branch of the Mercantile Bank Limited (T1, f.70);
- A copy of an outline of the “[Consultancy]” dated October 2002 identifying the applicant as an executive director (T1, f.67-69); and
- Email correspondence dated [in] August 2004, [in] November 2004, [in] May 2005, [in] December 2006, [in] November 2007, [in] June 2009, [in] October 2009 and [in] November 2009 between the Australian High Commission of Dhaka and education agents, including the applicant, regarding the processing of student visa applications and regulation of overseas education agents (T1, f.56-66).

The Tribunal's Inquiries in relation to the Applicant's Political Claims:

40. [In] November 2009 the Tribunal sought advice from the Department of Foreign Affairs and Trade (DFAT) regarding the applicant's political membership and activism with the BNP.

41. [In] December 2009 the Tribunal received the following response:

A. Could Post please confirm whether the letter submitted by [the applicant] was issued by the stated BNP office holders and/or whether the applicant is known to the [District A] of the BNP.

Post spoke with ex-MP, [Politician 1] over the telephone, who confirmed that he had issued the letter of recommendation for [the applicant].

We also spoke with [Politician 2], ex-MP and Joint Convenor, [District A] BNP over the phone. [Politician 2] contacted the [District A] of the BNP and informed us that *the applicant was not known to that BNP office.*

B. Is the applicant known to be a member of the Jatiotabadi Chatra Dal?

Post spoke with [an officeholder] of the Jatiotabadi Chatra Dal (JCD) from [District A] and also the [officeholder] of the National Executive Committee of the JCD. [The officeholder] recognised [the applicant] and identified him as a member of JCD and a student from [Education Provider 2].

C. Is he also known as an active member and leader of the BNP in [Education Provider 2]?

Post also spoke with [an officeholder], *Central Committee of JCD*. He was unable to recognise the applicant but later got back to post to confirm that the applicant was a member of JCD at [Education Provider 2].

D. If possible, could the post establish the exact nature of the relationship between [Politician 1] and [the applicant]? Are they, in any way, members of the same family?

[Politician 1] (the referee) advised post that he and the applicant [name] were not members of the same family but were “distant relatives”.

[Tribunal emphasis]

The Tribunal Hearing

42. A hearing was held [in] December 2009 and [name deleted: s.431(2)], the applicant, gave oral evidence. An interpreter in the Bengali language was engaged to facilitate oral evidence at the hearing. The applicant’s representative represented him at the Tribunal hearing. A summary of the evidence at the Tribunal hearing follows.

The Applicant’s Personal and Visa Application Details:

43. The applicant confirmed in his evidence that his name is [name deleted: s.431(2)] and that he was born [in] 1979 in Moulvibazar, Bangladesh. The applicant stated that he was married to his spouse [in] November 2008. The Tribunal observed that, in his Protection visa application, the applicant had stated that he was married in September 2007. The applicant examined his Protection visa and advised the Tribunal that the response at question 14 that he was married [in] September 2007 was incorrect.

44. In relation to his family composition, the applicant stated that he has a widowed mother, 2 brothers and 3 sisters. He stated that, his spouse, mother and youngest sister had lived in his home until [a date in] June 2009. However, due to circumstances affecting the applicant, he subsequently relocated his family. The applicant gave evidence that, at the time of the Tribunal hearing, his spouse lives with her parents in [City A] and that his mother and youngest sister were living with a friend of his in Moulvibazar. The applicant also told the Tribunal that his eldest brother lives in Dhaka and is employed as a bureaucrat by the government, whilst his youngest brother is studying in Sydney as an overseas student; his remaining 2 sisters are married and live in [City A].

45. The applicant stated that from 1979 until 1996 he lived in Moulvibazar and that from 1996 until 2009 he lived in [City A]. He told the Tribunal that [City A] has an approximate population of more than 2 million, but he did not know the size of the population for the Moulvibazar district. The applicant advised that [City A] is located approximately [number] kilometres from Moulvibazar and [number] kilometres from Dhaka and has a mix of Muslims, Hindus, and small numbers of Christians and other religious groups. He also explained that [City A] is largely comprised of the Bengali ethnic group. The applicant confirmed that he belongs to the Bengali ethnic group and that he is a Muslim. He also informed the Tribunal that he reads and writes Bengali, English and Arabic and that he speaks Bengali and English.

46. The applicant informed the Tribunal that he has received 16 years of education and that he completed a bachelor degree at [Education Provider 2] from 1996 to 2000. He gave evidence that, whilst he was a student there, [Education Provider 2] had a student body of less than 5000, whereas now there were more than 10,000 students at this university.

47. The applicant gave evidence that, after he completed university, he undertook 2 years of monitored activities from 2001 to 2003 that allowed him to obtain the relevant certificate to register his student consultancy business. As a result, the applicant stated that he was a full-time businessman during this particular period. He explained that in April 2004 he commenced full-time employment at [Education provider 2] as a lecturer.

48. The applicant informed the Tribunal that teaching was his occupation and that he was employed as an [Subject A] lecturer at [Education Provider 2] on a full-time basis from April 2004. He stated that after 3 years in this position he was elevated to the position of assistant professor. The applicant gave evidence that his role at the university required him to teach specific courses, prepare student results and supervise both under and post graduate students, including at the masters level. He told the Tribunal that he had one academic paper published in 2005, a chapter titled “[chapter and book deleted: s.431(2)] from the Department of [Subject A] at the [Education Provider 3] The applicant also gave evidence that he was due to have another academic paper, [title and journal deleted: s431(2)].

49. As regards his working hours at [Education Provider 2] as a lecturer, the applicant stated that there were no fixed hours, but he was expected to teach classes etc Sundays through to Thursdays and, if necessary, to also work on Fridays and Saturdays. The applicant told the Tribunal that after finishing work at the university he would then go to his business office premises, which were off campus, and undertake 2-3 hours work there as well every day. As a result, the applicant estimated that he probably worked an additional 40 hours per week in his business, which he operated simultaneously with his employment as a lecturer.

Passport and Departure Related Issues:

50. The applicant gave evidence that, notwithstanding the fact that the Caretaker Government was in power at that time, he had no difficulties in obtaining a legal and genuine Bangladeshi passport, which was issued [in] September 2008. He stated that he sought his passport at that time because he was looking for an offer of a place to undertake higher studies at the tertiary level and a number of universities required prospective applicants to provide evidence of their passport. The applicant stated that this was the first passport issued to him and that, prior to travelling to Australia and Fiji in 2009, he had not otherwise travelled overseas.

51. The applicant stated that when he was given a student permit to study in Fiji, he was advised that different airlines would require him to have a transit visa for Australia He confirmed that he spent a day in Australia on a transit visa [in] April 2009 and that he was in Fiji from [a date in] April 2009 to [a date in] May 2009 and from [an approximate date in] June 2009 to [a date in] July 2009. The applicant explained that he returned to Bangladesh in May 2009 because his spouse, mother and sister became fearful that the visits he had received from January 2009 to April 2009 from his political opponents would continue in his absence. As a result, they therefore wanted the applicant to relocate them within Bangladesh. At that time they were living in [City A] and the applicant relocated his spouse to her parents' home in another part of [City A], and his mother and sister to his friend's home in a rural area in Moulvibazar district.

52. The applicant stated that he returned to Bangladesh in July 2009 because some of the employees in his consultancy business had resigned and he wanted to resolve issues related to his business. In addition, the applicant gave evidence that he had experienced problems with his PhD supervisor in Fiji and he had been told to leave Fiji for a short time, and return at a later date to see if alternative arrangements could be made for his studies. However, his PhD enrolment and student permit in Fiji were cancelled [in] August 2009.

53. The applicant confirmed that he travelled to Australia on a Transit subclass 771 visa, and that he was last granted a transit visa [in] July 2009, which he had organised himself. The applicant stated that he last departed Bangladesh [in] July 2009 from the Zia International Airport in Dhaka under his own name. He stated that he was aware that his transit visa allowed him to remain lawfully in Australia for a period of only 3 days and that after [a date in] July 2009 he would in Australia unlawfully. However, the applicant stated that during this period he was in regular contact with [Education Provider 1] in Fiji. He stated that, as there were no Bangladeshi students or residents in Fiji, unlike Australia, he thought he would be able to negotiate a new PhD supervisor whilst in Australia and that he would then be able to continue with his journey to Fiji. The applicant gave evidence that during July 2009 [Education Provider 1] had indicated that they were prepared to consider a change of supervisor for his PhD studies and [in] August 2009 he was advised that he would be given a new supervisor, at which time the applicant informed [Education Provider 1] that he was in Australia and needed to arrange his airfare and travel to Fiji. However, [in] August 2009 [Education Provider 1] wrote to the applicant and informed him that his enrolment and student permit had been cancelled. The applicant stated that prior to [a date in] August 2009 he had not intended to apply for a Protection visa in Australia, but when his enrolment in Fiji was cancelled, he could not return to Bangladesh and he felt he had no option other than to seek protection in Australia. As a result, he lodged his application for a Protection visa application [in] September 2009.

The Applicant's Knowledge of Bangladeshi Politics:

54. The applicant gave evidence that after the Caretaker Government came to power in January 2007 there were a large number of arrests, particularly of BNP leaders, and of anyone who was suspected of being involved in corruption. He told the Tribunal that the Caretaker Government established an anti-corruption commission for this purpose. The Tribunal noted that one of the Caretaker Government's goals was to reform the major political parties in Bangladesh and it asked the applicant what reaction there had been to this proposal within the BNP. The applicant responded that a group of senior political leaders within the BNP reached an agreement with the Caretaker Government, but others refused to do so because the leader of the BNP, Khaleda Zia, had not been released from prison. As a result, the BNP split into a reformist group and an orthodox group; the leader of the reformist group was Abdul Mannan Bhuiyan.

55. The Tribunal asked the applicant who was the joint convenor of the [District A] BNP office. The applicant responded that, given his involvement in and focus upon his constituency, the convenor of the [District A] BNP office was not his concern. The Tribunal repeated its question. The applicant answered by stating that [Politician 3] is the BNP Member of Parliament for, and the Convenor of, the [District A]. The Tribunal also asked the applicant who was the president of the JCD for the [District A]. The applicant replied that in the past [Politician 4] had occupied this role for a lengthy period of time. However, the applicant stated that, since his departure from Bangladesh, he did not know the name of the current JCD president for this district because councils regarding this matter had only been

held [in] December 2009. Similarly, the applicant stated that he was not sure who the president of the Central Committee of the JCD currently was, but when he was a student, it was [Politician 5].

The Applicant's Political Claims:

56. The applicant stated that he cannot return to Bangladesh because he fears the student wing of the Awami League, who had approached him on 3-4 occasions from January 2009 to April 2009 seeking monetary bribes.

(i) *The Applicant's Political Activities as a Student and as BNP Member:*

57. The applicant confirmed that none of his relatives are involved in politics in Bangladesh, but that he had joined the JCD, as a student in 1996, when aged 16 years and that he then joined the mainstream BNP party as a member in 2001.

58. The applicant stated that during the period 1996 to 2001 he was engaged in various political activities as a member of the JCD. He stated that every weekend he would go to the constituency in his local area in an effort to lay the ground work for the re-election of the BNP at the 2001 elections, given that the party had lost government to the Awami League in 1996. In terms of his political activities during this period, the applicant stated that he spoke to both village Imams and elders regarding the ideology of the BNP compared with that of the Awami League. The applicant stated that he made a deliberate decision not to seek to hold any position as an office bearer within the JCD because he was aware that there was a risk that some lecturers, who held different political views and affiliations to his, would under mark him in his studies.

59. The Tribunal asked the applicant why his view of the death toll in the 1972 war of independence exposed him to a risk of being targeted by the Awami League. The applicant stated that he disputed the official version of the death toll for these events and had undertaken research to support his views. He explained that in 1996, when the Awami League last came to power, he had commenced a project to this effect, but the then government was so sensitive about the death toll that his seniors at [Education Provider 2], as well as those of his relatives involved with the Defence Department, suggested that he should cease his pursuit of this project. The applicant stated that he had never published his research paper on this topic and, given its political sensitivity, he doubted that it would ever be published in Bangladesh. The Tribunal asked the applicant if he had ever worked as a journalist in Bangladesh; he responded that he had not.

60. The applicant gave evidence that when he joined the BNP as a member in 2001, he did not take any steps to take any official office because he was aware that, if the Awami League came to power, then he would not be recruited, or employed, as a university lecturer. As far as the 2001 elections in Bangladesh were concerned, the applicant explained that the campaign ran for approximately 3 months and that there were 5 constituencies, and therefore 5 BNP candidates, within [District A]. However, he was only involved in campaigning for one constituency, being his local one, which comprised approximately 56,000 voters. The applicant stated that this was because he believed the BNP had a talented candidate who, having failed to be elected in 1996, deserved to be elected in 2001. The applicant stated that he actively campaigned on behalf of the BNP by preparing and distributing hand bills, leaflets and posters; this printed material referred to the corrupt practices of the Awami League whilst it had been in government during the period 1996 to 2001. The applicant told

the Tribunal that he delivered speeches of 20-30 minutes duration at more than 100 venues during the campaign and that the BNP candidate for his constituency won the election by approximately 800 votes.

61. The applicant stated that after the BNP won the election in 2001 his involvement with the BNP consisted of ensuring that relief aid and infrastructure projects such as roads and bridges were pursued by the local BNP Member of Parliament, [Politician 1], who later became a Minister in the BNP government. The applicant gave evidence that from 2004 onwards his local Member of Parliament was aware of his work and business commitments. He stated that consequently his involvement in such political activities for the BNP reduced to a monthly visit to constituent villages to assess their basic needs.

62. The applicant confirmed that elections were held in Bangladesh on 28 December 2008. However, he stated that he had not actively campaigning for the BNP for these elections due to the fact that his circumstances had changed since 2001.

(ii) The Alleged Threats issued to the Applicant since January 2009:

63. In relation the issue of past harm or persecution, the applicant stated that he started to experience problems in January 2009 following the election of the Awami League in December 2008. Specifically, the applicant stated that, as a government employee and lecturer at [Education Provider 2], he did not wish to jeopardise his employment in the event that the Awami League was elected to power. Consequently, he did not officially give public speeches as he had in the 2001 election campaign. Rather, he provided advice and motivation to informal groups “silently”, but in any event he told the Tribunal that he felt that his efforts in this regard had been more effective.

64. The applicant stated that [in] January 2009 he was first approached by a person he knew as “[Person A]”, a student leader of the Awami League student wing at the [City A] college and some others he did not recognise. These individuals informed him that he should contribute to the particular cause they were promoting at that time. The applicant stated that he understood this to be polite language for a bribe and handed over 50,000 Bangladeshi Taka. The applicant told the Tribunal that he was subsequently approached on 2 further occasions by individuals who said they were there on behalf of [names deleted: s.431(2)]. He gave evidence that the second occasion was [in] February 2009 and that he, again, handed over 50,000 Taka. The applicant stated the third approach for a bribe took place [in] April 2009, at which time he handed over 40,000 Taka. The applicant told the Tribunal that these members of the student wing of the Awami League then left him alone for 2 months.

(iii) The Attacks upon the Applicant and his Property:

65. The applicant informed the Tribunal that [in] June 2009 [Person A] and his associates arrived at the applicant’s business premises in [City A] carrying arms. He said that they demanded that he pay them 500,000 Taka and that he also provide them with a blank cheque so that they could access funds from his bank account whilst he was overseas. The applicant stated that on this occasion he refused their demands because he had insufficient funds and due to the fact that realised that the demands for the payment of bribes would only continue if he complied. The applicant stated that he was quite vocal in his refusal. Consequently, [Person A] and his followers broke a glass on his table, a shard of which struck him in the forehead, leaving a temporary scar. The applicant told the Tribunal that he was told that all it would take was one shot to end his life. His political opponents then proceeded into his

computer room where they destroyed his largest computer screen and other office equipment, including computer and reception desks. In addition, the applicant stated that a revolver was placed on the table and he was told that, as he had refused to pay the bribe, he would pay with his life. The applicant stated that his attackers left about 3.30pm. He gave evidence that, those of his staff who had remained with him expressed their concern that, if these kinds of attacks continued, they would not be able to remain working in his student consultancy business. The applicant stated that he was haunted by this visit and unable to sleep at night because, as a university lecturer, he had never been treated by anyone in this manner, yet his life and livelihood had now been threatened.

66. The applicant informed the Tribunal that on the following day, [in] June 2009, he and his staff began to receive a number of unidentified telephone calls threatening them. As the applicant's employees had become fearful, the applicant told them not to answer these calls and that he would take them. Later that day, near [Education Provider 2], the applicant was stopped by a person he did not know, but whom he assumed was a tertiary student. This individual stabbed the applicant in the upper back, and the applicant stated that, as this attack was taking place, he saw [Person A] standing by, watching. The applicant told the Tribunal that he believed [Person A] had sent this person to attack him. The applicant gave evidence that he did not feel safe in [City A] and went to Dhaka for medical treatment by a private surgeon. He explained that [in] June 2009, when he was sufficiently recovered from his surgery, he left Bangladesh for Fiji.

67. The Tribunal observed that the applicant had made no specific mention of this attack in his Protection visa application, at his departmental interview, or in his submission to the Tribunal dated [in] December 2009. In particular, the Tribunal noted that in this submission the applicant had stated in a general manner that the student wing of the Awami League and its supporters had harmed him "physically, mentally, financially and socially" without providing any specific details.

68. The applicant conceded that he had not included these details in his Protection visa application, but he claimed that he had not had a lot of time to seek advice about how to properly prepare his Protection visa application. He added that the migration agent he had engaged for this purpose was particularly unhelpful, as the latter kept insisting that the applicant had not paid him sufficient funds for any assistance beyond a 2-hour initial consultation. The applicant stated that his former migration agent merely told him to write his story and, when he suggested preparing a draft statement or statutory declaration regarding his claims, his former migration agent stated that there was no time for this and insisted that the applicant lodge his application as it was. Consequently, the applicant stated that his Protection visa application was disorganised.

69. The Tribunal noted that, whilst the lack of assistance from his migration agent might have explained the applicant's failure to mention the assault that occurred [in] June 2009 in his Protection visa application dated [in] September 2009, it did not explain his failure to mention this event at his departmental interview a month later [in] October 2009, by which time he could have prepared a written statement regarding this matter. The applicant responded that when he had sought advice from his former migration agent regarding the conduct of the departmental interview, his migration agent told him to be co-operative and frank at his interview, but did not otherwise assist him to prepare for the interview. The Tribunal observed that the fact remained that, it seemed odd that the applicant had not mentioned such a significant recent event to the delegate when he was seeking a Protection visa. The applicant confirmed that he had not done so and that his current migration agent

had advised him that had he done so at the time, his Protection visa application might not have been refused at the primary stage.

70. The applicant asked the Tribunal to take into account that he had visited Australia on a transit visa on 4 occasions in 2009 and, even on his last arrival in Australia in July 2009 he had hoped to be able to go to Fiji to undertake his studies. The applicant stated that he had asked [Education Provider 1] to refund his \$7000 tuition fee, but they had refused to do so, only refunding an amount of \$250. The applicant stated that, unlike many applicants for refugee status, he had earned a reasonable living as a lecturer in Bangladesh and through his student consultancy business and that unlike most overseas students, he was in a position to fund his own overseas studies. In addition, he had hoped that, as a result of studying in Fiji for 3 years, by the time he was ready to return to Bangladesh the personal risks he faced in Bangladesh would have dissipated. As a result, he asked the Tribunal to give due consideration to these facts in assessing the genuineness of his claims.

The Tribunal's Oral Invitation to Comment or Respond to Information:

71. Pursuant to section 424AA of the Act, the Tribunal outlined for the applicant the information before it that was adverse to his case and how it was relevant to the review application. In particular, the Tribunal noted the following:

- In relation to the applicant's claims regarding the level of his political involvement with the BNP in Bangladesh, the Tribunal had received [in] December 2009 advice from DFAT that [Politician 2], an ex-Member of Parliament and the Joint Convenor of the [District A] BNP had informed DFAT that the applicant was not known to that BNP office;
- DFAT had also advised the Tribunal that [an officeholder] of the National Executive Committee of the JCD had identified the applicant as a member of the JCD and a student from [Education Provider B];
- In addition, DFAT had also spoken with [an officeholder] of the Central Committee of JCD, and he did not recognise the applicant, although he later advised DFAT that the applicant was a member of JCD at [Education Provider B];
- Further, whilst [Politician 1] had informed DFAT that he and the applicant [name deleted: s.431(2)] were not members of the same family, he had also stated that they were "distant relatives".

72. The Tribunal noted that this information was relevant to the review because it might adversely reflect on the credibility of the applicant's claims regarding his participation in the BNP. This was particularly so given that the applicant had not been able to identify various office holders within the [District A] BNP or JCD. In addition, the Tribunal noted that despite the applicant's claims to be a BNP activist who would be targeted by the Awami League, office bearers within the BNP did not appear to recognise him and, therefore, this detracted from his claimed political profile. As a result, the Tribunal noted that this information might lead to a finding that the applicant did not face a real chance of persecution in the reasonably foreseeable future if he was required to return to Bangladesh.

73. The Tribunal also invited the applicant to comment upon country information before it which indicated the following:

- In the past Bangladeshi politics has been marred by a cycle of vindictiveness with victorious governments, both the Awami League and BNP, regularly abusing the judicial system by lodging false charges against political opponents;
- The *United Kingdom Operational Guidance Note: Bangladesh* (6 February 2009), reported that there was little corroborated information that there had been any significant clashes between supporters of the BNP and Awami League parties during either the state of emergency, or following the December 2008 election of the Awami League to power;
- This report also stated that “[w]hilst not always fully effective the authorities have not shown that they are unwilling or unable to offer sufficiency of protection from members of opposing political parties or opposing factions of an applicant’s own party” and that “[p]olitical violence in Bangladesh is generally localised, so internal relocation will be a viable option in most cases”;
- Although there was some violence between members of the Awami league and BNP in the period immediately following the December 2008 elections, the country information before the Tribunal indicated that the level of violence was considered by independent monitors to be relatively mild, within the spectrum of Bangladeshi electoral politics, and that polling had been relatively free of ballot-rigging and other irregularities;
- Reports such the *United Kingdom Country of Origin Information Report on Bangladesh* (11 August 2009), the *2008 United States Department of State Report on Human Rights Practices for Bangladesh* (25 February 2009) and *United States Department of State 2009 Report on International Religious Freedom for Bangladesh* (26 October 2009) all reported that the December 2008 elections had been observed by independent observers to be well-administered and fair, and largely free of violence, resulting in a credible electoral process that met international standards with a peaceful transfer of power;
- In addition, the country information also indicated that the current Prime Minister Sheikh Hasina had resisted the opportunity to embark on a fresh round of politically motivated arrests, in an attempt to convince the country and the broader international community that her government is committed to a stable, democratic and secular Bangladesh;
- There was little in the country information before the Tribunal to indicate that since the December 2008 elections the Awami League government had been actively targeting members of the BNP;
- In relation to extra judicial killings and the RAB, the Tribunal noted that the *2008 United States Department of State Report on Human Rights Practices for Bangladesh* (25 February 2009) had indicated that the number of incidents involving the RAB had declined from the previous year;
- In addition, even taking into account the country information the applicant had provided to the Tribunal regarding extra-judicial killings, there was little to indicate that a person with the applicant’s limited political profile, who had not publicly campaigned in 2008 elections and who had never worked as a journalist, would be actively targeted by the Awami League and its supporters;
- The country information also indicated that the government had taken steps to address police corruption; and
- Further, country information indicated that there were high levels of corruption in Bangladesh and that documents, such as political party membership confirmation letters and medical certificates, frequently contained incorrect information. In addition, this

country information indicated that those providing such documents often feel obligated to assist fellow Bangladeshis to immigrate to so-called “rich countries”.

74. The Tribunal noted that this information was relevant to the review because, taken together with the applicant’s failure to mention the alleged attack that occurred [in] June 2009, the Tribunal might not accept the accuracy of the contents of his reference letter and his medical certificate. In addition, the Tribunal might not accept that the country information supports the applicant’s claim that the Awami League would target him due to his political opinion. Consequently, this might lead to a finding that the applicant did not face a real chance of persecution in the reasonably foreseeable future if required to return to Bangladesh.

75. As regards the matters upon which the Tribunal had orally invited the applicant to comment or respond, the applicant stated that he would like to respond immediately at the Tribunal hearing.

The Applicant’s Oral Response:

76. The applicant responded that when he was a student [Politician 1] was the [office deleted: s.431(2) of the [District A] – District 1. He informed the Tribunal that [Politician 2] was the convenor of one part of the [District] for the BNP, but [Politician 3] was the convenor for the other half. The applicant went on to say that after the 2001 elections [Politician 3] was the [office deleted: s.431(2)]. He added that he was not concerned about what was happening at the district level of the BNP because he was focussed on his constituency. The applicant explained that, unlike others who became involved in politics to gain an official position, he was not interested in becoming a BNP office bearer and therefore he was not concerned with who is and was the president at the district level.

77. In relation to his relationship to [Politician 1], the applicant stated that all those with the [name deleted: s.431(2)] surname had originated from the same place, so they all had some distant relationship, but [Politician 1] was not closely related to him. In addition, the applicant stated that the Tribunal should give weight to the reference from [Politician 1] because he is senior to both [Politician 2 and Politician 3] within the BNP. The applicant also advised that the Tribunal should take into account the reference from [the officeholder of the National Executive Committee of the JCD], dated [in] November 2009, because [the officeholder] knew him very well.

78. As regards the country information the Tribunal had referred to, the applicant responded that he had examined the primary decision and the country information it referred to and had not found any statements in respect of the RAB. The applicant stated that his personal fear was that he would be targeted by the student wing of the Awami League and the RAB if he returned to Bangladesh. The applicant stated that the reports he had provided from *Odhikar* indicated that there had been 125 extra judicial killings and, whilst the government claimed to have zero tolerance for such killings, Ministers were simultaneously issuing statements that these deaths were due to cross fire. The applicant stated that the most corrupt killings had involved the military, yet the perpetrators were not being brought to justice. The applicant stated that although he might not be harassed upon his return at the Dhaka airport because he was a university lecturer, but he still feared that he might be attacked by the RAB.

79. The applicant told the Tribunal that his family was scattered within Bangladesh and it would save his family if he were allowed to remain in Australia. In addition, he stated that he

did not go to Sydney where his brother was specifically because he wished to secure his personal safety.

The Independent Country Information before the Tribunal

80. In assessing the applicant's claims against the Convention grounds, the Tribunal considered information from external sources regarding the situation within Bangladesh.

81. The Tribunal observes that following a census in 2001 Bangladesh was estimated to have a population of 129.2 million people, with projections that this would reach 156.1 million by July 2009. Consequently, given its geographical size, Bangladesh is considered to be the most densely populated country in the world. In terms of its population, 89.6 per cent of the population is Muslim, 9.3 per cent is Hindu, 0.6 per cent is Buddhist and 0.5 per cent is Christian or 'other'. The country is administratively divided into 6 Divisions, 64 Districts (Zila), 507 sub-districts (Thana or Upazila) and 4,484 Wards/Unions. There are also over 87,000 villages in Bangladesh. The Moulvibazar district comes within the [City A] division in Bangladesh (See paragraphs 1.02-1.03 and 1.05 of the *2009 United Kingdom Home Office Country of Origin Information Report Bangladesh*, 11 August 2009).

Major Political Parties in Bangladesh:

82. Annex B of the *2009 United Kingdom Home Office Country of Origin Information Report Bangladesh* (11 August 2009) provides the following information regarding the main political parties in Bangladesh:

Awami League (AL)

Founded 1949. The Awami League spearheaded the war of independence under Sheikh Mujibur Rahman and is currently headed by his daughter, Sheikh Hasina. Advocates socialist economy, but with a private sector, and a secular state. Has about 1,025,000 members, according to Europa. After 21 years in opposition, the AL governed Bangladesh between June 1996 and July 2001 – and returned to government in January 2009. [1c] [40j] [16c] In the general election of December 2008, the AL won 230 of the 300 ordinary seats in parliament and Sheikh Hasina again became Prime Minister. [16c]

Bangladesh Nationalist Party (BNP) (Bangladesh Jatiyatabadi Dal)

Founded in 1978 by a former President, General Zia, and is now led by his widow, ... Khaleda Zia. [40a] The BNP won 193 of the 300 parliamentary seats in the 2001 general election and formed a government in coalition with Jamaat-e-Islami, the Jatiya Party and the Islamic Oikkya Jote. [16] According to the Economist Intelligence Unit Country Profile 2006: "The BNP espouses Bangladesh nationalism with anti-Indian and pro-Islamic nuances; however, these nuances have not been evident in its policymaking since coming to power in October 2001... The BNP, with close links to business, is committed to fostering a market economy and liberal democracy, and encourages private sector-led economic growth." [40a] The term of office of the BNP-led coalition government ended on 27 October 2006. [20cf] The BNP won only 30 seats in the 2008 general election and formed the official opposition. [16c]

The Situation in Bangladesh during 2008:

83. According to a range of sources, Bangladeshi politics has been marred by a cycle of vindictiveness since it gained independence with victorious governments, both Awami League and BNP, regularly participating in systematic abuse of the judicial system to initiate charges against their political foes. The result has been the lodging of thousands of false charges in Bangladesh against political foes on all sides of politics. The Tribunal observes that various reports indicate that at the end of May 2008 the Caretaker Government in Bangladesh had launched a drive resulting in mass arrests, variously described as an anti-crime drive or as a political crackdown.

84. On 17 July 2008 the DFAT provided the following information to the Tribunal:

A. Please provide an update on the situation regarding the detention of BNP members, in the context of the continuing state of emergency in Bangladesh.

A number of senior members and law-makers from the Bangladesh Nationalist Party (BNP) still remain in jail after being arrested as part of the current broad anti-corruption drive of the Caretaker Government. High profile members include the former Prime Minister, Begum Khaleda Zia (BNP Chairperson), and her two sons, Tarique Rahman and Arafat Rahman.

In mid-May, the Dhaka court issued arrest warrants against another twelve senior BNP members accused in a graft case that included former Finance Minister, M Saifur Rahman, a senior leader of the pro-reform faction of the BNP; expelled BNP Secretary General, Abdul Mannan Bhuiyan; and other ex-ministers including Amir Khasru Mahmud Chowdhury, MK Anwar, and M Shamsul Islam. Mr Bhuiyan, Mr Anwar, and Mr Islam are currently in jail while Mr Rahman and Mr Chowdhury remain abroad having absconded before they could be detained.

A fresh round of mass arrests began at the end of May 2008. The timing was interesting, occurring just after the two major political parties (BNP and AL) threatened to boycott dialogue sessions with the Caretaker Government unless their leaders were freed. Open source material suggested that over 25,000 people were arrested in a month long period including petty criminals, grassroots leaders and activists of different political parties including the BNP, all of whom were alleged to be involved in criminal activity regardless of their political affiliation.

(DFAT Report 850 – 17 July 2008) [Tribunal emphasis]

85. However, research undertaken by the Tribunal indicates that the roundups or mass arrests which began on 28 May 2008 occurred during a limited period, variously reported as having been between 15 days and 4 weeks. For example, the *United Kingdom Home Office's Country of Origin Information Report – Bangladesh*, dated 25 September 2008, referred to the “intensive wave of arrests ... between 28 May and 12 June 2008” as follows:

4.39 An intensive wave of arrests took place between 28 May and 12 June 2008, when between 18,000 and 25,000 people (based on media estimates) were arrested by police and ‘joint forces’ in what the government described as a drive against ‘miscreants, criminals and those wanted by the law’. Those arrested included political leaders and activists (of both major political parties) at district, sub-district and municipal level. It is not known how many were subsequently released. Some human rights organisations, political parties and media characterised the arrests as a tactic of political repression, perhaps arising from the refusal of the major parties to engage in a dialogue with the Caretaker Government until their leaders were released

(UK Home Office 2008, *Country of Origin Information Report – Bangladesh*, 25 September, Paragraph 4.39).

86. Similarly, in an article dated 21 August 2008 published on the website of the *Asian Legal Resource Centre* reference is made to “the four-week crackdown that started on May 28, 2008” According to this report although individuals were arrested en-mass in order to intimidate, in general they were not detained for long periods and the courts typically released suspects when there was no evidence against them (See *Asian Legal Resource Centre*, “Bangladesh: Prolonged State of Emergency threatening the judiciary and human rights defenders’ ability to work”, 21 August 2008).

87. Correspondingly, the *Human Rights Watch World Report 2009* country summary for Bangladesh (January 2009) refers to the fact that in the second half of 2008 the Caretaker government released dozens of senior politicians and businesspersons arrested in the anti-corruption drive initiated in 2007. In addition, this report refers to the fact that, although in June 2008 the security forces detained thousands of grassroots political activists, following the refusal of the major political parties to participate in a government-initiated dialogue about the country’s political future until party leaders were released from detention, most of those arrested were released shortly afterwards.

88. As a result, despite numerous criticisms levelled at the previous Caretaker Government on a range of issues, one area it pursued with vigour was the purging of obviously false and politically motivated charges of a relatively minor nature so as to reduce the crippling affect these have had on the Bangladeshi judicial system. Only major crimes such as the charges of serious corruption made against both political leaders Zia and Hasina were pursued under the caretaker regime; both of whom were subsequently released from detention to contest the December 2008 elections.

89. For example, the Tribunal notes that in its most recent report, the *International Crisis Group* stated in its report “Bangladesh: Getting Police Reform on Track” (11 December 2009) that:

Ironically it was the military-backed caretaker government (CTG) that resuscitated the UN-sponsored Police Reform Programme (PRP) scuttled by the last Bangladesh Nationalist Party (BNP)-led government. During the two-year state of emergency between January 2007 and December 2008 the military clamped down on politicisation and temporarily allowed the CTG to make progress on a number of reforms stalled under the previous government, including police reform.

<http://www.crisisgroup.org/home/index.cfm?id=6427&l=1> – Accessed 11 January 2010).

The Post- December 2008 Situation:

90. The Tribunal observes that the *United Kingdom Operational Guidance Note: Bangladesh* (6 February 2009), specifically reported the following regarding the treatment of political activists following the December 2008 elections:

3.7 Political activists in fear of members of opposing parties

3.7.1 Some applicants may make an asylum or human rights claim based on a fear of ill-treatment by members of opposing political parties or a fear of opposing factions within their own party.

3.7.2 Treatment. Tensions between the two main political parties, the BNP and the AL, has continued in recent years and political violence during demonstrations and general strikes has reportedly killed hundreds of people in major cities and injured thousands.

3.7.3 Against the background of serious differences between the BNP and the AL regarding the general election, political demonstrations and civil unrest, on 11 January 2007, President Ahmed declared a state of emergency. Under the Emergency Power Ordinance 2007 introduced the following day, political parties were initially banned from holding meetings and political rallies, though some of these restrictions were lifted in September 2007. The Emergency Power Ordinance remained in force for the period of the state of emergency, which was lifted by the Caretaker Government in December 2008.

3.7.4 There is little corroborated information on whether clashes between members or supporters of opposing political parties such as the BNP and the AL have continued to any significant degree either during the state of emergency or since Sheikh Hasina's AL-led alliance was victorious in the general election of December 2008.

3.7.5 Sufficiency of protection. The internal security establishment in Bangladesh consists primarily of the police and four auxiliary forces: the Bangladesh Rifles, the Rapid Action Battalion (RAB), the Ansars and the Village Defence Party. The police are organised nationally, under the Ministry of Home Affairs, and have a mandate to maintain internal security and law and order. Under recent governments police were generally ineffective and reluctant to investigate persons affiliated with the ruling party. After the January 2007 declaration of a state of emergency, the Caretaker Government formed a joint task force, composed of personnel from the police, the RAB, the military, and other security agencies, and gave the special new teams responsibility for enforcing the state of emergency.

3.7.6 A Police Reform Programme, designed to assist the police to improve performance and professionalism, to ensure equitable access to justice and to be more responsive to the needs of poor and vulnerable people, commenced in 2005 and then progressed more rapidly under the Caretaker Government. By April 2008, eleven model thanas (police stations), designed under the programme, had so far opened in different regions of the country, officers were receiving training on human rights, on gender awareness, and on accountability. *Whilst not always fully effective the authorities have not shown that they are unwilling or unable to offer sufficiency of protection from members of opposing political parties or opposing factions of an applicant's own party.*

3.7.7 Internal relocation. The law provides for freedom of movement, and the Government generally respects this right in practice. *Political violence in Bangladesh is generally localised, so internal relocation will be a viable option in most cases.*

...

3.7.9 Conclusion. Whilst protection from governmental sources may not be available in all cases, *those in fear of ill-treatment by members of opposing political parties or in fear of opposing factions within their own party will generally be able to relocate*

internally away from the area where they are at risk. Claims made on this basis are therefore also likely to be clearly unfounded and will fall to be certified. However, the precise nature of political activity and level of involvement of both the applicant and the opposing party member(s) with any political party should be investigated in detail. A grant of asylum or HP would only be appropriate in exceptional cases, where an individual was able to show that he/she remained at risk because of specific factors relating to his/her particular history, and internal relocation was not an option.

[Tribunal emphasis]

91. Several reports indicate that the election, and immediate post-election period, was marked by violence between supporters of both the victorious Awami League and the BNP, as the main opposition party, as well as with student groups associated with the major parties from mid to late January to late March 2009 (See: 'AL, BNP clash in N'ganj: 5 injured' 2009, *The Daily Star*, 10 March <http://www.thedailystar.net/story.php?nid=79194> – Accessed 4 December 2009 and 12 January 2010).

92. However, although a number of clashes were recorded and some deaths occurred as a result of the violence, the level of violence was considered by independent monitors to be relatively mild within the spectrum of Bangladeshi electoral politics, with polling relatively free of ballot-rigging and other irregularities. The United States-based election observers, the *National Democratic Institute for International Affairs*, stated that:

On December 29, the people of Bangladesh went to the polls for the first time since 2001 to elect the members of their national parliament. Throughout the country, people voted enthusiastically and in large numbers. With a few exceptions, the elections were well-administered and took place in a peaceful environment, resulting in a credible electoral process that met international standards. A population that has been governed under an emergency order for the past two years is eager for a return to elected government...

For the most part, election officials were well-trained and ensured that the balloting and counting processes were carried out properly, and that voters were able to cast their votes secretly. The delegation also commends the political parties' presence and the collegial interactions between the agents of the two major parties at most polling sites. Nationwide, turnout was high, with an estimated 80 percent turnout...

NDI's pre-election assessment statement expressed concern about the role the military and security forces play on election day. Prior to the elections, the military had been tasked with providing the BEC assistance with the voter registration process, specifically for logistical reasons. The BEC indicated that the military would not be present at polling stations, but would be available to respond to specific incidents.

The pre-election concern regarding military involvement on election day did not materialize. Police and other security forces were present and engaged in maintaining a calm voting environment at all visited polling stations. Observers reported that security personnel, including the military, behaved professionally and interfered only when necessary.

(National Democratic Institute for International Affairs, 2008, Statement of the NDI Election Observer Delegation to Bangladesh's 2008 Parliamentary Elections, 31 December – <http://www.ndi.org/files/Final%20Statement%20->

[*Tribunal emphasis*]

93. Apart from isolated clashes between the student groups at certain campuses (including intra-party factional disputes), there are relatively few reports of continued violence between supporters of the major parties having been recorded since the first weeks following the victory of the Awami League in December 2008.

94. In April 2009, although relatively early in the new administration, Prime Minister Sheikh Hasina was viewed as having resisted the opportunity to embark on a fresh round of politically motivated arrests, given that she was seeking to convince the country and the broader international community that her government is committed to a stable, democratic and secular Bangladesh. The notable exception was the charging of former Prime Minister Khaleda Zia's son, Arafat "Koko" Rahman, on large-scale corruption charges. (See Montero, D. 2009, 'Bangladesh fights rampant corporate corruption', *The Christian Science Monitor*, 1 April – <http://www.csmonitor.com/2009/0401/p06s15-wosc.html> – 4 December 2009 and 12 January 2010).

95. In addition, the Tribunal notes that the most recent *United Kingdom Country of Origin Information Report on Bangladesh* (11 August 2009), which also cites the *2008 United States Department of State Report on Human Rights Practices for Bangladesh* (25 February 2009), provided the following report on the post-election situation in Bangladesh:

4.03 The United Nations Development Programme (UNDP) noted in a press release of 11 January 2009: "Bangladesh's 9th parliamentary election is being hailed as the country's most transparent, credible, and peaceful election ever." [108c]

...

International observer reports

4.18 According to a BBC News article of 30 December 2008, the general election was monitored by some 200,000 observers, including 2,500 from abroad. [20ei]

4.19 The UNDP, in a press release of 11 January 2008, stated:

"The High-Level Panel established by UN Secretary-General Ban Ki-Moon for the elections consisting of senior UN officials and election experts said that the Election Commission had conducted the polls with credibility and fairness, pointing to the very high voter turnout and the large participation by minorities. Over 200,000 national and 500 international election observers deployed on Election Day returned similar verdicts: the election was peaceful, transparent, and credible, setting a high democratic standard." [108c]

4.20 The Asian Network for Free Elections (ANFREL), which deployed 70 observers around the country, reported that the election was conducted credibly and it did not believe isolated breaches of the electoral laws affected the overall polling process. (United News of Bangladesh, 31 December 2008) [39bf] The Commonwealth Observer Group told a press conference that they did not find any evidence to justify the BNP's claims of serious irregularities. (UNB, 31 December 2008) [39bg] Similarly, the European Union Election Observation Mission did not find evidence of 'election manipulation' as alleged by the BNP; they reported that the general election was free, fair and transparent and was held in a peaceful atmosphere, with high turnout. (The Daily Star, 1 January 2009) [38dw]

Security during the election

4.21 Serious violence accompanied the 2001 general election; at least 140 people were killed in feuding between AL and BNP supporters during the run-up to the election, voting had to be suspended in several constituencies owing to violence, and unrest continued after the results were announced – including an outburst of serious, systematic attacks on the minority Hindu community. [Section3] The Caretaker Government stated that it would not permit the same to happen in 2008 and, from 18 December, it tightened security throughout the country. On election day over 600,000 police and army personnel were deployed, half of them at the 35,000 polling stations. (BBC News, 17 December 2008) [20eh]

The new Government

4.22 Awami League leader Sheikh Hasina was sworn in as Prime Minister on 6 January 2009. (BBC News, 6 January 2009) [20ej] In selecting members of her cabinet, she overlooked many in the party's 'old guard' in favour of generally younger, 'bolder' appointments – which included four women and three members of ethnic minorities – in an attempt to build what The Daily Star described as “a bold, new and gender sensitive face of Bangladesh's government”. No members of the new cabinet had faced corruption charges. (The Daily Star, 7 and 12 January 2009) [38dr] [38ds]

Post-election violence

4.23 The Dhaka-based human rights NGO, Odhikar, stated that – according to press reports – 62 people were killed and over 4,000 were injured in violence between supporters of various political parties during the first three months of 2009. [46s] *Most were killed in clashes between supporters/activists of the Awami League, BNP and Jamaat-e-Islami and their affiliated student organisations, and between members of two opposing factions of Bangladesh Chhatra League, the student association of the AL. In most instances the violence involved students and it took place at several different universities and colleges throughout the country.* (Odhikar) [46s] For example, clashes between AL and BNP student wings in early January at Jahangir Nagar University, located 30 km from the centre of Dhaka, spread and led to the temporary closures of a number of other higher-education institutions. According to the Economist Intelligence Unit, “The violence [at Jahangir Nagar University] was sparked by an attempt by some students to ‘establish control’ over certain dormitories.” (EIU, February 2009) [40r]

4.24 *During January and February 2009, there were reports of Awami League supporters attacking the houses of BNP and Jamaat-e-Islami supporters and vandalising their property.* (Odhikar) [46u] [46v]

[Tribunal emphasis]

96. The Tribunal further notes that the most recent *United States Department of State 2009 Report on International Religious Freedom* for Bangladesh (26 October 2009) reports the following in respect of the December 2008 elections:

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 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.*

[*Tribunal emphasis*]

97. The Tribunal notes that the *International Crisis Group* has reported the following in respect of Bangladesh:

In the aftermath of the democratic transition, the political parties face the ongoing challenge of making parliament work. This requires both main parties to seek accommodation with each other and the army. The army wants to limit civilian oversight as a safeguard against political interference; particularly regarding the army's access to lucrative UN peacekeeping operations. Widespread corruption, which worsened during the CTG's tenure, remains an issue. The founding families continue to dominate the Awami League and the BNP and institutionalising democracy both within and outside their structures remains an uphill task.

Bangladesh is also faced with several challenges that should transcend partisan politics such as weak judicial and law enforcement agencies, ethnic conflict, poor relations with regional neighbours, poverty, illiteracy and low development indicators (particularly for women). Militant Islamist movements also remain an issue, with the banned Jamaat'ul Mujahideen Bangladesh continuing to concern security officials. *Also no government has yet tackled the culture of impunity, which would mean investigating past and present crimes including those perpetrated by the security forces and senior politicians.*

Crisis Group reporting on Bangladesh will continue to cover civil-military relations, attempts to stabilise and institutionalise democracy and militant Islamist movements.

Our reports on Bangladesh are listed below, starting with the most recent...

Recent reports & briefings Bangladesh:

Getting Police Reform on Track, Asia Report N°182, 11 December 2009
Bangladesh: Elections and Beyond, Asia Briefing N°84, 11 December 2008
Restoring Democracy in Bangladesh, Asia Report N°151, 28 April 2008
Bangladesh Today, Asia Report N°121, 23 October 2006

(<http://www.crisisgroup.org/home/index.cfm?id=4457&l=1> – Accessed 12 January 2009).

[*Tribunal emphasis*]

98. The Tribunal observes, that this report does not specifically refer to wide scale targeting of BNP party members by the current Bangladeshi government, the RAB, or other government agents.

99. *Odhikar's Human Rights Report on Bangladesh 2009* (1 January 2010) states the following in respect of the post election violence in Bangladesh:

This Annual Human Rights Report 2009 is a compilation of information and reports received by Odhikar from its human rights defenders in 40 districts; by scanning reported incidents published in national dailies; and information received from

victims and their families. It has been prepared emphasising on international standards for the protection of human rights and the Constitution of the People's Republic of Bangladesh Apart from analysing the activities of the recently elected regimes, the government's influence on civil and political rights have also been scrutinised.

...

Post Parliament Election Violence

According to Odhikar's documentation, *17 persons (9 from BNP and 8 from AL) were reportedly killed and over 500 persons were injured in post-election violence in different places across the country. In most cases, activists and supporters of the Awami League (AL) led Grand Alliance, and the Bangladesh Nationalist Party (BNP) led Four-Party Alliance were found to be involved in such clashes. In many districts, AL activists attacked the houses and shops of the BNP and Bangladesh Jamaat-e-Islami supporters and vandalised their property.*

...

Vandalising Property

A number of incidents of vandalising property were recorded during this reporting period. This included damaging cars, homes and shops and a warehouse for storing jute. *In many cases, incidents of rivalry attacks took place targeting properties of the opposition party.*

Control of Halls of Residence

Ignoring the instructions of the newly elected Prime Minister Sheikh Hasina and concerns made by the university teachers, pro-government political activists caused unrest in the educational institutions.

- General students were found vacating halls of residence to avoid conflict and a house tutor and a provost faced threats from the BCL.
- *In Ziaur Rahman Hall of the University of Dhaka; Rajshahi University of Engineering and Technology; Shahjalal University of Science and Technology; University of Rajshahi; Jahangirnagar University; and Jagannath University, there were intra-group clashes in the BCL reported, which left a number of injuries.*
- A number of casualties were also recorded in Dinajpur Haji Danesh Science and Technology University; Netrokona Govt. College; Jagannath University's Residential Halls; Bangladesh University of Engineering and Technology; Khulna Medical College; Narail Govt. Victoria College; Feni Govt. College and Dhaka Polytechnic Institute due to clashes between the BCL and the JCD and Islami Chatra Shibir.

Political Violence

In Bangladesh, political violence between rival groups is a common phenomenon over establishing supremacy and gaining power.

...

According to facts gathered by Odhikar, *a total of 251 persons have reportedly died and 15,559 persons have been injured in political violence in 2009. Most of the deaths have been due to clashes between followers of the Awami League and BNP or internal party clashes* During this period, 38 people were reportedly killed and 6092 were injured due to internal conflicts within the Awami League while 02 were killed and 865 injured due to clashes between factions of the BNP.

Extra-judicial Killings and Impunity

...

During the year 2009, 154 people have reportedly been killed extra-judicially by law enforcement agencies. It is alleged that of these people, 41 were reportedly killed by RAB, 75 by police, 25 jointly by the RAB-Police, 3 by Army, 2 by Ansar, 1 by Jail Police and 1 by Forest Guards, 5 were under the custody of BDR and 1 was a coast guard. Of the 154 killed, 35 were killed while they were in custody of the law enforcement agencies.

...

Identity of victims

The political affiliation of some of the victims of extra-judicial killings were as follows: 2 from Awami League, 1 from BNP, 2 from UPDF24, 6 BDR Jawans, 19 from Purbo Banglar Communist Party (Jonojuddho), 3 from Purbo Banglar Communist Party, 6 from Purbo Banglar Communist Party (Red Flag), 11 from Gono Mukti Fouz, 6 from Biplobi Communist Party, 3 from New Biplobi Communist Party, 8 from Gono Bahini, 5 from Shorbohara Party, 2 from Sromojibi Mukti Andolon, 1 from Pahari Chattra Parishad (PCP). Two of those killed were students of the Polytechnic Institute, 2 were villagers, 2 garment workers, 1 was a Union Parishod²⁵ Chairman, 2 were young men, 1 was a Madrasa student, 1 a petty trader, 1 a labourer, 1 a freedom fighter, 1 farmer and 1 a shopkeeper. One person was an under trial prisoner, one a clearing and forwarding agent, 38 were alleged criminals, 13 alleged dacoits, 3 were alleged muggers, 1 an alleged drug dealer, 1 was from the alleged gangster group 'Lalchand Bahini', 1 from the Bahini group, 1 from Panna Bahini and 3 were from the alleged gangster group 'Gangchil Bahini'.

(http://www.odhikar.org/documents/2009/English_report/HRR_%202009.pdf - Accessed 12 January 2009)

[*Tribunal emphasis*]

100. The Tribunal further notes that on 20 January 2010 Human Rights Watch announced the release of its *Human Rights Watch World Report 2010* (See <http://www.hrw.org/en/world-report-2010/news-release> - Accessed 21 January 2010.) In respect of Bangladesh the Tribunal notes that the following was reported:

The new government has recommended the withdrawal of many of the corruption cases initiated against Awami League supporters charged in connection with the interim government's anti-corruption drive on the grounds that the cases were politically motivated. *The similar legal processes initiated against members of the political opposition are, with few exceptions, continuing.*

...

In July parliament adopted a new Human Rights Commission Act, under which an independent commission is mandated to investigate violations. At this writing the commission has yet to be constituted.

Elements in the Bangladesh Rifles, the country's border guard unit, staged a rebellion at BDR headquarters in Dhaka, the capital, on February 25-26, 2009. In the rebellion 74 people, including 57 commanding officers seconded from the army, were killed. Despite pressure from the armed forces to place those suspected of involvement in the rebellion before a court martial, the government decided in accordance with a recommendation of the Supreme Court to try them in civilian courts and under the BDR ordinance. As of September 2009 about 3,700 border guards were detained as a result of the indiscriminate arrests that followed the rebellion.

Extrajudicial Killings

On several occasions during 2009 the government promised that it would end the grave problem of extrajudicial executions by members of the security forces. Yet the Rapid Action Battalion (RAB)-an elite paramilitary law enforcement agency-and the police continued to kill people in what the authorities refer to as "crossfire" killings, "encounters," and "shootouts" but in fact constitute thinly disguised extrajudicial executions. According to the human rights group Odhikar, 109 such killings were reported in the press between January 1 and October 31, 2009. The killings increased significantly during the second half of the year, suggesting a lack of commitment to confront the security forces once the government settled into office. *Alleged members of outlawed left-wing political parties are particularly targeted.* In echoes of previous governments' statements that had been heavily criticized by the Awami League while in opposition, the government claimed that law enforcement agencies were only exercising their right to self defense.

...

(<http://www.hrw.org/en/node/87391> - Accessed 21 January 2010)

[*Tribunal emphasis*]

Corruption and Document Fraud Issues in Bangladesh:

Corruption

101. In relation to the issue of general corruption in Bangladesh since the imposition of the State of Emergency, DFAT Report 723 dated 1 November 2007, and referred to above, advised that the Caretaker Government's plans to bring 'reforms' to the major political parties resulted in sharp differences among senior leaders of the BNP such that the split into two factions. In particular, Khaleda Zia sacked her deputy leader, Abdul Mannan Bhuiyan, for a "conspiracy to split the party" and he subsequently went on to lead the pro-reformist group of the party. DFAT also reported that there had been a marked reduction in the level of politically-motivated violence, including retaliation against opponents throughout Bangladesh, since January 2007 when the Caretaker Government came to power. In addition, DFAT informed the Tribunal that during the State of Emergency there had been a transformation of the political landscape and the restrictions on "internal politics" during this period had led to very limited political activity and a significant reduction of politically motivated violence, including retaliation against opponents.

102. The Tribunal notes that the *2008 United States Department of State Report on Human Rights Practices for Bangladesh* (25 February 2009) states the following in relation to the issue of corruption in Bangladesh:

Police are organized nationally under the Ministry of Home Affairs (MOHA) and have a mandate to maintain internal security and law and order. *Under recent governments, police were generally ineffective and reluctant to investigate persons affiliated with the ruling party. After the declaration of a state of emergency, the government formed the Joint Forces, composed of police, the RAB, the military, and other security agencies, and gave the special new teams responsibility for enforcing the state of emergency. The DGFI, a military intelligence agency, assumed the lead in enforcing the state of emergency by investigating corruption charges and interrogating suspects.*

The RAB received human rights training through the UN Development Program; the UK government; and a local NGO, BSEHR. *Although the RAB continued to commit*

serious human rights violations, the number of incidents involving the RAB dropped from the previous year.

The government took steps to address widespread police corruption and a severe lack of training and discipline. The Inspector General of Police continued to implement a new strategy, partially funded by international donors, for training police, addressing corruption, and creating a more responsive police force.

[Tribunal emphasis]

Document Fraud:

103. There have been numerous reports over the past decade regarding the prevalence of corruption and the presence of a high level of fraudulent documents in Bangladesh. By way of background, the 1998 report on asylum applicants from Bangladesh by the *United States Bureau of Democracy, Human Rights and Labor* stated the following on this matter:

Asylum applicants from all parties submit voluminous documentation to support their claims, including in particular outstanding warrants for their arrest if they return to Bangladesh and other alleged court and police documents. Arrest warrants are not generally available to the public, and all such documents should be scrutinized carefully. Many “documented” claims of outstanding arrest warrants have proved to be fraudulent. As of December 1997, the Embassy had examined several hundred documents submitted by asylum applicants; none proved to be genuine.

There has been a particularly active market for fabricated documents to support asylum applications filed by individuals claiming abuse because of their membership in the Jatiyo Party. Illegal immigration facilitators routinely advise clients to request political asylum as Jatiyo Party members. Altered or counterfeit newspaper articles are another less frequent but notable example of document fraud.

(US Bureau of Democracy, Human Rights and Labor, *Bangladesh: Profile of Asylum Claims and Country Conditions*, February 1998)

104. More recently, the Tribunal observes that the most current *United Kingdom Country of Origin Information Report on Bangladesh* (11 August 2009) reports the following in relation to the weight that can be given to documents from Bangladesh:

35.01 The Canadian High Commission in Dhaka, in July 2005, advised the Canadian IRB as follows, inter alia:

“Many false documents exist; it is relatively easy to verify these documents, but verification takes a long time when it is done outside the capital ... The content of genuine documents is often questionable. The rampant corruption in various levels of the government weakens the integrity and the credibility of officially issued documents ... It is common for [political party] membership confirmation letters to be issued to facilitate verification procedures, even if the information is incorrect ... We often hear people saying that it is normal to provide incorrect information for a third party, because it is considered a duty to help ‘co-nationals/brothers’ to immigrate to a so-called ‘rich’ country ... Genuine medical certificates containing incorrect information can also be issued ... Birth certificates are issued [often years after the person’s birth] upon verbal or written request, and no proof of the person’s date of birth, identity or age is required; these

certificates have the same value as the information provided by the applicant ... Similarly, it is relatively easy to obtain a passport under a false identity.” [3b]

35.02 British High Commission in Dhaka stated as follows in a letter of 1 December 2003:

“Forged and fraudulently obtained documents are readily available in Bangladesh and are frequently submitted in support of entry clearance applications. Such documents include forged passports, birth, death and marriage certificates, bank statements (local and British), business plus employment related documents and educational certificates. Maintenance of official records in Bangladesh tends to be haphazard. Most records are kept in hand written logs, with very little in the way of computerised records. There is no local equivalent of the UK Police National Computer system. Instead, records are kept at local police stations with no national link. With regard to birth and death certificates, and marriage and divorce certificates, local municipal corporations or union councils, and local registrars issue these respectively. As with police records, there is no national link up between any of these records. Most banks have similar poor maintenance of accounts, and most rural branches lack computers or even telephones.” [11g]

[Tribunal emphasis]

FINDINGS AND REASONS

What is the Applicant’s Country of Nationality and is he outside it?

105. The applicant claims to be a national of Bangladesh and arrived in Australia on a Bangladeshi passport. The Tribunal accepts that the applicant is a Bangladeshi national and, for the purposes of the Convention, has therefore assessed his claims against Bangladesh as his country of nationality.

Does the Applicant have a well-founded fear of persecution for a Convention related reason?

106. The Tribunal observes that the mere fact that a person claims fear of persecution for a particular reason does not establish either, the genuineness of the asserted fear or that it is “well-founded”, or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that he satisfies all of the required statutory elements. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is also not required to make the applicant’s case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169).

107. In determining whether an applicant is entitled to protection in Australia the Tribunal must first make findings of fact on the claims he or she has made. This may involve an assessment of the applicant’s credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly,

the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims.

108. On the other hand, as stated previously, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, 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 established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality (See *Randhawa v MILGEO* (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). However, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).

109. In relation to whether the applicant is entitled to protection in Australia as a refugee the Tribunal notes that the Convention requires that a refugee must have a well-founded fear of persecution for a Convention reason, namely, for reasons of *race, religion, nationality, membership of a particular social group or political opinion*.

110. The Tribunal accepts that the applicant is of Bengali ethnicity, that he was born in Moulvibazar, Bangladesh [in] 1979 and that he is a Muslim. Similarly, the Tribunal accepts that applicant is from Moulvibazar, and that he lived there from 1979 until 1996 and that he lived in [City A] from April 1996 to April 2009. The Tribunal also accepts that since April 2009 the applicant's movements have been as follows:

[in] April 2009	Australia (with his brother)
[a date in] April 2009 to [a date in] May 2009	Fiji
[a date in] May 2009 to [a date in] June 2009	[City A], Bangladesh
[a date in] June 2009 to [a date in] July 2009	Fiji
[in] July 2009	Australia
[in] July 2009	[City A], Bangladesh
[a date in] July 2009 - present	Australia

111. In addition, the Tribunal accepts that the applicant married his spouse [in] November 2008. The Tribunal also accepts that the applicant's family composition consists of his spouse, widowed mother, 2 brothers and 3 sisters and that his spouse lives with her parents in [City A], that his mother and youngest sister live with a friend in Moulvibazar, that his eldest brother is a bureaucrat who lives in Dhaka, that 2 of his sisters are married and live in [City A] and that he has a brother living in Sydney.

112. The Tribunal also accepts that the applicant completed a bachelor degree at [Education Provider 2] from 1996 to 2000 and that from 2001 to 2003 he engaged in monitored activities that subsequently allowed him to register his student consultancy business. Accordingly, the Tribunal also accepts that the applicant was a full-time businessman during this particular period. The Tribunal further accepts that in April 2004 the applicant commenced full-time employment as an [Subject A] lecturer at the public [Education Provider 2]. The Tribunal also accepts that after 3 years the applicant was elevated to the position of assistant professor. In relation to his academic papers, the Tribunal

accepts that the applicant has had one academic paper published in 2005, consisting of a chapter in the book “[chapter and book deleted: s431(2)]. The Tribunal also accepts that the applicant has prepared another academic paper, “[title and journal deleted: s431(2)].

113. The applicant has not made any claims that he fears persecution on the basis of his race, religion or nationality. However, the applicant has claimed that he is a long-standing BNP supporter and activist who has received threats from supporters of the Awami League. Accordingly, the applicant claims that he fears persecution in Bangladesh on the basis of his actual political opinion. The applicant has submitted that, as a known BNP supporter and activist, there is a risk that he will be subjected to the political violence that characterises Bangladeshi politics and that this constitutes serious harm as defined by section 91R of the Act.

114. The Tribunal observes that the independent country information before it confirms that politically motivated violence has occurred in Bangladesh and that there have been human rights abuses reported as a result of the targeting of some of these groups within Bangladesh. As a result, the potential for political violence to erupt in the future remains. However, whilst the Tribunal does not wish to diminish the seriousness of the human rights abuses that may be taking place in Bangladesh, the existence of such human rights violations does not, of itself, mean that the applicant is a refugee as defined under the Refugees Convention (as amended by the Refugees Protocol). This is dependent upon an assessment of the applicant’s claims, which are discussed below:

The Applicant’s Political Opinion:

(a) The Independent Country Information:

115. In assessing the applicant’s claims of past persecution as a former student member of the JCD, and as an active member and supporter of the BNP in Bangladesh, and whether there is a real chance that he would be persecuted into the reasonably foreseeable future on the basis of his political opinion, the Tribunal has had regard to the written and oral evidence he has provided on this matter and the specific independent country information before it.

116. The applicant has submitted that since the election of the Awami League to power in December 2009, there is a heightened risk of this occurring for members of the BNP. In particular, he alleges that this government and its supporters, including members of its student wing and the RAB, target those who are active in the BNP.

117. The Tribunal acknowledges that there is independent country information before it indicates that Bangladeshi politics has been marred by a cycle of political vindictiveness regardless of who is in power, be it either of the major political parties (the Awami League or BNP) or the Caretaker Government that came to power in January 2007. Indeed, in respect of the latter reports such as the *2007 United States Department of State Country Report on Human Rights Practices – Bangladesh*, the *2008 United Kingdom Home Office Country of Origin* report (25 September 2008), the *Human Rights Watch World Report 2009* country summary for Bangladesh (January 2009), advice from DFAT and newspaper reports confirm that, during the State of Emergency from January 2007 until the general election in December 2008, thousands were detained by the authorities in Bangladesh, by the police and RAB. In particular, reports from DFAT, the Asian Legal Resource Centre and Human Rights Watch before the Tribunal confirm that, as a part of the Caretaker Government’s anti-corruption drive, there was an intense round of mass arrests from May 2008 – June 2008. Many of those

arrested at this time were associated with the two major political parties in Bangladesh, the BNP and Awami League, and included grassroots leaders and activists. Similarly, the Tribunal has taken into account the fact that there are various reports referring to clashes between supporters of the Awami League and the BNP since the December 2008 elections.

118. On the other hand, the Tribunal also notes that the country information before it also indicates that during the State of Emergency there was a shift in the internal political landscape in Bangladesh. In particular, in November 2007 DFAT advised that there had been a marked reduction in the level of politically motivated violence since January 2007 when the Caretaker Government was sworn in. It also indicated that the emphasis was on identifying corruption by senior members from the major political parties. Correspondingly, the *2007 United States Department of State Country Report on Human Rights Practices – Bangladesh* emphasized the fact that the authorities were primarily focused on high-level officials suspected of corruption and that a number of ranking political officials were arrested and prosecuted on this basis.

119. Although thousands were arrested during the period May 2008 – June 2008, reports from the *United Kingdom Home Office’s Country of Origin Information Report – Bangladesh*, dated 25 September 2008, the Asian Legal Resource Centre (21 August 2008) and *Human Rights Watch World Report 2009* country summary for Bangladesh (January 2009), observed that the crackdown was generally considered to be short-lived, being over a period of approximately four weeks. In particular, most of those arrested were not detained for long periods and in many cases the courts released suspects when there was no evidence against them. The *Human Rights Watch World Report 2009* country summary for Bangladesh (January 2009) notes that in the second half of 2008 the government released dozens of senior politicians and business persons arrested during the anti-corruption drives that began in 2007. It also reported that the number of killings decreased in 2007, and declined in early 2008. The Tribunal notes that in its most recent report (11 December 2009) the International Crisis Group gives some credit to the Caretaker Government for the progress it achieved in implementing reform that had stalled under the previous BNP government and in the area of police reform.

120. The Tribunal notes that the general tenor of the country information before it tends to emphasize that, in the recent past, the political targeting of individuals in Bangladesh has been at the senior levels of the major political parties. This appears to have been due to the fact that this is where the scope for potential corruption was the greatest, rather than targeting the ordinary members, or supporters, of either of the major political parties in Bangladesh. In addition, when lower-level political party supporters or members were caught up in the mass arrests during the State of Emergency, they were released fairly quickly by the Bangladeshi authorities. In particular, the *United Kingdom Operational Guidance Note: Bangladesh* (6 February 2009) specifically stated that it was important to examine the nature of an individual’s political activity and level of involvement in assessing an applicant’s claims to be at risk in Bangladesh due to their political opinion.

121. The Tribunal further observes that the December 2008 elections were generally considered to have been conducted in a transparent and credible manner: see the report from the *National Democratic Institute for International Affairs* (31 December 2008), the *United Kingdom Operational Guidance Note: Bangladesh* (6 February 2009) and the *United Kingdom Country of Origin Information Report on Bangladesh* (11 August 2009). In terms of the situation in Bangladesh since these elections, the evidence confirms that political violence remains a feature of the Bangladeshi political scene and that important challenges remain as

far as the institutionalisation of democracy within Bangladesh (See <http://www.crisisgroup.org/home/index.cfm?id=4457&1=1>). For example, Odhikar, a recognised human rights non-government organisation in Bangladesh, reported in its *Human Rights Report on Bangladesh 2009* (1 January 2010) that 17 individuals (9 from the BNP and 8 from the Awami League) were reportedly killed, with over 500 being injured, in post-election violence.

122. On the other hand, the Tribunal also notes that the *United Kingdom Operational Guidance Note: Bangladesh* (6 February 2009) reported that there was little in the way of corroborated information to indicate whether clashes between the supporters of the BNP and Awami League had continued to any significant degree during either the State of Emergency, or since the election of the Awami League to power in December 2009. In addition, this report stated that political violence was generally localised and internal relocation was a viable option for those who feared ill-treatment by members of opposing political parties. The most recent report before the Tribunal addressing these issues is Odhikar's *Human Rights Report on Bangladesh 2009* (1 January 2010), which reports that political violence between rival political groups continues to occur in Bangladesh. It reported that approximately 15,559 individuals were injured and 251 were reported killed in political violence due to clashes between followers of the Awami League and BNP. Odhikar also reported that 154 people were reportedly killed during extra-judicial killings by law enforcement agencies, but that only *one* of the victims was identified as being from the BNP. The Tribunal gives this matter some weight, given the applicant's reliance upon earlier monthly reports from Odhikar.

123. In addition, the Tribunal further notes that the *Human Rights Watch World Report 2010* refers to the fact that the current Awami League government continued to recommend the withdrawal of many corruption cases against not only Awami League supporters, but also its political opponents during 2009. The Tribunal has taken into account that this particular report also refers to an increase in extra-judicial killings in the second half of 2009, involving the targeting of alleged members of outlawed left-wing political parties. However, the evidence before the Tribunal is that the BNP is committed to a market economy and liberal democracy and currently holds approximately 30 seats in the Bangladeshi parliament, none of which suggest that it is an outlawed left-wing political party. In addition, in respect of its comment on extra-judicial killings, the Tribunal also notes that the *Human Rights Watch World Report 2010* specifically relies upon reports from Odhikar regarding these matters and therefore the Tribunal considers that this aspect of the *Human Rights Watch World Report 2010* needs to be considered against the background of what has been specifically reported in Odhikar's *Human Rights Report on Bangladesh 2009* (1 January 2010).

124. The Tribunal does not seek to suggest that political violence has been completely eliminated at the time of its decision in Bangladesh. As stated previously, nor does the Tribunal wish to diminish the seriousness of any human rights abuses that may be taking place in Bangladesh. However, the Tribunal notes that the country information indicates that following the introduction of the State of Emergency in January 2007, there was a reduction in politically motivated violence in Bangladesh and that since the December 2008 elections, and that the current government appears to be taking genuine steps to address issues of corruption and to work towards a stable, democratic and secular Bangladesh. In considering the evidence before it the Tribunal is mindful of the fact that Bangladesh's population was estimated to reach 156.1 million by July 2009 and that it is considered to be the most densely populated country in the world. As a result, the Tribunal has borne it mind that it is

appropriate to have regard to this context in assessing both the country information before it and the applicant's claims to be a refugee.

125. In addition, the Tribunal has also taken into account the independent country information regarding the existence of corruption and the prevalence of false documents in Bangladesh. In particular, the Tribunal notes that there have been various reports from authoritative sources, including DFAT, the *United States Bureau of Democracy, Human Rights and Labor*, the British and Canadian High Commissions in Dhaka, as well as the United Kingdom Home Office over the period 1996 to 2009 regarding the issue of questionable political party membership confirmation letters, and even altered newspaper articles in Bangladesh. In addition, these reports highlight the fact that it is difficult to verify such documents because, frequently, the contents of such documents have not been verified and often contain incorrect information.

126. Finally, the Tribunal observes that it is required to discharge its review responsibilities by assessing the facts and evidence in each case before it in accordance with the requirements of the Convention and the Act, having regard to the relevant case law. In particular, in *Applicant NABD of 2002 v MIMIA* [2005] HCA 29 their Honours Hayne and Heydon JJ held [at par.158] that:

The question for the Tribunal must always be *whether the particular applicant is entitled to the visa which is sought*. That requires consideration of the criteria prescribed by the Migration Act 1958 (Cth) ("the Act"). In most cases coming to the Tribunal the central question will be, as it was in this case, whether the Tribunal is satisfied that the visa applicant is a non citizen to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.

[*Tribunal emphasis*]

127. As a result, the Tribunal gives some weight to the country information before it in assessing the likelihood that the applicant has been subjected to past persecution on the basis of his political opinion, as well as in considering whether there is a real chance that this might be the case in the reasonably foreseeable future.

(b) *The Applicant's overall credibility and personal profile as a member of the BNP*

128. In assessing the credibility of the applicant's claims the Tribunal has before it the applicant's Protection visa application dated [in] September 2009, the material on the Departmental and Tribunal files, including the applicant's submission dated [in] December 2009, the applicant's oral evidence at the Tribunal hearing [in] December 2009, as well as his section 424AA response at the hearing. The Tribunal also has the benefit of both the country information generally available to it, as well as that specifically provided by the applicant.

129. At the Tribunal hearing the applicant submitted that the Tribunal should take into account the fact that he had earned a reasonable living as a lecturer, and through his student consultancy business, in Bangladesh and that he was in a position to fund his own overseas studies in assessing the genuineness of his claims. In particular, the applicant stated that he had sought to study in Fiji to allow any personal risks he faced in Bangladesh to dissipate by the time he returned to Bangladesh.

130. However, the Tribunal notes that, of itself, the fact that the applicant could afford to enrol in PhD studies in Fiji necessarily indicate anything about the genuineness of his current

claims to be a refugee. Nor does the Tribunal consider that the fact that his course was cancelled by the Fijian authorities to have any real bearing upon whether the applicant faces a real chance of persecution in Bangladesh in the reasonably foreseeable future for a Convention related reason.

131. In addition, the Tribunal does not find the applicant's account of why he overstayed his transit visa in July 2009 in circumstances where he knew he could only lawfully remain in Australia for 72 hours particularly credible. The applicant gave two reasons for why he overstayed this visa. Firstly, the applicant stated that he was hoping he could negotiate a new PhD supervisor at [Education Provider 1] and he felt that he could do this better from Australia, than from Fiji where there are no Bangladeshi students or residents. Secondly, the applicant stated that he needed to arrange his airfare and travel to Fiji. The Tribunal does not consider either of these explanations to make any sense.

132. [In] July 2009, when the applicant had effectively overstayed his transit visa in Australia, the applicant's Fijian student permit was still valid, given that this permit was not cancelled until [a date in] August 2009. As a university lecturer who claims to have research his overseas study options, it is not clear to the Tribunal why he would believe he would need the assistance of Bangladeshi nationals in Australia to assist him to effect a change of PhD supervisor in his proposed course in Fiji. The Tribunal also notes that it is a requirements for the grant of a subclass 771 visa that an applicant has concluded arrangements for travel to a destination outside Australia and that it is the applicant's intention to remain in Australia no longer than 72 hours, passing through Australia to another country. As a result, the applicant's airfare and travel to Fiji should properly have been arranged before he arrived in Australia.

133. In the circumstances, the Tribunal does not find the applicant's reasons for overstaying his transit visa in July 2009 overly persuasive. As a result, the Tribunal does not accept the submission that, because the applicant had arranged to unsuccessfully study in Fiji, and as he had travelled to Australia on a number transit visas before overstaying the last transit granted to him, these are somehow indicators of the genuineness of his claims to be a refugee.

134. Accordingly, in assessing whether the applicant faces a real chance of persecution in the reasonably foreseeable future on the basis of his political opinion, the Tribunal considers it more appropriate to have regard to the applicant's knowledge of, role in and activities within the JCD and BNP.

135. The Tribunal notes that there is no requirement for a person who claims persecution on the basis of political opinion to necessarily be the leader, senior office holder or other appropriate office holder within the political party he or she claims to belong to in order to meet the definition of a 'refugee'. Nor is there a requirement for a person claiming persecution on the basis of his or her political opinion to be fully versed in the history of the political party they claim to belong to or support, or to have a current knowledge of every aspect of the political party they belong to. On the other hand, the Tribunal considers that these factors are relevant matters to be taken into account in assessing whether an applicant has well-founded fear of persecution on the basis of his or her actual political opinion and claimed membership of a particular political party.

(i) *The Applicant's Political Profile:*

136. In this case, the applicant claims to have been an active member of the BNP since joining the student wing of the BNP, the JCD in 1996, aged 16 years, before joining the main BNP in 2001. The applicant gave oral evidence at the Tribunal hearing that he made a deliberate decision not to seek an office bearer position within the JCD whilst a student because he did not want any such role to potentially jeopardise his academic progress. In support of his claim to have been a student member of the JCD the applicant has submitted written statements, dated [in] September 2009 and [in] November 2009 respectively, from [Politician 1], ex-Member of Parliament, ex-president of the [District A] of the BNP, and former State Minister in previous BNP government and [an officeholder of the National Executive Committee of the JCD] of the BNP.

137. As regards his political profile, the applicant claimed that as a student member of the JCD from 1996 to 2001 he engaged in various political activities. These included visiting the constituency in his local area, speaking to village Imams and elders regarding the BNP's political ideology, compared with that of the Awami League, in order to prepare the ground work for the re-election of the BNP in 2001. He also claimed to have commenced a politically sensitive project in 1996 disputing the official death toll in the 1972 war of independence, but he ceased his pursuit of this when the Awami League was elected to power in 1996 and on the advice of his seniors at [Education Provider 2] and relatives. At the Tribunal hearing the applicant confirmed that he had never published his research paper on this topic and expressed doubts that it would ever be published in Bangladesh due to its political sensitivity.

138. In respect of his membership of the main BNP from 2001 the applicant stated that he had not taken any steps to pursue any official office within the party because he did not wish to jeopardise his future employment as a university lecturer if the Awami League was returned to government in the 2001 elections. The applicant told the Tribunal that the 2001 election campaign ran for 3 months and he was only involved in campaigning for his local constituency, which was one of 5 in [District A] He stated that this constituency comprised 56,000 voters and that he actively campaigned on behalf of the BNP by preparing and distributing hand bills, leaflets, misdemeanour fact sheets, and posters, as well as photographic evidence, referring to the corrupt practices of the Awami League. The applicant also claimed to have delivered speeches of 20-30 minutes duration each at more than 100 venues during this particular campaign. Following the election of the BNP candidate in his local constituency in the 2001 elections the applicant stated that his involvement with the BNP consisted of ensuring that his elected Member of Parliament, [Politician 1], pursued relief aid and infrastructure projects for the constituency. He stated that from 2004 his Member of Parliament was aware of the applicant's work and business commitments and therefore why his involvement in BNP political activities had reduced to monthly visits to constituent villages to assess their basic needs.

139. The applicant also advised that he did not actively campaign for the BNP in the December 2008 election campaign because his circumstances had changed since 2001. In particular, he stated that he did not officially give public speeches as he had in the 2001 election campaign, instead he provided advice and motivation to informal groups "silently", which he felt was more effective.

140. The Tribunal observes that apart from the written statements from [Politician 1] and [an officeholder of the National Executive Committee of the JCD] and the applicant's oral evidence, he has not provided the Tribunal with any other independent, or documentary, evidence to support his claim that he commenced a political sensitive project in 1996

regarding the death toll in the 1972 war of independence, or that anyone within Awami League, the university, or elsewhere was aware that he had done so. Nor has he provided evidence that would substantiate his claims to have actively campaigned on behalf of the BNP from 1996 to 2001 as a member of the JCD, or that he was actively campaigning and making political speeches during the 2001 election campaign such that he had acquired a political profile that might expose him to a real chance of persecution approximately 8-9 years after he claims to have last actively engaged in political campaigning for the BNP. In assessing the applicant's claims, the Tribunal has taken into account that it may not always be easy for an applicant to substantiate his or her claims with documentary evidence. As a result, the applicant's overall credibility becomes important to an assessment of his claims.

141. In this case, the Tribunal observes that there are a number of aspects to the evidence that detract from the credibility of the applicant's claims. For example, notwithstanding the fact that the applicant is tertiary educated, speaks English and was employed as an academic in the past, who has had at least one academic paper in [Subject A] published, the applicant's description of his activities as a member of both the JCD and BNP from 1996 to 2008 was quite general in his Protection visa application, written submission and oral evidence.

142. In considering the applicant's claims the Tribunal has taken into account the relevant Tribunal guideline, "*Guidance on the Assessment of Credibility*" (August 2008), which provides, at paragraph 4.3, that:

Members need to be mindful that a person may be anxious or nervous due to the environment of a hearing and the significance of the outcome. A person from a different social and cultural environment may experience bewilderment and anxiety. The educational, social and cultural background of a person may affect the manner in which a person provides his or her evidence and the depth of understanding of particular concepts. A person may have had traumatic experiences or be suffering from a disorder or illness which may affect his or her ability to give evidence, his or her memory or ability to observe and recall specific events or details. There may also be mistrust in speaking freely to people in positions of authority.

143. Accordingly, the Tribunal accepts that the hearing and review application process can be stressful for applicants. Nor does the Tribunal expect the applicant to be versed in Australian refugee law in terms of the presentation of his claims. In addition, the Tribunal has taken into account the concerns the applicant has expressed for his family in Bangladesh and his future, and that he may have been anxious about the outcome of his review application.

144. However, the Tribunal does not accept in the circumstances of this case, and for the reasons set out in this decision, that this type of stress necessarily explains the vagueness of the applicant's claims and evidence regarding his alleged past political activities and opinion. Indeed, it is a little surprising, even taking into account his claim that he was poorly advised by his former migration agent, that an individual with the applicant's tertiary qualifications and employment background, did not have a greater appreciation of the need to provide some details regarding his specific political activities given his claim to be a BNP activist, in the same way that an academic might be expected to appreciate the need to provide evidence that supports a particular thesis. The Tribunal notes that the applicant appears to have understood this in terms of providing a medical certificate regarding his alleged back wound. He also submitted his business card and a copy of the outline for the ["Consultancy"] (dated October 2002) to verify his claims to be an assistant professor at [Education Provider 2] and an executive director of this institute.

145. The Tribunal reiterates that it accepts that applicants may not always be able to provide documentary evidence to support each and every aspect of their claims. However, the Tribunal does consider it relevant to take into account the general nature of the applicant's claims regarding his claimed political activities since 1996, having regard to his claims to be an active BNP member at both an intellectual and practical level, in assessing the credibility of his claims.

146. Another aspect of the evidence that detracts from the applicant's claims relates to the supporting statements that have been submitted on his behalf. The Tribunal notes that the statement from [Politician 1], dated [in] September 2009, confirms that the applicant comes from [Politician 1]'s constituency and is personally known to him. However, apart from stating that the applicant is a member of the JCD and an "active member and leader" and that his "political activities" meant that his political rivals were "trying to oppress and harass him for political reasons" this statement, or reference, does not provide much specific detail. For example, it does not detail the nature of the applicant's political activities within either the JCD or BNP Nor does it refer to the fact that the applicant claims to have actively campaigned for [Politician 1] by distributing printed material regarding the Awami League and by delivering political speeches throughout the constituency, or that he had embarked upon a project disputing the accuracy of the number of deaths in the 1972 war of independence. The reference does not state the reasons for the applicant not proceeding with this particular intellectual project or why the applicant's views regarding this matter have not been published. Similarly, [Politician 1]'s reference does not discuss what steps the applicant took to ensure [Politician 1] provided relief aid and infrastructure projects to his constituency, or the fact that the applicant reduced his political activities to monthly village visits after 2004 due to his work and business commitments. Correspondingly, this statement also does not explain why the applicant did not actively campaign on behalf of the BNP in the 2008, or what "silent" advice and motivation the applicant provided to informal groups and how this was of benefit to the BNP's 2008 election campaign. Further, there is no explanation, beyond the general statement that the applicant was being targeted due to his political activities, regarding the reasons for the applicant being targeted in 2009. The Tribunal further observes that the applicant gave oral evidence that he has never sought any office in the BNP, which appears to be at odds with [Politician 1]'s statement that he was a leader of the party at his university.

147. Similarly, although the statement from [an officeholder of the National Executive Committee of the JCD] confirms that the applicant is an associate professor at [Education Provider 2] and that he has been participating in the BNP for a long time, it does not actually state when the applicant joined the BNP, that he held any leadership role, or what responsibilities he held or discharged within the party in [City A]. In addition, whilst the statement refers to the student wing of the Awami League destroying the applicant's personal business and NGO office and that his family has been threatened, it is somewhat lacking in specific detail regarding either of these claims. The Tribunal notes that this reference states that the applicant actively took part in the last election, but does not provide any details in terms of the applicant's specific activities in this regard. Given that this reference is dated [in] November 2009, presumably the last election that is being referred to is the December 2008 election. This particular claim would therefore appear to contradict or overstate the applicant's oral evidence that he did not actively campaign for the BNP in the 2008 elections because his circumstances had changed and that his activities were limited to the provision of "silent" advice and motivation of others. Alternatively, if the reference was intended to refer to the applicant's participation in the 2004 election campaign, it does little to support the

applicant's claims that he has been and remains an active member of the BNP. In addition, as stated previously, the Tribunal has also had regard to the country information before it regarding the prevalence of corruption and the unreliability of Bangladeshi documents.

148. Accordingly, having regard to all the evidence before it, including the country information regarding the questionable nature of many documents from Bangladesh, including such political party membership confirmation letters, the Tribunal gives these statements of support less weight in its assessment of the issues before it.

149. The Tribunal has taken into account that [in] December 2009 DFAT advised that two office bearers within the JCD had identified the applicant as a member of the JCD at [Education Provider 2]. However, this advice also stated that, notwithstanding the applicant's claim that he was an active member of the BNP, [Politician 2], an ex-Member of Parliament and the Joint Convenor of the [District A] BNP, had advised that the applicant was not known to that BNP office.

150. In his section 424AA response at the Tribunal hearing the applicant stated that [Politician 2] was the convenor of one part of the [District A] for the BNP and that his constituency belonged to the other half, which was administered by [Politician 3], who was also the [office deleted: s.431(2)]. He also submitted that the Tribunal should give greater weight to the statement from [Politician 1] because he is senior to both [Politician 2 and Politician 3] within the BNP. Whilst the Tribunal has had regard to this explanation, it does not consider it to be particularly plausible that a person who claims, as does the applicant, that he is being targeted by the current government in Bangladesh, and/or its supporters and agents, for his political opinion and activities would not be recognised by the convenor of the other half of the BNP district to which his constituency belongs. Nor does the Tribunal accept that the advice provided by [Politician 2] on this matter should be rejected merely because she might hold a hierarchically lower position within the BNP than [Politician 1].

151. In any event, the Tribunal observes that, if it accepts the explanation the applicant has put forward in response to the advice the Tribunal received from DFAT [in] December 2009, the fact that the applicant was not known to the [District A] BNP does little to support his claim that he has the kind of political profile, as a member of the BNP and a claimed activist for this party, that would attract the serious adverse attention of the current Awami League government and/or its supporters and agents in Bangladesh in the reasonably foreseeable future.

152. As a result, the Tribunal does not find the applicant's explanation for the information [Politician 2] provided to DFAT to be particularly credible. Consequently, the Tribunal prefers the advice it has received from DFAT, given that it comes from a relatively disinterested source, over the applicant's account in respect of these matters and the letters of support from [Politician 1] and [an officeholder of the National Executive Committee of the JCD]. This is particularly so, given that the country information before the Tribunal also indicates that political party membership confirmation letters are often issued in Bangladesh on the basis of incorrect factual information and cannot be relied upon.

153. The Tribunal notes that the applicant claimed that he started to experience problems in January 2009. Interestingly, he did not claim to have been caught up in any of the anti-corruption drives undertaken by the previous Caretaker Government that resulted in the 2008 mass arrests of many grassroots supporters of both the BNP and Awami League parties at the district, sub-district and municipal levels. This is so, even though the applicant claims to have

provided intellectual and other practical support to the BNP, to be a businessman, an academic and a government employee in a state-run university. Although this factor is not finally determinative of itself, the Tribunal considers that this evidence also tends to support a finding that the applicant did not have a high profile as a political activist, member or supporter of either the BNP or JCD, as claimed, prior to 2009. Apart from the election of the Awami League to government on 28 December 2008, there is little in the evidence of the applicant's political activities both before and after those elections to indicate that he would have acquired the kind of political profile that would attract such adverse attention into the reasonably foreseeable future.

154. In addition, there are other aspects to the evidence in this case that also detract from the applicant's claims that his past involvement with JCD and BNP would lead to a real chance of him being targeted by the supporters of the Awami League, or its agents, in the reasonably foreseeable future. This view is reinforced when the Tribunal takes into account the applicant's knowledge of the BNP.

(ii) *The Applicant's Knowledge of the BNP:*

155. The Tribunal acknowledges that the applicant demonstrated a reasonable knowledge of when the Caretaker Government came to power in Bangladesh and the consequences of its reform agenda for the BNP. On the other hand, as a tertiary educated man and academic in Bangladesh, it would be unusual if an individual in these circumstances did not possess some knowledge of these recent political events in Bangladesh.

156. However, the Tribunal observes that, despite his claim to have been involved with the BNP, or its student wing, the JCD, since 1996, and to have provided both intellectual and practical support to the BNP, there were gaps in the applicant's knowledge of this political party and its organisational structure, particularly at the district level. For example, when questioned at the Tribunal hearing about the identity of the convenor of [District A], the applicant initially responded that this was not his concern because he was focussed upon his constituency. Indeed, he only identified [Politician 3] as the convenor of the [District A] district 1 after the Tribunal repeated its question; he did not appear to know that [Politician 2] was the joint convenor of [District A].

157. The Tribunal invited the applicant to comment upon this matter under section 424AA at the hearing. He responded that, unlike others who became involved in politics to gain an official position, he was not interested in becoming a BNP office bearer and therefore was not concerned with who were the relevant office bearers at the district level. As stated previously, Tribunal has proceeded on the basis that applicants are not required to be office bearers, or to possess a desire to be so, before they can satisfy the Convention definition of a 'refugee'. The Tribunal has also had regard to the applicant's explanation that he did not know the name of the current JCD president for [District A] because councils regarding this matter had only been held on 8 December 2009. In addition, the Tribunal has taken into account the fact that the applicant was able to identify [Politician 3] as the BNP district president and [Politician 1] as his former Member of Parliament and a former Minister in the previous BNP government. On the other hand, the Tribunal also observes that it would be reasonable to expect the applicant to be aware of the identity of the district BNP president and former Member of Parliament, who was also a former government minister.

158. The Tribunal has considered whether the applicant's responses to its questions at the Tribunal hearing might have been affected by the stress and anxiety review applicants often

experience in connection with the review application and Tribunal hearing process. Accordingly, the Tribunal has also had regard to the guidance set out in paragraph 4.3 in the relevant Tribunal guideline, “*Guidance on the Assessment of Credibility*” (August 2008) in assessing the gaps in the applicant’s political knowledge of the BNP at the district level.

159. However, whilst the Tribunal acknowledges that the applicant comes from a different social and cultural background to that which prevails in Australia, he is also a tertiary educated individual. The Tribunal has taken into account the possible impact that the alleged telephone threats, property destruction and personal assault may have had upon the applicant’s ability to give oral evidence at the Tribunal hearing, but gives these matters less weight for the reasons set out below in this decision. The Tribunal further notes that the applicant has not provided any medical evidence to support a claim that he suffers from any disorder, or ongoing illness, that might have affected his ability to give oral evidence before the Tribunal. Accordingly, whilst the Tribunal accepts that the hearing and review application process can be stressful for applicants, it does not accept that, in the circumstances of this particular case, this type of stress necessarily explains the gaps in the applicant’s knowledge regarding the BNP in his district. This is particularly so, given the applicant’s claims that he provided intellectually, practical and moral support to the BNP.

160. In addition, the Tribunal is also mindful of the fact that there is no requirement for a person claiming persecution on the basis of his or her political opinion to know all of those working at the relevant political branches that they might come into contact with. Notwithstanding, the Tribunal does consider these matters to be relevant considerations in assessing the applicant’s past claims of persecution and whether there is a real chance of persecution in the reasonably foreseeable future due to the applicant’s political opinion.

161. In this case, what detracts from the applicant’s credibility, in terms of his claimed role and activities within the BNP, is the fact that he did not appear to know the identity of other joint convenor of the BNP at the district level, [Politician 2]. This is particularly so, given the applicant’s educational background and claims to have provided active intellectual support to the BNP. In these circumstances, notwithstanding the applicant’s claim to have focussed purely on his constituency, the Tribunal considers that it would not be unreasonable to expect the applicant to have some knowledge of the identities of both of the district BNP convenors in [District A]. Consequently, the Tribunal gives the applicant’s knowledge of [Politician 1] and [Politician 3]’s respective roles within the BNP less weight in its assessment of the evidence. Further, the Tribunal gives greater weight to the applicant’s inability to identify [Politician 2] as an office bearer within the BNP, given his claim to have provided intellectual, practical and motivational support to the BNP. The Tribunal accepts that this matter is not, of itself, necessarily decisive of the issues before it. However, this gap in the applicant’s knowledge about the political structure of the BNP at the district level, being the party he claims to have actively worked for, together with his admissions that he wound back his political activities from 2004, due to his work and business commitments, and that he did not actively campaign on behalf of the BNP in the 2008 elections, tends to reinforce the impression that the applicant has not been as involved in the BNP as he has claimed. It also supports the view that any involvement the applicant may have had with the BNP at his university college and/or in his district, was at a low level.

162. In the circumstances, the Tribunal does not accept that a person, who claims to have been very active in his political involvement with the BNP in the manner described by the applicant, would not know, or have an interest in, the identity of the joint convenor of the BNP for [District A]. This is particularly so given that this office bearer would be someone

whom it would not be unreasonable to expect that the applicant might have become aware of in the general course of his political activities on behalf of this political party. Consequently, taking into account the evidence before it, the Tribunal does not accept that the any stress or anxiety the applicant may have been experiencing at the time of the Tribunal hearing, adequately explains his lack of knowledge of this matter.

Summation:

163. Accordingly, based on all the evidence before it, including the discussion of the material set out below, the Tribunal did not find the applicant to be a particularly credible witness. Although the Tribunal accepts that the applicant may have joined the BNP as a student when aged approximately 16 years, given the inconsistencies that have been identified in respect of the applicant's claims regarding his profile in, and knowledge of the BNP, the Tribunal does not accept that the applicant was as active in the BNP as he has claimed.

164. The Tribunal does not accept that the applicant has had a close involvement in the BNP's activities at a practical level. The Tribunal also does not accept that the applicant distributed hand bills, leaflets, posters and photographic pictures of the Awami League's corrupt activities during the period 1996 to 2001, either in the lead-up to or during the 2004 election campaign. Correspondingly, the Tribunal does not accept that the applicant made fact sheets for his constituency regarding the misdemeanours committed by the Awami League. Nor does the Tribunal accept that the applicant delivered political speeches of 20-30 minutes duration at more than 100 venues during the 2001 election campaign. In addition, the Tribunal does not accept that the applicant provided intellectual support to the BNP, be it during the 2004 or 2008 election campaigns, or at any other time. The Tribunal further does not accept the applicant's claim that he did not officially give public speeches during the 2008 campaign because he did not wish to jeopardise his university employment. Nor does the Tribunal accept that he provided more effective campaign support during the 2008 election through the provision of advice and motivation to informal groups "silently" on behalf of the BNP.

165. As a result, the Tribunal does not accept that the applicant is known to be an active member of the BNP whose past involvement with the BNP has given him the kind of political profile that would attract adverse attention from his political opponents in government, its supporters, agents, or otherwise, as claimed. The Tribunal finds that the applicant was a low-level member and supporter of the BNP with no particular political profile.

(b) The Applicant's Claims of Specific Incidences of Past Persecution in Bangladesh:

166. The applicant has not claimed that he has been the victim of any attacks in the past by the RAB or authorities might be categorised loosely as "cross fire". However, he has claimed that he started to experience problems in January 2009, following the election of the Awami League to government, from supporters of the Awami League's student wing. In particular, the applicant stated that [in] January 2009 he was approached by someone known as "[Person A]", a student leader of the Awami League student wing, and some others he did not recognise, who suggested that he should contribute to their cause. As the applicant understood this to be a request for a bribe, he claims that he handed over 50,000 Bangladeshi Taka. The applicant claims that he reported this incident to the police, but that they failed to take any action against the supporters of the Awami League. The applicant also alleges he was approached on 2 further occasions by members of the student wing of the Awami

League, [in] February 2009 and [in] April 2009, at which time he handed over 50,000 and 40,000 Taka respectively. He claims that he was then left alone for a period of 2 months.

167. The applicant has alleged that subsequently, [in] June 2009, [Person A] and his associates arrived at his business premises demanding 500,000 Taka and that he had to provide them with a blank cheque to access funds from his bank account whilst the applicant was overseas. The applicant claims he refused these demands because he did not have sufficient funds and realised that the demands for the payment of bribes would only continue if he complied. The applicant stated that he was vocal in his refusal and was then assaulted with broken glass, and that his attackers also destroyed his office equipment and furniture. In addition, the applicant stated that he was threatened with being shot dead before his attackers finally left his business premises. Following the attack, the applicant claims that his employees indicated that they would be unable to remain in his employment. The applicant stated that the incident left him deeply affected and stressed. He went on to say that on 12 June 2009, the following day, he and his employees began to receive unidentified, threatening telephone calls. The applicant stated that later that day he was physically assaulted, being stabbed in the upper back and that he observed that [Person A] was watching this assault take place; he therefore assumed that [Person A] was responsible for organising this attack. The applicant told the Tribunal that because he did not feel safe in [City A] he therefore went to Dhaka, 300 kilometres away, for medical treatment by a private surgeon. He stated that, when he had sufficiently recovered from his surgery, he departed Bangladesh for Fiji [in] June 2009.

168. The Tribunal observes that the High Court of Australia considered the issue of what is meant by the phrase “threat to the person’s life or liberty“ in subsection 91R(2)(a) in *VBAO v MIMIA* [2006] HCA 60. In this case the applicant had claimed, like the applicant before the Tribunal, that he had been a member of a political party, but in Sri Lanka, and that he had attended and organised political rallies. The applicant in *VBAO’s case* also claimed that his life had been threatened by members of an opposing political party. He claimed to have received threatening telephone calls and letters, to have been struck by food and to have been struck by the rear-view mirror of a passing van. The applicant in *VBAO* also claimed that his parents had been threatened and that he had to go into hiding because of the threats he received. Gleeson CJ and Kirby J held [at par 3]:

...A past communication of an intention to harm a person may, or may not, be some evidence that there is a likelihood of future harm to the person’s life or liberty, but the question for the decision-maker is whether there is such a likelihood. The decision-maker is required to consider future persecution that involves serious harm, and one instance of such serious harm is a threat to life or liberty. The decision-maker is to decide the risk of future harm, not the risk of future communications.

169. In support of his claims of past persecution the applicant has submitted a blank cheque from the Mercantile Bank Limited in [City A] and a medical certificate dated [in] June 2009. In respect of the blank cheque provided to the Tribunal, although this particular document provides an account number, the only link to the applicant’s business appears to be an ink stamp, applied diagonally to the cheque stating “[Consultancy] Proprietor”, which could have been applied at any point in time. In addition, even if the Tribunal proceeds on the basis that this document is evidence of the existence of the applicant’s business cheque account, it does not itself establish that any requests for political bribes were made to the applicant or by whom they were made, or when they were made. As such, the Tribunal gives this evidence less weight in its assessment of the issues before it.

170. Similarly, the Tribunal has had regard to the medical certificate dated [in] June 2009 from a surgeon based in Dhaka that the applicant received medical treatment [in] June 2009. The Tribunal finds the applicant's claim that he needed surgery for a stab wound to his upper back, which also required a week's bed rest, to be at odds with his claim that he travelled 300 kilometres to Dhaka for medical treatment, even taking into account his alleged fear for his personal safety in [City A]. The Tribunal finds it implausible that in a city of approximately 2 million people, the applicant would have undertaken this journey for medical treatment if his wound was as serious as he claimed. In addition, the Tribunal has taken into account that the *United Kingdom Country of Origin Information Report on Bangladesh* (11 August 2009) reports that that medical certificates from Bangladesh are unreliable because genuine medical certificates, containing incorrect information, can be and have been issued in Bangladesh. For these reasons, the Tribunal gives this evidence less weight in its assessment of the applicant's claims.

171. In assessing the applicant's claims of past persecution on the basis of his political opinion and activities the Tribunal notes that there are a number of discrepancies in the evidence that tend to detract from the overall credibility of the applicant's claims of past persecution in Bangladesh. The Tribunal observes that the applicant did not mention the bribery incidents in his Protection visa application dated [in] September 2009. In addition, the Tribunal notes that, whilst the applicant did refer to an attack in his Protection visa application, he specifically stated that before coming to Australia, [Person A] and his associates had "tried to attack" him; he did not say he was actually assaulted and stabbed. At the hearing the Tribunal noted that these claims had not been raised in the applicant's Protection visa application, or at his departmental interview. The applicant conceded this was the case at the Tribunal hearing, but responded that he had not had a lot of time to prepare his Protection visa application and that his previous migration agent had not been particularly helpful in this regard, or in advising him what issues to raise at his departmental interview. The Tribunal further notes that details of his stabbing were not included in the applicant's submission to the Tribunal dated [in] December 2009.

172. The Tribunal has taken into account the applicant's explanation that he received little assistance from his former migration agent in respect of the preparation of the applicant's Protection visa application and his preparation for the departmental interview. On the other hand, it has also had regard to the fact that the applicant is a tertiary educated academic and businessman who speaks English. Even after taking into account possible cultural differences and the fact that it would be unreasonable to expect the applicant to have the same familiarity with Australian refugee law as a registered practitioner in this field, the Tribunal does not find the applicant's explanation for why he did not raise these matters at his departmental interview, if not in his Protection visa application, credible. The applicant had a month in which to prepare himself for his departmental interview after lodging his Protection visa application, by which time he could have prepared a written statement regarding the incidents that had occurred to him in Bangladesh and which had given rise to his fear of persecution. Yet, he did not do so. The fact that the applicant gave oral evidence at the Tribunal hearing that his current migration agent had advised him that he should have done so, does not necessarily assist the Tribunal to understand his failure to refer to these events and, therefore, articulate the basis for his persecution fears at his departmental interview in October 2009, or when he lodged his review application [in] October 2009. This is particularly so, given that the alleged destruction of the applicant's business premises and the serious physical assault upon him that respectively occurred [in] June 2009, if true, were very recent events that it

would be reasonable to expect an educated man to raise in presenting his case for protection, whether or not he had the benefit of competent refugee assistance.

173. Accordingly, the Tribunal gives weight to the applicant's failure to raise these events prior to the review application and/or the Tribunal hearing. As a result, having regard to the lateness of these claims, the applicant's educational background and the Tribunal's earlier finding regarding his general lack of credibility the Tribunal does not accept that the applicant was approached to pay in bribes to members of the student wing of the Awami League in January, February, April and June 2009. Nor does the Tribunal accept the claim that after the applicant's political opponents did not seek bribes from him for a period of 2 months from mid-April 2009. The Tribunal further does not accept that the applicant reported the first bribery incident to the police, but that they failed to take any action against the supporters of the Awami League.

174. Similarly, the Tribunal does not accept that someone called [Person A] visited the applicant's business premises [in] June 2009 demanding that the applicant pay him the sum of 500,000 Bangladeshi Taka and that he provide this individual with a blank cheque and access to his bank account. It follows that the Tribunal does not accept that these alleged members of the student wing of the Awami League destroyed the applicant's office equipment and furniture or threatened to kill him, or that the applicant was struck in the forehead by a piece of broken glass on this occasion and that this was the cause of any scar to his forehead.

175. Correspondingly, having regard to the requirements of section 91R of the Act and the decision in *VBAO v MIMIA* [2006] HCA 60, the Tribunal does not accept that the applicant or his employees received threatening telephone calls on 12 June 2009, or at any other time. As a result, the Tribunal does not accept the claim that the applicant's employees expressed concerns about continuing to work for the applicant, or that the applicant was haunted by this visit and unable to sleep at night as a result.

176. In addition, the Tribunal does not accept that [in] June 2009 the applicant was stopped by a person he did not know, possible a tertiary student, near [Education Provider 2] who stabbed in the upper back whilst [Person A] stood nearby watching. Nor does the Tribunal accept the claim that the applicant had to travel to Dhaka for medical treatment by a private surgeon for this wound because he feared for his personal safety in [City A].

(c) *Passport and Departure related issues:*

177. The Tribunal observes that, despite the applicant's claims that he was, and remains of adverse interest to the Bangladeshi authorities, his ability to depart Bangladesh in the manner that he did on several occasions from April 2009 to June 2009 undermines the overall credibility of his claims. In particular, in both his Protection visa application dated [in] September 2009 and at the Tribunal hearing the applicant stated that he did not have any difficulties in obtaining a passport in September 2008 for the purpose of travelling overseas as a prospective international student. In addition, the applicant stated that he departed Bangladesh from the Zia International Airport in Dhaka under his own name and did not refer to ever having experienced any difficulties with the relevant authorities upon his departure or return. Indeed, the applicant told the Tribunal at his hearing that he might not be harassed upon his return at Dhaka airport because he was a university lecturer. However, having regard to the ease with which the applicant has departed and returned to Bangladesh in the

recent past and the country information before it, the Tribunal does not accept that the applicant is of interest to the Awami League, its supporters and/or agents.

178. Accordingly, the Tribunal finds that the applicant has been able to depart and return to Bangladesh without experiencing any difficulties from the Bangladeshi authorities, its supporters or agents notwithstanding the applicant's claimed political opinion and activities. In addition, having regard to the Tribunal's earlier findings regarding the applicant's political profile as a member of the JCD and BNP, the Tribunal does not accept that the applicant was of any significant interest to the Bangladeshi authorities, or their agents, due to his political opinion and activities at any time when he departed Bangladesh in 2009, despite his claims to the contrary.

Conclusion:

179. In terms of assessing the applicant's claims of past persecution for his political opinion in Bangladesh the Tribunal has had regard to the inconsistencies in the evidence that have emerged between the claims the applicant set out in his Protection visa application, his oral evidence and the country information before the Tribunal. The latter includes the questionable nature of many documents from Bangladesh, such as political party membership confirmation letters and medical certificates; the advice from DFAT regarding the lack of the applicant's public profile as a political activist for the BNP in the relevant district in Bangladesh in which the applicant claims to have been politically active; and his inability to identify a relevant office bearer of the BNP from this district. In addition, the Tribunal has taken into account the applicant's failure to articulate some of his more serious claims of past persecution before the Department, despite the fact that these alleged incidents occurred relatively recently.

180. However, after considering all the evidence and giving some weight to the independent country information before it, the Tribunal does not accept the applicant's claim that he was persecuted in the past for his political opinion and activities in Bangladesh. In particular, the Tribunal finds that the applicant was a low-level member and supporter of the JCD and BNP. The Tribunal finds that the applicant did not have a political profile at his university or at the district level in Bangladesh that would make him known to the general public. As such, the Tribunal finds that the applicant did not have the kind of political profile that would attract adverse attention from the Awami League, which is currently in power in Bangladesh, or from its student wing, its supporters, or agents in Bangladesh. Given this profile, the Tribunal does not accept that the applicant was harassed and persecuted for his past political activities in Bangladesh. Based on the reasons and findings set out above, the Tribunal does not accept that the applicant was ever targeted by, or of interest to, the current Bangladeshi government, its supporters, the authorities, including the RAB, or their agents in the manner claimed by the applicant.

181. As a result, based on the above discussion of the evidence and the independent country information before it, the Tribunal finds that the applicant has not suffered past persecution, or serious harm, for reasons of his political opinion, or activities, within the JCD and/or BNP in Bangladesh.

182. The Tribunal has also considered whether the applicant will suffer persecution in the reasonably foreseeable future on the basis of his political opinion, given that he has indicated that he will continue to be a member of the BNP, and to be identified as such, and that he, therefore, fears persecution if returned to Bangladesh.

183. In assessing this issue the Tribunal has taken into account the most recent country information reports before it, including the United Kingdom Home Office *Country of Origin Reports* dated 25 September 2008 and 11 August 2009, the United Kingdom Home Office ‘*Operational Guidance Note – Bangladesh*’ dated 6 February 2009, the 2007 and 2008 United States Department of State ‘*Country Report on Human Rights Practices, Bangladesh*’ reports, the reports from the *Asian Legal Resource Centre* dated 21 August 2008, the *Human Rights Watch World Report 2009* country summary for Bangladesh (January 2009), the reports from the International Crisis Group and the various reports from Odhikar, including its 2009 annual report, as well as the advice from DFAT. The Tribunal notes that these reports generally do not support the proposition that a person with the applicant’s low-level political profile would face a real chance of persecution in the future on the basis of their political opinion. As stated previously, the Tribunal places some significance upon the fact that, despite the applicant’s claims that there is a risk of extra-judicial killing in his case due to his political opinion, the annual report from Odhikar dated 1 January 2010 that only one victim of an extra-judicial killing was politically affiliated with the BNP.

184. In addition, given the independent country information that has been discussed in detail above, the Tribunal finds that the applicant does not have the kind of political profile that would result in him facing a real chance of persecution now, or in the reasonably foreseeable future, due to his political opinion, practices and activities as an ordinary, low-level member of the BNP, or a former student member of the JCD, in Bangladesh. As a result, the Tribunal does not accept that the applicant faces a real chance of persecution now, or in the reasonably foreseeable future, on the basis of his political opinion if he were to return to Bangladesh now, or in the reasonably foreseeable future.

The Applicant’s Membership of a Particular Social Group:

185. The Tribunal has also considered whether the applicant has suffered persecution as a member of a particular social group as a businessman, or as an academic in a state-owned university, who is a member of the current government’s political opposition.

186. The Tribunal notes that the meaning of the expression “for reasons of ... membership of a particular social group” was considered by the High Court in *Applicant A v MIEA* (1997) 190 CLR 225 and also in *Applicant S v MIMA* (2004) 217 CLR 387. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [par. 36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a “social group” and not a “particular social group”. ...

187. As a result, the Tribunal observes that it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution; the persecution must be feared for reasons of the person’s *membership of the particular social group*.

188. In relation to the issue of whether the applicant is a member of a particular social group as a businessman in Bangladesh, whilst this may constitute a particular social group, the Tribunal does not accept that the applicant in this case faces a real chance of persecution for reasons of his membership of this particular social group, now or in the reasonably foreseeable future. There is no evidence before the Tribunal that the applicant was ever caught up in any of the mass, short-lived mass arrests, that took place as part of an anti-corruption drive, or otherwise, in the past in Bangladesh. In addition, the country information before the Tribunal does not suggest that businessmen in Bangladesh have been targeted as a group within Bangladeshi society at large. Having regard to the Tribunal's earlier findings regarding the applicant's claims that he was being targeted for bribes, together with the country information before it, the Tribunal does not accept that the applicant faces a real chance of persecution for reasons of his membership of this particular social group, now or in the reasonably foreseeable future.

189. Similarly, the Tribunal accepts that lecturers employed at State-owned universities in Bangladesh, or that such lecturers who also have the financial means to study overseas, might respectively constitute particular social groups. However, whereas the country information before the Tribunal indicates that journalists have been targeted in the recent past in Bangladesh, there is little to suggest that this is the case with either of these particular social groups. Accordingly, on the basis of this evidence, together with the country information that has been discussed in detail above, the Tribunal does not accept that the applicant faces a real chance of persecution for reasons of his membership of either of these particular social groups now, or in the reasonably foreseeable future, if he were to return to Bangladesh.

190. The Tribunal has considered the applicant's claims that he has had to relocate members of his family within Bangladesh because he fears for, and they fear for his safety. However, there is little to suggest that the applicant's family have acquired any sort of profile that would expose them to a real chance of serious harm for a Convention related reason in the reasonably foreseeable future. In view of the Tribunal's earlier findings regarding the applicant's claims, the Tribunal also does not accept that the applicant faces a real chance of persecution for reasons of his membership of a particular social group, being his family, if he were to return to Bangladesh, now or in the reasonably foreseeable future.

Is the Applicant's Fear of Persecution Well-Founded?

191. Accordingly, in considering the applicant's claims the Tribunal has taken into account the documentary and oral evidence provided by the applicant, including the submissions he has put forward, together with the independent country information before it.

192. Notwithstanding, the Tribunal finds that the applicant does not face a real chance of persecution on the basis of his political opinion, religion, or his membership of a particular social group in this case. The Tribunal further notes that the applicant has not made any claims that he fears persecution on the basis of his race or nationality. As a result, the Tribunal also finds that the applicant does not face a real chance of persecution on the basis of these Convention grounds.

193. Consequently, and having regard to the totality of the evidence before it, including considering the applicant's claims on both an individual and cumulative basis, the Tribunal does not accept that the applicant faces a real chance of persecution for Convention-related reasons of his race, religion, nationality, membership of a particular social group or political

opinion, or for any other reason, if he were to return to Bangladesh now, or in the reasonably foreseeable future.

194. As a result, the Tribunal finds that the applicant does not face a real chance of persecution, or serious harm, in the reasonably foreseeable future for Convention reasons if he were to return to Bangladesh; he is not a refugee.

CONCLUSION

195. On the basis of having considered the evidence as a whole, and looking to the reasonably foreseeable future, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution in Bangladesh on a Convention-related ground. Accordingly, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant does not satisfy the criterion set out in subsection 36(2) of the Act for a Protection visa.

DECISION

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

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 Officer: PRMHSE