

1204317 [2012] RRTA 780 (3 October 2012)

DECISION RECORD

RRT CASE NUMBER: 1204317

DIAC REFERENCE(S): CLF2011/74131

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Andrew Mullin

DATE: 3 October 2012

PLACE OF DECISION: Sydney

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 to refuse to grant the Applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The Applicant, who claims to be a citizen of Bangladesh, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] May 2011.
3. The delegate refused to grant the visa [in] March 2012 and the Applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. 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.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 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.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

Complementary protection criterion

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Departmental and Tribunal files relating to the Applicant. The Tribunal also has had regard to the material referred to in the delegate's decision and other material available to it from a range of sources.
20. The Applicant appeared before the Tribunal [in] July 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.
21. The Applicant was represented in relation to the review by his registered migration agent, who attended the hearing.

Summary of written claims

22. In his protection visa application the Applicant claims to have been born in [Town 1], Bangladesh, in [year deleted: s.431(2)]. He gives his religion as Maizbhandari. He claims to have lived at an address in [Town 1] from May 2000 to February 2004, at an address in Dhaka from February 2004 to March 2007 and at an address in [Town 2] from March 2007 to October 2010. He claims to have received [formal education] in Bangladesh, obtaining a [degree] in 2000. Regarding his work history he claims to have been unemployed from March 2000 to March 2004, to have worked as a [representative for a company] from March 2004 to January 2007 and as a marine steward from May 2008 to April 2011. He claims to

have been married in [2007] and lists his wife, [child], parents and [a number of siblings] as living in Bangladesh and one [sibling] living [abroad].

23. The Applicant claims to be able to speak, read and write Bengali and to read and write English.

24. The Applicant's substantive claims, set out in the application form and an attached statement running to four and a half pages of typescript may be summarised as follows:

- He was born and raised in a conservative Muslim family. He received religious education at his mosque from an early age and was taught that to be a true Muslim meant hating other faiths. Those who professed other faiths had no right to live in the country. These teachings made him uneasy.
- While in college preparing for his HSC, [in the 1990s], he attended a religious program led by Nazim Uddin Chisty, a dedicated religious leader. He was impressed by a speech Chisty gave on Sufism and the ideology of the Maizbhandari. He became convinced of the truth of Chisty's message and visited the centre of the Maizbhandari religion in Fatikchori, Chittagong. He met, and was impressed by, the Imam of the faith, Syed Mohammad Hassan Mia Maizbhandari. He became a 'disciple' of Chisty and accepted the Maizbhandari religion.
- Acceptance of the Maizbhandari faith took his life in a new direction. He dedicated himself to it and his life became very simple. He fixed his sights on serving humanity, irrespective of race or religion. He accepted the responsibility of spreading the message to people in his area, believing that he would not meet significant resistance if he did so.
- He returned to [Town 1] after graduating in 2000 and began discussing the ideology of Maizbhandari with some people in the area. However his family members became antagonistic towards him. He spoke in public in favour of Maizbhandari and people told him he was straying from the path of Islam. They viewed his religion as a cult as the playing of musical instruments is forbidden in Islam, as is the non-performance of the five daily prayers. He was warned he would be labelled as a kaffir, or non-believer, and severely punished.
- These objections did not shake his belief and he began addressing younger people in the community, without the knowledge of their parents. He managed to bring a few of these younger people into the Maizbhandari religion.
- His father ejected him from the family home and he spent his time in 'different places.' Most people in the community avoided him. In January 2004 he organised a prayer session in the house of one of the religion's adherents. Suddenly a group of people attacked the meeting and he was severely beaten. He was then ostracised and forced to leave the area. He moved from [Town 1] to [Dhaka] to find safety.

- It was difficult for him to live without an income and in March 2004 he obtained a position as a [representative of a company). He was not able to perform his religious activities correctly and he had a difficult time.
- In September 2006 he met [name deleted: s.431(2)] in a friend's house. He found her intelligent and not fundamentalist in her outlook. He explained the ideology of Maizbhandari to her and she decided to dedicate herself to the religion. Their relationship grew stronger but was opposed by her parents. They married [in] January 2007, without the knowledge of her family, and began to live together in his house. His in-laws began acting against him and local people began to threaten him. They could not lead normal lives. His company was owned by people from Jamaat-e Islami and they terminated his employment in January 2007.
- In March 2007 he and his wife left [an area in Dhaka] and moved to [Town 2] where they rented a flat. It was difficult for them to survive without employment. One night while he was praying at home his neighbour objected and told him to stop. The neighbour spoke to others the next day. The Applicant realised that their attitudes were antagonistic and that it was not possible to remain there long. He was threatened by a group of people. He left his wife behind and moved to Chittagong for a while to avoid the threats.
- In May 2008 he obtained work as a marine steward with a [foreign] shipping company. He returned to Bangladesh for four months in February 2009 but did not find the situation favourable to him. He went to sea once more and returned in June 2010. 'After my arrival I found it difficult to move freely anywhere. My wife and [child] have been leading a captive lives. On many occasions she was teased and harassed by fundamentalist Muslims. She had to maintain a very restricted life.' He was not able to perform his prayers freely and experienced discrimination and harassment from 'the community people.' 'My freedom was severely interrupted. I suffered harm in every step of my life.'
- In October 2010 he went to sea once more. He did not feel safe in Bangladesh when he returned and realised that he had to find alternative ways to escape persecution and live permanently 'for my well being and the well being of my family.' He deserted his ship in [Port 4, in Australia], leaving his passport on board.
- His parents and family members, his in-laws and members of the community have been acting against him. He has been unable to visit his village since he left in 2004. He is seen as being no longer a Muslim.
- 'There is every possibility' that he will be harmed and persecuted on return to Bangladesh. It is impossible for members of the Maizbhandari religion like him to perform religious activities and offer prayers anywhere in Bangladesh without meeting resistance from the majority Sunni Muslims. They are always targeted and discriminated against.

- The authorities will not protect him as he is regarded as being involved in anti-Islamic activities.

Departmental interview

25. The Applicant added to his claims at a Departmental interview [in] November 2011, as follows:

- In Australia he was staying with a relative and [working part time]. He had no other job and in his spare time he sat at home watching television. He was anxious about having to return to Bangladesh. He had no other activities in Australia. He was not in contact with members of the Maizbhandari religion here.
- He had entered Australian ports a number of times but, before the last visit, he had never left the ship. He had visited Qatar, United Arab Emirates, Bahrain and Sri Lanka but he had not sought protection there. He had heard Australia was famous for human rights and he thought it would be easy to express himself and describe his problems.
- He became a follower of Maizbhandari in November 1999. He was introduced to the religion by one of his friends, attending a religious ceremony marking the death of a saint. The religion emphasises meditation and prayer, accompanied by musical instruments. In Australia he prayed almost every night – he had done so most recently at home the previous week. There was no fixed schedule for this praying.
- Asked about the process of his conversion to the religion he said there were seven ‘conditions of achievement’ the practice of which brought one closer to Allah. He named the seven conditions in Arabic. Asked if he understood them all he said he did not – he understood one or two. Asked about them he suggested that they provided for meditation, for less food, less sleep and moderation in sex. Asked about the other conditions he gave them as ‘white death, green death and red death.’ He did not know the meaning of these terms. Asked what else he understood about Maizbhandari he said it taught that one should not hate any person or any religion.
- It was put to him that it seemed unusual for a person who had been a member of Maizbhandari for twelve years not to understand three of the seven key principles of the religion. He said the seven conditions can only be achieved by a leader of the religion, not by the followers.
- Asked other questions about Maizbhandari he stated that it was based in Fatikchhari, Chittagong, and was founded by Hazrat Maizbhandari Shar Sufi Sayed Moulana Ahammad Ullah, born on 15 January 1826.
- The community in Bangladesh is hostile to Maizbhandari because they sometimes say their prayers accompanied by musical instruments. This is strictly prohibited in Sunni Islam. Asked if he sang the prayers in Maizbhandari he said he did not, although he listened to them. Followers of Maizbhandari said the same prayers, five times a day, as Sunnis.

- He was injured in January 2004 when local people attacked a house belonging to a friend who was also a Maizbhandari follower. They had been reciting one of the phrases used in the religion (zikr) He did not know how these people had learned they were praying or why they attacked him - they may have heard the zikr from the street. He was [stabbed] and beaten with a stick. This was the only occasion on which he had been physically harmed but he was threatened from many other sources in many other places. These people told him, to his face, that what he was doing was against Islam but they did not threaten to harm him.
- It was put to him that his account of moving from place to place within Bangladesh, and leaving and returning to the country, did not support his claim that his freedom of movement was restricted. He said there was no other reason why his freedom of movement was restricted. It was not possible for him to move around freely and he did not have liberty like other people. People always kept an eye on him and treated him as a non-believer. They did not like to communicate with him or establish cordial relationships with him and his family. His wife felt very isolated.
- It was put to him that the country information does not indicate that followers of the Maizbhandari religion are adversely treated in the Chittagong area. He said this only applied to the area of the Maizbhandari headquarters. Asked if it would be safe for him to live there he said it is a very remote village and not a place where someone can stay for a long time. After praying there people returned to their own homes. Asked if the Maizbhandari Spiritual Centre was a safe area in which he could practise his religion he said people travel there for one or two days for events and then leave. Nobody lives there permanently and there is no accommodation.

26. A copy of the delegate's decision record of [a date in] March 2012 is attached to the application for review.

Pre-hearing submission

27. [In] July 2012 the Tribunal received a submission from the Applicant's new migration agent enclosing a Statutory Declaration made by the Applicant on [the previous day]. He states, in summary, that:
- 'I admit that I made a non-genuine claim in my original protection visa application due to the insistence of my previous migration agent.'
 - He practises Sunni Islam. His father was a supporter of Jamaat-e-Islami.
 - He joined the student wing of Jamaat-e-Islami, Islami Chhatra Shibir, in [1994], being attracted to its Islamic teachings. He lists the eight activities required of one to become and function as a Chhatra Shibir worker. He participated actively in the organization when he was in College.
 - His involvement in Chhatra Shibir made him a target of Awami League supporters. He was threatened and told to cease his activities. The Awami

League banned Chhatra Shibir but he continued to work for the organization in [Town 1].

- After he graduated in 2000 he began supporting Jamaat-e-Islami and became a worker for the Party. He participated in a procession protesting the killing of a Party member by the Awami League. As a result of his participation he was targeted and threatened by Awami League members.
- He gradually became an active worker for Jamaat-e-Islami and supported the Party's candidate in a local election in 2002. Following the election Awami League members began taking revenge against its opponents. He was targeted by one of the Awami League members.
- In 2004 he joined [a particular company] formed by Jamaat-e-Islami. He worked there until 2007. In this period he participated in meetings and rallies organised by Jamaat-e-Islami.
- In May 2008 he began working on a ship. He travelled to Australia but was not allowed to disembark. On arrival in Australia [in] April he deserted ship, without the knowledge of other crew members, and sought protection.
- 'I understand from news reports that Awami League supporters and members continue to harass and harm political opponents including Jamaat-e-Islami. I fear that I will be targeted and harmed because of my political affiliation as an active worker of Jamaat-e-Islami. In addition, I also fear that I will be imprisoned if I go back to Bangladesh because I deserted the ship.'

Claims at hearing

28. The Applicant said he was helped by a 'known migration agent,' to complete his protection visa application and the attached statement. This person, who was from Bangladesh, was not a lawyer. He had provided advice and prepared everything. The Applicant said he now had another migration agent who was a lawyer. I explained to him that, as a matter of professional legal privilege, he was not required to divulge any advice given to him by his new migration agent and he confirmed that he understood this.
29. The Applicant said he had communicated with his first migration agent in Bengali in preparing the protection visa application and the statement. Asked if he had explained to the migration agent what to include in the statement he said he told him he was involved with Jamaat-e-Islami. The migration agent told him Jamaat-e-Islami was a fundamentalist party and that his application would not be accepted on this basis. The migration agent then created a case based on the Applicant being a Maizbhandari. Asked if the migration agent had prepared the statement in these terms he said that when he came to Australia his mind was not working well so he simply followed the migration agent's instructions.
30. The Applicant confirmed that he had been able to read the protection visa application and the statement when they were completed by the migration agent in English and that he had been able to understand everything these documents contained. Asked if these things were true he said his initial claims were not true. Asked if the things he had said in his Departmental interview were true he replied he had just said what he was told to do. He agreed this meant he had said things which were not true.

31. Asked why he had deserted his ship in [Port 3] in 2011 the Applicant said in Bangladesh he had been actively involved with Jamaat-e-Islami. The Awami League is in power and are torturing Jamaat-e-Islami activists. Fearing the he would be tortured he made the decision to desert. Asked what he meant by a fear of being tortured he said he was actively involved with the student wing of Jamaat-e-Islami during the 2002 election. The Awami League candidate, [Mr A], was defeated and he targeted the Applicant because he was responsible for the outcome. He added that in 1996 the Awami League had attacked and threatened his group while at university. After this incident he had been forced to cease any activity in his college on behalf of his party but he remained active within his village.
32. The Applicant continued that [in] August 2002 the Awami League had murdered a Jamaat-e-Islami party representative. He strongly opposed the murder and protested against it. As a result he was targeted by figures in his village.
33. Asked again about the torture he feared in his village the Applicant said he would be targeted by [Mr A], in the way others had been targeted. [Mr A] was currently the chairman of the Awami League. After the Awami League came to power it had arrested and tortured members and representatives of Jamaat-e-Islami. He feared greatly that if he returned he would be targeted and killed. Apart from [Mr A] he feared harm from other Awami League figures.
34. Asked if he had ever suffered harm in Bangladesh the Applicant said the Awami League had not been in power at the time. Those who murdered the Jamaat-e-Islami representatives ran away. Asked again if he had ever been harmed he said he had only been threatened by them that they would 'see him' if they ever came to power. I observed that the Awami League had been in office in Bangladesh for part of the time since he claimed to have first become involved with Jamaat-e-Islami. He said he was talking about the 2002 incident. The chairman, [Mr A], was targeting him and if he returned he would immediately kill him.
35. I asked the Applicant why, if these people threatened to kill him in the past, they had never harmed him. He said it was because they were not in power in 2002. I recalled his claim to have joined Jamaat-e-Islami in 1996 and noted that the Awami League had come to office in that year. He said the Awami League was not 'openly in power' and did not have the power to take action then. Asked why this was so he said Jamaat-e-Islami together with the BNP were in power at the time. I directed his attention once more to this period of the Awami League's term of government. He said they targeted him in 1996 when he was in college. At the moment all Jamaat-e-Islami activists and representatives have been threatened and tortured continuously. Everybody knew this.
36. I asked the Applicant if it was his claim that, although he had been associated with the Jamaat-e-Islami for the past sixteen years, he had never once suffered physical harm from the Awami League or from anyone else. He said he left Bangladesh by ship, for the first time, in 2008. After that the Awami League came to power. After being on the ship for ten months he returned to Bangladesh but did not go back directly to his village, staying instead in [Town 2] for fear that if they found him they would harm him. He had a wife and [child] who were now living in [Town 2].
37. Asked if he feared harm in Bangladesh for any reason other than as a member and activist of Jamaat-e-Islami the Applicant said the only reason was this political one. As well as being a Jamaat-e-Islami activist he had given inducements of hospitality (dawat) to Awami League members to join his party. This had caused him to be targeted to an even greater degree. I

observed that this was his first mention of such an activity and that the claim did not appear in his most recent Statutory Declaration. He said he had probably missed it out then went on to refer to the list of his activities as a Shibir worker set out in this document. I noted that this was a general reference to the duties of Shibir members but that it made no reference to his own role. He said dawat was a responsibility of Muslims.

38. The Applicant confirmed that he did not fear harm in Bangladesh for any other reason.
39. The Applicant confirmed the biographical details set out in his protection visa application. Asked the date of his marriage he gave it as [a date in] 2008. I noted that this was said to be [in] 2007 in his protection visa application. He said this was a mistake. Asked about his wife's living arrangements in [Town 2] he said she was living in rented accommodation. He had travelled to Australia on his last ship up to five times before he deserted.
40. I noted that in his protection visa application and later in his Departmental interview the Applicant had claimed that:
 - He was a follower of the Maizbhandari religion.
 - He first came into contact with the religion as a student in 1999 when he heard a speech or sermon from a preacher named Chisty. This had changed his life and he had converted others to the religion.
 - This led to him being targeted because most Bangladeshis are fundamentalist Sunni Muslims who regard Maizbhandaris as un-believers or kaffirs.
 - He was thrown out of the house by his fundamentalist father, he was stabbed on one occasion, he was unable to pray freely and he was forced to move his family from place to place.
41. I also noted that after the delegate's decision that he would not suffer harm as a Maizbhandari the Applicant had sought review by the Tribunal with a new migration agent and, just before the date of the hearing, had renounced his previous claims as untrue and offered a new set of claims to fear harm in Bangladesh based on membership of Jamaat-e-Islami. Asked why he had made these new and very different claims he said that what he was now saying was absolutely true. He had sworn this on the Koran, in the month of Ramadan. I noted that he had also sworn to the truth of the things he had claimed in his protection visa application, promising that everything he was saying was correct. He agreed that he had written this, but said he had been confused and was simply following instructions.
42. The Applicant agreed that his previous claims had been lies and confirmed that he had known this at the time. I put to the Applicant that this information could indicate that he was a person who was prepared to tell multiple lies in order to obtain an Australian visa. This made it difficult for the Tribunal to know whether what he was now saying – that he feared harm as a member of Jamaat-e-Islami – was true. He said he had sworn it by the Koran and that he would swear it on a photograph of his wife and child.
43. I explained to the Applicant that this information could cast doubt on the truth of his claim to fear harm in Bangladesh, either as a member of the Maizbhandari religion, as he had previously claimed, or as a member or activist of Jamaat-e-Islami as he now claimed. This could lead to a conclusion that if he returned to Bangladesh he would not suffer harm for any of the reasons he claimed. He asked how it was possible for him to make me believe that

Jamaat-e-Islami members are targeted and brutally tortured by the Awami League. I explained that it was not for the Tribunal to advise him as to how to advance his case, but that I would take his responses into account in making my decision. He said his life and that of his family depended on him – nobody else understood how his life was at risk in Bangladesh. It was ‘one hundred per cent true’ that he was involved with Jamaat-e-Islami.

44. I asked the Applicant why, if he feared that specific Awami League people would kill him, he had not sought protection in Australia during his previous visits by his ship. He said he was not able to obtain shore leave previously. The captain would not have allowed him to go ashore. He had not thought of defying the security guard to approach the Australian authorities, and he would have been immediately deported to Bangladesh had he done so.
45. In oral submissions the advisor suggested that it was unfair to expect the Applicant to have absconded from the ship to seek protection in the way I had suggested. He had not been given shore leave before the occasion on which he deserted.
46. The advisor submitted that as a Bangladesh ship deserter the Applicant potentially faced a prison term of five to six years. The Federal Court had not yet given a decision as to whether Bangladesh ship deserters could be said to constitute a particular social group. In the alternative, the Applicant would come within the provisions of Australia’s complementary protection legislation given that, under prison conditions in Bangladesh, there was a real risk that he would face torture or degrading or inhuman treatment for this offence.
47. I noted that there was country information before the Tribunal indicating that no Bangladesh ship deserter had been jailed since independence in 1971, or at least over the last ten years. The advisor submitted that the source of this information was not sufficiently broad and came from only one person. Whether the offence had gone unpunished for the last ten years was not clear. I noted that the information came from the principle of the Bangladesh Marine Training Institute, and that it was substantially supported by another source who was a senior official of Bangladesh’s major shipping agency. I undertook to provide copies of the country information involved.
48. The advisor submitted that in advancing his previous claims the Applicant was under the influence of his then-migration agent, having arrived in a foreign country and placing his trust in a fellow Bangladeshi. This influenced him to advance the claims to strengthen his claims to protection. He was a victim of this agent’s negligence. I noted that although the Applicant had just arrived in Australia at the time, it was also relevant that he was an adult who was highly educated, who was obviously very intelligent and who had had some experience of life through his varied employment. This made it hard to see him an innocent who had been swayed by an unscrupulous migration agent or to ignore the fact that he had knowingly advanced untruths, matters which went directly to his credibility. The Applicant said he had not known anything at the time but simply followed what he was told.
49. Asked if there was anything he wished to add the Applicant said he would face serious harm, including torture, if he returned to Bangladesh.

Post hearing submissions

50. [In] August 2012 the Tribunal received a submission from the advisor covering:
 - A photocopied document in Bengali on the letterhead (in Bengali and English) of the Bangladesh Islami Chhatrashibir. According to an accompanying

English translation this is an undated letter from the Central Working Committee of the organisation stating that the Applicant ‘...was a member of Bangladesh Islami Student Camp during his student life. He is a hard working and honest individual. I wish him all the best in his future endeavours’

- A further photocopied document in Bengali. An accompanying English translation identifies this as a letter from the Bangladesh Jamayat Islami, [place name deleted: s.431(2)] Sub-district branch, [Town 1], dated [in] May 2012. It states that the Applicant ‘...was a leader at the Bangladesh Islamic Student Camp during his student life. During his working life he was a responsible employee of Bangladesh Jamayat Islami. He is a hard working and honest individual. I wish him all the best in his future endeavours.’

51. [In] August 2012 the Tribunal received a further submission from the advisor canvassing legal issues and citing country information to submit that:

- Section 196 of the Bangladesh Merchant Shipping (Act) 1983 provides that a seaman guilty of desertion may be punished with a term of up to five years imprisonment, a fine of up to BDT 1 million and forfeiture of wages owing to him and the effects he leaves on board.
- Such imprisonment is so severe and disproportionate that it will effectively undermine the Applicant’s fundamental rights.
- Australia owes the Applicant protection, either under the Refugees Convention or under complementary protection arrangements, as there is a real chance that he will be imprisoned for deserting his ship, that he will face torture in Bangladesh prisons, that he will not be provided with adequate state protection and that he will suffer significant harm.

52. On the same day the Tribunal received a further submission from the advisor taking issue with the validity of the country information regarding Bangladesh ship deserters which had been forwarded to her by the Tribunal. She submits that:

- ‘We question the validity of the article written by Capt. Zaki Ahad who is the principle of the Bangladesh Maritime Training Institute and International Maritime Academy. There is no evidence provided regarding his academic qualification and experience and his research skills on the issue of Bangladesh Ship deserter. In this regard we raise the following relevant issues:
 - What is the educational qualification, experience or expertise of Mr Zaki Ahad in this particular field?
 - Has he written any peer reviewed research articles in his chosen field?
 - Has he done any qualitative and quantitative research on the topic of ship deserter prior to writing this particular article?
 - Where and how did he collect data to write the article?
- In relation to the chain of emails the RRT has provided to us, we raise the following concerns.

- What is the specific expertise of Md Jahangir Hossain aka Advocate Jahangir of Mirpur Rapnagor Law House?
 - Has the RRT research team endorsed the contents in the email?
 - What is the specific expertise of Mr M A Matin, Haqsons, Chittagong to make authoritative comments on the law relating to ship deserters in Bangladesh?
 - What is the weight the RRT provides for the chain of email correspondence which we submit are not authoritative sources to determine an important issue in the refugee claims?
 - Has the RRT research team verified the contents in the email into its Country advice and if so please provide the details?
 - Has the RRT contacted Capt. Zaki Ahad and sought his advice on the issue of ship deserters?
- We request the RRT to confirm whether the chain of emails provided to us were a part of report or an advice prepared by experts commissioned by the RRT in response to particular questions, and if so we seek:
 - The full questions on which the advice was given.
 - The full advices given by way of response so we can consider them in context.

Independent country information

Jamaat-e-Islami

53. The International Crisis Group's 2006 report *Bangladesh Today* provides information on the Bangladesh political party Jamaat-e-Islami and its student wing Islami Chhatra Shibir:

The Jamaat is a well organised and politically sophisticated party. A member of the BNP-led ruling coalition, it is the most influential Islamic party: despite having only eighteen seats in parliament it holds two important ministries. Structured along classic communist lines – cadre-based, with a relatively small but highly committed and ideologically oriented membership, it is patient and has a long-term strategy. While content to work within the parliamentary system for now, it has a clear vision of moving over fifteen to twenty years into a position of more decisive influence. Many observers believe it is using the BNP – “colonising it from within” – as a way of furthering its agenda without diluting its tight party discipline and ideological purity.

It has targeted the urban middle classes in particular for support and been described as “a sort of Islamic Opus Dei”. It is seen as clean and committed in comparison to the corrupt and self-interested major parties but has links – certainly indirectly and probably directly – to more extreme and violent groups. “Jamaat is very well established now. They have educated, cultured people. They can conceal themselves, can put their people everywhere – from the army to the village level”. Many observers find it hard not to admire Jamaat's discipline and efficiency, especially

when contrasted with the other parties. An American observer pointed to these features in the early 1990s under its then leader:

The party stages large, extremely well disciplined rallies and continues to grow. More important, many university teachers report that the brightest students are turning for leadership to Ghulam Azam....One of the nation's most intelligent leaders, Ghulam Azam is soft-spoken, conceptually logical, truthful, and disarming....He is a man with clear ideas of what a Muslim state should be.

A senior U.S. diplomat says it remains the same today: "Jamaat has been very clever. It really has sold a clean, approachable image". An Indian analyst adds: Jamaat "has shown extreme political acumen and dexterity".

Jamaat's goal is to make Bangladesh an Islamic state governed by Islamic law. It aims to do this gradually by working within the parliamentary system. The party views India as a potential threat to Bangladesh's sovereignty, advocates a strong national army and promotes national service. It campaigns on an anti-corruption platform and describes its outlook as follows:

The Jamaat-e-Islami Bangladesh upholds Islam in its entirety. It aims at bringing about changes in all phases and spheres of human activities on the basis of the guidance revealed by Allah and exemplified by His Prophet Muhammad, peace be upon him. Thus the Jamaat-e-Islami Bangladesh is at the same time a religious, political, social and cultural movement.

Syed Abul Ala Maududi founded Jamaat-e-Islami in Lahore, in pre-independence India, in 1941. The party supported the Pakistani military regime during Bangladesh's 1971 War of Liberation. Sheikh Mujib outlawed it after independence, and its members were declared war criminals. Most entered exile in Pakistan and only returned to Bangladesh under General Zia's regime. The Bangladeshi Jamaat was only legally established in 1979. It continues to maintain close links with its Pakistani counterpart.

Maulana Motiur Rahman Nizami is Ameer of the party and minister for agriculture, an influential portfolio in a country that is still largely rural. The secretary general, Ali Ahsan Mohammad Mojahid, is minister for social welfare, which regulates NGOs, including many which Islamists criticise for undermining traditional values. That the BNP has given them such influential posts shows the party's electoral importance; that the ministers have received widespread praise for clean and efficient performance shows the party's political maturity.

Islami Chhatra Shibir (Shibir) Jamaat-e-Islami's student wing, Islami Chhatra Shibir (Shibir), was founded in 1941. Nurul Islam Bulbul is the current president and Muhammad Nazrul Islam the secretary general. The organisation, with six divisions countrywide, is seen as a training ground for Islamist politicians; many of its former members have become prominent leaders, some in legitimate politics, others in underground extremist movements. Shibir's support has historically been concentrated in particular areas and university campuses, where it has a reputation for violence.

Shibir campaigns for Islamisation of the education system. It also encourages students to pursue Islamic studies and prepares them to take part in the struggle for establishing Islamic rule. Critics allege that it is simply opposed to modernisation, secularism and democracy.¹¹⁶ Shibir is a member of the International Islamic Federation of Student Organisations and the World Assembly of Muslim Youth. It

maintains close ties with similar youth organisations in Pakistan, the Middle East, Malaysia, and Indonesia. It reportedly supports Islamist groups in India and has links with Pakistani intelligence, from which, in addition to Saudi Arabia, it is said to receive financing.

Shibir has a stronghold in the university in Chittagong and a significant presence on campus in Dhaka and recruits from privately run madrasas throughout Bangladesh. The group regularly clashes with other student organisations on university campuses and has been implicated in religiously motivated violence, murders and bomb attacks. When in 2003 members were charged with violent crimes, the home ministry intervened in some instances to dismiss the charges¹

Ship deserters

54. Section 196 (a) of Bangladesh's Merchant Shipping Ordinance, 1983 (as amended) provides, in the case of desertion from Bangladeshi ships, that:

196. If a seaman lawfully engaged, or an apprentice, commits any of the following offences, he shall notwithstanding anything in the Code of Criminal Procedure, 1898 (Act V of 1898), be liable to be tried in a summary manner and to be punished as follows, namely:

(a) if he deserts from his ship, he shall be guilty of the offence of desertion, and shall be punishable with imprisonment for a term which may extend to five years and with fine, which may extend to ten lakh taka and shall also be liable to forfeit all or any part of the effects he leaves on board and of the wages which he has then earned and also, if the desertion takes place at any place not in Bangladesh, to forfeit all or any part of the wages which he may earn in any other ship in which he may be employed until his next return to Bangladesh, and to satisfy any excess of wages paid by the master or owner of the ship which he abandons to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be repaid to him and he shall also be liable to refund the actual cost of his repatriation and the said amount shall be realised as a public demand;

55. Section 197 of the legislation prescribes the same penalties for desertion and absence without leave from foreign ships.²
56. An August 2010 report in the Bangladesh daily *The Financial Express* by the Principal of the Bangladesh Maritime Training Institute, Captain Zaki Ahad, focuses on problems of maritime education in the country and the fall in the number of ratings working at a time when the number of Bangladeshi marine officers has increased rapidly. He states, in part:

With the emergence of Bangladesh, the number of Bangladeshi marine officers increased by leaps and bounds as there was neither quota for West Pakistan or domiciled category. From less than 100 Bangladeshi marine officers at the time of liberation, the number has now reached 5,500. Probably, this single professional body remits the highest amount of foreign exchange. This fact is encouraging and something that the nation can be proud of. Apart from a few hundred in the national fleet, most of these officers work in the global market with multi-national crew with reputation, prestige and rapport that is enviable to many nations.

There is also another side of the coin. While the number of officers significantly soared, the number of ratings has dwindled. From about 10,000 at the time of

¹ International Crisis Group 2006, *Bangladesh Today*, Asia Report N°121, pp.15-16, 23 October.

² The Bangladesh Merchant Shipping Ordinance, 1983, http://bdlaws.minlaw.gov.bd/pdf_part.php?id=642

liberation it has fallen to about 2,500 at present.

If we analyse, we will find that there were significant contributing factors that lead to the debacle of our ratings' employment. The foremost factor is that there has been significant number of desertion in foreign ports by our ratings. This had lead to ship-owning companies paying huge amount in fines to the immigration authority, undue detention to the vessel. Even though our law provides for penal action against deserters, since liberation, there has not been a single instance where it is applied. In other words, many ship-owners have lost faith in the integrity of our ratings and many have stated that our ratings are not loyal either to the company they serve or to the nation. Deserters who were caught by the immigration authorities overseas and deported to Bangladesh never faced justice or penal action. A question remains as to why we failed to take action against those who have degraded our national image. Another reason could be the lack of competency on the part of the ratings. Competency can be achieved in two ways, one through training and the other through experience. Whereas, the later was the option of the past, the former is the reality now.³

57. According to his LinkedIn entry, Captain Zaki Ahad is Commandant at the International Maritime Academy, Bangladesh, having been appointed to the position in January 2012. His previous positions are shown as:

- Principal, International Maritime Academy, Bangladesh, April 2008 – January 2012. ‘Head of the organization including International Maritime Academy, the pre-sea wing of MBTI which is engaged in training pre-sea nautical and engineering cadets as well as ratings.’
- Principal, Bangladesh Maritime Training Institute, April 2002 – January 2012. Administrative in-charge, policy maker and QMR. Develop courses as per STCW convention and tailor made ones for specific ship owners.’
- Captain in command, Pacific International Lines Singapore, November 1996 – May 2001. ‘Commanded ocean going container ships on both feeder and liner services. Contributed to the development of ISM manuals as well as crew training manuals of the company.’
- Master in command, Bangladesh Shipping Corporation, 1990 – 1996. ‘Commanded container, bulk carriers as well as multi-purpose vessels of Bangladesh Shipping Corporation.’⁴

58. A different advisor in another case before the Tribunal⁵ sought from Captain Zaki Ahad an update of the information provided in his article in *The Financial Express*, in particular as to whether it was still the case that, since liberation, there had not been a single instance in which the penal provisions of the Bangladesh law on desertion had been applied. Captain Ahad replied by email in the following substantive terms on 29 November 2011:

Desertion has decreased significantly, probably due to shore leave restrictions on Bangladesh seafarers.

³ Zaki Ahad, ‘Woes of maritime education in Bangladesh’, *The Financial Express*, 22 August 2010, downloaded from http://www.thefinancialexpress-bd.com/more.php?news_id=109704

⁴ Zaki Ahad in LinkedIn, <http://bd.linkedin.com/pub/zaki-ahad/18/812/b64>, accessed 3 October 2012.

⁵ [Case details deleted: s.431(2)]

There are many instances where deserters have been arrested and later on they got bail, but definitely no one was sentenced to imprisonment to the best of my knowledge.

59. The advisor sought further clarification from Captain Ahad as to whether arrested deserters paid a fine or posted bail, what the amount of a fine would be and what happened subsequently in the event that they posted bail. Captain Ahad referred the advisor to Mr M A Matin, an employee of M/S Haque and Sons, the biggest employer of seafarers in Bangladesh. Mr Matin was, he said, the person who dealt with desertion matters in the company. In response to the advisor's request for information Mr Matin responded by email on 20 November 2011 in the following substantive terms:

Your attached message noted and inform some of the deserters being arrested on return Bangladesh against prior information to the law enforcing authority and subsequently the caught person released without imprisonment. General action being taken by government shipping office, cancellation of CDC and forfeiture of guarantee money and deferred credit money with the shipping office of concerned deserter.

60. The advisor contacted Mr Matin once more to seek advice as to how long deserters are detained before being released, particularly where they have not provided guarantee money, and whether he was aware of convictions of deserters during the 1990s. The advisor noted that he had in the meanwhile contacted a Bangladesh lawyer, Md Jahangir Hossain, who had advised that sentences of three to six months imprisonment and fines of BDT 1 million were imposed on ship deserters in the 1990s. There had been no convictions in the last ten years but cases were currently before the courts and were expected to be finalised soon. 'With the government having returned to some form of democracy, these cases are expected to be decided with the imposition of increased periods of imprisonment and fines.' Bail would depend on the circumstances of the case but generally those charged with deserting ship do not have the funds to post bail.

61. Mr Matin responded by email on 30 November 2011 as follows:

Your attached message noted and inform duration detained depends how the victim and his next of kin handle the case. Amount of payment also depends on mutual negotiation.

When a deserter desert from the vessel then Shipping Master file case against him on the basis of information received by the local agent of the vessel from the ship's Captain and for more details you can contact Shipping Master with this email.

Document fraud

62. Independent country information indicates there is a high level of document fraud in Bangladesh and forged or fraudulent documents, including passports, are readily available. It has also been common to pay bribes to officials. In addition, lawyers will provide, for a fee, a letter advising that it is unsafe to return to Bangladesh.⁶

⁶ Department of Foreign Affairs and Trade (DFAT) Cable DA 19732, 26 July 1988 CX2690; DFAT Cable DA 824, 24 December 1995 CX13160).

63. False documentation is very often provided by Bangladeshi asylum seekers. In its February 1998 report entitled "Bangladesh: Profile of Asylum Claims and Country Conditions" (CX31417), the US Bureau of Democracy, Human Rights and Labor states:

Asylum applicants from all [political] 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...

64. According to a July 2005 report by the Canadian High Commission in Dhaka:

"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."⁷

FINDINGS AND REASONS

65. On the basis of his passport which he submitted at the hearing I accept that the Applicant is a citizen of Bangladesh, as he claims to be.
66. The Applicant claims to fear harm in Bangladesh at the hands of the ruling Awami League because of his political opinion as a member of Jamaat-e-Islami. He also claims to fear significant harm under Bangladesh law because of his actions in deserting ship.

Membership of Jamaat-e-Islami

67. In his Statutory Declaration [dated in] July 2012 the Applicant claims to have become involved with Islami Chhatra Shibir, the student wing of the Islamist political party Jamaat-e-Islami, when he was at school in 1994. He claims that he later became an activist member of Jamaat-i-Islami and that he took part in election campaigns and protests on the party's behalf.
68. At the hearing the Applicant acknowledged that these claims are quite different from the claims he made in his protection visa application and the attached statement, which were to the effect that he feared harm at the hands of Islamists as a member of the Maizbhandari religious sect. His explanation for this was that when he arrived in Australia he was told by

⁷ *Country of Origin Information Report, Bangladesh*, UK Home Office, 11 August 2009.

his previous migration agent that claims based on membership of an Islamist group such as Jamaat-i-Islami would not be accepted and that the agent then created a set of fictional claims based on Maizbhandari membership. He said he was confused and that he had simply followed the instructions of the advisor. He acknowledged that his original claims were, in effect, lies and that he was aware they were lies when he advanced them.

69. As put to the Applicant at the hearing, the fact that he advanced false claims in his protection visa application casts major doubts on the credibility of his new claims to fear harm in Bangladesh set out in the Statutory Declaration lodged with the Tribunal just one day before the hearing. I note that his claims to fear harm on the basis of Maizbhandari membership are set out in considerable detail in the protection visa application statement, a document running to over four pages of typescript. I accept that when he made these claims he had only recently arrived in Australia and I also accept that he was unlikely at that time to have had any particular knowledge of Australia's migration law as it applies to protection claims. Nevertheless, he was neither a child nor an unsophisticated person at the time but instead a mature adult who had received an advanced education in Bangladesh and who had a considerable experience of life, having worked both as a representative of a [company] and as a merchant seaman. Whatever trust he may have placed in his first migration agent he knew at the time, as he confirmed at the hearing, that the claims he was making were entirely untrue. I am not satisfied that there is anything about the circumstances in which he prepared his original claims which would serve to reduce the doubts they cast over his reliability as a witness or, as a consequence, about the credibility of his new claims.
70. These doubts were not diminished by the Applicant's evidence at the hearing concerning his alleged membership of Jamaat-i-Islami. He could offer no reasonable explanation as to why, if he had been an activist member of the party who had opposed the Awami League and had attracted the enmity of Awami League leaders in his area, placing himself in danger of his life as a consequence, he had nevertheless suffered no harm from these sources while he was in Bangladesh. I note his suggestion that he was able to escape harm because the Awami League was not in power at the time but, as put to him at the hearing, it is common knowledge that the Awami League was in office as the national government from 1996 (the year the Applicant claims to have become involved with Jamaat-i-Islami's student wing) to 2001. There is nothing in the information before the Tribunal to indicate why, if he had been targeted by the Awami League for his activism within the Jamaat-i-Islami to the point where Awami League members wished to kill him, no attempt to do so was ever made, even at other times when the Awami League was out of office.
71. I note also that the Applicant's suggestion at the hearing that he had been involved in converting members of the Awami League to the ranks of Jamaat-i-Islami by offering them 'dawat,' or hospitality, was the first mention he had made of this further source of the alleged animosity by the Awami League. He offered no reason for the late appearance of this claim beyond suggesting that, in effect, he had simply overlooked it when preparing his Statutory Declaration [dated in] July 2012.
72. Taking these matters together I am not satisfied as to the truth of the Applicant's claim to have been involved with Jamaat-i-Islami or its student wing Islami Chhatra Shibir, either as an activist member or in any other way while he was in Bangladesh. I am not satisfied that he was ever threatened with harm for such a reason. Nor am I satisfied there is any reason to believe that he would be harmed for such a reason if he were to return to Bangladesh.

73. I have reached this conclusion having taken into account the two supporting letters from Bangladesh submitted to the Tribunal following the hearing. The provenance of these documents is by no means clear. One of them is undated but the other bears [a date in] May 2012 and its belated appearance, three months after it was allegedly signed and some three weeks after the hearing, inevitably casts doubt over its authenticity. I also note that passages in the documents containing identical wording. Given these factors, together with the country information before the Tribunal concerning the ready availability of forged or fraudulent documents in Bangladesh, I am not satisfied that any weight can be placed on either document as evidence of the Applicant's involvement with Islami Chhatra Shibir or Jamaat-i-Islami.

Harm as a ship deserter

74. I have also considered the Applicant's claim that he comes within the scope of Australia's complementary protection legislation because he would face significant harm through torture and cruel and inhuman treatment or punishment as a consequence of being imprisoned for the offence of deserting his ship.
75. I accept that the relevant section of Bangladesh's Merchant Shipping Ordinance, 1983, provides for a term of imprisonment up to five years together with other financial penalties for the offence of deserting a Bangladesh or foreign ship. I note, however, that there is information before the Tribunal from Captain Zaki Ahad and Mr M A Matin which indicates that Bangladeshis who desert ship do not receive prison sentences. Having considered the information before the Tribunal relating to the practical application of the law in this area, I am not satisfied there is a real risk that the Applicant would be sentenced to prison. I accept that he might be arrested and that he might be required to post bail or pay a fine. I also accept that his seaman's travel document (CDC) might well be cancelled and that he might be unable to find work in the merchant navy again. However, I am not satisfied that these penalties would represent anything more than the implementation of a law of general application, adopted for the legitimate purpose of regulating Bangladesh's maritime trade and the reliability of Bangladeshis as merchant seamen. I am not satisfied that they would be applied to the Applicant in a discriminatory fashion, so that he was punished more severely than others, for any reason. Nor am I satisfied that they could reasonably be seen as disproportionate or excessive, or that they would lead to him suffering significant harm through torture or cruel or inhuman treatment or punishment.
76. I have reached these conclusions taking into account the advisor's concerns, expressed in the submission [dated in] August 2012, about the reliability of the country information given to the Applicant regarding the likelihood of imprisonment for ship desertion in Bangladesh. I note that she raises a number of questions about the ability of the three persons who provided this information to do so with authority. She asks, for example, about the educational qualification, experience or expertise of Captain Zaki Ahad, whether he has written any peer-reviewed articles and whether he has done any 'qualitative and quantitative research' on the subject. She asks some similar questions concerning the lawyer Mr Jahangir Hossain and Mr M A Matin. She asks whether the Tribunal has verified the emails from these figures, whether it has contacted Captain Ahad directly and whether it has incorporated this material into its Country advice.
77. I accept that these queries reflect a genuine concern to understand the background to the information which was provided to the advisor. However, I am satisfied on the information before the Tribunal that the position and considerable experience of Captain Zaki Ahad are

such as to make him an authoritative source of information. I am also satisfied that Mr Matin, who was recommended by Captain Zaki Ahad as the person responsible for managing deserter matters within the country's largest employer of seafarers, is also a reliable source of information in this field. Mr Jahangir Hossain was approached for information by another advisor in a different case before the Tribunal and he appears in the information largely because he was involved in the chain of emails between that adviser, Captain Zaki Ahad and Mr M A Matin. Apart from the fact that Mr Hossain is a lawyer who appears to be familiar with the subject matter there is no information before the Tribunal as to his background or relevant experience. For this reason I have not placed any weight on the information he has provided.

78. I note, finally, that the advisor has not produced any independent information concerning a single incident of the imprisonment of a ship deserter in Bangladesh which might suggest that the Applicant would suffer such a fate.

Summary

79. The Applicant has confirmed that his claim to fear harm in Bangladesh because of membership of the Maizbhandari religious sect is untrue.
80. In the light of all the information before the Tribunal I am not satisfied that the Applicant was ever an activist member or supporter of Jamaat-i-Islami or its student wing or that he was ever targeted by the Awami League for such a reason. I am not satisfied there is a real chance that he would suffer harm for this reason in Bangladesh. Nor am I satisfied that the penalties likely to be imposed on him for deserting his ship would reflect more than the application of a law of general application, or that they would be disproportionately harsh or applied in a discriminatory fashion for any reason.
81. I am not satisfied that the Applicant has a well-founded fear of persecution because of his political opinion or for any other Convention reason should he return to Bangladesh, now or in the reasonably foreseeable future and I am not satisfied that he is a refugee.
82. I have also considered whether the Applicant might meet the alternative criterion for protection under the complementary protection provisions of s.36(2)(aa) of the Act. As noted, I am not satisfied there are any grounds for believing there is a real risk that he would be imprisoned for the offence of ship desertion should he be returned to Bangladesh. I accept that he might be arrested and that some form of financial penalty might be imposed on him, and that he might also be barred from ever working again as a merchant seaman. However, I am not satisfied that these penalties could reasonably be said to amount to significant harm, either as torture or as cruel or inhuman treatment or punishment, or in any other way so as to bring him within the scope of Australia's complementary protection arrangements. I am not satisfied there is any reason to believe he meets this criterion.

CONCLUSIONS

83. The Tribunal is not satisfied that the Applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the Applicant does not satisfy the criterion set out in s.36(2)(a).

84. Having concluded that the Applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the Applicant is a person to whom Australia has protection obligations under s.36(2)(aa).

DECISION

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