

1304785 [2013] RRTA 528 (1 August 2013)

DECISION RECORD

RRT CASE NUMBER: 1304785

DIAC REFERENCE(S): CLF2012/233740

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Andrew Mullin

DATE: 1 August 2013

PLACE OF DECISION: Sydney

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

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

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 14 November 2012 and the delegate refused to grant the visa on 22 March 2013. The Applicant applied to the Tribunal for review of the delegate's decision on 27 March 2013.
3. The Applicant was represented in relation to the review by his registered migration agent.

RELEVANT LAW

4. 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 in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
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 in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugee as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
7. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.

CLAIMS AND EVIDENCE

8. 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 record and other material available to it from a range of sources.

9. In an entry interview on 31 August 2012¹ the Applicant claimed, in summary, that he was forced to leave Bangladesh because of his political opinion in support of the Bangladesh Nationalist Party (BNP). He feared harm from supporters of the Awami League. He would attend BNP meetings and rallies two to four times a month and would also mingle with other supporters in sporting teams. On one occasion was attacked and beaten while on his way home. On another occasion in 2008 he was sitting outside a club which was attacked by Awami League supporters. He ran away. He heard friends had been killed. His brother told him people had come to the house searching for him. He stayed away from home and later went to India and then Malaysia via Thailand.
10. In his protection visa application the Applicant expanded on these claims, as follows:
- He was born in [Village 1], [Town 2], Jessore, Bangladesh in [year deleted] and lived there until 2008. Both his parents are deceased and he has [number] siblings living in Bangladesh. He has never married. He received six years of formal education in Bangladesh, ending in about [year deleted]. He does not list any employment in Bangladesh but claims to have worked as a salesman and as [a tradesman] in Penang.
 - He left Bangladesh as he feared his life was in danger because of his political opinion in support of the Bangladesh Nationalist Party (BNP) from groups acting at the direction of the Awami League.
 - He spent six or seven months in Kolkata, India, in 2008-9 then traveled to Malaysia in 2009 where he lived in [Penang] He went to Jakarta and Madang, in Indonesia, in June and July 2012 before coming to Australia.
 - He regularly attended BNP political meetings and was known in his local community for this. He lived in an area dominated by Awami League members. They are very violent and the violence has become worse since the Awami League came to power. Two friends who were well-known BNP supporters were killed by the Awami League in 2011.
 - He and his friends were singled out by the Awami League. In early 2008 he was beaten when ambushed by Awami League supporters when returning home from a BNP election rally. He believes they acted purely because of his political support for the BNP. Later in 2008 he was attending a BNP meeting which was suddenly attacked by them. He and others fled but he heard later that one BNP member was badly cut with machetes.
 - He was warned by his brother that Awami League supporters had been to his house looking for him so he did not return home. He knew if they found him he would be dragged away and killed or seriously injured, simply because of his political opinion.

¹ The Applicant entered Australia as an unauthorised maritime arrival, on [date deleted].

- He fears if returns to Bangladesh he will be killed by the Awami League because of his political opinion. They wish to crush support for the BNP by killing and injuring its supporters. He would be forced to keep a low profile and remain constantly on the run. He could not find employment sufficient to live freely and subsist.
- The police and state authorities would not protect him because it is impossible for citizens to refer a problem or report a crime. His complaint would not be accepted because the police are closely linked with the Awami League.
- It would not be reasonable for him to relocate to any other area of Bangladesh. He fears retaliation from the Awami League government authorities and other groups anywhere in Bangladesh.
- Relevant to the provisions of Australia's complementary protection arrangements, he fears if he is returned to Bangladesh he will suffer arbitrary arrest and detention, imprisonment, physical assault and torture, and possibly death, for the reasons set out above.

11. These claims were discussed in a protection visa interview attended by the Applicant on 25 February 2013. The advisor submitted a Bengali language newspaper article said to refer to killings in the first four years of the Awami League government. These included the 'BNP President Mr Naj' The Applicant confirmed the article referred to the killings of some of his friends for political reasons, after he left Bangladesh, but did not mention his name.

12. The advisor referred to:

- Court documents relating to a false court case brought against the Applicant's [cousin] [in] January 2013. The cousin had been beaten previously. The Applicant believed the case was brought because of his uncle's involvement in politics.
- Other untranslated newspaper articles relating to Awami League assaults on two further individuals in the Applicant's area, one of whom was the Applicant's neighbour who had refused to give the Awami League money. She submitted that one of the Applicant's friends who was killed in 2010 was the vice president of the BNP. The other, killed in 2009, was active in the BNP. In March 2012 the Awami League killed another of his friends.

13. The Applicant said, in summary, that:

- He had no legal passport and had never applied for one. When he left Bangladesh he had no identity card - at that time they did not exist. He did not know if it was necessary to apply personally for a card. He did have a certificate from the local municipality regarding his identity.
- He went to India a couple of times before 2008 without a passport in order to observe important Hindu religious festivals. Asked how he crossed the border he said he paid the Bangladesh and Indian border

guards some money. On the first day of the Bengali calendar there are no restrictions on the crossing.

- He was given a false Indian passport to travel from India to Thailand. This was taken from him by the agent who arranged his employment. He crossed over a river at night to enter Malaysia and later travelled by boat from Malaysia to Indonesia on his way to Australia.
- He was unemployed in Bangladesh. In Malaysia he worked as a salesman in a [shop] and later as [a tradesman], using the experience of helping a friend in Bangladesh whose shop repaired [details deleted].
- Asked if he was a supporter or a member of the BNP he said he was a member. After arriving in Australia he had received a certificate from the party stating this (the advisor indicated she was unaware of this document) Asked why he obtained it he said an acquaintance had asked if he had any proof of his involvement in politics. He had not had it in Bangladesh as it was not needed there.
- Asked why he supported the BNP he said his uncle had supported Jamaat-i-Islami for a long time and there was conflict between his family and the Awami League. The Applicant had participated in joint processions of the BNP and Jamaat-i-Islami. So far as he knew, no other member of his family was involved in politics. Asked why he had not supported Jamaat-i-Islami like his uncle he said he found the BNP responsive to his requests. The party tried to develop the position of labourers and farmers.
- Asked about his political activities he said that for one and a half to two years he regularly attended party meetings. He and his friends helped organise these meetings by distributing information about the date and venue, on instructions. He was active in his village and surrounding areas. He had only a very minor involvement in these activities before 2006. He did not do any other kind of job in the party. He ceased his activities in August or September 2008.
- Asked how he joined the BNP he said there were no rules and regulations about joining but it normally required a recommendation from a leading party member. He gave names for BNP office holders in his village.
- He reiterated his claim to have been beaten by gangsters working for the Awami League when returning from a procession during an election campaign. After some time he was treated by a local doctor for his injuries. He was afraid to report the incident to the police as they would not accept such complaints. He was also involved in some minor incidents. Once he was in a BNP meeting which was attacked by terrorist supporters of the Awami League. He hid with a friend after his brother told him people had looking for him.

- He feared he would be killed if he returned to Bangladesh. Even though he had a low profile in the BNP, those with an even lower profile had been killed.
- Following a brief adjournment to allow him to consult his advisor he said that after he reached Malaysia his brother received many telephone calls from people making threats and demanding money. People were coming to his house to search for him. His family members were not harmed but a brother was falsely accused shortly after the Applicant left Bangladesh – this was a case of mistaken identity and the case was resolved. He added that while he was organising meetings the police would come to search for him. He did not know what they wanted and he never spoke to them when they came to the house – his brother would speak to them. Asked why he had not mentioned this previously he said he had forgotten to do so.
- Asked if there was anything else he wished to say, he reiterated that some of his friends had been killed - he had nothing else to say.

14. Also on the Departmental file are photocopies of:

- A letter in English on the letterhead of the [Town 2] Municipality Office and signed by [Mrs A] ‘Panel Mayor-03 [Town 2] Municipality, [Town 2], Jessore.’ The writer states that the Applicant is personally known to her, that he is of good character and that he has not taken part in any subversive activities.
- The Applicant’s birth certificate, in English.

15. In a submission to the Department dated 6 March 2013 the advisor cites country information relating to Bangladesh and submits that:

- The country information demonstrates those who support the BNP are targeted by the Awami League.
- The Applicant cannot find safety by relocating since he fears persecution from the Awami League, the dominant political party with control over the judicial and law enforcement agencies. Relocation is also not reasonably practicable for him.
- The Applicant has been falsely charged with murder, an offence which carries the death penalty in Bangladesh. There is a real risk that he would suffer significant harm, for the purposes of Australia’s complementary protection arrangements, if returned to Bangladesh .

16. Attached to the submission are photocopies of:

- Documents in Bengali, with English translations, said to be police and court records relating to a charge of murder brought against the Applicant arising from an incident in December 2008.

- A document in Bengali said to be a photocopy of the Applicant's BNP membership card.
- A letter in English on the letterhead of the 'Bangladesh Nationalist Party[Town 2],' dated [in] December 2012. It is signed illegibly over a stamp reading 'Prasident Bangladesh nationalist Party, [Town 2], Jessore.' The writer states that the Applicant '...was an active member of Bangladesh Nationalist Party (B.N.P.) He was an assistant secretary of [Town 2] Thana B.N.P, as a member he took part in all political functions of the party and also he lead a various procession of anti government movement. He had ample contribution in domestic activities in Jessore district. He is by Bangladesh, by faith Muslim, He is not involved any kinds of anti social activities. As per my knowledge his character is good. He is our party member. Though he is locally famous for his fresh polities. But the exempting ruling party creates too many obstructions, political and falsely implicated different types of harassments. They will be killed by them if he staying here.'
- A document in Bengali said to be a BNP membership card for the Applicant.

17. Also attached is a Statutory Declaration signed by the Applicant on 6 March 2013. He claims, in summary, that:

- Four of his friends were killed by Awami League supporters or 'terrorists,' in 2009, 2011 and 2012. A fifth was stabbed by Awami League members after refusing to pay them money.
- At the beginning of the previous week he telephoned his [brother] and asked him to find out why the police had been coming to his house, even after his departure from Bangladesh. [His brother] subsequently advised he had discovered from the local police station there was a warrant for his arrest on a charge of murder. He subsequently obtained from the Jessore court a number of documents relating to this case and emailed them to the Applicant.
- The case against him is a false one. He does not know the person said to have been murdered or the complainant. The other person accused is from his area but he has no connection with him.
- He fears that if returned to Bangladesh the authorities including the police and the judicial system may target him because of his political opinion. The judicial system is corrupt and the political leaders use it to target their opponents. He will be arrested, jailed and kept in inhuman and degrading conditions. He may be denied access to a fair trial and subjected to the death penalty.
- The period since his departure from Bangladesh has been a very unsettling time for him and this has impacted on his memory. While he was in immigration detention he had little contact with people in Bangladesh, limiting his information about what was happening there.

- He believes there may have been interpreting problems during his protection visa interview. The interpreter was unsympathetic and he felt unable to discuss the experiences of his friends and political associates who were harmed or killed for their political beliefs.

18. On 1 July 2013 the Tribunal received a submission in which the advisor cites further country information concerning human rights issues in Bangladesh, canvasses legal issues and takes issue with the delegate's findings. The advisor submits, in summary, that:

- The Applicant fears persecution in Bangladesh on the Convention grounds of his political opinion (in support of the BNP and opposed to the Awami League) and membership of the particular social group consisting of members of the BNP. He also fears significant harm, as defined in s.36(2A) of the Act, throughout Bangladesh.
- There is no necessary inconsistency between the Applicant's evidence in his entry interview and protection visa application to the effect that he was only a 'supporter' of the BNP rather than a member of it, as he claimed in his protection visa interview. The Australian courts have cautioned against placing undue weight on minor inconsistencies and on inconsistencies between entry interviews and subsequent accounts.
- In his instructions following the delegate's decision the Applicant has confirmed he was an assistant secretary of his local branch of the BNP, with duties including inviting people to BNP events. He failed to disclose this earlier because he was confused by Australia's system for providing protection, was unsure that his migration agent could be trusted and was afraid to disclose information which could expose him to further harm if he were to be removed to Bangladesh. He was unaware of the consequences for his credibility of failure to disclose the information earlier. Considered in context this should not be seen as evidence of an intent to deceive but as a plausible response to stress and a lack of knowledge of what the procedures required of him.
- The Applicant confirms the documents he has submitted are genuine. He did not know that documentary evidence was required of him and did not think to bring it with him when he fled to India. He has demonstrated consistent knowledge of political events in Bangladesh at the local level, supporting a conclusion that the letter confirming his involvement with the BNP is genuine.
- The availability of forged or fraudulent documents in Bangladesh should not, in itself, be used to find the court and police documents relating to the false charge against the Applicant are not genuine.
- The Applicant instructs that since arriving in Australia he has resumed his involvement with the BNP through its Australian branch, heightening his profile. The Awami League in Australia will have informed their Bangladesh counterparts of his renewed political activity, limiting his ability to relocate within Bangladesh. He did not mention this previously because he only became involved with the

BNP two or three months ago. If returned to Bangladesh he will continue his political activity and involvement, exposing him to renewed persecution, regardless of his lack of a prior profile in any place he would choose for relocation. He speaks with a distinct regional dialect (from Jessore) and would be easily identifiable if he relocates, allowing his political persecutors to locate him.

- The persecutory harm feared by the Applicant cannot be avoided by relocating anywhere in Bangladesh. His persecutors will harm him not only because of what he has done but because of his political opinion and the actions he will take to express it in future. He cannot be expected to avoid persecution by maintaining discretion. It would also be unreasonable to expect him to be able to relocate, given that he would face difficulties of corruption, generalised violence and widespread poverty, and he would be denied support while he found employment and shelter.
- If the Tribunal were not satisfied that the Applicant met the definition of a refugee, he is owed protection under Australia's complementary protection arrangements as there is a real risk he would suffer significant harm, in particular arbitrary deprivation of life and cruel, inhuman or degrading treatment.

Tribunal hearing

19. The Applicant appeared before the Tribunal on 3 July 2013 to give evidence and present arguments. The hearing was conducted with the assistance of an interpreter in the Bengali and English languages and was also attended by the Applicant's advisor. The Applicant submitted further copies of documents already submitted to the Department and said, in summary:

- He left Bangladesh in 2008 because the situation was very 'hot, politically.' There was an incident in which he was beaten by Awami League terrorists. Later, on [a date in] August 2008, they attacked a political procession and a meeting. He and others fled but he heard that one of his colleagues was caught and brutally cut with a knife. They thought he had died.
- His brother called him and warned him against returning home that night. He slept in a shop belonging to a friend and the next day went to the home of a relative in Benapoll where he stayed for a few days to determine if he could return home. He heard the terrorists were still looking for him and his friends and about a week later they bombed the shop belonging to his friend, severely injuring him. When he heard this news he knew he could not return home so he fled to India.
- Asked about the people he feared he said, again, that they were Awami League terrorists and were all members of the Awami League. He clarified that he did not mean all Awami League members are terrorists. Asked if he knew their names he said he did – some were from his locality and some were strangers. They had groups and

would collect ransom from villagers, taking away possessions such as mobile telephones and motorcycles. Asked if other political parties did the same things he said the Awami League and communists do so. Asked about the BNP he said the party also has terrorists, but there were not many in his area.

- Asked why the Awami League members had done these things to him he said they are in the majority while the BNP is in the minority. He had been active in the BNP, including by calling people to meetings and processions. Asked if there was any other reason why they wished to harm him he said it was because of his political activity.
- He feared that he would suffer the same fate as his colleagues if he returned to Bangladesh. Asked why they would still wish to harm him five years after he left Bangladesh he said that if he returned he would once more be active in politics. He had not intended to do so but when he arrived in Australia he discovered the BNP holds meetings in local community centres. There is no fighting as occurs in Bangladesh.
- Asked if he feared harm from anyone else in Bangladesh, for any other reason, he said he was also in danger from the government. There is a false case against him. He had seen from newspaper reports that BNP leaders and workers are being tortured by the police. If he was caught he would be placed in remand for an indefinite period. He could be jailed for life.
- He confirmed that in Bangladesh he lived all his time in his family house in [Town 2]. He left school at about the age of fourteen. His brother is now living in this house and his two sisters have married. Asked about his father he said he had been a businessman, [details deleted] The family had been rich but their wealth had decreased somewhat.
- Asked about his visits to India he said these were very brief, lasting only a day, to satisfy his interest in Hindu culture and music. He had not needed a passport. When he went to India in 2008 he lived in Calcutta for six or seven months. He had no employment and was able to subsist with money sent to him by relatives living in the border area.
- He confirmed that he travelled to Malaysia, via Thailand, using a fraudulent Indian passport in the Hindu name of [Name 1]. After he arrived in Thailand his agent took the passport from him. He crossed into Malaysia by walking through the jungle. He was able to gain employment as [a tradesman] on the basis of experience he gained in Bangladesh through a friend who had [a] shop. Asked how he had been able to live there for three to four years without a passport he said he was able to use a photocopy of it. On one occasion the police caught him and detained him for five or six days. They planned to return him to Bangladesh and would have jailed and tortured him to

death but he managed to borrow money from a friend to help him travel to Indonesia.

- Asked when it was that he had become actively involved with the BNP he said he formally became a party member [in] January 2007. Before then he had attended party meetings with a friend. Asked what changed after this date he said he began talking to other friends about the BNP and attracting them to it. They wanted to know more about the party and he explained how it, the Communist Party and the Awami League worked. He was working for the country. His friends listened and expressed fear of being involved in politics lest their family members come to know of it and become angry. This was particularly the case since the Awami League dominated his area. He was able to convince them it was important by saying that if they did not take a stand against Awami League torture it would continue. He was able to convince people to join the BNP. These were primarily his friends and ‘members of the younger generation.’
- Asked if he had done anything else for the BNP after January 2007 he said when leaders of the party saw that a boy from [Village 1] could convince people they began to support him. They kept him with them and he did things for the party’s ‘propaganda’ including donating blood on three occasions. He became increasingly well known. Asked about his contact with BNP leaders he said people normally do not gain any position in the party but when he was seen to have a capacity for work he was given a position on the council. He was able to convince the owner of a local community centre to make it available to the poor. He also arranged for a doctor to provide free treatment and made available study books for youths who had gone astray.
- Asked if he had done these things of his own volition he said he and his friends did it in their way, to mobilise the people in the interests of the party. I put to him it seemed hard to believe that, as a [age deleted] year old who had dropped out of school at the age of fourteen and had no employment experience, he would have had much influence. He said it was not him alone – he did these things collectively, with friends. He was very young but had the opportunity to mix with the big leaders and be inspired by the experience. He had acted with the approval and support of the leaders.
- I noted he had not made any reference to elections. He said there was no election at the time as Bangladesh was under a caretaker government. I noted that there was an election shortly after he left, and that the campaign was under way while he was still there. He agreed this was so, ‘to some extent.’ Asked about his involvement he said the election was definitely a target. The things he did would lead people to vote for the BNP. Asked again what he had done he said the party Secretary would decide who spoke at meetings. His own job was to organize the stage and seating area. He named the candidate for the BNP – led alliance in his [constituency] as [Mr B], from Jamaat-i-

Islami. His uncle had been a close associate of [Mr B]. Asked if he had done anything else for the election he said he would cook food for particular occasions, such as the birthday of the party leader. He did many such tasks.

- I noted there appeared to have been a process of development in his claims regarding his involvement with the BNP, with a growth of his claimed political profile:
 - In his entry interview and in his protection visa application he claimed to have been a supporter of the party who regularly attended political meetings;
 - In his protection visa interview in February 2013 he claimed to have been not just a supporter of the BNP but a party member who attended meetings and helped organize them by travelling to neighbouring villages and telling people the dates. This had been the extent of his activities;
 - In March 2013 he submitted to the Department a letter from the BNP stating that he was an assistant secretary in his local branch, that he led processions and that he was locally famous for his political involvement;
 - At the Tribunal hearing he had added the claim that he recruited people to the party and that he had impressed top leaders who took him into their presence and supported him in a number of activities he and his friends carried out.
- I put to him that this could cast doubt on the truth of his claims about his involvement with the BNP. He said he had experienced torture at the hands of the police in Bangladesh and Malaysia. His arrival interview lasted only fifteen minutes and allowed him to answer in only one word or one line. He could not communicate with anyone from Bangladesh when he was in detention and in his entry interview he could speak only about his own experience. He could not give the full detail of what happened in Malaysia. When he reached Brisbane the interpreter service was not very good and he could not communicate with anyone from Bangladesh. He had access to his lawyer when he was in Sydney but his mental condition was not very sound. He was under great mental pressure and he could not remember dates. Asked if he had sought any professional advice about his mental pressure he said he consulted a doctor over insomnia but was charged too much money. He was prescribed medication.
- Asked about his torture by the Bangladesh police he said he was never arrested but they used to invade his house, just before the planned day of a meeting, to make it difficult for the meeting to take place. Asked how this would affect the meeting he said that if they could catch him

the night before, the meeting would have fewer people. Asked how many times this had happened he said he could not remember. Asked for an estimate he said it happened once or twice a month, then that it happened every one or two months. Asked again he said it was about eight to ten times. Asked if they had been unable to catch him on each of these occasions he said they caught him and his brother once but the neighbours helped him by telling the police that he and his brother were not the people named on the wanted list. I put to him that it seemed implausible that the police would not identify him correctly, having located him in his own house. He said he was known widely as [name deleted], a name which was not on the list of people the police were looking for. After this incident he stopped living in his house.

- I noted that he had previously advanced a different explanation for this decision to live away from home – that his brother had telephoned him telling him that Awami League people had been to the house. He said his brother told him this in 2008. He denied he meant there was a previous period in which he had stayed in hiding from the police; he would stay somewhere else on the day before a meeting or a procession. I noted that he had not mentioned this matter in his entry interview, his protection visa application or in submissions to the Department or Tribunal. He said he was advised not to mention it as it happened long ago. For a long time police had been coming to his house and preventing him from sleeping properly. This happened frequently in Bangladesh.
- I noted that in his entry interview and his protection visa application he spoke of false charges being brought against his cousin and his brother but made no mention of false charges against him. Nor had he mentioned any such false charges in his protection visa application. However, in his Statutory Declaration of 6 March 2013 he claimed to have been charged with murder, and he had provided police and court documents relating to this charge. I put to him it seemed difficult to understand why he would not have mentioned this matter from the beginning. He after he arrived in Malaysia the police came to his house in Bangladesh looking for him. He was sure they could not do anything to him as he was in Malaysia. When he mentioned at his protection visa application that the police were looking for him he was asked why this was so and given seven days to respond. He then telephoned his brother who said he was afraid to visit the police station. He asked him to send someone else to the police station to find out.
- I put to him it seemed difficult to believe he could have been charged with murder in December 2008, and that police could come repeatedly to his house on this matter, without his having discovered such a thing for the next five years. He said that after they visited the house a few times they became reluctant to return, as they knew he was not there. When a new officer would arrive they would start a fresh investigation and begin to look for him once more. For this reason he had not placed

any importance on their visits. I put to him I found it hard to believe that if police had appeared many times at his house to search for him nobody in his family would realize what it was about. He said his brothers did not enquire and simply said he was not home. Had the case commenced while he was in Bangladesh he could not have left.

- I asked the Applicant if any of the incidents of harm he had described – his beating by Awami League terrorists, the attack on a BNP meeting and the false murder charge against him – had ever been reported in the media. He said these things happened during the caretaker government. They were probably reported in the newspapers but he did not know about this. I suggested that if an attack on him was reported he would know about it. He said that immediately after the last incident he left the country and he had had no connection with the media. I noted that the incident when claimed to have been beaten was said to have occurred in early 2008, several months before his departure. He agreed it happened then and said he did not know if it was reported.
- I put to him I believed it was possible to doubt the truth of his claims about these incidents and about false charges having been laid against him. He asked that the Tribunal make enquiries about them.
- I put to him that I also had doubts about the truth of his claim to have had any involvement with the BNP and, moreover, that the involvement which he did claim appeared unlikely to have given him any political profile as a BNP leader. He said he had answered all the questions that were put to him. The Tribunal should make enquiries as to whether he was involved in politics and whether this had caused him problems. His uncle had lost everything because of his political activities. His cousin had only just been given bail. He had a friend who was often targeted by the Awami League and was sent overseas. Another friend was beaten and hospitalised, causing his father to die of a stroke. How could he say that such things would not happen to him?
- He submitted copies of the documents from Bangladesh already on file. I noted that the letter said to be from the BNP in his village was on letterhead which seemed to vary from normal BNP letterhead in that it did not include the party emblem. He said it was given to him by the party president in his village. Noting that independent country information before the Tribunal indicates false and fraudulent documents are easily obtained in Bangladesh and are often used in migration and refugee cases I put to him that this, together with other concerns over his claims which I had raised with him, could lead me to believe that no weight should be placed on the documents. He asked the Tribunal to make enquiries about them.
- I explained there was information before the Tribunal, including information he had given in his entry interview and protection visa application interview, which could cast doubt over the truth of his

claims of involvement with the BNP. This information was important because it could lead me to doubt the truth of his claims to have had any involvement with the BNP, to have suffered any harm or to have been falsely charged with murder. If I came to believe these things were not true I would conclude that he would not suffer harm on return to Bangladesh and that Australia did not have protection obligations to him, leading the decision to refuse to grant him a protection visa to be affirmed. He confirmed he understood the information and its importance for his case. I invited him to respond to the information or comment on it, explaining that he could do so immediately, at an adjourned session of the hearing or in writing, with further time available for these purposes if necessary. He said he wished to respond in writing and it was agreed that he could have two weeks in which to do so (later extended to 31 July 2013, at the advisor's request)

- Asked about his claims to have become involved with the BNP in Australia he said he had become a member of the party here. I explained to him the operation of s.91R(3) and its possible significance for this conduct. He said he joined the BNP and that was why he joined it. He did not do so to strengthen his case.
- Asked if there was anything he wished to add he said he was asking the Tribunal to investigate the documents he had submitted and consider the situation in Bangladesh.

20. On 1 August 2013 the Tribunal received a further submission from the advisor addressing aspects of the Applicant's claims. He submits, in summary, that:

- The Applicant raised new claims at the hearing about invasions of his home by police, prior to BNP meetings, in or around 2007. He did not previously mention this aspect of his claims because he was never asked.
- The police were unable to find him, despite their numerous attempts, because he was in hiding. He knew when they were planning to visit his house because the president and secretary of the local BNP would inform him. He is not sure how they knew this but believes they either obtained the information from the police or would make assumptions about when they would visit. As a result he was able to ensure he was absent. His neighbours were able to assist by lying to the police. They knew him well and believed in his good reputation.
- 'As noted during the hearing, [the applicant] has currently been prescribed melatonin, movicol and polaramine.' Melatonin's most common side effects include daytime sleepiness, dizziness and headaches. Less common side effects include mild anxiety, confusion and short-term depression. The most common side effect of Polaramine is drowsiness and others can include dizziness, disturbed concentration, fatigue, confusion, nervousness depression and anxiety. These potential side effects should be taken into account in assessing the credibility of the Applicant's claims, and findings of vagueness,

inconsistencies, unreasonable lapses of memory and related conduct should not go against his credit without consideration as to whether they are attributable to his medication.

- The Applicant's claim that he was an assistant secretary of his local BNP branch is credible, as are his explanations for previous inconsistencies about the level of his involvement in the party – confusion as to what was required of him at different stages of the assessment process and fear that information he disclosed would become available to the Bangladesh government. He displayed a considerable understanding of Bangladesh politics at the hearing, including by naming the BNP-coalition candidate in his constituency.
- While conclusions may be drawn about the Applicant's overall credibility as a witness, the credibility of his claims regarding the charge of murder against him should not be based entirely on whether his claims of BNP involvement are credible. Since he became aware of this charge he has been consistent in his claim about it. There is no evidence, beyond the general country information regarding the prevalence of fraudulent documents in Bangladesh, to suggest that the documents he has provided about these charges are not credible.
- The Applicant satisfies the criterion for complementary protection as a result of the murder charges he faces. If convicted there is a real risk he would face the death penalty. While held in prison there is also a real risk that he would suffer torture or cruel, inhuman or degrading treatment.
- Given the Applicant's knowledge of political conditions in Bangladesh it is open to the Tribunal to find he sincerely supports the BNP and has joined its branch in Australia in good faith. Even if the Tribunal were to disregard this conduct, on the basis that it was engaged in to strengthen his claim to be a refugee, s.91R(3) does not affect the test for protection under s.36(2)(aa). It is open for the Tribunal to find that he faces a real risk of significant harm on account of his membership of the BNP in Australia if he were to be removed to Bangladesh.

21. Attached to the submission are photocopies of documents said to be:

- Newspaper articles regarding the persecution of BNP members by the Awami League in [Town 2], with English translations. The quality of these reproductions makes them partly illegible. The advisor submits that the Applicant is not mentioned but the articles substantiate his claims by demonstrating a pattern of conduct among Awami League supporters.
- A letter of support dated [in] December 2012 from the President of the BNP in [Town 2]. I note that this document is, in fact, on letterhead reading 'Bangladesh Nationalist Student Party [Town 2] Thana, Jessore' and is signed, again illegibly, over a wet stamp reading 'President Bangladesh Nationalist Student Party [Town 2], Jessore.'

Its wording is in every other way identical with the letter said to have been written by the 'President Bangladesh Nationalist Party [Town 2], Jessore' which was attached to the submission to the Department of 6 March 2013.

CONSIDERATION OF CLAIMS AND EVIDENCE

22. On the basis of the photocopy of his birth certificate I accept that the Applicant is a citizen of Bangladesh and that his identity is as he claims it to be.
23. The Applicant claims to fear serious harm in Bangladesh on the Convention grounds of his actual or imputed political opinion in favour of the Bangladesh Nationalist Party and against the Awami League, and his membership of the particular social group consisting of 'members of the BNP.' It is also claimed that he would satisfy the criterion for protection under complementary protection arrangements as there are substantial grounds to believe there is a real risk that he would suffer significant harm on return Bangladesh.

Political opinion

24. Having considered the Applicant's account together with the country information cited in the delegate's decision record and the submissions to the Department and the Tribunal I have doubts as to the credibility of his claims to fear harm because of his political opinion. This is for the following reasons:
 - As put to him at the hearing, his claims about his role and activities in the BNP have steadily grown since he arrived in Australia. In his entry interview and his protection visa application he claimed only to have been a supporter of the party and to have attended political meetings regularly. In his protection visa interview he claimed he formally joined the party in 2009 and that, in addition to attending meetings, he helped advertise them to people in his area and surrounding areas. Following the interview he provided a letter, said to be from the BNP branch president in his area, which states that he held the position of Assistant Secretary of the branch, took part in all its political activities, led anti-government processions and was 'locally famous' because of his political involvement. Most recently, at the Tribunal hearing, he said he recruited people to the party and impressed top leaders who took him into their presence and supported him in a number of initiatives he and his friends pursued. I have considered his explanations for this at the hearing – in summary, that at earlier points his mental condition prevented him expressing himself more fully or remembering things, that there were only limited opportunities to explain his claims and that there were problems with the interpreter service – but I am not satisfied they adequately account for the late emergence of such important and relevant circumstances as his party membership, his position as Assistant Secretary of his branch and his prominent role in leading processions if these were, in fact true.
 - His claim to have been 'tortured' by the Bangladesh police, by which he appears to mean that they came to his house searching for him in order to hamper meetings of the BNP, is also very recent having been

raised for the first time at the Tribunal hearing. I am not satisfied that he provided any convincing explanation as to why such a clearly relevant matter would not have been raised by him at an early point. Nor am I satisfied it is at all plausible that the police would have seen such visits as being of any use in preventing BNP meetings or, indeed, that they would have any clear interest in doing so under what at the time was a caretaker government. I find it equally implausible that the police would come to his house six or seven times without being able to find him at home, or that on the one occasion when they did find him there they were persuaded somehow that he was someone else and took no action against him.

- In his protection visa application he claims that in 2008 he escaped from a political meeting after it was attacked by Awami League supporters and then went into hiding when his brother warned him they had been to his house looking for him. This is, however, inconsistent with his claim at the hearing that he went into hiding after his brother warned him police had been to the house looking for him. When this was drawn to his attention at the hearing he gave a confused response which provided no explanation for the inconsistency.
- His claim that a false murder case has been lodged against him by his Awami League enemies first appeared in the submission to the Department of 6 March 2013 (after his protection visa interview) although as early as in his entry interview he referred to other false cases having been lodged against his cousin and brother. His explanation for the late appearance of this significant claim is, in summary, that although police frequently came to the house looking for him after he left Bangladesh the family did not know the reason. These visits would cease when the police grew tired of them but every time a new police officer arrived the case would be re-examined and the visits would recommence. It was only after the delegate asked him the reason for the visits that he made enquiries of his brother, bringing to light the police and court documents and alerting him for the first time to the fact that he had been falsely charged with murder. Having considered this explanation I am not satisfied it is plausible that the police would never allude to the reasons for their multiple visits to the family home or that his family, said to be a wealthy one, would simply allow unexplained visits to continue without making enquiries of any kind. I do not find the explanation convincing and I consider that the late appearance of this claim casts strong doubt over its credibility.

25. Taking these matters together I am prepared to accept that when the Applicant was in Bangladesh he may generally have favoured the BNP, like many other Bangladeshis, and that he may have attended some of its public meetings. I accept that to this extent he may well have had a political opinion in favour of the BNP and opposed to the Awami League, and that he may still hold this opinion. However, I am unsatisfied as to the credibility of his claim that he was ever a member of the party, occupied the position of Assistant Secretary in his local branch, took a leading role in processions, actively recruited for it or had any other role in advancing its interests. I consider that these claims have been progressively adopted by

him in order to strengthen his case for a protection visa. As I am not satisfied that he ever played such a part in the BNP I do not accept that he ever developed any kind of political profile as a BNP activist or leader in his local area. I am not satisfied that he had friends or relatives with BNP (or Jamaat-i-Islami) political profiles which led to him being imputed with a political profile through association. Nor do I accept that he was ever targeted by Awami League supporters or harmed by them for such a reason, or that a false case has been lodged against him by political enemies. I do not accept, finally, that he ever suffered harm at the hands of the Bangladesh police, that they have been searching for him or that they have an adverse interest in him.

26. In reaching these conclusions I have taken into account the matters raised in the submission to the Tribunal of 1 August 2013, as follows:

- I note that the Applicant's explanation for not previously mentioning the police 'invasions' of his home is, simply, that he was never asked about it before (I note that this is not strictly accurate, as he did, in fact, make a reference to such visits during his protection visa interview) Whether or not he was asked about such matters, however, I am not satisfied it is plausible that he would have failed to volunteer information about these significant, often-repeated and obviously relevant incidents at some earlier point if they had, in fact occurred.
- I note the Applicant's explanations for his ability to avoid harm by absenting himself from his house during these police 'invasions' – that he was tipped off by local BNP leaders and that his neighbours were prepared to lie to the police – but I am not satisfied they are plausible. I find far-fetched his suggestion that police who were targeting the BNP would advise its leaders in advance of their raids, or else that the leaders were, in some unexplained way, able to 'make assumptions' about the timing of such raids. Neither explanation was suggested by him when he was asked about the alleged incidents at the hearing. As noted above, his claim at the hearing that police were able to find him in his house on one occasion, but were nevertheless able to be persuaded by a neighbour that he was not the person named on a list they carried, seems difficult to believe.
- As the advisor points out, at the hearing the Applicant was able to name the BNP-coalition MP in his local constituency and correctly identified him as belonging to Jamaat-i-Islami. I accept this indicates a knowledge of political developments in his area and it is certainly not inconsistent with his claim to have been a BNP member and activist. However, I believe the name and affiliation of his local MP is also something which could reasonably be expected to have been common knowledge in his area, particularly among those with a political opinion favouring the BNP, and that it does not of itself demonstrate the truth of his claim that his party involvement ran any deeper than this.
- The advisor submits that inconsistencies in the Applicant's account of his experiences in Bangladesh may be explained by the side effects of medication which has been prescribed for him – melatonin, Movicol

and Polaramine. I note from a cursory search of the internet that these substances are, respectively, a drug used to treat sleep disturbance, a laxative and an anti-histamine and that the latter two are pharmacy medicines available without prescription. I accept that the potential side-effects of these drugs are as the advisor submits. There is however no evidence before the Tribunal from the Applicant's treating physician about the nature of his condition, for how long and at what level such medications have been prescribed for him, or whether he has in fact exhibited any of the symptoms which the advisor has identified. Further, the Applicant has not previously complained of being inhibited in articulating his claims by any difficulties with drug side-effects, although he has advanced a number of other explanations, such as the allegedly unsympathetic attitude of the interpreter at the protection visa interview. It is difficult to understand why, if these side effects were so pronounced as to hinder him in the vital task of explaining why he has a well-founded fear of persecution in Bangladesh and requires Australia's protection, he should wait until this very late stage to mention them. Finally, having observed the Applicant at the hearing over an extended period I am not satisfied that he exhibited any of the symptoms which are suggested, or that he was in any other way prevented from participating effectively in it.

- The advisor also submits that the Applicant's was confused about what was required of him at various stages in the assessment process and that he feared any information he gave would become available to the Bangladesh government. With respect, I do not find either of these explanations convincing. The Applicant has had the benefit of the assistance of a professional migration agent since at least the time of his protection visa application in November 2012. I am not satisfied that the marked development in his claims over the succeeding eight months can plausibly be laid at the door of ignorance about the nature of the refugee status determination process. Nor, given his readiness from the beginning to identify supporters of the ruling Awami League as the agents of his persecution in Bangladesh, is it plausible that he felt inhibited by fear from mentioning other aspects of his experiences in Bangladesh which he has more recently come to rely upon.
- The advisor suggests that adverse findings about the credibility of the Applicant's claims to have been a BNP member and activist should not inevitably lead to a conclusion that his claims concerning the murder charge are untrue. I note, however, that his claims regarding his alleged BNP role are not simply marginal or unimportant matters but lie instead at the heart of his case for protection in Australia. As noted, I do not accept that these claims are credible and I find that this casts doubt on the credibility of his claims overall. There is, moreover, a direct link between the two areas of his account given that the false case is said to have been motivated by Awami League anger over his BNP activism. As I do not accept the latter proposition it follows that I do not accept there can have been any motivation to bring a false case against him.

27. I have reached these conclusions also taking into account the documents submitted by the Applicant which purport to show that he is a member of the BNP, that he was the Assistant Secretary of his local branch and that a false case is current against him. As put to him at the hearing, the independent country information available to the Tribunal (see, for example, RRT Country Research Response BGD16476, 25 February 2004) points to the ready availability of false or fraudulent documentation in Bangladesh and its frequent use to support migration or refugee claims. The information also indicates there is rampant corruption in various levels of government and 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. I have considered the Applicant's invitation for the Tribunal to investigate his documents but I am not satisfied these circumstances allow any practicable means by which the Tribunal could do so or, if it did attempt an enquiry, to be able to be confident in the outcome.
28. I have additional concerns about the authenticity of the supporting letters said to have been written by BNP leaders in the Applicant's own village of [Town 2]. As put to him at the hearing, the letterhead of the letter said to have been signed [in] December 2012 appears unusual in that it lacks the emblem of the party. Of further concern is that the letter subsequently provided with the submission of 1 August 2013 is said to have been written by a different person (and I note that although the signatures are both illegible they do not resemble each other) who occupies the position of President of a different organization – the 'Bangladesh Nationalist Student Party' in [Town 2] I accept that this may be intended to refer to the Jatiyatabadi Chattra Dal, the BNP's student wing, but I find it difficult to accept that such a person would write a letter which was otherwise identical in every respect to the letter [of] December 2012, down to the misspelling 'Prasident' in the wet stamp under his signature. It is also difficult to account for this sudden appearance of a letter which is said to have been written the day before the letter which was submitted to the Department with the submission of 6 March 2013.
29. Taking together these specific concerns about the BNP letters the Applicant has submitted, the independent country information about fraudulent documents in Bangladesh and my doubts, on other grounds, concerning the credibility of his claims about his experiences in Bangladesh, I am not satisfied that any weight can be placed on the documents as evidence that he was involved with the BNP. Given his preparedness to submit such documents, and given my other concerns about the credibility of his claims in general, I am also unable to place any weight on the police and court records relating to a charge of murder which has allegedly been brought against him.
30. Given these findings about the Applicant's circumstances in Bangladesh I do not accept there is any reason to believe that if he were to return there he would involve himself in any way with the BNP so as to create a political profile which might make him a target for serious harm. In this context I have considered his claim at the hearing that he has joined the local branch of the BNP in Australia. He has provided no details about the nature of this involvement or any documentary or other substantiation for it, and I am unable to be satisfied that he has in fact joined the party here. While I accept that he may have had some fleeting contact with it this has, by his own evidence, been quite recent. Given this, and as I am not satisfied that he was ever a member of the BNP in Bangladesh, I am unable to be satisfied that his conduct in contacting the party in Australia has been undertaken other than for the purpose of strengthening his claim to be a refugee and, as required by s.91R(3) I have ignored

that conduct in determining whether he has a well-founded fear of persecution for a Convention reason.

Particular social group

31. I am prepared to accept that the group consisting of ‘members of the BNP’ can be said to exist in BNP as a particular social group, in the sense that it is sufficiently identifiable by characteristics or attributes common to all its members, other than a shared fear of persecution, which distinguish it from society at large. As noted above, however, I am not satisfied that the Applicant was ever a member of the BNP, or that he played any role in its activities. This being the case it follows that I do not accept there is a real chance of his suffering serious harm for reason of his membership of such a particular social group if he were to return to Bangladesh.

Summary - refugee claims

32. In the light of all the information before the Tribunal, considered individually and cumulatively, I am not satisfied there is a real chance that on return to Bangladesh the Applicant would suffer serious harm amounting to persecution for the Convention reasons of his political opinion (whether real or imputed) in favour of the BNP and against the Awami League, or membership of a particular social group consisting of members of the BNP. He does not claim to fear serious harm for any other Convention reason and no other reason is apparent on the face of the information before the Tribunal.
33. I am not satisfied that the Applicant has a well-founded fear of persecution for a Convention reason should he return to Bangladesh, now or in the reasonably foreseeable future, and I am not satisfied that he is a refugee.

Complementary protection

34. For the reasons given above I am not satisfied that the Applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the Applicant does not satisfy the criterion set out in s.36(2)(a).
35. Having concluded that the Applicant does not meet the refugee criterion in s.36(2)(a) I have considered the alternative criterion in s.36(2)(aa). The advisor submits that he would satisfy the criterion because there is a real risk he would be subjected to significant harm as a consequence of being tried for murder, with the possibility that the death sentence would be carried out on him, and through his exposure to torture and cruel, inhuman and degrading treatment while in prison.
36. As noted above, I am not satisfied that a murder charge has, in fact, been brought against the Applicant in his absence or that he is of any adverse interest to the Bangladesh authorities. Nor am I satisfied that he has ever incurred the enmity of the ruling Awami League by membership or activism in the BNP, or that they wish to harm him for this reason. This being the case, I am not satisfied there is a real risk of his suffering significant harm for such a reason should he be returned to Bangladesh.
37. The advisor submits that the Applicant’s involvement with the BNP in Australia has been reported to the Awami League and that it would expose him to a real risk of significant harm, satisfying the criterion for protection under complementary protection arrangements. He

points out that s.91R(3) is not relevant in assessing whether the Applicant meets the test for protection under s.36(2)(aa) As noted, however, I am not satisfied the Applicant has had more than a marginal degree of contact with the BNP in Australia. I am not satisfied it is at all plausible that this contact would create a real risk of significant harm for him if he were to be returned to Bangladesh Nor am I satisfied that it demonstrates that on return to Bangladesh he would involve himself with the BNP so as to cause such a real risk to arise in future.

38. Having considered the Applicant's claims individually and cumulatively, I am not satisfied he would be at any risk on return to Bangladesh for the reasons he has claimed. I am not satisfied there are substantial grounds to believe that, as a necessary and foreseeable consequence of his being removed from Australia to Bangladesh, there would be a real risk that he would suffer harm which would amount to significant harm in terms of s.36(2)(aa) of the Act.
39. There is no suggestion that the Applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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