

1209185 [2013] RRTA 35 (18 January 2013)

DECISION RECORD

RRT CASE NUMBER: 1209185

DIAC REFERENCE(S): CLF2012/62165

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Ms Christine Long

DATE: 18 January 2013

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 is a citizen of Bangladesh applied to the Department of Immigration for a protection visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] March 2012.
3. The delegate refused to grant the visa [in] May 2012, and [in] June 2012 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 in respect of 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 in respect of 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 in respect of 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 in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
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 in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

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 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').
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 Department's file relating to the applicant which includes the applicant's application for protection visa and the delegate's decision record. The Tribunal also has had regard to the material referred to in the delegate's decision. The Tribunal also has before it the applicant's application to this Tribunal for review.
20. In the application for protection visa the applicant states that he was born in [District 1], Bangladesh in [year deleted: s.431(2)] and he was educated in [District 1]. His religion is Islam. He indicates that he has never married. He states that he lived in [District 1] in Bangladesh between 2002 and 2006 and from February 2006 until December 2011, when he came to Australia, he lived in [Country 2]; he indicates that he had a working/employment visa for [Country 2]. He indicates that he worked in [Country 2] as a driver from March 2006 until December 2011. He states that he left his country legally in February 2006 and did not have any difficulties getting his travel documents. He indicates that he travelled to Australia using a passport in his name issued [in] 2004; his Australian visa was a subclass 676 visa issued [in] November 2011.
21. The applicant states that he and his father and brothers are active supporters of the BNP and he started supporting the BNP from 1996. He attended meetings and learned about BNP political activities. He attended election meetings, organised election campaign meetings and engaged in door to door campaigns to promote the BNP. He initially joined JCD and after he

left school he joined the BNP. He supported the local BNP candidate during the 2001 election. The applicant states that due to his political activities in Bangladesh he faced problems from Awami League supporters. During this period however when the BNP was in power he was able to solve his problems with the Awami League.

22. The applicant continues that in 2006 he went to [Country 2] on an employment visa but while he was in [Country 2] he maintained his political contact with political leaders. During his time in [Country 2] his family told him they were being threatened by the sitting member of Parliament [Mr A] and his brother in law; they were threatened because of their continued support of the BNP. In January 2012 his family advised him that [Mr A] and his supporters forcibly entered one of their properties and illegally occupied it. They told his family that whoever supported the BNP would be thrown out of the village. His family told him that because he had good connections with the BNP leaders and activists he would be targeted and that despite the fact that he had been living abroad he was “under the close eyes of the Awami League supporters in the area” because of his BNP political connections.
23. The applicant continues that Awami League supporters continue to target and harm BNP members and supporters and he will be identified and targeted by the Awami League although he has been out of his country for a number of years. He did not apply for refugee status in [Country 2] because he understands that country does not take refugees. After he came to Australia he learned that his employer had terminated his employment in [Country 2]; he cannot return to [Country 2] as his work visa would be cancelled. He will be seriously harmed if he returns to Bangladesh. He will be targeted and harmed by the Awami League in his country and the authorities will not protect him as the Awami League is in power.
24. Submitted in support of the applicant’s application for protection visa and contained on the Department file is a copy of the applicant’s passport issued in Bangladesh in 2004 and a copy of a vehicle operator licence for [Country 2] in the applicant’s name.
25. On the departmental file is a submission from the applicant’s adviser dated [in] May 2012 in support of the applicant’s claims. The submission includes references to extensive country information, and references to decisions of the Tribunal, in relation to human rights abuses and politically motivated, and other, violence by the present government and its supporters in Bangladesh. On the departmental file there is also a copy of a letter dated [in] April 2012 from the applicant’s employer in [Country 2], a copy of a letter on letterhead of the BNP, [branch deleted: s.431(2)], and a letter in English dated [in] April 2012 described as from the BNP Joint Secretary General.
26. The applicant was interviewed by the delegate about his claims [in] May 2012.

Application for Review

27. In his application for review the applicant makes no new claims.

Tribunal Hearing

28. The applicant appeared before the Tribunal [in] November 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages. The applicant was represented in relation to the review by his registered migration agent.

29. At the hearing the applicant produced to the Tribunal the following- his passport issued in Bangladesh in September 2004; a letter dated [in] April 2012 described as from the applicant's employer in [Country 2] stating, essentially, that the applicant left [Country 2] in December 2011 and that his employment was terminated as the writer reorganised his company and did not wish to re employ the applicant; a letter described as from the Bangladesh Nationalist Party dated [in] April 2012 stating that the applicant was an active member of the BNP for almost 12 years in [District 1] and that he is honest and hard working and has not been involved in any anti social or subversive activities; a letter dated [in] May 2012 described as from the secretary of the applicant's branch of the BNP stating that BNP supporters are being threatened and arrested by the present government in the applicant's district in Bangladesh, that government authorities are looking for the applicant and threatening members of his family, that if he returns to Bangladesh his life will be threatened, that false cases and anti state lawsuits could be filed against the applicant/ BNP supporters including the writer, and that the applicant keeps in regular contact with the writer; various newspaper reports and other publications and news reports about human rights abuses in Bangladesh, including reports of violence and human rights abuses by the government and Awami League supporters against members and supporters of the BNP.
30. In answer to questions from the Tribunal at the hearing the applicant said that he found out about the availability of protection visas in Australia in about January /February 2011 before he left [Country 2] to come to Australia. He said that there were problems in [Country 2] and they did not want to keep Bangladeshis there.
31. The applicant said that he left Bangladesh in February 2006 and went to [Country 2] because he had problems in Bangladesh; he could not stay in Bangladesh because of his political opinion and activities. He said that he stayed in [Country 2] and looked for other countries to go to and he learned about Australia. He could not return to Bangladesh from [Country 2] because of his problems. After he arrived in [Country 2] he met others from Bangladesh there and told them about his problems and they helped him. The applicant said that he first had a tourist visa for [Country 2] and went to that country because people said that it was easy to go there.
32. The Tribunal asked the applicant if he went to [Country 2] to work and noted that in his protection visa application it indicates that he went to [Country 2] in 2006 on an employment visa. He said that he got his working visa after he had been in [Country 2] for about a week; he talked to fellow Bangladeshi people and they helped him and he did his medicals. He had problems in Bangladesh and asked someone to help him escape to any country or any place. The Tribunal asked the applicant if he knew he had prospects of employment in Bangladesh before he went there. He said that he was told to leave the country and that he would get something there; he was told there were other people from Bangladesh in [Country 2]. The Tribunal asked the applicant how then he thought he would survive financially in [Country 2] when he went there. He said that his first decision was to leave Bangladesh and that then he would get something. The Tribunal asked the applicant whether it was correct to say that he went to [Country 2] to work. He said he went there to be safe but he had to do something to support himself. He agreed that he got a good job in [Country 2] and took steps to get employment in [Country 2] after being in the country for about one week. He said that he worked from about four to five weeks after he arrived in [Country 2] but was idle before that time. He said that after he was there for one week he did his medicals; he was told about his boss and "did the papers" in that boss's name to become legal in [Country 2]. He said that he was able to get work soon after arriving in [Country 2] because fellow Bangladeshi people

helped him arrange the documents so that he could work and the employer gave him a chance. The applicant agreed that he worked all the time he was in [Country 2] from about 4 to 5 weeks after his arrival there until he left to come to Australia except that he did not work for two months in May/June 2011. He agreed that he supported himself financially from the work he did in [Country 2].

33. The Tribunal asked the applicant whether his employment in [Country 2] had ended before he left there to come to Australia. He said that his boss said that business was not good and took his papers from him about one to two months before he came to Australia, in about November, and that meant that he could not work/get a job. The Tribunal asked the applicant if he told the delegate at his interview that he came to Australia because he was made redundant in his employment as a driver in [Country 2]. The applicant said that he told the delegate that his boss took his work permit.
34. The Tribunal asked the applicant when he first made the claim that he left his country in 2006 because he had trouble there and referred to his protection visa application where he states that he faced problems from the Awami League supporters but could solve those problems because the BNP was in power during that period and that he went to [Country 2] on an employment visa in 2006. The applicant said that his problems started in Bangladesh in 2004 and then escalated and in 2006 his situation was so bad that he could not stay in Bangladesh. He said that he did not say that he had problems with the Awami League but could solve those problems because the BNP was in power at that time and that he went to [Country 2] on an employment visa. The applicant said that he told his story to his adviser who wrote it down in English and he saw the document and signed the document but no one read it back to him in his language. The Tribunal told the applicant that it was of concern to it that his application for protection visa does not mention that he left his country in 2006 because he feared harm there.
35. The Tribunal asked the applicant if he came to Australia because he did not have work in [Country 2]. He said that if he had no job in [Country 2] he had to return to Bangladesh which he could not do so he was looking for other avenues. Someone told him that law and order was good in Australia and that there were good human rights in Australia so he applied for a tourist visa. He thought he could enter and stay here or move to other places; it was not safe for him in Bangladesh and not possible for him to stay in [Country 2].
36. The Tribunal asked the applicant why he obtained his Bangladeshi passport in 2004. He said that his problems with the Awami League had started and he got it as a precaution. He did not have a problem getting his passport. The Tribunal asked him if he had any difficulties exiting his country and he said that those from his locality did not know he was leaving.
37. The Tribunal asked the applicant about his situation in Bangladesh before he left there in 2006. The applicant said that before he left Bangladesh he was living in his village with his family. His parents were supporting him and he helped the family. His father passed away in 1995; his father was a [profession deleted: s.431(2)] in Bangladesh. His brothers and sisters and his mother are still living in the village where he grew up but they are facing problems; the local Awami League person, the brother in law of the party chairmen, is creating problems for them as the Awami League is in power. The Tribunal asked the applicant how the family supports itself financially in Bangladesh. The applicant said that they are not supported by the farm but they have employment. He explained that he has [siblings]. His older brother is a [profession deleted: s.431(2)], his sisters are married and the other brothers have jobs in agriculture and in a [business deleted: s.431(2)] in the village.

38. The Tribunal asked the applicant about the problems that he claims his family members are having in the village. He said that they have had problems for a long time but the problems escalated when the Awami League came to power; he said that the Awami League came into power in 2008. The applicant said that his family has land close to the college and there is a dispute about the land. The applicant said that the whole family supports the BNP and the local Awami League chairman wants to find a pretext to make trouble for the family; his brothers are trying to keep the peace. The Tribunal asked the applicant what is happening in relation to the land and he said that the local chairman of the Awami League just wants to make an issue for his family. The applicant said that his family last had problems with the Awami League after he came to Australia in January 2012 but he told his brothers not to make trouble. The applicant said that the Awami League is in power and can do anything such as abduct people. The Tribunal asked the applicant how it was that his family were managing to live and work in Bangladesh as they had done for many years, in business and in teaching, if they were having serious difficulties there. The Tribunal told the applicant that his family's situation, as he described it, did not seem consistent with the claims he was making about persecution. The applicant said that they try to manage but he could not live there and work there as they do because he was involved with the Party and was a target.
39. The Tribunal asked the applicant what he did with the BNP He said that he was involved in meetings and rallies and was involved with a leader, whom he named, who was nominated as a member of Parliament. He said that he went door to door and asked people to participate and meet the leader; he talked about what was good with the BNP and what was bad with the Awami League. The Tribunal asked the applicant what he did to be targeted as he claims. He said that because of him Awami League young people joined the BNP The applicant agreed that he was young at the time, about [age deleted: s.431(2)]. He said that in the 2004 elections which were held to elect the local chairman he organised those in the locality to support the BNP; he built a rapport with supporters and families. He compared the leaders of the Awami League and BNP and said that the Awami League leader was a bad person who was always involved in fighting and killing. The Tribunal asked him if he claims he became a target in 2004. The applicant said that he did become a target of the Awami League in 2004 and from then until 2006 there were meetings and rallies and the Awami League did not want the rallies to be held and there was resistance from them. The Tribunal asked the applicant how he managed to stay living in the family home and live and go about his affairs from 2004 until he left Bangladesh in 2006 if he was targeted. He said that he moved with BNP people and then when he came home they shut all the doors. The Tribunal told the applicant that it was a concern for it that he managed to live in the family home with his family and go about his daily life after he claims he became a target, from 2004. The applicant said that no one wants to leave their country but there were threats to his life and "they abduct people" The Tribunal asked the applicant about the threats to his life. He said that in January 2006 they threatened to abduct him and at that time the family advised him to leave. He said that he got his passport in 2004 because he could have been harmed at any time if the problems escalated and there would be no time to get a passport.
40. The applicant told the Tribunal that he would still be of interest to the Awami League in Bangladesh who would still harm him as he has continued to speak to friends and family in Bangladesh and has told them to stay with the BNP. He has spoken to a friend who is the secretary of the BNP every day since 2006 and still speaks from Australia daily to his friend/s for one to one and a half hours. The Tribunal asked the applicant why he would speak with people about the BNP every day since 2006. He said that he likes the BNP and the Awami League gives pain; they destroy shops and they have to give them money and then it

is difficult to do business. He said that he speaks with the secretary of the BNP who is from his area every day in the evening. He said that the Awami League would be aware of his contact from Australia with the BNP members in Bangladesh as they have heard him ring a few times and they guess he speaks to these people every day as the calls come from a foreign country; people know as news of it spreads by word of mouth. The Tribunal asked the applicant if he attended any BNP meetings in Australia and he said that he did so occasionally and attended a meeting about two to three weeks after his arrival in Australia. He agreed that he had only attended one BNP meeting in Australia but said that he sometimes contacts them. When the Tribunal asked him why he did not attend more BNP meetings in Australia if he is a fervent BNP supporter he said that the people in Australia are not close to him and are involved with their work but he has known the people in Bangladesh from his childhood.

41. The Tribunal asked the applicant about the documents that he submitted in support of his application. He said that the letters from the BNP, one from the local BNP and one from the central BNP, were obtained by him after he made his protection visa application to provide evidence for the application, to support his claims that he was with the BNP. He obtained the letter from his employer in [Country 2] as that employer took away his papers but did not give him anything officially; that is why the employer gave him this paper. The Tribunal referred generally to country information that it had consulted about document fraud in Bangladesh; it told the applicant that it had to decide if the documents from his country that he had produced were reliable evidence of the facts in them in the light of its assessment of his credibility and in the light of the country information that it had consulted about the prevalence of document fraud in Bangladesh.
42. After a break in the hearing the applicant told the Tribunal that he fears he will be killed if he returns to his country. He said that he has been out of his country for a long time and the situation is bad there. The Awami League will target him and ask him for money. He was a target before but now they know he has been abroad and they think he has made a fortune; if he does not give them money they will harm him or kill him; they could chop off his hands or his limbs.
43. The applicant's adviser addressed the Tribunal's concerns about the applicant's claims. She submitted that the applicant claims that he faced problems from the local Awami League chairman because he supported the BNP in his country and that he decided to leave his country in 2006. He went to [Country 2] as a visitor and then got work there to support himself. The advisor submitted that the family of the applicant is managing to survive in Bangladesh although they still face problems and it is consistent with country information that the Awami League extorts money. The family is managing to live there but they have to pay money to the Awami League to run their business. Also the advisor submitted that the applicant has been away from Bangladesh for about six or seven years and there is a real risk he will be targeted as a westerner because they think he is rich. The Tribunal noted that that claim had not been raised before and the advisor agreed but said it was consistent with country information and it is a fear the applicant now has. The adviser said that the applicant is passionate about the BNP and was/will be targeted because of his political opinion.
44. The advisor submitted that the applicant left [Country 2] because he lost his employment but said that he left Bangladesh because he feared harm there; he left [Country 2] but could not return to Bangladesh.

45. As the application for protection visa foreshadowed the production of a statutory declaration by the applicant in support of the application for visa, and as there was no statutory declaration from the applicant on the departmental or Tribunal files, the Tribunal confirmed with the advisor and the applicant that it had all the documents submitted by the applicant. The advisor asked for further 14 days to make further submissions and the Tribunal allowed her until [a date in] December 2012 to send the Tribunal further submissions and materials. At the date of decision no further materials/submissions were received from the applicant or the applicant's advisor following the Tribunal hearing.

COUNTRY INFORMATION

46. In addition to the country information referred to by the delegate and referred to and produced by the applicant/applicant's representative, the Tribunal consulted the following independent country information about the prevalence of document fraud in Bangladesh; *UK Home Office Country of Origin Report, Bangladesh*, 23 December 2011 at paragraph 32.

FINDINGS AND REASONS

47. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.
48. The Tribunal accepts that: "applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule." The Tribunal also accepts that: "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt". (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para. 196). However, the Handbook also states (at para 203): "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts".
49. It is for the Tribunal not only to consider inconsistencies but also to determine what evidence it finds credible (Nicholson J. in *Chen Xin He v MIEA*, 23 November, 1995 (unreported) at p.11). The Tribunal does not have to accept uncritically all statements and allegations made by an applicant. (Beaumont J in *Randhawa v MIEA*, 124 ALR 265 at p.278). "The mere fact that a person claims fear of persecution for reasons of political opinion does not establish either the genuineness of the asserted fear or that it is well-founded or that it is for reasons of political opinion.[it is] for the Applicant to persuade the reviewing decision-maker that all of the statutory elements are made out." (*MIEA v Guo and Anor* (1997) 144ALR 567 at 596).
50. The applicant claims that he is a citizen of Bangladesh and that his religion is Islam. He claims that he left his country in 2006 and fears to return there because he was targeted for harm there, and will be again targeted and harmed if he returns there, by Awami League authorities and supporters, in particular local Awami League members/supporters whom he named, because of his BPN connections and activities which have been ongoing since he left Bangladesh including since he came to Australia in 2011. He also claims that he will be asked for money and harmed in his country because he will be perceived as wealthy having lived abroad in a western country, after leaving Bangladesh He claims that his family

members have been harassed, their property occupied and they have been asked for money in Bangladesh by certain local Awami League supporters. He claims that he cannot relocate to avoid harm in Bangladesh. Implicit in the applicant's claims is that he cannot get protection from the harm he fears in his country because the Awami League is in power.

51. The Tribunal accepts that independent country information, including the country information referred to by the delegate and the country information produced and referred to by the applicant, supports in a general way the applicant's claims that there is political violence and conflicts between opposing parties in Bangladesh and that sometimes those with a political profile are targeted for harm, including sometimes kidnappings and extortion, by members of opposing political factions. Clearly however in relation to section 36(2)(a) the Tribunal must determine whether the applicant before it has a genuine fear founded upon a real chance of persecution for a Convention reason if he returns to his country and/ or, for the purposes of s.36(2)(aa) ('the complementary protection criterion') the Tribunal must determine whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant in question being removed from Australia to a receiving country, in this case Bangladesh, there is a real risk that he will suffer significant harm in that country.
52. The Tribunal accepts that the applicant is who he claims to be, that he is Muslim and that he is a citizen of Bangladesh; a copy of his passport issued in his country in September 2004 is on the departmental file; the passport is noted as validly renewed in the regional passport office in Dhaka until September 2014.
53. Not without some doubt about the matter the Tribunal accepts that the applicant and his family members in Bangladesh are BNP supporters and that the applicant was involved in BNP activities in his country when he lived there. It does not accept as true however that the applicant was/will be targeted for harm by Awami League members/supporters because of his/BNP membership/activities as the applicant claims.
54. The Tribunal accepts from the details noted in the applicant's passport that the applicant left his country in February 2006 and flew to [Country 2] where he lived until he left there to come to Australia in December 2011.
55. The Tribunal does not accept as true that the applicant left his country in 2006 as he claims because he feared harm there for the reasons that he claims. Having regard to all of the evidence before it the Tribunal finds that the applicant left Bangladesh in 2006 to travel to [Country 2] to work and that he left [Country 2] in 2011 to travel to Australia because he could no longer work in [Country 2]. The Tribunal does not accept as true that the applicant did not return to his country from [Country 2] because he feared/fears harm there as he claims for the reasons that he claims. The Tribunal considers that the applicant has not given truthful evidence about these claims to the Tribunal.
56. While the applicant's oral evidence to the Tribunal was that he was threatened and targeted for harm by Awami League supporters in Bangladesh from 2004 and that he left Bangladesh in 2006 and went as a visitor to [Country 2] because the problems with the Awami League escalated, he did not state in his application for visa that he left his country because he feared harm there for those reasons. While he states in his application that he was a BNP supporter and was involved in BNP activities for many years in Bangladesh, having initially joined the JCD and, after he left school, having joined the BNP, and while he states that he faced problems in Bangladesh due to his political activities he states that he was able to solve his

problems in Bangladesh during that period because the BNP was in power then. He states on three occasions in his application for protection visa that he went to [Country 2] on an employment visa/working visa. At question 33 of the form in answer to the question about other countries to which he travelled he indicates that he arrived in [Country 2] [in] February 2006 and the reason for travel is listed as “working visa” He refers to his working visa for [Country 2] at question 32 and again at question 42. Also the applicant told the Tribunal that he did in fact work very soon after his arrival in [Country 2], and agreed that he got a good job in [Country 2] and took steps to get employment in [Country 2] after being in the country for about one week. The applicant agreed that he worked all the time he was in [Country 2] from about 4 to 5 weeks after his arrival there until he left to come to Australia except that he did not work for two months in May/June 2011 and he agreed that he supported himself financially from the work he did in [Country 2]. When the Tribunal raised with the applicant its concerns about the matters in his application which indicate that he left his country to go to [Country 2] to work and not because he feared harm in Bangladesh, he said that he did not say these things to those who prepared his application; he said that although he signed the application it was not read back to him in his language. Given that the applicant told the Tribunal that he told the person who prepared his application his story and that person wrote it down in English, and given the number of times that his visa for [Country 2] is mentioned in the application for protection visa, and also given the applicant’s evidence to the Tribunal about his work history in [Country 2], the Tribunal does not consider that the applicant’s explanation for the inconsistencies between his oral evidence to the Tribunal and the details in his application for visa about why he left [Country 2], is reasonable or plausible.

57. Further, the Tribunal considers that it is not consistent with the applicant’s claims that he feared harm in his country from Awami League members/supporters and was targeted from 2004, as he told the Tribunal he was, that he managed to live in the family home in Bangladesh where he had always lived with his family and go about his activities as he claims he did until he left to go to [Country 2] in 2006. Essentially he told the Tribunal that things were so serious for him in his country in 2004 that he obtained his passport at that time in case he had to flee to avoid harm from Awami League supporters; the Tribunal does not accept that this is true.
58. As the Tribunal does not accept that the applicant left Bangladesh for the reasons that he claims and does not consider that he feared harm there when he left there in 2006 it does not accept that he could not return to Bangladesh for these reasons when his employment was terminated in [Country 2] around the end of 2011. The applicant essentially told the Tribunal that he left [Country 2] because his employer took away his papers so that he did not have a work permit for [Country 2]. When the Tribunal asked the applicant whether his employment in [Country 2] had ended before he left there to come to Australia he said that his boss said that business was not good and took his papers from him about one to two months before he came to Australia, in about November, and that meant that he could not work/get a job in [Country 2].
59. Nor does the Tribunal accept as true that the applicant fears that he will be targeted for harm in Bangladesh because he has been regularly contacting and keeping in touch with BNP members and supporters, including a friend who is a BNP secretary from his area, during the time he has been in [Country 2] and Australia. The Tribunal does not accept as true that the applicant is such a fervent BNP supporter that he contacts the BNP secretary in his area every day as he claims and that Awami League supporters in his country will know about this. The Tribunal considers that if the applicant were passionate about the BNP as he claims he would

have attended BNP meetings in Australia; he told the Tribunal that he has contacted the BNP in Australia but has attended only one meeting of the BNP in Australia since arriving here in December 2011. The Tribunal does not consider that he gave a reasonable explanation for not attending more of these meetings given that he claims that he is so passionate about the party that he as contacted member/s of the BNP every day since he left Bangladesh in 2006.

60. While the Tribunal accepts that the applicant's family members have had some problems and disputes, including property disputes, with political opponents in their village and that they have been asked to pay money by Awami League supporters which is consistent with country information, the Tribunal does not accept as true that the applicant's family members are suffering serious problems in Bangladesh, either because of the applicant or otherwise, or that the applicant would suffer serious problems in Bangladesh for that reason if he returned to his country. The applicant told the Tribunal that his father passed away but his [brothers and sisters] and his mother are still living in the village where he grew up. He said that the local Awami League members whom he named are creating problems for his family members but his family members are trying to keep the peace. He said that his family members have employment in Bangladesh; his older brother is a [profession deleted: s.431(2)], his sisters are married and the other brothers have jobs in agriculture and in a [business deleted: s.431(2)] in the village. When the Tribunal asked the applicant how his family members managed to live and work in Bangladesh if they were suffering serious problems there because of their/his political opinion as he claims, he said that they try to manage but that he could not live there and work there as they do because he was involved with the party (BNP) and was a target. The Tribunal does not accept as true that the applicant's family members or the applicant have suffered, or will suffer, serious harm in Bangladesh as the applicant claims for the reasons that he claims. The Tribunal does not accept as true that the applicant feared to return to Bangladesh after Awami League supporters had a property dispute with his family and his family warned him not to return as the applicant claims.
61. Although the Tribunal accepts that there is general country information to support such a claim the Tribunal does not accept as true that the applicant fears harm in his country amounting to serious harm because he has been living abroad for a time in a western country and will be perceived to be rich. The Tribunal considers that this relatively recent claim by the applicant has been invented by the applicant to give him a better chance to get a visa to stay in Australia; the applicant's advisor agreed that he had not made this claim previously and made it towards the end of the Tribunal hearing.
62. The Tribunal considered the documents produced by the applicant in support of his claims, in particular the documents described as from the BNP offices in Bangladesh. Having regard to the country information the Tribunal consulted about the prevalence of document fraud in Bangladesh, which information was discussed generally with the applicant at the hearing, and having regard to the Tribunal's assessment of the applicant's credibility at the hearing, the Tribunal considers that the documents produced by the applicant are not reliable evidence of the facts in them.
63. In the Tribunal's view there is no plausible evidence before it that the applicant has suffered persecution in Bangladesh, or that he has a real chance of suffering persecution there, from political opponents, Awami League members/supporters or from anyone else, because of his political opinion or imputed political opinion, because he is a member of a particular social group, or for any other Convention reason, either now or in the reasonably foreseeable future, if he returns to Bangladesh.

64. Having regard to the above the Tribunal is not satisfied, on the evidence presently before it, that the applicant has a well-founded fear of persecution in Bangladesh within the meaning of the Convention.
65. Further in the Tribunal's view there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, in this applicant's case, Bangladesh, there is a real risk that he will suffer significant harm for the purposes of s.36(2)(aa) ('the complementary protection criterion').

CONCLUSIONS

66. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
67. 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 in respect of whom Australia has protection obligations under s.36(2)(aa).
68. 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) for a protection visa.

DECISION

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