

**1300485 [2013] RRTA 408 (1 May 2013)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1300485
<b>DIAC REFERENCE(S):</b>	CLF2012/225506
<b>COUNTRY OF REFERENCE:</b>	Bangladesh
<b>TRIBUNAL MEMBER:</b>	Mila Foster
<b>DATE:</b>	1 May 2013
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	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, a citizen of Bangladesh, arrived in Australia on a student visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] May 2009. He applied to the Department of Immigration for the protection visa [in] November 2012 because he claimed he feared he would be seriously harmed if he returned to Bangladesh due to a land dispute between his father and a man named [Mr A].
3. The delegate refused to grant the protection visa [in] January 2013, and the applicant applied to the Tribunal for review of that decision.

### **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 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.
5. Article 1A(2) of the Convention 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.
6. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may meet the complementary protection criterion in s.36(2)(aa) where there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm.

### **CLAIMS AND EVIDENCE**

7. The applicant's claims for protection and supporting evidence have been provided in his protection visa application, during an interview with the delegate, oral evidence at a Tribunal hearing, written submissions made to the Department and the Tribunal by his representatives, and written comments submitted to the Tribunal after the hearing.

### **Protection visa application**

8. According to the applicant's protection visa application, he has not had an Australian visa since February 2011 and has been in an immigration detention centre since [a date in] November 2012.
9. In a statutory declaration made [in] November 2012 the applicant said he feared that if he returned to Bangladesh he would be detained, seriously physically harmed and/or killed by [Mr A] and/or members or associates of Jamaat-e-Islami<sup>1</sup> (JI) including the Jamaatul Mujahideen Bangladesh<sup>2</sup> (JMB) because of a land dispute between his father and [Mr A]. Further, he said he feared he would be arbitrarily deprived of his life, tortured and/or subjected to cruel, inhuman or degrading treatment by [Mr A] and/or members of affiliates of JI including the JMB. The applicant claimed that in March 2010 his father gave his life savings and money borrowed from the applicant's paternal uncle to a man named [Mr C] for the purchase of land. However, before the transfer documentation was completed [Mr C] died. When the applicant's father approached [Mr C]'s son, [Mr A], about transferring ownership [Mr A] threatened to harm the applicant's father and his family if his father pursued the issue of the transfer of ownership of the land. [Mr A] is a member of JI which is connected to terrorist groups such as the JMB. The applicant's father and uncle decided to report [Mr A]'s threat to the police. [Mr A] subsequently threatened to kill the applicant's father and uncle if they did not withdraw their police complaints; the applicant's father did so but his uncle did not and his uncle was killed two days later. The applicant's father, a supporter of the ruling Awami League party, had received phone calls from [Mr A] and the JMB since then threatening to kill him and his family if any further attempts were made to secure the land.

### **Interview with delegate**

10. The applicant was interviewed in relation to his protection visa application and claims by the delegate [in] December 2012. His representative attended the interview. The Tribunal has listened to a recording of that interview.

### **Post-interview submission to the Department**

11. The applicant's representative made a written submission to the Department in relation to the applicant's protection visa application [in] December 2012. The written submission repeated oral submissions made at the interview and included information from various sources about the JMB, JI, political violence in Bangladesh, and the unwillingness of state authorities to protect those involved in political violence.

### **Delegate's decision**

12. The Tribunal has had regard to the material referred to in the delegate's decision. The delegate did not find the applicant credible and thus did not believe the applicant's claims.

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<sup>1</sup> A political party in Bangladesh.

<sup>2</sup> A group proscribed as a terrorist organisation in Bangladesh.

## **Review application**

13. The applicant's review application consisted of a completed application form and a copy of the delegate's decision. [In] January 2013 the applicant's representative made written submissions to the Tribunal on the applicant's behalf.

## **Tribunal hearing**

14. The applicant gave evidence and presented arguments at a hearing conducted by the Tribunal [in] February 2013. The applicant appeared confident and relaxed whilst giving his oral evidence before the Tribunal. His ability to give evidence did not appear impaired in any way. The applicant's representative attended the Tribunal hearing; she did not make oral submissions.

## **Post-hearing comments**

15. After the hearing the Tribunal wrote to the applicant and invited him to comment upon discrepancies in information he had provided in relation to his claims. His written comments were provided [in] March 2013.

## **Information from other sources**

16. In addition to the above evidence and material I have had regard to the following information from other sources in assessing the applicant's claims.

### *Land transfers*

17. The majority of urban residents in Bangladesh access land through an informal market where land rights are neither registered nor transferred according to the law<sup>3</sup> Bangladesh stands at 175 in a ranking of 185 economies on the ease of registering property<sup>4</sup>.

### *Jamaat-e-Islami (JI)*

18. The International Crisis Group (ICG) recently reported on Bangladeshi politics and political parties<sup>5</sup> According to the report JI is an Islamist party aligned to Bangladesh's major opposition party, the BNP, without which it could not win many seats or have policy influence. The party has been under attack since the Awami League was elected in 2009, and has in effect been decapitated with its top three leaders being arrested in 2010 and charged with war crimes. Its remaining leaders went on the run, and its party headquarters in the two biggest metropolitan centres – Dhaka and Chittagong – were shut down. In February 2012, a JI party leader told the ICG that the party's current preoccupation was self-preservation. Despite the arrest of its top leaders JI has however continued to be able to organise political rallies and processions.

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<sup>3</sup> USAID, *Bangladesh – Property Rights and Resource Government Profile*, November 2010, p.6, [http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Bangladesh\\_Profile.pdf](http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Bangladesh_Profile.pdf); United Nations Economic and Social Commission for Asia and the Pacific, *Municipal Land Management in Asia: A Comparative Study*, 1995, p.65, [http://www.unescap.org/huset/m\\_land/mun\\_land.pdf](http://www.unescap.org/huset/m_land/mun_land.pdf)

<sup>4</sup> The International Bank for Reconstruction and Development and The World Bank, *Doing Business 2013 Economy Profile: Bangladesh*, p.43, <http://www.doingbusiness.org/~media/giawb/doing%20business/documents/profiles/country/BGD.pdf>

<sup>5</sup> International Crisis Group, *Bangladesh: Back To The Future, Asia Report N° 226*, 13 June 2012, p.5,7,9, <http://www.crisisgroup.org/~media/Files/asia/south-asia/bangladesh/226-bangladesh-back-to-the-future.pdf>.

### *Jamaat-ul Mujahideen Bangladesh*

In a report issued in 2010 about the JMB the ICG gave a detailed account of the history and current state of the JMB<sup>6</sup> The ICG reported that the JMB is a proscribed terrorist organisation which aims to establish an Islamic state in Bangladesh through armed struggle. After carrying out coordinated bombing attacks across Bangladesh on 17 August 2005, the government cracked down on the group and from late 2005 hundreds of its members were arrested and every member of its original leadership including its founder was executed. Whilst it has been dramatically weakened and its ranks decimated, it remains active and has been able to recruit, train and raise funds. Its last successful attack was in January 2006 and the JMB's current strategy is to rebuild the organisation. It thus remains dangerous. Although many senior JMB operatives were JI members in the past, there has only been negligible evidence of direct JI support for JMB or any other violent militant organisation.

### **ASSESSMENT OF CLAIMS AND EVIDENCE**

19. If the applicant faced the harm he claims to fear in Bangladesh then he may have satisfied one of the criterion for protection in s.36(2). However, for the following reasons I did not find the applicant credible and have concluded that his claims are not true.
20. In the statutory declaration he submitted in support of his protection visa application the applicant stated that JI has close connections with various terrorist groups in Bangladesh including the JMB which carries out killings and atrocities on its behalf At the Tribunal hearing he confirmed that JI and JMB were connected and stated that as JI was a political party it could not engage in terrorist activity and thus used the JMB to undertake such activities. He also told me that while all JMB members are members of JI not all JI are members of JMB. Yet, despite differentiating between JI and the JMB in this way, the applicant contradicted himself on other occasions when he referred to JI and the JMB. For example, in his statutory declaration he said his uncle was killed by a member of JI for refusing to withdraw the police complaint against [Mr A]. However, during his interview with the delegate the applicant told the delegate that his uncle was shot by a JMB member and specifically not JI. Then shortly afterwards the applicant told the delegate that his uncle was shot by a person who was a member of both JI and the JMB. The applicant was invited to comment about this inconsistency after the Tribunal hearing however his comments failed to provide a sound explanation for the inconsistency and were themselves contradictory. Firstly, the applicant stated that his uncle was shot by a member of JI and not the JMB and that he had told the delegate the person was a member of the JMB because the JMB is supported by and directly connected to JI. Even if JI and the JMB are connected this does not explain why the applicant specifically told the delegate in the first instance that the person was from the JMB and not JI or why he then told the delegate the person was a member of both. Secondly, the applicant then proceeded to say that he believed it was *possible* that the person who killed his uncle was both JI and JMB. This does not explain why the applicant told the delegate that the person who killed his uncle was a JMB and JI member and not merely that it was possible that the killer was a member of both.

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<sup>6</sup> International Crisis Group, *The Threat from Jamaat-ul Mujahideen Bangladesh*, Asia Report N° 187, 1 March 2010, Executive Summary and p.29, <http://www.crisisgroup.org/en/regions/asia/south-asia/bangladesh/187-the-threat-from-jamaat-ul-mujahideen-bangladesh.aspx>.

21. In his statutory declaration the applicant stated that the land his father had purchased from [Mr C] was valuable to JI - that his mother had heard from her cousin that they planned to build a meeting area for "the group" (on the land) and use it as a base for future terrorist activities. In contrast the applicant told the delegate that his mother's cousin had found out that JI planned to erect a building on the land so they could get together and organise cultural "stuff" and not, the applicant specifically said, for terrorist activities. Invited to comment upon this apparent discrepancy in his evidence about how the land was to be used, the applicant stated in his post-hearing comments to the Tribunal that JI wanted to use the building (built on the land) for cultural activities and indicated that his mother had heard a rumour from his cousin that JI might possibly use it for terrorist activities; the applicant then added that JI wanted to use the building for political activities including cultural activities and for the JMB to run terrorist activities. These comments do not explain why if the applicant believed JI had wanted to use the land for cultural activities he did not say so in his written statement but stated instead that it was to be used for terrorist activities, or why he told the delegate that JI wanted to use the building it had built on the land for political activities and the land was not to be used for terrorist activities.
22. At the beginning of the hearing I asked the applicant whether anything had happened since he had lodged his protection visa application which was relevant to his case. He replied that his [brother] had been harassed by a JMB member. Questioned further about this the applicant stated that his brother knew the attacker was a JMB member because the person told the applicant's brother he was being harassed because his father had taken "further action" Questioned about what further action the attacker was referring to, the applicant told me that the attacker referred to the "charge" his father and uncle had brought against [Mr A] which his father subsequently withdrew. I do not consider it credible that [Mr A] would decide to attack the applicant's brother for that reason more than two and a half years after the applicant's father made the complaint when he had not physically harmed the applicant's father. I also do not find it credible because later in the hearing when I questioned why the threats against the applicant's father would have continued if he had not pursued the registration of the land as the applicant had stated in his statutory declaration, the applicant claimed that his father had sought help from the Awami League in December 2012, that is, before his brother was harassed and then the applicant suggested that this may have led to his brother being attacked. If the applicant's brother was attacked in January 2013 a month or so after his father had sought political help for the land dispute I do not find it credible that the applicant would have initially testified that his brother was told that he was being harassed because of the complaint his father had made in 2010. It thus appears that the claim that the applicant's brother was harassed shortly before the hearing was invented to bolster the applicant's claim that he and his family continued to face harm from [Mr A].
23. In his statutory declaration the applicant indicated that the only assistance his father sought in relation to the land dispute was to complain to the police in 2010 after he was threatened by [Mr A]; a complaint his father withdrew shortly after. However, the applicant told the delegate that his father had sought political help from a ward commissioner in early 2011. Invited to comment upon his failure to mention in his statutory declaration that his father sought help from the ward commissioner, the applicant stated in his post-hearing written comments that he forgot that his father had sought that help when he prepared his statutory declaration. He said he was informed about it in early 2012 and when he prepared his statement [in] November 2012 he was worried about his father, and had a lot to go through. I do not find this explanation credible. The applicant's statutory declaration provided a detailed chronology of events that had occurred since March 2010, including when his father

approached [Mr A] for the first time, when his father sought help from the police, which police station his father went to, how many days later his father was threatened by [Mr A], and the name of his father's friend who witnessed his uncle's killing. More significantly, the applicant stated in his statutory declaration that he believed his father's life had been spared because his father had not made any further attempts to get the land registered in his name. I do not find it credible that declaring that his father had not taken any further steps to get the land registered would not have prompted the applicant to recall that his father had sought the help of a ward commissioner even if he was worried about his father and had a lot to go through. Furthermore, at the hearing I questioned why the applicant claimed in his statutory declaration that he feared would be detained, seriously physically harmed, tortured or killed when neither his father, mother nor his siblings had, as at the time he had lodged his protection visa application, been subjected to such harm. The applicant responded that the JMB were brutal and had killed many people; he said his father and family had not been killed because his father had withdrawn his complaint but had since sought political help having approached the Awami League in December 2012. The Tribunal expects that if the applicant's father had sought the help of a ward commissioner in early 2011 the Tribunal's questioning would also have triggered his memory of this yet he indicated that the only help his father had sought (since his early police complaint) was in December 2012. This indicates to me that the applicant did not forget that his father had sought the help of a ward commissioner in early 2011 when he prepared his statutory declaration rather than that this was a claim he had invented during his interview with the delegate.

24. According to the applicant his father and family has been consistently threatened since early to mid-2010 by [Mr A] and persons from the JMB yet his family had not moved from their home during that time. He told me at hearing that they had not moved because they did not have the economic means to do so - his father had sold his business and spent everything buying the land, their relatives would only be able to help his family temporarily if they moved, and his family had been entirely dependent upon money he sent to them (until he was placed in immigration detention in November 2012) as no member of his family was working. I do not find this explanation credible. The fact that the applicant was supporting his family indicates that they had the means to move to another area or at least attempt to move even temporarily to avoid ongoing threats from a group that the applicant testified was brutal and killed people and had killed one of their relatives. The fact they did not even attempt to move to avoid the alleged threats undermines the credibility of the applicant's claims.
25. According to his protection visa application the applicant arrived in Australia on a student visa [in] May 2009 which expired in February 2011. At the hearing he testified that he did not return to Bangladesh because his family had faced a real threat due to the land dispute since March 2010. Yet he did not apply for a protection visa until [a date in] November 2012 – 2 ½ years after the threat emerged and, more relevantly, over 18 months after he no longer had a valid visa to remain in Australia and thus faced having to return to Bangladesh. The applicant's lengthy delay in seeking protection and the inconsistent information he has provided about why he did not apply for protection sooner indicate that he did not fear being seriously or significantly harmed in Bangladesh as he claims. In relation to the delay, the applicant told the delegate that he had searched the internet and found information about protection visas but did not think his situation fell within the Refugees Convention and it was only when he entered the immigration detention centre (in November 2012) that he found out about complementary protection. However, he testified at the Tribunal hearing that he became aware of protection visas at the immigration detention centre. Invited to comment upon this inconsistency, the applicant stated in his post hearing comments that he found out

that complementary protection was a basis for applying for a protection visa in the immigration detention centre and forgot to raise the fact he knew about protection visas in 2010. I do not accept this explanation. The applicant intimated at the hearing that he delayed applying for a protection visa prior to his detention because he did not know about them. I then confirmed and asked directly when he found out about protection visas and he replied that it was during his detention.

26. Considered cumulatively, the above matters lead me to conclude that the applicant lacks credibility and was not a truthful witness. The information about the informal urban land market in Bangladesh referred to above indicates that it is plausible and thus I accept that the applicant's father paid for land without it being legally transferred to him. However, in light of the applicant's lack of credibility I do not accept that the applicant's father nor any member of the applicant's immediate family including his brother has been threatened or harmed by [Mr A], JI, the JMB or any other person or group associated with [Mr A] because of a land dispute between the applicant's father and [Mr A]. Nor do I accept that the applicant's father complained to the police about [Mr A] or that he sought help from a ward commissioner or the Awami League. Further, I do not accept that the applicant's uncle was killed because he refused to withdraw a police complaint against [Mr A].
27. As a result of my preceding findings, I am not satisfied that there is a real chance that the applicant will seriously harmed in the reasonably foreseeable by [Mr A], JI, the JMB or anyone other person or group associated with [Mr A] if he returns to Bangladesh. Hence, I am not satisfied that the applicant has a well-founded fear of Convention related persecution in Bangladesh. I am therefore not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention and thus he does not satisfy the criterion set out in s.36(2)(a).
28. 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). However, as I did not find the applicant credible and have rejected all but one of his material claims, I am not satisfied there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm from [Mr A], JI, the JMB or anyone other person or group associated with [Mr A] if he is removed from Australia to Bangladesh. Thus, I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
29. 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**

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