

**REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND**

REFUGEE APPEAL NO. 75934

REFUGEE APPEAL NO. 75935

REFUGEE APPEAL NO. 75936

AT AUCKLAND

Before: RPG Haines QC (Chairperson)
RJ Towle (Member)

Counsel for the Appellant: R McLeod

Dates of Hearing: 22, 23 & 24 January 2007; 13 February
2007

Date of Further Submissions: 13 April 2007; 24 April 2007 & 8 May 2007

Date of Decision:

18 March 2008

DECISION

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INTRODUCTION

[1] This is a conjoined appeal against decisions of the Refugee Status Branch of the Department of Labour given on 29 April 2004 declining the grant of refugee status to the appellants, citizens of the People's Republic of Bangladesh who arrived in New Zealand on 18 May 2002.

[2] The first two appellants are husband and wife. The third appellant (DOB 12 August 1993) is their daughter. The male appellant is the responsible adult for his daughter in terms of s 141B of the Immigration Act 1987. For the purposes of this decision, the male appellant will be referred to as "the husband", the female appellant will be referred to as "the wife" and the daughter will be referred to as "the daughter". All three members of the family will be referred to jointly as "the appellants".

[3] By consent the appeals were heard together, the evidence of each appellant being treated as evidence in the appeal of the other. While the husband and the wife gave oral evidence before the Authority, the daughter elected not to be called.

[4] Generally summarised, the husband claims that in Bangladesh he was a high profile journalist and Awami League supporter who, following his dismissal from his then employment on political grounds, issued proceedings in the High Court Division of the Supreme Court of Bangladesh seeking a declaration that his dismissal was contrary to law and unlawful. Within days of the proceedings being filed anonymous phone calls were received by the husband and the wife threatening that unless the writ was withdrawn serious harm, if not death would befall the husband, his wife and daughter. Almost immediately the family travelled to New Zealand with the intention of lodging a claim to refugee status. They believe that unless and until the Awami

League is in power it will be unsafe for them to return to Bangladesh. The issue in this appeal is whether these claims are credible.

Procedural background

[5] The negative decision given at first instance on 29 April 2004 was based largely on the grounds that the risk of harm faced by the appellants on their return to Bangladesh did not reach the well-founded standard set by Article 1A(2) of the Refugee Convention; that is, there was no real chance of the threats being carried out. It was the assessment of the refugee status office that the claimed risk was a remote and speculative one. The officer went on to find that the applications for refugee status were motivated by economic considerations and a desire by the appellants to improve their living conditions. An appeal to this Authority followed. On 28 April 2006 a differently constituted panel of the Authority dismissed the appeal on the grounds that while the claims were credible, the inability of the husband to pursue his civil proceedings during the reign of the opposition BNP party fell well short of “being persecuted” and in addition the husband (and for that matter, his wife) could avoid the risk of harm by finding employment opportunities outside the journalism field. The holding was, in effect, that because the risk of harm to the family arose out of the husband’s outspokenness as a journalist, that risk would evaporate should he change his occupation. Expecting him to change his occupation would not amount to “being persecuted” as there was no human right to be a journalist.

[6] On 11 May 2006 the appellants filed proceedings in the High Court at Auckland seeking judicial review of the Authority’s decision. The primary challenge was in relation to the finding that the adult plaintiffs could avoid the risk of being persecuted by modifying their conduct and by finding employment opportunities outside journalism. After further consideration the Authority determined that the decision of the first panel could not be reconciled with the principles governing voluntary but

protected activity as set out in *Refugee Appeal No. 74665/03* [2005] NZAR 60. The outcome was that on 13 July 2006 Asher J made a consent order setting aside the decision and remitting the case to the Authority for rehearing before a differently constituted panel.

[7] The rehearing was originally scheduled for 25, 26 and 27 October 2006 but that fixture was vacated after the appellants raised objections to the interpreter who was to assist at the hearing and the hearing was rescheduled.

[8] The hearing duly commenced on 22 January 2007 before a differently constituted panel of the Authority (the present panel), continued on 23 and 24 January 2007 and concluded on 13 February 2007. On that last date the appellants sought a three-month period within which to obtain further evidence and to file closing submissions. In a *Minute* dated 13 February 2007 the Authority allowed a two month extension to 13 April 2007. That period was subsequently enlarged at the request of the appellants to 24 April 2007. Further submissions and accompanying documentation were received from the solicitor for the appellants under cover of letters dated 13 April 2007, 24 April 2007 and 8 May 2007. All of the post-hearing material has been considered and assessed.

[9] It is now intended to briefly outline the case presented by the appellants. An assessment of the credibility of the husband and of the wife follows later in this decision.

THE CASE PRESENTED BY THE APPELLANTS

Sources of evidence

[10] Although the appellants came to New Zealand with the intention of seeking recognition as refugees, they did not immediately make a claim to refugee status at Auckland Airport on 18 May 2002. Rather they travelled on to Hamilton where they stayed with relatives of the wife. On 7 June 2002 the husband and his wife signed an Application for Long Term Business Visa and Permit (the LTBV application) which was filed with the Business Migration Branch of the New Zealand Immigration Service on 12 July 2002. That application was based on their proposal to operate a commercial cleaning franchise in Hamilton. Following correspondence with the New Zealand Immigration Service the LTBV application was eventually declined on 25 September 2003.

[11] Apparently in anticipation of that unsuccessful outcome the appellants lodged their applications for refugee status on 11 August 2003. Accompanying the applications were detailed statements by both the husband and the wife. At interviews on 17 November 2003 and 9 December 2003 the refugee status officer heard further evidence. Thereafter more evidence and submissions were filed. On the original appeal to this Authority there were supplementary statements and submissions and an oral hearing at which the evidence of the appellants was traversed and submissions made on their behalf. Accordingly, when the appeals came before the newly constituted panel of the Authority for the rehearing in early 2007 the record contained extensive evidence, including the transcript of the two day hearing before the original panel. Additionally, in preparation for the rehearing the appellants filed further statements and evidence updating their case and their personal circumstances. As mentioned, following the four day hearing before the new panel the appellants filed even further evidence and submissions.

[12] In the circumstances it is not practicable to repeat or summarise at length the evidence received by the Authority at the re-hearing. Only the main features follow in abbreviated form and are taken largely from the original statements filed with the

refugee claim in August 2003. As mentioned, an assessment of the credibility of the claims made by the appellants follows in a later part of this decision.

The husband's background

[13] The husband is currently forty-five years of age. He has been a political activist since his student days and is a supporter of the Awami League. In July 1989 he began work as a staff reporter at a Bengali daily called the *Dainik Janata* in Dhaka and in the following year (1990) became a member of what he claims to be the biggest professional forum for journalists in Bangladesh, namely the Dhaka Union of Journalists, a union which is supportive of the Awami League. His wife was then also working at the *Dainik Janata* and they married in September 1990. She too is pro-Awami League and a member of the Dhaka Union of Journalists. In his time at the *Dainik Janata* the husband says that he wrote a large number of articles (mostly front page articles) which were highly critical of the BNP party then in power. To the present panel of the Authority he described his journalism at this time as “hard core political writing” which brought him into political prominence. He and other pro-Awami League journalists at the *Dainik Janata* were using their influence to help the Awami League to gain popular support for the 1996 elections. However, in the last week of June 1994 he was one of five journalists dismissed by the paper. All were leaders of the Dhaka Union of Journalists. For the next two months pro-Awami League journalists and members of the union carried out protest activity, including the occupation of the premises of the *Dainik Janata*. The protests came to an end when police and members of a BNP “enforcement” unit evicted the protesters from the paper’s offices. Two days later the wife was “forced” to hand in her resignation.

[14] Following these events the husband was unemployed from August 1994 to February 1995. In March 1995 he found a position as staff reporter for a share market fortnightly magazine known as *Share Bazar*, in Dhaka where he worked until December 1995.

[15] From January 1996 to June 2001 he held the position of staff reporter at what he described as Bangladesh's "premier" English daily, *The Bangladesh Observer*. He attributes this long period of employment to the fact that in June 1996 elections were held and the Awami League came to power. In this period the husband wrote and travelled extensively in his capacity as an economic reporter. He visited the USA, Canada, the UK, Germany, Italy, the Netherlands, France, Switzerland, Singapore, Thailand and India.

[16] In June 2001 the husband was approached by the managing director of the government's official news agency known as the *Bangladesh Sangbad Sangstha* (BSS) and persuaded to join the staff there as a senior sub-editor, a position which offered a high salary. He commenced work at the BSS in July 2001. As his role was that of editor and he did not write or publish articles under his own name.

[17] In October 2001 there were further elections but on this occasion the outcome was that the BNP came to power and the husband claims that many supporters of the Awami League were arrested and imprisoned, including many journalists. The BNP also took control of the BSS and a new managing director was appointed. That person was an active supporter of the BNP. The husband feared that because of his history he was in danger of being arrested for supporting the Awami League. He decided to keep a low profile and to make preparations to leave the country with his family so that they were in a position to escape should things deteriorate. He, his wife and daughter already possessed valid passports. In November 2001 they made a trip to India. While in New Delhi the family applied to the Immigration New Zealand office there for a one month visa to visit New Zealand. The visas were not issued at that time as the husband was required to submit further documentation. When that documentation was subsequently provided the visas were approved in December 2001 but that approval lapsed following the husband's failure to return in time to New Delhi to have the visas endorsed in the passports. Both the husband and his wife say that at this time

they had no intention of leaving Bangladesh and the visa application had simply been part of their contingency planning should their situation in Bangladesh deteriorate.

[18] On 27 February 2002 the husband and eight of his colleagues were dismissed from the BSS. A termination letter was served but no reasons were given for the dismissal. The husband believes, however, that the decision was a political one, he being identified as a strong supporter of the Awami League.

[19] The husband and other journalists immediately began protest activity which included street protests and public meetings as it was the first time that journalists had been fired from the BSS for political reasons.

[20] Believing that his actions were placing him and his family in “great danger” the husband decided to renew the application for New Zealand visas in case the family needed to leave Bangladesh in a hurry. On 23 or 24 March 2002 he travelled to the Immigration New Zealand office in New Delhi and renewed the visitor visa application. As the previous (lapsed) application had been approved he found that he was only required to submit a new application and pay a filing fee. No further supporting documents were required and on 25 March 2002 he, his wife and daughter were issued with visitor visas valid until 25 May 2002.

[21] On returning to Bangladesh the husband and other protesters held a one-day hunger strike at the National Press Club and on 3 April 2002 he participated (along with about fifty other journalists) in a protest outside the offices of the BSS. The police told the protesters that if they did not end the demonstration immediately, force would be used and the protesters arrested. The demonstration came to an immediate end.

[22] The husband and other journalists who had been dismissed from the BSS then sought legal advice and were told that they could file a writ petition in the High Court

challenging the termination of their employment on the grounds that the terminations were contrary to the Constitution and the employment regulations of the BSS. The intending plaintiffs were aware that the writs would be politically embarrassing for the BNP but they also had an economic reason for taking court action; if the Awami League returned to power and their wrongful dismissal actions upheld, their employment would be reinstated and compensation paid for wrongful dismissal.

[23] For his part, the husband understood that filing the writs “was risky” but felt that he had no other option. He had already put in place plans to leave the country if his situation deteriorated.

[24] The writs were filed on 11 May 2002. The following day this action was reported in all of the major daily newspapers. As the husband was aware that this publicity would increase his level of danger he continued preparations to leave Bangladesh at short notice. A couple of days after the appearance of the newspaper reports the husband received an anonymous telephone call at home after midnight. A male voice advised him to withdraw the writ and threatened that unless this was done the husband and his family would be killed. Believing that the threats were real, the husband decided at that moment that the family had to flee Bangladesh. To buy time, he told the caller that he would think about withdrawing the writ.

[25] On the following day the husband went to a travel agent and purchased tickets to New Zealand departing from Dhaka on 17 May 2002. While he was at the travel agent his wife received another threatening phone call. The male caller told her that if the husband did not withdraw the writ petition he (the husband) would be killed and that “they” might kill her (the wife) or the daughter. The wife immediately called her husband to report what had happened and the husband returned home at once. The family decided to keep a low profile and to not tell anyone of their intentions. The daughter did not attend school from this point. Over the next two days the family

received approximately four more threatening telephone calls. The husband (who answered all but one of the threatening calls) believes that it was always the same caller.

[26] During this time the husband had no further contact with his fellow petitioners as the decision had been made at their last meeting that they would have no contact with each other after the writs were filed. The husband did, however, have a conversation with [AB], then chief news editor at the BSS who, in a brief telephone discussion warned him that he (the husband) was not safe in Dhaka.

[27] On 17 May 2002 the family departed Bangladesh from Dhaka International Airport, arriving in New Zealand on 18 May 2002. At Auckland Airport they were met by the wife's relatives and taken to their home in Hamilton. The husband explained to the relatives that he and his family wished to apply for refugee status. The relatives dissuaded them from taking this step as, it was claimed, the Bangladesh community regard refugee status as shameful. It was suggested that the husband file instead an application for a LTBV. To this end he was referred to an accountant who assisted in preparation of the application. The advice of a lawyer was also taken. The family did not discuss with this lawyer the possibility of lodging a claim to refugee status. It was only when the decline of the LTBV application appeared inevitable that the refugee claims were filed in the following year on 11 August 2003.

The wife's background

[28] The wife is currently forty-six years of age and is also a supporter of the Awami League and a member of the Dhaka Union of Journalists. After graduating from Dhaka University in 1989 she commenced employment as a sub-editor of the *Dainik Janata* in February 1990. She remained employed there until August 1994 when she was forced to resign in the circumstances earlier described. She had given birth to her

daughter twelve months earlier on 12 August 1993. In September 1994 she found work as a sub-editor of an English daily, *The Independent*, which is also published in Dhaka, having been recruited by the editor who had been one of her teachers in journalism at Dhaka University. However, in March 1996 this person was forced to resign after the managing editor of the paper (a BNP supporter) gained more power within the paper. The wife's own employment was terminated in March 1996, just ahead of the election of June 1996 which was won by the Awami League.

[29] Thereafter the wife was unemployed for approximately ten months. Finally, in March 1997 she found employment as a senior sub-editor at a national news agency, *United News of Bangladesh*. She worked there until August 2000 when she resigned to look after the couple's daughter, her husband having become very busy in his job. The wife did not thereafter re-enter the workforce, electing to stay at home to assume primary care for the couple's daughter.

[30] In her statement and subsequent evidence the wife confirmed the visit to New Delhi in November 2001, the termination of her husband's employment by the BSS, the filing of the writ petition on 11 May 2002 and the subsequent threatening telephone calls. As earlier indicated, she personally received only one such call, being the occasion when her husband was out purchasing the airline tickets to New Zealand. In her account of the telephone call she said that the male caller told her that she should ask her husband to withdraw the writ otherwise members of the family would come to harm. The caller stated that "they" knew the school attended by the daughter, signalling to the wife that she (the daughter) would be targeted should the writ not be withdrawn.

[31] In relation to the LTBV application, the wife confirmed that she and her husband explored other options to stay in New Zealand other than seeking refugee status and added that they intended to return to Bangladesh as soon as the situation there was

safe. They thought that if they applied for refugee status it might be difficult for them to return to Bangladesh. However, when they realised that the LTBV application would be declined the only option was to lodge the refugee application.

THE ISSUES

[32] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a 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.”

[33] In terms of *Refugee Appeal No. 70074/96 Re ELLM* (17 September 1996) the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to the country of nationality?
2. If the answer is Yes, is there a Convention reason for that risk of being persecuted?

ASSESSMENT OF THE CLAIMS TO REFUGEE STATUS

[34] Before the identified issues can be addressed an assessment must be made of the appellants' credibility, the Authority's credibility concerns having been clearly articulated during the hearing. In this regard we have taken into account not only the evidence and submissions received prior to and during the hearing, but also that

received subsequently. We have also taken into account the time that has elapsed since the claims to refugee status were filed on 11 August 2003, the potential for the fading of memories and the fact that both the husband and the wife have at times suffered ill-health in New Zealand. It is acknowledged that in the particular circumstances, caution must be exercised when assessing the demeanour of the husband and of the wife as witnesses. Particular account has been taken of counsel's submissions on credibility, especially the detailed points made in the memorandum of 13 April 2007. The Authority is grateful for the assistance which counsel has given.

General conclusion on credibility of appellants

[35] The Authority has concluded that it has been presented with a carefully edited and highly selective presentation of the appellants' true circumstances in Bangladesh and it is not prepared to accept any of their claims at face value. While the husband has at some point in his life worked as a journalist and has issued a writ following his dismissal from the BSS, we do not accept that his importance and profile are that which has been claimed. More importantly, in relation to the core of the refugee claim (that the filing of the writ was followed by threats against the lives of each of the appellants and it was this that caused them to leave Bangladesh), the Authority does not accept that the threats were made and is of the view that the claimed harm faced by the family does not in fact exist. Rather the appellants travelled to New Zealand for better life opportunities, not to escape the risk of being persecuted. There was no such risk then and even accepting that the husband did work in the journalism field and has issued a writ, the situation today remains that neither he nor any member of his family faces the risk of serious harm should they return to Bangladesh. Our reasons for these general conclusions follow.

The employment histories - the husband

[36] At the core of this case is the contention that the husband was a well-known journalist and supporter of the Awami League who, having taken a wrongful dismissal action, received death threats and was forced to flee with his family. Central to this contention is the veracity of the husband's and the wife's claimed employment history and the reasons they have asserted for leaving Bangladesh and coming to New Zealand.

[37] For reasons which are not clear, neither the refugee status officer at first instance nor the first panel of this Authority at the original appeal hearing called for the LTBV file held by Immigration New Zealand. In the result, the favourable credibility findings made by the officer and the original panel were reached without the benefit of significant documentation.

[38] The present panel of the Authority did, however, call for the LTBV file. On examination it was found to contain information and documentation (provided by the husband and the wife) which places their refugee claims in a different light. In particular, the employment histories given by them in support of the LTBV application are significantly different to the histories given in the refugee claim. In addition the LTBV file contains information from the appellants not previously disclosed in the refugee claim. The documentation submitted by the appellants in support of the LTBV application was accordingly examined at some length at the hearing.

[39] We address first the contrasting employment histories of the husband:

Refugee claim

July 1989 to July 1994 - staff reporter at *Dainik Janata*.

August 1994 to February 1995 - unemployed.

March 1995 to December 1995 - staff reporter at *Share Bazar*.

January 1996 to June 2001 - staff reporter at *The Bangladesh Observer*.

July 2001 to March 2002 - senior sub-editor at BSS.

LTBV application

1991 to 1996 - freelance journalist (part-time).

July 1996 to June 2001 - staff correspondent, *Bangladesh Observer*.

July 2001 to February 2002 - senior sub-editor at BSS.

October 2000 to January 2002 - content head (part-time) of the Bangladeshinfo.com (news website).

[40] The following discrepancies are to be noted.

- (a) The LTBV application makes no mention of the husband's claimed five years employment at the *Dainik Janata* where he allegedly came to political prominence through his "hard core political writing". Rather he is now described as working as a freelance journalist (part-time). This is a remarkable discrepancy given that a central part of the refugee claim is that the husband is a longstanding Awami League supporter and activist journalist whose writings at the *Dainik Janata* are an important reason why he is at risk of harm.
- (b) The LTBV application makes no reference to the husband's claimed period of unemployment in the period August 1994 to February 1995 following his

political dismissal from the *Dainik Janata*. Nor is reference made to his working as a staff reporter for *Share Bazar*.

- (c) The husband's time at *The Bangladesh Observer*, while mentioned in both applications, does not correspond in that there is a six month difference to the start date (January 1996 as opposed to July 1996).
- (d) The husband's time at the BSS has the same commencement date in both applications, but an earlier terminating date in the LTBV application, a point of some significance and which will be returned to shortly.
- (e) The refugee application contains no reference to his part-time position (overlapping with the BSS) at Bangladeshinfo.com.

[41] As to (d) above (the BSS termination), inspection of the LTBV file revealed that submitted with the LTBV application was a letter from *The Financial Express* dated 1 April 2002 offering the husband the post of senior reporter. The contract, if accepted, was to come into force from 1 April 2002. Also on the LTBV file is an identity card from *The Financial Express* issued on 28 April 2002. It contains the photograph of the husband. This offer of employment is highly significant for two reasons. First, the existence of the offer and of the identity card issued on 28 April 2002 had never previously been disclosed in the context of the refugee claim. Secondly, whereas the refugee claim is premised on the urgent need to escape Bangladesh following dismissal from the BSS and the filing of the writ, documentation on the LTBV file shows that prior to the family's departure from Bangladesh on 17 May 2002 the husband had in fact commenced employment at *The Financial Express* as a senior reporter and had been issued with an identity card by his new employer on 28 April 2002, just two weeks before the claimed escape from Bangladesh.

[42] Asked about the LTBV application the husband sought to distance himself from it, stressing that it was not his idea to apply for the LTBV. He had been pressured into lodging the application by his wife's relatives who had told him that the Bangladesh community regarded refugee status as shameful and that other avenues should be pursued instead. While the husband's preference throughout had been to lodge the refugee application, he had been taken to an accountant and a lawyer by the relatives for the purpose of lodging the LTBV application. He agreed, however, that he had made no mention to either of these professional men of his wish to claim refugee status. The relative and the advisers had prepared the application, the husband's role being confined to providing them with documents which he had brought with him from Bangladesh. He had not been required to obtain any further documentation from that country. He said that he did not look through the LTBV application although he conceded that he was aware that the business plan submitted with the LTBV application was premised on him and his wife running a franchised operation for cleaning business premises. Otherwise, he was totally in the dark with "everything to do with the LTBV application".

[43] Asked about his relationship with *The Financial Express*, the husband said that on an irregular basis he had written articles for this newspaper. He thought that in 2001 there were one or two such articles and in 2002 perhaps two or three articles. He had been approached to join *The Financial Express* while working for the *Bangladesh Observer* in the period January 1996 to June 2001. Then, after his dismissal from the BSS there had been an informal discussion at the Press Club with the Editor of *The Financial Express* who had been very sympathetic and who had made an informal offer that the husband join *The Financial Express*. The husband stressed that no formal job offer had been made and the discussion did not go far.

[44] Asked specifically by the Authority whether *The Financial Express* had made a formal written offer of employment the husband paused for a long time before

answering in the negative. At that point he was taken to the written offer of employment at page 48 of the LTBV file (which is on *Financial Express* letterhead and dated 1 April 2002) and asked whether he had ever seen that document before. The husband was emphatic, replying that he had never seen the document before. When it was pointed out to him that the document had been attested before a Bangladesh lawyer on 7 May 2002 at a time when he (the husband) was still in Bangladesh and just ten days before his departure from that country, he said that he had no idea how the attestation had come to be endorsed on the document. Asked whether he had ever been issued with an identity card by *The Financial Express* he again firmly answered in the negative. Taken to the copy of the identity card at page 79 of the LTBV file, he said that he had never seen the card before. He conceded that the photograph on the card was of him. Asked how his photograph was on an identity card he had never seen, the husband replied that he had “no idea” as the LTBV application had been prepared by his cousin-in-law who lives in Hamilton. By way of emphasis the husband stated that he had “no idea of the documentation”.

[45] The husband was then taken to pages 68 to 66 of the LTBV file which is an employment offer from Bangladeshinfo.com dated 3 October 2000, a document which was also attested on 7 May 2002 by the same Bangladesh lawyer who attested *The Financial Express* employment offer of 1 April 2002. The husband said that the Bangladeshinfo.com letter had been brought by him to New Zealand in his suitcase but he did not know how the attestation of 7 May 2002 had happened. Nor did he know how it was that the Bangladeshinfo.com document was attested on the same day and by the same person as *The Financial Express* employment offer of 1 April 2002. He again reiterated that he had not previously seen *The Financial Express* letter at page 48 of the LTBV file.

[46] The husband then abruptly changed his evidence. He asked to withdraw his previous statements about *The Financial Express* letter and conceded that he had

received the letter and apologised for not telling the truth. He said that he was afraid that if he disclosed the document the inference could be drawn that he was able to find employment in Bangladesh. However it was not employment which was the issue, rather it was his fear of being harmed by supporters of the BNP. He added:

All my documents are true. I just hide this document.

It is clear that the husband has deliberately concealed vital information which casts real doubt on the claim that following his dismissal from the BSS he had to escape Bangladesh to save his life.

[47] In re-examination the husband stressed that in Bangladesh he had had a good life, a good career and many life opportunities. Before travelling to New Zealand he had never considered migrating to New Zealand other than through a claim to refugee status. While his LTBV application was based on a business plan in which he and his wife were franchised owner/operators of a commercial cleaning business, that application had only been lodged at the urging of the relatives in Hamilton who regarded the lodging of a refugee application as shameful. In the same breath the husband acknowledged that he had no experience in commercial cleaning, observing that in Bangladesh cleaning is not done by a person “who is like me”. He added that cleaners were treated like “street people”. In a further attempt to distance himself from the LTBV application and the documents submitted in support, he said that he later discovered that the cousin-in-law in Hamilton stood to gain from signing people up to the franchise offered by Crest Commercial Cleaning in that Crest was helping the cousin-in-law to obtain a loan from a bank which would then be used to purchase a section and to build a house in Hamilton. All that the husband had done was to acquiesce in advice that an application for an LTBV should be lodged rather than an application for refugee status. The husband had told the cousin-in-law that he could

not do commercial cleaning and there were arguments which eventually led to the husband and his family leaving the home of the relatives in November 2002.

[48] Yet even so, the husband did not then lodge the refugee application. Instead, on 27 November 2002 the family were issued with further visitor permits pending the determination of their LTBV application with even further permits being issued on 7 May 2003, the latter to expire on 31 August 2003. It was in that month, on 11 August 2003, that the refugee applications were lodged. In the meantime the husband himself pressed the LTBV application. By personal letter dated 17 September 2003 (ten months after the alleged split with the relatives in Hamilton over the wisdom, if not the ethics, of lodging the LTBV application) he wrote to the Business Migration Branch in Wellington (p 208 of the LTBV file). He was responding to a Business Migration Branch letter of 20 August 2003 in which he was asked to comment on the fact that his journalism experience was not relevant to the operation of a commercial cleaning franchise. The full text of the letter follows. It makes no mention of the fact that a refugee application had been lodged one month earlier. It betrays no suggestion that he had been deceived or misled into lodging a LTBV application, the contents of which he was barely aware of. On the contrary the letter conveys the tone of a man, in full command of the facts of the application, pressing his case for the LTBV.

I regret that you did not get the reply of your query regarding my relevant business experience. My agent, Mr. Bob Fenwick, was supposed to reply you. However, I like to tell you something about me. It may sound rather a personal appeal than a formal answer to your query.

My understanding was that many people had been issued LTBV though they did not have relevant experiences. You can justify my statement if you please just have a look on the files of some people from Fiji who are now doing Crest business successfully. I have been hoping to do the same business.

Pinning my all hope on the LTBV, I, along with my wife and daughter, have been staying here for a long time. Suddenly your letter has poised to spoil my hope and the future of my daughter who is now just ten.

You are certainly a veteran business specialist. You have the right and capacity to allow my daughter a bright future. I am just assuring you of doing a successful business.

Being a business journalist, I have gathered sound knowledge in running a business successfully. Besides, I have the courage to study more about New Zealand business rules and regulations. Meantime, I have got some knowledge in the relevant business rules and regulations.

I have also met with the officials of Hamilton Business Development Centre. They are ready to extend all cooperation to establish a successful business. In addition to that, Crest will provide all sorts of supports in this regard.

As a journalist in a third world country, I was doing part time business for an extra income. But I did not documented that in the application for LTBV, because the business was not in the similar one that I proposed to do here. I was a partner of a production company which produces programmes for a country's private television channel.

I know it is not the answer what you have asked for. But I do not have other option instead of making an appeal to consider my case using your good offices to give me an opportunity to probe that what I am saying.

[49] The third to last paragraph of this letter makes reference to a meeting between the husband and officials of the Hamilton Business Development Centre. At page 196 of the LTBV file there is a letter from the Manager of that Centre confirming that such meeting had taken place and making submissions in support of the LTBV application. The relevant paragraph reads:

I have met [the husband] recently, where he spoke of his huge frustration with the delay to any decision regarding his application for a Long Term Business Visa. I was impressed with [the husband]. He is someone whom I believe would make a positive economic impact to our region. His investment in a business and ability to create employment will be of benefit to Hamilton. He will spend capital in Hamilton with his business investment, his plans to purchase property and vehicles, and his need to school his child.

...

I am concerned [the husband] who is potentially an asset to our region and our country, is being affected by the delay in processing his LTBV application. I can assure you after having met with him and discussing his business plan and his goals for the future that he has all the maturity and experience it takes to be successful in business....

If this letter faithfully records the author's interaction with the husband, it documents the action of a man who is doggedly and persuasively lobbying for support for his LTBV application well after the supposed split with the Hamilton relatives over the ethics of the LTBV application. Some six months after that split the husband did not

present himself as the victim of bad advice and manipulation by his cousin-in-law. Rather he presented to the Manager of the Business Development Centre in Hamilton as a man who could fluently and persuasively discuss his business plans and goals and who was able to persuade the Centre to support his LTBV application.

[50] In this context, the timing of the refugee application is significant. It was lodged just a few weeks before the visitor permits held by the family were about to expire on 31 August 2003 and when he knew from the terms of the “minded to decline” letter from the Business Migration Branch, that the LTBV application was highly likely to fail. The refugee application also presents a very different picture of the family’s circumstances to that presented to the Business Migration Branch.

[51] In the circumstances, the Authority is of the view that the refugee application was an application of convenience, not a genuine application lodged belatedly as a result of bad advice given by the Hamilton relatives.

The employment histories - the wife

[52] It is now possible to turn to the equally contrasting employment histories provided by the wife in the refugee claim on the one hand and the LTBV application on the other.

Refugee claim

February 1990 to August 1994 - sub-editor at *Dainik Janata*.
September 1994 to June 1996 - sub-editor at *The Independent*.

Ten months unemployment.

LTBV application

1989 to 1995 - unemployed. Attended training programmes on journalism.
March 1995 to January 1997 - senior supervisor, Trio Vision (a private telefilm and documentary company).

March 1997 to August 2000 - senior sub-editor of *United News of Bangladesh*.

February 1997 to March 1998 - senior supervisor, Clean Dhaka Campaign.

March 1998 to August 2000 - senior sub-editor of *United News of Bangladesh*.

August 2000 to May 2002 - unemployed for personal reasons.

September 2000 to May 2002 - freelance journalist.

[53] The following discrepancies are to be noted.

- (a) The LTBV application asserts that in the period 1989 to 1995 the wife was unemployed. In her refugee application she asserts that in the period February 1990 to August 1994 she was sub-editor of the *Dainik Janata*. The omission from the LTBV application of reference to employment at the *Dainik Janata* is significant as it was at the *Dainik Janata* that the couple allegedly met. They say that they married on 21 September 1990 when they were both working at that newspaper. The husband says that at a later point he was dismissed for political reasons and his wife was forced to resign. If the wife was indeed unemployed during the period 1989 to 1995 a substantial part of the foundation to the refugee claim is undermined as the husband says that it was at the *Dainik Janata* where he came to political prominence through his “hard core political writing”. As previously mentioned, the husband also made no mention in the LTBV application of his alleged employment at the *Dainik Janata*.
- (b) The refugee application asserts that in the period September 1994 to June 1996 the wife was sub-editor at *The Independent*. The LTBV application, on the other hand, asserts that in this period she was unemployed.

- (c) The LTBV refers to the wife's employment as a senior supervisor at Trio Vision in the period March 1995 to January 1997. This is new. Her refugee application asserts that in the ten months prior to March 1997 she was unemployed.
- (d) In the LTBV application it is claimed that the wife started at the *United News of Bangladesh* in March 1998 whereas in the refugee application the commencement date is March 1997, one year earlier.
- (e) Whereas in the refugee application the wife said that she resigned from the *United News of Bangladesh* in August 2000 to look after her daughter, the LTBV application describes her activities in the period September 2000 to May 2002 as that of a freelance journalist.
- (f) The LTBV application also contains an assertion (wholly absent from the refugee application) that the wife has experience in commercial cleaning. See p 145 of the LTBV file:

I have had experience in commercial cleaning. I was trained in cleaning and hygiene procedures, and in the various tasks of cleaning offices. I was promoted to the team supervisor, responsible for the operation of a large team of workers. I was accountable for their work efforts, and I had to make quality inspections and provide instruction on procedures. I was also responsible for liaising with the customers and the building managers.

Submitted in support of the claimed cleaning experience is a letter from Clean Dhaka Campaign dated 15 January 1997 offering the wife the position of senior supervisor of a 30-member team responsible for maintaining cleanliness in fifteen offices.

[54] At the hearing before the present panel, when asked about her employment history, the wife adhered to the version set out in her refugee statement but belatedly

added her employment by Trio Vision. She also claimed that the assertion in the refugee statement that she had been unemployed for approximately ten months between June 1996 and March 1997 was inaccurate. She had been unemployed **as a journalist** and that was what she had meant. She also added that in the building in which she and her husband lived there was a non-governmental organisation known as Clean Dhaka and she worked there at the same time that she had been senior sub-editor at *The United News*. She was paid for this work and *United News* knew of her secondary employment.

[55] When questioned about the contents of the LTBV application and the supporting documentation the wife stated:

- (a) Although she signed the LTBV application she did not “fully” read it. She had been told to sign the document and did so.
- (b) As to the claim in the LTBV application that she had been unemployed in the period 1989 to 1995 she could see that this assertion was different to the information set out in the refugee application. The LTBV application had not been completed by her and had not been read by her. Asked how six years of her professional life as a journalist came to be missing she blamed her relatives in Hamilton for pushing her and her husband into working for Crest Commercial Cleaning and said that “they” had created the file, meaning the LTBV application.
- (c) Her omission of the Trio Vision employment from the refugee claim was due to the fact that that employment (for a telefilm and documentary company) was not linked to journalism and for that reason it had not been included. This assertion, however, is not entirely consistent with her claim that the LTBV application had been made up by others and that it had been barely read by her.

- (d) The refugee application contained no reference to her employment at Clean Dhaka because, once again, her activities there had not been part of her journalism career. The wife was at this point taken to page 57 of the LTBV file which, as mentioned, is the letter of employment from Clean Dhaka Campaign dated 15 January 1997. She said that she had never seen the letter before. Asked how this document came to be attested by a lawyer in Bangladesh on 13 May 2002 (four days before the family left Bangladesh) she had no explanation. Asked whether the Clean Dhaka Campaign letter had been prepared for the purpose of assisting the LTBV application, she answered “I can’t say”.
- (e) Asked why, prior to her departure from Bangladesh she had obtained from Trio Vision a letter dated 1 February 2001 confirming her employment by that company in the period 1 March 1995 to 31 January 1997, she said that when she left Bangladesh she had simply obtained the letter. There had been no particular purpose in her doing so. Asked why she had obtained a letter in February 2001 showing employment by a company some four years earlier she said that she “could not really say” other than that it was to show to others that she had worked for the company. Asked to whom the letter would be shown, she said that it was “to keep for myself”. She denied obtaining this letter and the Clean Dhaka Campaign letter for the purpose of supporting a LTBV application upon arrival in New Zealand.
- (f) It is to be noted that the Trio Vision letter dated 1 February 2001 was attested on 13 May 2002 by the same lawyer in Bangladesh who attested the Clean Dhaka Campaign letter of January 1997.

[56] The Authority observed that when questioned about the differing employment histories and the supporting documentation, the wife was notably evasive and less than

frank in her replies. She insisted that she had “no idea” about the letter from Clean Dhaka Campaign.

[57] The wife also described how her relatives from Hamilton had stayed with her and her husband in Bangladesh for about two months. She could not remember exactly when the visit had taken place but thought it was before the elections in which the BNP had come to power and her husband’s subsequent dismissal from the BSS. Asked whether during that two month stay there had been any discussion about her and her husband coming to New Zealand she said that there had not been any such discussion beyond a holiday visit. Asked whether, prior to her arrival in New Zealand, she knew that her relatives held a commercial cleaning franchise in New Zealand, she answered in the negative. At the time of their Bangladesh visit her relatives had said only that they had a business, but had not described the nature of that business. It had been just a coincidence that on her arrival in Hamilton her relatives had advised that a LTBV application be lodged on the basis of a commercial cleaning franchise similar to their own. It was also simply fortuitous that she and her husband had arrived in New Zealand in possession of the letter from the Clean Dhaka Campaign “establishing” the relevant work and management experience required for the LTBV application.

[58] The Authority regards all of the wife’s evidence as highly improbable if not fanciful. It was delivered without conviction and the Authority does not believe the wife has said anything truthful about her or her husband’s employment histories or about the background and reason for their travel to New Zealand.

[59] The wife repeated the assertion made by her husband that on their arrival in New Zealand the wife’s relatives had not allowed them to lodge the intended refugee claim and that as she and her husband were scared, they had acquiesced in the lodging of the LTBV application. In this regard the wife was asked about the seemingly

contradictory picture painted by her in the statement filed in support of the refugee application. Paragraph 58 at p 66 of the file is in the following terms:

My husband submitted an application for a Long Term Business Visa as we were trying to explore other options than seeking refugee status to stay in New Zealand. We had respectful jobs in Bangladesh and were living a very good life there. We saw no dignity in applying for refugee status. Also, we intended to return to Bangladesh as soon as the situation was safe and we thought that if we applied for refugee status it might be difficult to return.

It was put to the wife that there is no suggestion in her statement that she and her husband had been misled or placed under undue pressure by her relatives in Hamilton. Rather the statement (prepared with the assistance of a refugee lawyer in Auckland many months after the alleged separation from the relatives in Hamilton) suggests that it was the wife and her husband who had determined on the LTBV application, not the relatives. The wife insisted, however, that at the time they did whatever the relatives had told them to do and that had she intended to apply for a business visa she would have brought all the right records with her.

[60] The Authority does not believe the wife's claim that her two different employment histories are explicable on the basis that because she considered her profession to be that of a journalist, she did not include any non-journalism activities in her refugee application. Nor does the Authority accept that the LTBV application was the "creation" of the relatives in Hamilton.

[61] The Clean Dhaka Campaign letter is the foundation stone on which the LTBV application was based. As mentioned, it provided evidence of the necessary relevant cleaning experience. The Authority does not believe the wife when she claims that she has never seen the letter before. Nor does the Authority accept that the letter fortuitously materialised when, after the husband and wife arrived in Hamilton, they were told that a refugee application was "shameful" and that instead an application should be made for a LTBV based on the acquisition of a cleaning franchise. The

Authority rejects the evidence that at the time the family left Bangladesh there was no intention to file a LTBV application and also rejects the claim it was just a coincidence that, completely unbeknown to the husband and his wife (because it was not disclosed during the two month visit to Bangladesh), the Hamilton relatives were themselves running a cleaning business.

Conclusion on employment histories

[62] Taking into account all of these factors the Authority is of the view that both the husband and his wife have engaged in calculated deception as to their true employment history in Bangladesh and as to their real reasons for travelling to New Zealand. Most, if not all of their evidence on issues central to their refugee claim has either been fabricated or is wholly unreliable. The Authority is not prepared to accept that any part of their evidence is true. As stated earlier, there is some indeterminable element of truth to the husband's claim that he has worked as a journalist but the Authority does not accept that anything truthful has been said as to when and for whom he has worked. Nor does the Authority accept that he has engaged in any journalism or political activity which now places him at risk of harm. His evidence in this regard was characterised by self-aggrandisement and exaggeration. Nothing he says or claims can be taken at face value.

The telephone threats

[63] Both the husband and the wife stressed that after the Awami League lost the October 2001 elections to the BNP they felt it prudent to have an escape plan and for that reason it should not be inferred that their 19 November 2001 New Zealand visitor visa application was the first step in a preconceived plan to come to New Zealand. They clearly understood that if such inference were drawn, it would show that three months prior to the husband's claimed dismissal from the BSS (the alleged trigger

point for their eventual departure), the family had already decided to come to New Zealand. In this regard they point to the fact that although the visitor visa application was granted they allowed it to lapse. The appellants assert that it was the dismissal from the BSS in March 2002 which catalysed new anxieties and it was in that context that they returned in earnest to putting in place a means of escaping from Bangladesh should the need arise. The new visitor visas were uplifted on or about 25 March 2002. Even so, they insist, travel to New Zealand was simply a contingency plan and they did not want to leave Bangladesh. It was only after the threatening telephone calls consequent on the filing of the writ petition that the decision to leave crystallised. The veracity of their evidence relating to these telephone calls is therefore of critical significance to the refugee claim.

[64] The Authority does not believe the appellants' claims in relation to the alleged telephone threats. First, the evidence of both the husband and the wife, while replete with detail as to the first and second calls, was characterised by vagueness as to the time and circumstances of the balance. The wife's evidence in particular was delivered with little conviction and had all the characteristics of rehearsed evidence. Both witnesses were evasive under questioning. Second, their evidence requires acceptance of an all too convenient coincidence. Their New Zealand visas (issued on 25 March 2002) required entry to New Zealand by 25 May 2002 or they would expire. Yet the appellants say that even as late as the filing of the writ on 11 May 2002 there was no intent or willingness to leave. Everything changed after the first telephone threat was received a couple of days later. The Authority is of the view that it was more than fortuitous that at the time the telephone threats were received the family had in their passports visas for New Zealand which were to expire in less than two weeks. The unease of the Authority is increased by the fact that no fewer than twenty-three of the Bangladesh-origin documents submitted in support of the LTBV application were "attested" on 7 May 2002 at the instigation of the husband, some four days before the writ petition was filed on 11 May 2002 and several days before the phone threats. At

least four others were attested earlier on 30 April 2002. Significantly, one of the documents attested on 7 May 2002 was the employment offer from *The Financial Express* dated 1 April 2002, about which the husband has admitted to lying. In the Authority's view, taking into account the demeanour of the husband and the wife and our assessment of them as witnesses, the circumstances establish not a last minute escape from Bangladesh consequent upon the telephone calls, but rather a planned departure which the appellants have sought to explain away by the invention of the fictitious telephone threats. Third, the false evidence relating to *The Financial Express* letter and in relation to the Clean Dhaka Campaign letter (attested on 13 May 2002) reinforce the Authority's conclusions, as does the claimed coincidence that the couple just happened to have brought with them an employment "reference" which they could use to support the unanticipated and unwanted LTBV application. The truth of the matter is that once the New Zealand visas were endorsed in their passports, the family had a fixed intention of coming to New Zealand. The threatening telephone calls have been invented to provide a "credible" basis for a refugee claim filed just over a year after the family arrived in New Zealand and after it was known that the LTBV application would be unsuccessful.

The writ petition

[65] Closely allied to the alleged telephone threats is the claimed filing of the writ petition. In this regard the Authority is of the view that even accepting that the writ has been filed, it has not been given a true account of the circumstances. Nor does it accept that the filing of the writ has created a risk of danger to any of the appellants.

[66] The husband said that there were four other journalists from the BSS who filed similar writs at the time his own writ was filed. He also understood that there were between two and four other groups of journalists, each comprising approximately five people, who similarly filed writs challenging the termination of their employment by

the BSS. One would think that as the number of plaintiffs is reasonably large and as they are all represented by lawyers, information would be readily at hand as to the fate which has befallen members of the group. If any had come to harm because of the writs, this would be of direct relevance to the plaintiff's refugee claim. Yet nothing of substance has been produced by the husband and it seemed to the Authority that on this simple question a barrier has been constructed to prevent meaningful exploration of the claim that the writ has put the husband and his family in immediate danger. That barrier includes the following elements. First, the claim that after the filing of the writs on 11 May 2002 members of his group of petitioners were advised not to contact each other, conveniently providing the husband an excuse for claiming ignorance about their fate. Second, his claim that he left Bangladesh without making enquiry as to whether the other petitioners had received threats. Thus his ignorance continued. Even when advised by [AB], the chief news editor of the BSS to leave Bangladesh the husband did not ask [AB] whether he ([AB]) had received any threatening phone calls despite the fact that [AB] had himself issued a writ challenging the rule under which the various journalists had been dismissed from the BSS. See *The Daily Star* of 9 April 2002 at p 287 of the refugee file. The constant assertion of the husband was that he knew nothing as to what had happened to anyone else. To the Authority this claimed state of ignorance seemed to be the product of the husband's own failure to inquire. Given that he presented himself as a fearless, crusading journalist who, together with other fearless and crusading journalists had challenged the political order in Bangladesh, one would have expected him to have wanted to know more. Particularly given that if any of his fellow petitioners had come to harm this would have been directly relevant to his intended refugee claim.

[67] Third, the evidentiary minimalism continued after the husband's arrival in New Zealand. On several occasions he had spoken by telephone to [AB] and been told that some petitioners had been forced to flee Bangladesh, while others had been forced to withdraw their writs. He claims that he was given no information as to the names of

those who had left and those who had withdrawn. The husband, for his part, did not ask for this information. Nor did he ask [AB] whether he ([AB]) had received any threats consequent on his own litigation. The husband claims that in the result, at no time since 11 May 2002 has he had contact with any other petitioners and that he has no way of contacting them. He does, however, claim the benefit of the reported statements by [AB] that he (the husband) remains in great danger because of the writs. He also relies on the unparticularised but nevertheless portentous reference by [AB] to the fate of other petitioners (forced to flee overseas or to withdraw the writs). Just enough evidence has been volunteered to create the impression of clear danger but not enough to allow the assertions to be meaningfully explored.

[68] It was in this context that the Authority scrutinised the husband's claimed contact with his lawyers in Bangladesh. In his statement dated 25 September 2004 prepared for the first appeal hearing, the husband said that he had not kept in direct contact with his lawyer in Bangladesh but he had been told by [AB] that the lawyer was "afraid to go ahead in our case". When in July 2004 the husband had telephoned the assistant to his lawyer in Bangladesh that person, on hearing the husband's voice, had "became very nervous and just wanted to get off the phone". The husband was told that the writ was still pending and that his lawyer "was not in a safe situation to progress the case further". In his statement prepared for the rehearing of this appeal and dated 17 October 2006 the husband again claimed (at para 16) that his lawyer was "not willing to proceed this writ further because of fears for his safety", and at para 26 he said that he had stopped calling his lawyer in Bangladesh "because he also doesn't want my call for safety reasons". Once again the Authority was presented with an inscrutable and fragmented account designed to convey a compelling sense of ever present danger to both the husband and his lawyers but simultaneously deflecting inquiry.

[69] In this context the post-hearing documentation is significant. First, there is a letter from a [CD] (an advocate) dated 6 March 2007 in which he states that the reason

for the writ petition being unable to be progressed is the emergency rule which followed the declaration of a state of emergency in January 2007 amid violence in the election run-up. The elections have been postponed. There is a similar statement by [EF] (also an advocate) dated 16 April 2007. It is significant that neither of these statements addresses the reasons for the delay in progressing the writ in the period 2002 to the end of 2006 and it is also to be noted that neither of these two documents confirms the husband's claims that pursuit of the writs will place him in danger. Nor do the documents suggest that the lawyers themselves have been or are in danger. The documents are also completely silent as to the claims that some petitioners have been forced to withdraw and others forced to flee overseas.

[70] The former chief editor of the BSS, [AB] has sworn two affidavits, the first on 28 March 2007 and the second on 15 April 2007. In the first he states that after the husband filed the writ, he ([AB]) told the husband that the situation "was not good for him and suggested him to go for safety". In his more recent affidavit [AB] states (inter alia):

5 I was involved in the process of filing of writs for [the husband] and others in the Supreme Court. All the major newspapers in the country published the news about the writs, which was embarrassing for the BNP Government. In the first phase [the husband] and four others filed the writs, followed by 14 others.

6 The journalists involved in the writ proceedings told me later that they had been threatened by telephone and had been pressured to withdraw their writs. For privacy reasons I cannot disclose the names of the journalists and I am unable to advise who withdrew their writs and who fled the country. I was also threatened by BNP terrorists for my involvement with the writs and eventually I lost my job.

7 I believe that [the husband] and his family will be at risk if they return to Bangladesh because of his political identity and his refusal to withdraw his writ.

[71] As to the above, the Authority has not had an opportunity to question [AB] and to test the veracity of his evidence. We are not in these circumstances prepared to attach weight to his evidence, particularly given our conclusions as to the credibility of the husband and of the wife. We are reinforced in this view by [AB]'s claimed sensitivity

to the privacy of the fourteen other journalists who filed wrongful dismissal proceedings. The names of a number of journalists dismissed from the BSS are already in the public domain (see the press clippings at pp 287, 291 and 292 of the refugee file) as are the names of journalists involved in the protest activity. There is even a photograph of some fifteen of them at p 289 of the refugee file. Furthermore, there would seem no reason why [AB] could not get the journalists involved to contact the husband directly, thereby safeguarding their “privacy”. In the context of activist journalists who openly took proceedings with a view to embarrassing the BNP government it seems remarkable that “privacy” reasons should inhibit the former chief news editor of the BSS from assisting a former colleague (the husband) in his hour of need.

[72] The Authority is of the view that the true circumstances in which the husband’s writ was filed and prosecuted have not been disclosed and the post-hearing documentation has only increased the concerns of the Authority as to the veracity of the husband’s evidence on this point. In the circumstances his account is not believed. The Authority is not prepared to speculate where the truth lies. It is certainly not to be found in the evidence of the husband or in the documentation he has produced.

[73] It is acknowledged that among the post-hearing documentation are statements (for example) from [GH] and [IJ] asserting that the husband was a high profile journalist in Bangladesh who has been forced to live overseas for his safety. We are not prepared to give any weight to these documents and to those of similar nature. The Authority has concluded, after lengthy interview of the husband and his wife, that neither are witnesses of the truth. In these circumstances it is not prepared to give weight to supporting statements in respect of which the Authority has not had the opportunity of questioning the author(s).

Police interest post-departure

[74] In his written statement dated 25 September 2004 prepared for the hearing before the first panel of this Authority on 4 and 5 October 2004 the husband claimed that when he spoke to his brother-in-law in mid-September 2004 he (the husband) had been told that police had arrived at the brother-in-law's home in May 2004 to enquire about the whereabouts of the husband. They also wanted to know what documents he had taken with him when he left Bangladesh, his return date and his immigration status overseas. The brother-in-law had been questioned for half an hour and instructed to notify the police should the husband contact the brother-in-law or should he (the brother-in-law) receive news about the husband. The husband went on to say that he was very concerned about his brother-in-law because the police had threatened him and warned that he was under surveillance. In the statement dated 17 October 2006 prepared for the re-hearing before the current panel of the Authority (originally scheduled for 25, 26 and 27 October 2006) the husband asserted that when he "talked earlier this year" with his brother-in-law he had been told that he (the brother-in-law) had been called to the police station and questioned about the husband's latest situation. When the brother-in-law told the police that the husband had been given permission to stay in New Zealand the police told him that there would be no problem while he (the husband) remained overseas but the information would be passed to Bangladesh Immigration so that they could notify the police should the husband return to Bangladesh.

[75] As to these assertions of police interest it seems remarkable that the only two claimed instances of police interaction with the brother-in-law occurred in each of the two years in which the appeal has come before this Authority, namely in 2004 and then in 2006. The husband knows of no visits prior to May 2004, between 2004 and 2006 or of visits subsequent to 2006. The Authority is not prepared to accept the veracity of the two claimed visits. There is too close a relationship between their alleged occurrence and events relating to the refugee claim in New Zealand, particularly the hearings before the Authority. The evidence does not have the ring of

truth. The Authority also noted that when questioned closely about the circumstances of the telephone calls with the brother-in-law in which the two episodes of police interest were recorded the husband was evasive and given to exaggeration and invention.

Demeanour

[76] As may be seen, at various points of this decision the demeanour of both the husband and of the wife has been a factor in the Authority's credibility assessment. Generally the husband was evasive on significant points, particularly the timing and circumstances of the threatening phone calls and his employment history. There was no sincerity or spontaneity to his evidence. He did not come across as the principled and courageous journalist he has claimed to be. Rather, he impressed as an opportunist who had little regard for his obligation to give truthful evidence. His wife too was evasive at times and appeared to have learnt her evidence and in particular the points that she believed she had to get across, even if the points were not relevant to the questions being asked. It was clear that there had been collaboration over their evidence and in particular the circumstances of the threatening phone calls. In her account of them there was no pausing or spontaneity.

[77] In making our credibility assessment we have, as stated, taken into account the effect of the passage of time on the memories of the husband and of his wife and the fact that they have both suffered ill-health while in New Zealand necessitating hospital treatment. They have understandably been under stress. We have accordingly approached the assessment of their credibility with substantial caution. We are satisfied, however, that neither of the appellants has given truthful evidence.

Lies

[78] The Authority is aware of the danger, when making a credibility assessment, of relying on lies told by refugee claimants. Lies can be told by such claimants for many reasons, some of them understandable, some not entirely rational. The fact that lies are told during an interview does not mean that the refugee claimant is not telling the truth about the facts on which the well-founded fear of being persecuted is based. But having reminded itself of the dangers the Authority has no hesitation in finding that the lies told by the husband and by the wife, particularly in relation to their respective employment histories are, in the present case, of significance and are properly to be taken into account in assessing their credibility.

Conclusions on credibility

[79] For the cumulative reasons which have been given, the Authority does not accept the husband and the wife as credible witnesses. As stated earlier, the Authority has concluded that it has been presented with a carefully edited and highly selective presentation of the appellants' circumstances in Bangladesh and it is not prepared to accept any of their claims at face value. We specifically find that there were no threatening telephone calls after the writ was filed. Nor does the Authority accept that any interest has been shown or will be shown in this family by the police, political parties or anyone else for that matter on their return to Bangladesh. The refugee claim is entirely baseless.

No residual claim

[80] The finding that there were no telephone threats is determinative of the case. However, for the avoidance of doubt it needs to be stated that it is also our finding that even accepting that the husband has at some point in his life had some undetermined involvement in journalism in Bangladesh and has issued the wrongful dismissal writ, neither of these factors place him or his family at risk of harm were they to return to Bangladesh. There is no credible evidence that any of the petitioners involved in the

court proceedings have come to harm. In addition his profile as a journalist has been exaggerated to a significant degree and there is no credible evidence that a journalism background and the issuing of the writ could give rise to a risk of harm that can sensibly be described as well-founded. Attacks on journalists in Bangladesh are well documented but the country information falls well short of establishing that all journalists are at real risk of harm for reason of being a journalist. In fairness, such was not in any event claimed by the husband and the wife. Similarly, even if the wife is accepted as having some undetermined journalism involvement in the past, she is not at risk of harm for that reason or for reason of being the wife of her appellant husband. It follows that their daughter equally has no claim to refugee status. Under s 129P(1) of the Immigration Act 1987 the appellants have the responsibility to establish their claims to refugee status. They have failed by a substantial margin to do this.

CONCLUSION

[81] None of the appellants have established a well-founded fear of being persecuted for a Convention reason should they return to Bangladesh. It follows that they are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

“R.P.G. Haines”

.....

[RPG Haines QC]

Chairperson