

1417566 (Refugee) [2016] AATA 4246 (1 August 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1417566
COUNTRY OF REFERENCE:	Bangladesh
MEMBER:	Louise Nicholls
DATE:	1 August 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 01 August 2016 at 5:14pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. The applicant claims to be a citizen of Bangladesh and is [age] years of age. He was born in Madaripur, Bangladesh and first came to Australia as a student [in] August 2009. He applied for a skilled visa in 2012. His application was refused and his application for review in the Migration Review Tribunal was unsuccessful.
2. The applicant applied for a Protection visa [in] March 2014. He provided a number of documents to support the application, including,
 - Translation of First Information Report (FIR) dated [in] February 2009; charge sheet and related court documents.
 - Translation of First Information Report (FIR) dated [in] April 2009; charge sheet and related court documents.
 - Warrant of Arrest- [name] Judge Court.
 - Letter of complaint from the applicant's brother to the [Suburb 1] police dated [in] January 2014.
 - A letter to the applicant from his Bangladeshi lawyer dated [in] February 2014.
 - Letter of support from the [senior official] of the Bangladesh Nationalist Satrodal dated [in] February 2014.
3. The applicant attended an interview with the delegate of the Minister for Immigration [in] September 2014.
4. [In] October 2014 his application was refused by the delegate pursuant to s.65 of the *Migration Act 1958* (the Act).
5. This is an application for review of that decision. The applicant provided a copy of the delegate's decision record together with the application.
6. The applicant appeared before the Tribunal on 9 June 2016 to give evidence and present arguments. He gave evidence about his background, his family, his claims relating to his political activities, his claims of mistreatment and fears as well as evidence relating to his current situation in Australia.
7. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION

8. The issue in this case is whether the applicant meets the refugee criterion, and if not, whether he is entitled to complementary protection.
9. The applicant claims that he was an office bearer, member and supporter of the BNP before he left Bangladesh in 2009 and that he was falsely implicated in two serious criminal offences in 2009. He fears he will be killed or gaoled by government authorities or harmed by Awami League activists for reasons of his political opinion if he returns to Bangladesh.

10. The relevant law is set out in Attachment A.

Background

11. The applicant is [age] years old and was born in Madaripur, Dhaka Division in Bangladesh. The applicant's family owned property in Madaripur including [certain establishments]. His father is deceased and his mother currently lives in the family home.
12. He has [siblings]. One [sibling] lives in Dhaka and the other [sibling] is living in [Australia]; [other siblings] live in Bangladesh and one [other sibling] lives in [Australia]. [The Australian resident sibling] was married but is now separated. The applicant used to share a house with his [sibling] but he now lives on his own in [Australia].
13. He is not married but is talking with a girl from Bangladesh; he is not sure whether that relationship will develop any further.
14. The applicant studied [a course] at senior college in Bangladesh and finished his [course] in [year]. He went on to work with friends in a [business] but also ran his own [business].
15. In April/May 2009 he applied for a student visa to study [course] in Australia. His [sibling] had already obtained a visa and helped him complete his application. He told the Tribunal he had to show he had financial support, his enrolment details and a Bangladeshi police clearance to support his student visa application. He arrived in August 2009 and went to live in [with] his [sibling]. He completed his studies and applied for a skilled visa but could not pass the IELTS English language test. He applied for review of the skilled visa refusal with the Migration Review Tribunal however the Tribunal affirmed the refusal decision. He applied for judicial review of the decision to affirm but was not successful.

What is the country of reference?

16. The applicant provided a copy of his Bangladeshi passport and gave evidence that he was born in Bangladesh. It was clear he was familiar with the culture, history and geography of Bangladesh and the Tribunal accepts on the evidence before it that he is a citizen of Bangladesh and that Bangladesh is the receiving country for the purposes of s.36(2)(aa).

Assessment of Claims and Evidence

Was the applicant a member or supporter of the BNP or its student wing?

17. In his protection visa application the applicant stated that he was involved in politics and supported the BNP. He participated in many activities and organised people in different national issues and became popular in the community.
18. The country information indicates that the Awami League and BNP command the loyalty of the majority of voters and dominate politics in Bangladesh.
19. The Bangladesh Nationalist Party (*Bangladesh Jatiyatabadi Dal* – BNP) was formed in 1978 by then-President of Bangladesh Ziaur Rahman and a number of groups that had supported him in his election campaign.¹ Ziaur Rahman was assassinated by military officers in 1981.²

¹ Lansdorf, T (ed) 2012, 'Bangladesh', *Political Handbook of the World Online Edition*, CQ Press, Washington <http://library.cqpress.com/phw/document.php?id=phw2012_Bangladesh&type=toc&num=15>; Virtual Bangladesh 2006, *Biography – Khaleda Zia*, 18 August <<http://www.virtualbangladesh.com/biography/khaleda.html>>

² Encyclopædia Britannica 2011, *Khaleda Zia* <<http://www.britannica.com/EBchecked/topic/657064/Khaleda-Zia>>

His widow, Khaleda Zia, has been the leader of the party since February 1984, when she took over as chairperson following the retirement of the previous incumbent. She was then formally elected as chairperson of the BNP on 10 August 1984.³ Zia twice served as the Prime Minister of Bangladesh, the first time between 1991 and 1996, and again between 2001 and 2006.⁴ The Jatiyatabadi Chhatra Dal (JCD) is the student wing of the BNP.⁵

20. The BBC Bangladesh Timeline⁶ indicates that the Awami League was in power from 1996 until the BNP won government in 2001. The BNP continued in power until 2006 when a series of caretaker administrations governed until the Awami League won at the elections of December 2008. The Awami League has continued in government since 2008.
21. The applicant claimed that whilst he was at college he became a supporter and member of the student wing of the Bangladeshi National Party (BNP), that is, the Jatiyatabadi Chatra Dal.
22. The Awami League and the BNP both have student wings, despite electoral reforms announced in 2008 which, according to *United News of Bangladesh*, “mandated the disbanding of front organizations for political parties, including student organizations”.⁷ The US Department of State (USDOS) reports that “In 2010 auxiliary student wings were formally severed from the political parties...Despite the formal separation, some politicians representing all major parties mobilized members of student wings for movements and demonstrations”.⁸
23. The applicant gave oral evidence that he became involved in the student wing of the BNP because he was impressed with the character of the founder of the party, Ziaur Rahman who was very noble and wished to do something good for Bangladesh. He was inspired by his popularity and his support for democratic rule in Bangladesh and was saddened by his death in 1981. The Tribunal pointed out the applicant would have been about [age] years old at that time and he stated that he had seen newspaper articles about these events and talked to others when he was older.
24. He stated he had gradually developed an interest in the BNP over his school years and after he finished Year 12 and went to college in [year] he became more active. He stated he asked friends to be involved; he attended meetings and claimed he became a [senior official]. He explained that there were a number of political groups which operated at college in those years.
25. When he left college in [year] he found part time work and claimed that he continued his political activities. When he was questioned about the details of his activities he stated he went to meetings and worked to build support. He claimed that he had contact with popular leaders and told people that the Chatra Dal and BNP were very good. He was not able to give the Tribunal specific details of his activities and described them in very general terms.

³ Virtual Bangladesh 2006, *Biography – Khaleda Zia*, 18 August, <<http://www.virtualbangladesh.com/biography/khaleda.html>

⁴ Encyclopædia Britannica 2011, *Khaleda Zia* <<http://www.britannica.com/EBchecked/topic/657064/Khaleda-Zia>> Accessed 7 September 2011

⁵ Immigration and Refugee Board of Canada 2001, *Bangladesh: Bangladesh Nationalist Party (BNP) student wing called the “Jatiyatabadi Chhatra (Chhatra) Dal (JCD)”*; its current leaders and activities, mainly in Dhaka (1998-2001), BGD36671.E, 9 April

⁶ BBC News online Bangladesh profile-Timeline www.bbc.com/news/world-south-asia-12651483

⁷ *United News of Bangladesh*, cited in Immigration and Refugee Board of Canada 2011, *Bangladesh: Information on the Awami League (AL), including its leaders, subgroups, youth wings, and activities*, BGD103808.E, 13 September <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453566&l=e

⁸ US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Bangladesh*, 24 May, Section 1c <<http://www.state.gov/j/drl/rls/hrrpt/2011/sca/186459.htm>

26. The Tribunal put it to him that the BNP were in power at the time he obtained part time work in 2003 and it questioned the nature of his political activities during this time.
27. He stated that during the time of the BNP government he was involved in BNP protests against hartals, strikes and protests conducted by Awami League supporters. At this time he lived in South Dhaka and stated that the local constituencies overlapped and he was involved in politics in the surrounding areas.
28. He stated he did not have a membership card because the party did not issue cards at that time and meetings were held on an informal basis. The Tribunal put it to him that given his evidence it appeared to the Tribunal that he had been a supporter of the BNP at this time and questioned whether he was a formal member of the party. His response was vague and ambiguous.
29. The Tribunal discussed the delegate's decision record and put it to the applicant that in his interview with the delegate he stated he was not familiar with the BNP Constitution and unable to recall the name of the BNP candidate for his local constituency even though he claimed he had campaigned and met that candidate. He told the Tribunal that he was also involved in campaigning for a neighbouring constituency and was familiar with all these things but could not remember them at the time of the delegate's interview.
30. The Tribunal discussed a letter he provided in support of his claims from [Mr A] the [senior official] of the Bangladesh Nationalist Satrodal dated [in] February 2014. That letter stated that the author certified that the applicant was the [officeholder] of Bangladesh Jatiotabadi Chattra Dal under [Suburb 1] Police Station.
31. The delegate had noted in his decision that this letter had been purportedly provided by [Mr A] but was allegedly signed on a date when the country information indicated that the author of that letter was in gaol on remand. When this was put to him at the Tribunal hearing the applicant he stated his brother in Bangladesh may have got the signature from [Mr A] while he was in gaol.
32. The Tribunal notes that the 2014 letter does not state when the applicant had been [an officeholder] and given that the applicant had left Bangladesh in 2009 it is not clear whether the letter related to past or current activities. The letter also does not give any date or any context to the assertion that the applicant was the [officeholder] of a Chattra Dal branch.
33. It also appears according to the country information cited in the delegate's decision (footnotes 13 and 14) that the alleged author was in gaol at the time he signed the letter. The applicant's explanation for this anomaly is speculative and whilst it is not impossible that the author's signature was secured whilst he was in gaol the Tribunal considers it implausible.
34. Given these circumstances, the Tribunal has not given this letter any weight in supporting the applicant's claim that he was an office holder or a member of the Chattra Dal involved in BNP activities until he left Bangladesh in 2009.
35. Taking into account the evidence given by the applicant and other written evidence the Tribunal accepts his claim he was member and supporter of the Chattra Dal when he attended college in Bangladesh. The country information indicates that the student wings of the main political parties were very active in higher education institutions in Bangladesh and it is plausible that the applicant may have become involved in the student wing of the BNP in that environment.
36. However, it does not accept the applicant continued to be a member of the Chattra Dal or BNP after he left college or that he continued to be active as a BNP member and supporter

until he left Bangladesh for Australia in 2009. His evidence as to the nature of his membership, his activities and the depth of his knowledge of BNP party politics was vague and had a generality which indicated that he had no personal experience of any political activity with the BNP. Whilst the Tribunal accepts he may have supported the BNP and been in favour of a BNP government it does not accept he played an active role in the BNP after he left college and obtained part time work in 2003.

Was the applicant falsely implicated in serious criminal charges in 2009?

37. In his application for the protection visa he stated that when the opposition party (AL) came to power they lodged two false cases against him. He claimed he had to go into hiding so he would not be killed so he was not able to prove the truth. His lawyer tried to prove his innocence but he failed due to government influence. His lawyer told him to leave the country and not return until the political situation had changed.
38. He gave the Department documents purporting to be First Information Reports (FIR) in Bengali as well as the English translations. These documents were all produced on uniform paper in terms of size, colour and apparent age. They all had similar elaborate headers.
39. Country information contained in a report published by the *International Federation for Human Rights*, describes the First Information Report (Bangladesh) as follows

“Police custody and arrest”:

“In Bangladesh, every criminal action commences with a First Information Report (FIR), lodged by the victim, relatives, or a witness. The FIR is a written or oral complaint to the investigating officer who must lodge the complaint in writing in the police records per Section 154 of the Cr.P.C. In a case of a cognizable offence, any officer of a police station may, without the order of a Magistrate, investigate the matter. According to Mr. Arafat Amin, Advocate to the Supreme Court of Bangladesh, as well as several FIDH interlocutors, when a FIR is lodged in the police station, describing a cognizable offence, the common practice is that the police immediately seek out and arrest the persons named in the FIR, regardless of the suspects’ involvement in the crime. Following the arrest, the suspect must be produced in front of a magistrate within 24 hours, per section 61 of the Cr.P.C.” (International Federation for Human Rights (10 October 2010)⁹)

40. The FIR dated [in] February 2009 refers to an occurrence which took place in [location name] under [Suburb 1] and in which the applicant is named as one of [a number of] individuals charged/ accused of [a crime] resulting in the death of [a number of] persons. He was said to have absconded. A later warrant of arrest is said to have been issued against all [the] accused.
41. The FIR dated [in] April 2009 refers to an occurrence at a [location] in [Suburb 1] and names the applicant as 1 of [a number] persons accused of an offence under [a certain] Act. In this FIR the applicant is referred to by name and as aged [Age 1]. He also is named as the leader of the group and was said to have absconded.
42. At the Tribunal hearing the applicant was asked to explain how these FIRs originated. The applicant claimed that [in] February 2009 the opposition people and police took action against him during a hartal (strike protest). During this hartal a number of people were killed and the opposition activists filed false cases against him. The Tribunal understands from the

⁹ International Federation for Human Rights (10 October 2010) *Bangladesh: Criminal justice through the prism of capital punishment and the fight against terrorism* <http://www.unhcr.org/refworld/pdfid/4cb2ac7b2.pdf>

general context of his evidence that he was claiming that Awami League activists in his local area were responsible for lodging false cases against him.

43. When asked to provide more detail he stated he was indirectly involved in a hartal as he had to go and support his BNP colleagues because the opposition activists had stopped them speaking out. He claimed he had not been involved in any violence during the hartal and he had not been arrested but later false charges were laid against him by the opposition.
44. The applicant told the Tribunal that after the hartal he decided to hide himself at his [sibling]'s house in Dhaka and after that could not take part in usual political activities. He claimed he hid at his [sibling]'s home until he departed for Australia in August 2009 on a student visa.
45. The Tribunal asked the applicant if there was another incident in which he was involved in April 2009. He stated he did not know about this and appeared to be somewhat puzzled by the question. It was put to him that he had provided copies of a First Information Report (FIR) which referred to an incident in April 2009. He stated that this was the police case lodged against him because of his involvement in the hartal.
46. The Tribunal put it to him that the copies of the FIR's were all produced on exactly the same type of paper with the same headings. He stated his brother sent him these documents and he could not remember them. The Tribunal put it to him that the documents were in Bengali with an English translation and he stated that the documents were in a form which was "the rule in Bangladesh". The Tribunal put it to him that the documents looked as if they had been produced at the same time. He stated that his brother had obtained the documents from the court and this is how they were produced in Bangladesh.
47. The Tribunal put it to him that one of the FIR's documents provided to the Department in 2014 referred to the applicant as a man of [Age 1] years of age, when he would have been [Age 2] years at that time of the filing of the false charges in 2009. He stated that this was probably a printing mistake.
48. The applicant stated that he found out about the false cases lodged against him because the police sent a letter to his house and his brother informed him. His brother obtained the FIRs by going to the court and asking the court to give him a copies in 2014. He then sent the documents to the applicant in Australia.
49. The Tribunal put it to him that at the delegate's interview he had stated that he thought the first FIR was lodged in March 2009 and the second in July/ August 2009. However the delegate noted that the first FIR pre dated the violent incident which the applicant claimed had occurred in March 2009. When asked to comment the applicant stated he could not remember the date of the FIR's when he discussed them with the delegate.
50. The Tribunal put it to him that country information indicated there was a high level of document fraud in Bangladesh and that official documents could easily be obtained by the payment of money. The problems identified in the FIRs might suggest that they are not genuine documents. He stated that the system in Bangladesh is slower and documents are provided by unskilled persons who make errors.
51. The Tribunal also asked the applicant to explain why he had not been arrested by police if he had been charged with serious offences as set out in the FIR's in February and April 2009. He stated they did send a letter to his home and he did not know why they had not arrested him.

52. The Tribunal has considered the evidence of the applicant at hearing along with other evidence provided and does not accept that Awami League activists or any other persons lodged false cases against the applicant in February and April 2009.
53. The April 2009 FIR referred to the ages of the accused persons and listed the applicant as [Age 1]. The applicant would have been [Age 2] years of age at the date of the claimed incident but would have been [Age 1] years at the time of the protection visa application in 2014. The applicant was not able to satisfactorily explain this anomaly. If the incorrect age had been a printing or transcription error the Tribunal would not expect the error to correspond with the applicant's correct age at the date of application (2014). His explanation appears to be far-fetched.
54. The Tribunal discussed the anomalies in the information given at the Departmental interview but does not accept the explanation given by the applicant that he could not remember everything. The applicant provided two sets of documents which related to specific incidents which were said to have taken place in Bangladesh and the descriptions of those incidents were dramatic and serious. It is not plausible that he would attend an interview having made these claims and provided these documents and would not have a clearer idea of when the alleged incidents took place and when the FIRs were lodged. Whilst he may not have recalled the exact dates the Tribunal considers he would have a better recall of the general time frames of these events.
55. Further he could not satisfactorily explain why he had not been arrested before his departure; he claimed he was staying with his [sibling] in Dhaka but also claimed that it was easy to locate individuals in particular areas. He had also given earlier evidence that he had obtained police clearance for his student visa. This evidence supports the Tribunal's finding that no warrant of arrest had been issued.
56. When these anomalies are considered in light of the country information on the prevalence and ease of obtaining false documents from Bangladesh¹⁰, the Tribunal does not consider that the documents provided to the Department support the applicant's claim that he has had two false cases lodged against him and that a warrant of arrest has been issued.
57. The applicant also gave the Department a letter said to be from his lawyer in Dhaka, that is, [Mr B] dated [in] February 2014. The letter's contents are as follows;

"Dear [applicant's name],

My best wishes to you and hereby inform you sorrowly that criminal case number No. [number] and case No. [number] [description] Lodged in your local police station [Suburb 1] against you. The learned Court issued warrant of arrest against you. Police man searching you to arrest everywhere. Your case is very serious nature. If you will arrest by the RAB they will must kill you by crossfire and if you arrest by police. They must put you in to gaol for a long Time. Your anti-party men can harass you. They may kill you in this situation, your life in Bangladesh is not safe and secure.

So I advise you not to come back to Bangladesh until finish your case in the court, you must stay in abroad far the safety and security of your life. Thanking you.

¹⁰ Immigration and Refugee Board of Canada, Bangladesh: Reports of fraudulent documents, 20 September 2010, BGD103532.E, available at: <http://www.refworld.org/docid/4dd113f92.html> ; Immigration and Refugee Board of Canada, Bangladesh; Reports of fraudulent documents (2011-2015) 20 August 2015 BGD105263.E; The Bangladesh Chronicle, US Embassy goes tough against visa fraud; 5 held, 6 April 2014, <http://www.bangladeshchronicle.net/index.php/2014/04/us-embassy-goes-tough-against-visa-fraud-5-held/>

[Mr B]

58. This document is of poor English quality. This suggests that the author did not have a good level of English competency. This may be understandable if the applicant's lawyer did not have a full command of English; however, it is not clear why a lawyer would send a document of this nature to a fellow Bangladeshi using such poor English if he was not competent in the language. If he did not have a good knowledge of English, the Tribunal would expect that a lawyer would prepare a Bengali document and send it to the applicant if there was some purpose to the document. It could then be competently translated into English if the applicant wished to use it to support his application.
59. Further it is not clear why the applicant's lawyer wrote such a letter some 5 years after the false cases were allegedly lodged against the applicant in 2009. The terms of the letter are also problematic; it is questionable as to whether a lawyer would advise the applicant that the RAB¹¹ will kill him in crossfire or why he advises the applicant not to return and engage in any court proceedings.
60. The Tribunal notes that the application for protection was lodged in March 2014 and the letter was sent in February 2014, that the letter's contents were essentially self-serving and it is not written in the style of legal advice or a request for instructions from the applicant.
61. As discussed at hearing with the applicant, the country information indicates there is a high level of document fraud in Bangladesh¹² and whilst the Tribunal accepts that not all documents will necessarily be false, given the timing and nature of the document the Tribunal does not give it any weight in supporting the applicant's claims that he was charged with two false cases in 2009 in Bangladesh.
62. The Tribunal does not accept that the applicant was falsely implicated in two false cases in February and April 2009 and does not accept a warrant of arrest has issued.

Was the applicant's brother threatened when he returned to Bangladesh in 2013/ 2014?

63. The applicant claimed his brother had been threatened on his return to Dhaka in 2014. He claimed that the threat resulted from the applicant's previous political activities and his BNP profile.
64. The applicant gave the Department a copy of a complaint said to be addressed to the officer in charge of the [Suburb 1] Police Station and made by the applicant's brother. It stated that the applicant's brother had been threatened by unknown persons on a motorcycle when he returned to Bangladesh for a visit in 2013/2014. These persons had driven past him whilst he was talking to [another sibling] and they told him he would be killed if he did not leave Bangladesh and they also threatened his brother, the applicant.
65. The Tribunal put it to the applicant that his brother had left Bangladesh in 2003 and it was implausible that after so many years away he would be threatened as soon as he made a

¹¹ Rapid Action Battalion of the Bangladeshi Police

"The RAB comprises approximately 9,000 personnel drawn from the police, border and coast guards, and the military. Organised into 14 battalions, the RAB is responsible for investigating and detecting serious crimes, including terrorism." DFAT Country Report on Bangladesh July 2016 para 5.2

¹² Immigration and Refugee Board of Canada, Bangladesh: Reports of fraudulent documents, 20 September 2010, BGD103532.E, available at: <http://www.refworld.org/docid/4dd113f92.html> ; Immigration and Refugee Board of Canada, Bangladesh: Reports of fraudulent documents (2011-2015) 20 August 2015 BGD105263.E; The Bangladesh Chronicle, US Embassy goes tough against visa fraud; 5 held, 6 April 2014, <http://www.bangladeshchronicle.net/index.php/2014/04/us-embassy-goes-tough-against-visa-fraud-5-held/>

return visit to Bangladesh. Whilst he agreed that Dhaka had a population of over 15 million people he claimed that in a person's own neighbourhood everyone knew each other and would be aware of a person's presence in the area.

66. As discussed, the applicant's brother left Bangladesh in 2003 and the Tribunal finds it highly implausible that after an absence of at least 12 years that during a visit with relatives living in Dhaka, a city of about 15 million people, that unknown persons would be aware that the applicant's brother was visiting and would use him to threaten the applicant for reasons of the applicant's former affiliation with the BNP. As discussed with the applicant, he had been absent from Bangladesh since 2009 and as set out earlier the Tribunal does not consider he had any active involvement in BNP politics after he left college.
67. The Tribunal does not accept that the applicant's brother or the applicants were threatened with harm for reasons of political opinion when his brother returned to Bangladesh in 2013/2014.

Why did the applicant delay making an application for protection?

68. The applicant claims he left his home in Bangladesh in February 2009 and was in hiding at his [sibling]'s home in Dhaka until he left Bangladesh on a student visa in August 2009. He gave evidence that when he arrived in Australia he moved to [city] and lived with his [sibling]. He studied in [city] for a number of years and applied for a skilled visa but was not granted the visa because he did not meet the English language requirements. He sought migration advice and a review of that decision in the Migration Review Tribunal but was ultimately not successful in that review.
69. The Tribunal asked the applicant to explain why he applied for protection around the time he realised that he would not be successful in obtaining a permanent skilled visa. He claimed that he intended to obtain a permanent visa through the skilled visa pathway and did not want to apply for protection because he had been through a difficult experience in Bangladesh; he was embarrassed and not really sure about the process. In considering this explanation the Tribunal has taken account of evidence that the applicant has completed his tertiary courses of studies in [city], has close relatives living in [that city], is well educated, is employed and is reasonably articulate in English. He has lived and studied in Australia since 2009, he gave evidence he sought advice in relation to his skilled visa and the Tribunal considers he would have been aware that he could have sought migration advice in relation to his claimed fear of returning to Bangladesh.
70. He also claimed that he was aware of an increase in politically motivated violence in 2014 and had heard that a large number of BNP members had been killed in political violence during the election period. This persuaded him to apply for protection in 2014 as he feared returning to Bangladesh in these circumstances.
71. However, the Tribunal notes that the applicant claimed prior to leaving Bangladesh he was in hiding for about six months until he left Bangladesh on a student visa and that had been falsely accused of serious criminal offences and feared could be killed or imprisoned if he had been located in Bangladesh in 2009 or any time thereafter whilst the Awami League held government. In these circumstances it is not plausible that once he was in Australia the applicant would not have taken some steps to protect himself at an earlier stage and the Tribunal rejects his explanation for the delay.
72. The Tribunal is mindful that delay on its own is not necessarily incompatible with a person having a well-founded fear of serious harm. However, in this case the Tribunal does not accept the applicant's explanation for the delay, that is, that he wanted to obtain a skilled

visa, that he was embarrassed and not sure of the process or that he was persuaded by events in 2014 to seek protection.

Does the applicant meet the refugee criterion?

73. The applicant claims that if he returns to Bangladesh he fears serious harm for reasons of his political opinion. He claims he was a member of the student wing of the BNP at college and after he left college. He claims that he was an office holder of a branch and actively involved in political activities such as campaigning, meetings, attending protests and encouraging other members of the community to support the BNP.
74. He claims that in 2009 he was falsely implicated and charged with two serious offences [during] protest and strike activity which resulted in the death of [number] individuals. He claims that he faces the prospect of being arrested and imprisoned or killed by the RAB if he returns to Bangladesh for reasons of his political activities with the BNP.
75. As set out above the Tribunal accepts that the applicant lived in Dhaka before he left Bangladesh. He gave oral evidence to this effect and his application form indicates that he attended college and then lived in Dhaka from 1993 to 2009¹³ It accepts he was a member of the youth wing of the BNP whilst he was attending college. It also accepts that he broadly supports the BNP and is opposed to the Awami League government.
76. However, the Tribunal does not accept that after he left college and obtained part time work in 2003 that he had an active involvement in the BNP or that he was the [officeholder] of the Bangladesh Jatiotabardi (Jatiyabardi) Chatra Dal (Youth wing of the BNP). It does not accept that he attended party meetings, campaigned for the local candidate of his constituency, or that he participated in strike or hartals or engaged in any active political campaigns.
77. As set out above the Tribunal does not accept that he was falsely implicated and charged with two serious criminal offences in 2009 and does not accept that a warrant for his arrest has been issued or that he will be arrested or killed for this reason if he returned to Bangladesh now or in the foreseeable future.
78. The Tribunal has considered his situation as a supporter of the BNP if he returns to Bangladesh now or in the foreseeable future. The current country information indicates that Bangladesh has experienced high levels of politically motivated violence in recent years. The most recent DFAT report¹⁴ notes that authorities have recently restricted BNP meetings and protests in rural areas, have responded violently to Jamaat Islami led protests and have arrested some BNP candidates prior to municipal and mayoral elections in 2015 and pressured others to withdraw from elections. Business owners in rural areas have also been subject to extortion demands by Awami League activists and the Awami League youth wings have restricted BNP activities on university campuses.
79. DFAT assesses that BNP leaders are subject to high levels of official discrimination during periods of heightened political tension and BNP supporters or members may be subjected to a low level of violence associated with extortion in rural areas.
80. The applicant is not a BNP leader and lived and worked in Dhaka before his departure from Bangladesh. The Tribunal considers he does not have a profile which may possibly bring him to the adverse attention of Awami League activists or the current government authorities if he should return to Bangladesh now or in the foreseeable future.

¹³ DIBD File CLF [number] Application for protection visa; pp 107, 108

¹⁴ DFAT Country Report on Bangladesh July 2016 paras 3.54 to 3.57.

81. The country information indicates that most inter party violence between the BNP and Awami League occurs during periods of heightened political unrest including elections. DFAT assesses that Awami League, BNP and Jamaat Islami members are subjected to a low level of inter party violence during demonstrations, protests and hartals but the number of casualties is low in proportion to the size of these parties¹⁵. As the Tribunal does not accept that the applicant was a member of the BNP or has been active in BNP protests prior to his departure it does not consider that he will return to Bangladesh and become involved in political protests or strikes. It does not accept he will face harm for this reason if he returns to Bangladesh now or in the foreseeable future.
82. For the reasons set out above, the Tribunal does not accept that if the applicant returns to Bangladesh now or in the foreseeable future that there is a real chance he will face serious harm for reasons of his previous membership of the Chatra Dal as a student or for his support for the BNP more generally. The Tribunal does not accept that he has a well-founded fear of persecution for reasons of political opinion or for any other Convention related reason.

Does the applicant meet the complementary protection criterion?

83. The Tribunal has considered whether on the evidence before it, that there would be a real risk that the applicant will suffer significant harm as a necessary and foreseeable consequence of being removed from Australia to Bangladesh.
84. There is some evidence that high level leaders of the BNP may face a risk of imprisonment from government authorities and harassment from Awami League activists supported by the current government. However as set out above, the Tribunal finds that whilst the applicant may have been a former member of the student wing of the BNP prior to 2003 it does not accept that he was a member or office bearer of the BNP or its student wing before he left Bangladesh in 2009 and thus does not face a real risk of imprisonment or harassment if he returns.
85. There is no credible country information indicating that as a supporter of the BNP living in Dhaka the applicant would face a risk of being arbitrarily deprived of his life, that the death penalty would be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment; or to degrading treatment or punishment.
86. Accordingly the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there is a real risk that he or she will suffer significant harm: s.36(2)(aa).

Overall Conclusion

87. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
88. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

¹⁵ DFAT Country Report on Bangladesh July 2016 paras.

89. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

90. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Louise Nicholls
Senior Member

1 August 2016

ATTACHMENT A

RELEVANT LAW

91. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.

Refugee criterion

92. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
93. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
- owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
94. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
95. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
96. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
97. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
98. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not

satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

99. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
100. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
101. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

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

Section 499 Ministerial Direction

105. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information

assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.