

060908139 [2007] RRTA 77 (9 May 2007)

DECISION RECORD

RRT CASE NUMBER: 060908139

DIMA REFERENCE(S): CLF2004/39786

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Ms Christine Long

DATE DECISION SIGNED: 9 May 2007

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies para 36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs to refuse to grant the applicant a Protection (Class XA) visa under section 65 of the *Migration Act 1958* (the Act).

The applicant, who is a citizen of Bangladesh arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant sought review of the delegate's decision.

RELEVANT LAW

Under subsection 65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Paragraph 36(2)(a) of the Act provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Convention). Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to 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.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under subsection 91R(1) of the Act persecution must involve “serious harm” to the applicant (para.91R(1)(b)), and systematic and discriminatory conduct (para.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: subsection 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.

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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

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: para.91R(1)(a) of the Act.

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 persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

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.

Whether an applicant is a person to 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.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicant, including the delegate's decision record. The Tribunal also has had regard to the material referred to in the delegate's decision. The Tribunal also has before it the applicant's application to this Tribunal for review and the materials and documents submitted by the applicant in support of her application.

In the application for protection visa the applicant states that she is Bengali and Christian. The applicant states that before she came to Australia she worked in the medical field. She indicates that she travelled to Australia using a passport in her name issued in Dhaka. Her visa was also issued in Dhaka. The applicant indicates that she travelled to a third country in the late 1990's and also travelled to a fourth country in the early 2000's. The applicant indicates that in her country she lived at the same address for almost 20 years. She said that she lived in Dhaka for a short time and then at a different address in Dhaka. She states that she was educated in Dhaka and obtained university qualifications there. She indicates that she worked in Dhaka for over 15 years. The applicant indicates that her father and mother and her siblings reside in Bangladesh.

In a statement in support of her application for protection the applicant states that in Bangladesh a relative was a pastor for many years in the local church. They were well known in the region as a devoted Christian family. She states that this "made eyesore to the fanatic Muslims years after years in the region." The applicant states that she left her country because she feared harm because of her devotion to her religion and "my outstanding performances in converting Muslims destitute/pauper to Christianity" and because of her involvement with the Awami League. She said that her family had a strong adherence to the Awami League and another relative was a leader of the League for many years in the region. She said that she was inspired during her years of education to uphold the spirit of Christianity and regularly attended church. She joined the staff at her place of employment which she names in the late 1980's. She said that she became more active in her religious duties when she was working at her profession and did further studies. She completed a number of degrees. During her studies she was involved with the Chatra League the student wing of the Awami League; and she was elected to a number of executive positions during her periods of study. She worked with the poor and in the slums and preached the gospel there. A number of the poor denounced Islam "and pronounced Christianity". She became one of the leading activists of a church in Dhaka. She supported the Awami candidate during the parliamentary election and the Awami League won a majority of seats and formed the government. She was elected to the executive of her local branch of the Awami League. She also became a member of a number of committees. After five years "the Awami League transferred its power to a caretaker government and since that day a black chapter was started for the minorities particularly Hindu and Christian and Buddhist people". The applicant said that during the election held in October 2001 she campaigned for the Awami League candidate and on a number of occasions was insulted by Jamat-e and BNP candidates. The Awami League candidate was defeated in the election. After the election she faced continuous persecution from Jamat-e and BNP activists. They knew about her Christian activities and that destitute people had denounced Islam under her leadership. She was attacked on a number of occasions and warned to leave the country. She was attacked and molested by a youth who threatened to shoot her. She went to the police to make a complaint but did not do so because of her Christian religion. She was attacked again by BNP and Jamt-e cadres who

planned to rape her except that a police van came. She decided to leave the country and join Hillsong. If she returns to her country she will be persecuted.

The applicant sent further materials to the Department in support of her claims. There is a letter described as from a Church in Bangladesh supporting her claims that in her country she was an active member of the Church and converted Muslims to Christianity and, for this reason, fundamental Muslim groups attacked her. There is also country information in relation to the killing of people at an Awami League rally.

In her application for review the applicant makes no new claims. She states that she is a member of a minority community in Bangladesh which is subject to oppression by the mainstream Muslim community. She said that she faced serious consequences because she had helped people convert from Islam to Christianity. The applicant sent the Tribunal a copy of a letter described as from a member of the Bangladesh Parliament certifying that the applicant worked where she claims to have worked and stating that she was a devoted Christian and belonged to the Awami League and made a significant contribution to the Party and was elected one of the executive members. The letter states that she was oppressed by the BNP and fanatic Islami cadres and was compelled to leave the country to save her life. The letter states that she will be persecuted in her country if she returns there. There is also a letter in very similar terms described as from the General Secretary of the National Christian Fellowship of Bangladesh. A copy of a further letter described as from a member of Parliament (Bangladesh) is in similar terms also. There is also a letter described as from the President of the Bangladesh Christian Fellowship of Australia certifying that the writer has known the applicant since she arrived in Australia and that she is a member of the Association and has been actively involved with the fellowship. It is stated that the writer "understands" that the applicant left her country to avoid harassment and torture from BNP-Jamat led government parties because of her active role in the Awami League.

The applicant also sent to the Tribunal a copy of various personal certificates and qualifications and extensive country information and press reports in support of her case including articles/reports in relation to the situation of religious minorities in Bangladesh and growing extremism and radicalism in Bangladesh.

The applicant's adviser sent a submission to the Tribunal setting out the applicant's background and qualifications and essentially repeating the applicant's claims. It is submitted that the applicant was a member of a number of groups and tried to uphold the name of Lord Jesus Christ. It is submitted that she became subject to oppression by fanatic Muslim people. It is further submitted that there is systematic persecution against minorities in Bangladesh and that the last parliamentary election empowered the right wing political party with the collaboration of fanatic Muslim parties. It is also submitted that the applicant is subject to oppression because she was a leading member of the Awami League. The submission sets out what is described as the background of the misdeeds by the caretaker government in the last parliamentary election. It is submitted that the applicant participated in the election campaign and was identified as a leader; after the end of the Awami League regime in mid 2001 the BNP party and its allies launched political violence and persecution against Awami League leaders and activists. It is submitted that there have been many important political killings of Awami League leaders and activists and details are provided. It is submitted that the applicant was a leading activist of minority Christians and a leading Awami League activist and left the country because she had a real fear of persecution from political opponents in the BNP which is in power. It is submitted that the present regime does not protect political activists

The applicant sent further country information to the Tribunal about growing extremism and radicalism in Bangladesh and reports about the persecution of minorities there.

The applicant appeared before the Tribunal to give evidence and present arguments in support of her claims. At the hearing she produced documents in support of her claims including a certificate described as from the General Secretary of the National Christian Fellowship of Bangladesh stating that she was a devoted Christian who worked in the slums converting Muslims to Christianity and that she was oppressed by the BNP; a document described as from a Church in Bangladesh stating that she was an active member of the Church and worked in the slums as a volunteer and that fundamental Muslims attacked her because of her work; a document stating that she is a member of the Bangladesh Christian Fellowship of Australia and that the writer met her soon after she arrived in Australia. It states that she is actively associated with the fellowship and its activities and that the writer understands that she left her country to avoid torture and harassment from the BNP because of her role with the Awami Party; a letter described as from a member of the Bangladesh parliament stating that she is a Christian and member of the Awami League in Bangladesh and that she will be oppressed if she returns to Bangladesh. The applicant also produced her passport to the Tribunal, copies of her qualifications and further country information.

The applicant sent further information to the Tribunal in support of her claims. It is submitted that the applicant will face harm in her country as a member of a marginalised Christian community and as a leading activist of the Awami League. It is submitted that the situation in Bangladesh remains the same and the country is run in favour of the BNP. Further country information is enclosed to support the applicant's claims.

The applicant again appeared before the present Tribunal to give evidence and present arguments in support of her claim. She produced her passport to the Tribunal; it is noted as renewed in Dhaka. It contains visas for a third and fourth country, as well as the visas for Australia.

The applicant was represented in relation to the review by her registered migration agent.

In answer to questions from the Tribunal the applicant said that she obtained her passport as she had a chance to go to conference in a third country; she was there for 7 days. She said she was in a fourth country for two months as she has relatives there; she returned to Bangladesh from the fourth country.

The applicant said that just before she came to Australia she was working in the medical field and had worked at the particular workplace for her whole career. She did her training in the 1980's and worked there until she came to Australia; she had study leave for about two years. She was still employed by there when she left her country; she sent her resignation letter after she had been in Australia for about a week. She said that when she came to Australia she decided not to return and to resign her job. She then said that had decided not to return to Bangladesh before coming to Australia but she did not resign her job because she had to leave. She said that she always had it in her mind to leave Bangladesh and not return; she thought that if she could go abroad she would not return. She returned from the third and fourth country as at that time she had no problems in Bangladesh. She chose Australia instead of going instead of going back to the fourth country as she could get a visa for Australia to go to a conference which she attended. Within one week of arriving in Australia she decided she would not return there.

The applicant said that her parents and siblings live in Bangladesh; the brothers live in Dhaka and her sister lives in the village with her parents. Her father is a farmer. Just before she came to Australia she lived in Dhaka; she moved there as it was close to her employment; before that she lived where she was employed and only stopped living at there when she went on study leave. The village where her family lives is about 5 hours away by bus from where she worked.

The applicant said that the main reason that she left her country to come to Australia was that she was scared because of the situations she had to face in Bangladesh; people wanted to kill her. The applicant said that the main reason people wanted to kill her was because she is a Christian and she had told a poor Muslim woman where she worked about the good side of Christianity and had demotivated her. She said she has been a Christian all her life. She said that she first had trouble because of her religion when she was returning from Church. Seven or eight people gathered around her and a gun was put to her head; she was abused and threatened and told that if she continues to spread Christianity and engage in politics she would be killed. When she shouted out these people left her alone because other people gathered around. The applicant said that no one tried to apprehend the people who threatened her with the gun as they left her before this could be done. She went to the police about the incident and reported it herself but no action was taken; the police told her they would investigate but they took no action.

The Tribunal asked the applicant how her application for protection visa was prepared. She said that she told her story to her adviser, he wrote it down and read it back to her and she signed it; she said that that was how the statement she made was prepared. The Tribunal referred her to paragraph 14 of the statement which states that she did not make a complaint to police after the incident. The applicant said that there were two incidents and she could not remember when she made the complaint.

The applicant said that she first became involved with politics in the early 1990's. She began to spread Christianity a long time ago especially from her workplace. The Tribunal asked her why then she did not suffer harm because of the incident. The applicant said that she did not know.

The applicant said that after the incident she continued working at her place of employment and continued to live at her address. The next time she had trouble was on Easter Sunday. She said that when she was returning from church 7 or 8 boys grabbed her and told her they would kill her if she continued in politics and continued to spread Christianity. She escaped because a police van came past and she shouted out. The applicant said that she cannot remember whether she reported that incident; she said that she went to the police to report one incident but no action was taken. Again after that incident she continued to live at her usual address and continued working at her place of employment. The applicant said that things were not so serious prior the first incident. After she returned from the fourth country nothing else serious happened but there were taunts against her. She said that she continued her Christian activities until she came to Australia.

The applicant said that she commenced her political activities when she was a student and she last held a position with the party some years ago. The Tribunal asked her whether she had any involvement with politics in her country after this time. She said that she did not have a position but she did volunteer work with the poor. She said that she did that volunteer work and she always had contact with the party until she left her country. She stopped doing the volunteer work as she was busy with work and with the church. She had contact with her

party after she finished doing volunteer work but did not do work for her party after that time because of her professional work.

The Tribunal asked the applicant whether the main reason that she feared to return to her country was because of her religion. The applicant said that Christians are in the minority in Bangladesh and she worked for Christianity and was successful in getting women into the church. She said that also her politics come into it. The Tribunal asked the applicant why she believes that nothing serious happened to her before the first incident. The applicant said there was a change of government in October 2001 and that caused more problems and suffering for the minority groups. She said that the present situation is bad and a curfew has been ordered.

The Tribunal asked the applicant about her religious activities in Australia. She said that she goes to Church, the Anglican church, and has a peaceful life in Australia. The Tribunal asked the applicant about the letter she submitted in support of her claims from the National Christian Fellowship of Bangladesh. She said that the writer of this letter is a Christian pastor she knew him and met him at functions when she was a member of the Bangladesh Christian Association. The letter came to be written for her because he knows her personally and she asked him for the letter for the Tribunal. She gave him the information in the letter about being oppressed. The Tribunal asked her about the letter from the Bangladesh Christian Fellowship of Australia and asked her if the writer of the letter got the information in the letter about her suffering harassment and torture in Bangladesh from her. She said she has joined this group since she came to Australia and the writer wrote the letter for her. She said that she also got the letter from a member of the Bangladesh Parliament to give to the Tribunal. She said that she knew this member of Parliament as she and he are from the same village and he knew about her as they met at a political meeting. He knew she was a Christian and a member of the Awami League. She last saw the writer of this letter before she left Bangladesh. The Tribunal asked the applicant whether she told the writer of the letter that she was oppressed and had to leave her country to save her life as the letter states. She said that she told him about these things. She said that the writer of the letter is a Muslim but he wrote the letter for her as they were from the same political party and the same village. The Tribunal asked the applicant about the letter from another member of the Bangladesh Parliament, which in part is in the same terms as the letter from another member of the Bangladesh Parliament. The applicant said that she knows that member as he is a Christian and used to attend church and she has met him at conferences. The applicant agreed that she told the writer of the letter what had happened to her and he put that in a letter for her. The Tribunal asked her whether he had personal knowledge of what happened to her. The applicant said that he knew her personally but he did not know about the incidents and she had told him about them. The Tribunal asked the applicant who drafted these letters as they are all in similar terms. The applicant said that she told these people her story and they sent her the letters. The Tribunal asked the applicant about the letter from the Church. She said that she told the writer about her oppression by Muslim groups and they wrote the letter for her; this was her church in Dhaka.

The Tribunal asked the applicant whether she knew that she could claim protection in Australia when she came here. She said that she did and that she has a lot of friends here in Australia. She said that before she left Bangladesh she knew that a lot of people applied for this type of visa and got it.

The Tribunal asked the applicant what she thinks will happen to her if she returns to her country. She said that it will be dangerous for her and even more dangerous now as the

caretaker government is supported by the BNP. The Tribunal asked the applicant whether the caretaker government supported by the BNP was in power before she left and she agreed; she said that the caretaker government had been there from approximately September 2006 but when she was in Bangladesh there a different Prime Minister. The applicant said that since the 2001 October elections the BNP was in power and the situation had become worse from that time. The Tribunal asked her how then she had managed to live and work successfully in Bangladesh well after the election if she was persecuted as she claims; it noted that the last serious incident that she described was well after this time. The applicant said that she was scared by the incident when they put a gun to her head. The applicant said that she does not want to return to her country because of the current situation. The Tribunal put it to the applicant that members of her family who are Christians are living and working in Bangladesh according to her evidence to the Tribunal. The applicant said that they are living in the village and they are persecuted; they are scared because they know minorities are tortured and that this can happen in any part of the country.

The applicant's adviser submitted that the applicant's response about complaining to the police after the incident was wrongly interpreted. The Tribunal told the adviser that it would send a section 424A letter to the applicant about this issue. The applicant's adviser addressed the Tribunal about the increased difficulties and abuses that minorities in Bangladesh faced after the October 2001 elections. He said that human rights are not preserved in Bangladesh. He said that there is now a curfew and the media is restricted. He said that it will be more dangerous for minority groups after the elections as there will be a push for Hindu-free and Christian-free Bangladesh. The advisor submitted that the applicant is a Christian, she looked after the poor and was a leading activist. The adviser submitted that the applicant was truthful to the Tribunal.

The Tribunal sent the applicant a letter pursuant to section 424A of the Act which stated that the Tribunal had information that would, subject to any comments she made, be the reason or part of the reason, for deciding that the applicant is not entitled to a protection visa. The particulars of the information were set out in the letter as follows-

"At the hearing of this matter on [date deleted] the applicant told the Tribunal that she reported the incident which occurred on [date deleted] to the police herself and they said that they would investigate the matter but took no action. In her statement made [date deleted] submitted to the Department in support of her application for protection visa the applicant states at paragraph 14 of that statement that after the incident [date deleted] she went to the police station to make a complaint but failed to make a complaint because of her Christian religion". The letter stated that this information is relevant because the statements made by the applicant about the incident are inconsistent and may cause the Tribunal to conclude that the applicant is not telling the Tribunal the truth about her claims. The applicant was invited to comment in writing about the information. The applicant's adviser wrote to the Tribunal asking for a further two weeks to reply to the section 424A letter but before a response to that request was sent by the Tribunal he replied to the section 424A letter by letter. In that reply letter it was stated that there is no inconsistency between what is in the statement and what the applicant said in her oral evidence; she did not state in her application for protection that she failed to make a complaint because of her Christian religion but was saying that, notwithstanding that, the police failed to record a complaint. The letter states, "she continued to practice and made a contribution to the Christian religion even though the police lack of action concerned her". The Tribunal extended the period for compliance with the section 424A letter and the applicant advised that it relied on its prior response, that is, the response

sent previously in response to the section 424A letter from the Tribunal. The Tribunal notes that this period for the extension of time did not comply with the requirements of the Act but the Tribunal takes that view that the applicant complied with the section 424A lettersent by the Tribunal.

COUNTRY INFORMATION

In addition to country information provided by the applicant the Tribunal consulted the following information.

An October 2006 report by the International Crisis Group (published not long before the military takeover) provides a more detailed analysis of politics in Bangladesh, and includes discussion of the two main parties:

The two main political parties are often described in opposing stereotypes: the BNP is right of centre, middle class, urban, anti-Indian, pro-Pakistani, of an Islamic bent and generally favoured by the business community; the Awami League is left of centre, secular, pro-Indian, rural and favoured by farmers. While these descriptions are generally true, they disguise some realities. Both parties are highly personalised and centralised, revolving around the founding families and brooking no dissent to their views and interests. Neither is particularly ideological nowadays, and neither views policy development and implementation as central to their missions. Both are about power, often in its rawest forms. Both are widely believed to maintain links to criminals, who are used as enforcers, fundraisers and election mobilisers. The parties have also spread their networks across a wide swathe of institutions: civil society is increasingly divided, as is the media and civil service. There is very little non-partisan space. While the BNP is said to be the business party, most powerful and wealthy families maintain a foothold in both camps.

1. The BNP

Established by General Zia in 1978, the BNP has moved away from its origins in the military but is still seen as the more overtly nationalistic party, mostly because it takes a harder line against India. General Zia moved the country away from its secular nationalistic origins, establishing a more conservative state whose identity merged Bengali cultural aspects and Islam. The BNP favours closer relations with Muslim majority states and tends to view the AL as willing to compromise this Bangladeshi identity through ties with India and secularism. Military governments under Zia and Ershad had close ties to the Pakistani military.

2. The Awami League

The AL was founded by Shiekh Mujibur Rehman to struggle for Bengali rights in Pakistan before the 1971 split. Its manifesto has long been based on four principles: nationalism, secularism, socialism and democracy. Its brief time in power before it was overthrown by the military and Sheikh Mujib assassinated has left it with distrust for the military and the BNP. Like the BNP, it has opted for patron-client relationships rather than internal democracy.¹

The same report discusses the prevailing political culture until recently:

Political culture has been corroded by the personal enmity between the BNP and AL leaders and the corruption, criminality and organised violence that have become an integral part of politics.

¹ International Crisis Group 2006, *Bangladesh Today*, Asia Report No.121, 23 October, pp.3-4

This has taken place in a wider context of consistent human rights violations and exclusion from power of marginalised groups.

A 2006 research response by the Canadian Immigration and Refugee Board provides information on the Awami League. It states that the party's student wing is the Bangladesh Chhatra League, that Liakat Shikdar is the president of this group and that Nazrul Islam Babu is its general secretary.²

Political events of 2007

Events in early 2007 resulted in the peaceful installation of a military-backed caretaker government, which remains in control of the country. Many leaders of both the Awami League and the BNP have been arrested and charged with corruption, or have agreed to leave the country. The political situation in Bangladesh has changed considerably: emergency rule has been declared, all political activities are currently banned, and new elections are not expected to be held until late 2008.

A February 2007 report from *Jane's Intelligence Review* describes the events of December 2006 and January 2007:

Under Bangladesh's constitution, a neutral caretaker government usually led by the chief justice governs the country for three months before each general election. However, in October 2006, three months before elections were due to be held, the then-ruling BNP and the opposition AL failed to agree on the choice of an impartial chief advisor to the interim administration. As a result of the political impasse, President Iajuddin Ahmed, a BNP appointee, stepped in to run the country ahead of the national polls.

By late December, the AL had become increasingly critical of Iajuddin Ahmed's regime, in particular accusing him of bias towards the BNP. Moreover, the AL and the 16 smaller parties allied with it announced on 3 January that they would boycott the upcoming elections in protest of the government's failure to produce an accurate and updated voter list. The AL and most Bangladeshi newspapers suggested that millions of 'fake' voters had been included on the electoral roll.

As a result, violent clashes erupted between AL and BNP supporters in early January, leaving more than 40 people dead and hundreds more injured. In addition, the AL launched a wave of national strikes and transport blockades on 8 January in an attempt to weaken Iajuddin Ahmed's administration. Against this backdrop, donor agencies and diplomats continued to mount pressure on the caretaker government and the political parties to resolve the ongoing crisis and warned Iajuddin Ahmed that elections would not be acceptable without the participation of all political parties.

In late December 2006, Bangladeshi public opinion was also sceptical about the legitimacy of upcoming elections, given that a BNP-appointed chief election commissioner, M A Aziz, was in charge of overseeing the poll. However, despite these doubts, the country's business community and other sections of the middle class a core constituency of Wazed's opposed the imposition of national strikes and transport blockades by the AL and its allies. The Dhaka Chamber of Commerce and Industry estimated that around USD7 million was lost each day during a strike.

² Immigration and Refugee Board of Canada 2006, *BGD101503.E – Bangladesh: The Awami League (AL); its leaders; subgroups, including its youth wing; activities; and treatment of AL supporters by the authorities (2004-2006)*, 27 July.

Moreover, the import and export of goods from Chittagong one of only two ports for manufactured goods to be shipped to Europe and the US was also suspended owing to the AL's actions.

As a result of the damage caused to Bangladesh's economy, the AL lost much of its credibility among the urban middle classes. On 10 January, the Dhaka and national chambers of commerce and industry demanded that elections be postponed and a state of emergency be declared in order to save the national economy.

The AL's declining credibility was reinforced by the increasing willingness of the party's senior leadership to ally with political groups of differing ideologies. For example, the AL, which has traditionally been a leftist and secular party, announced its alliance with the Islamist Bangladesh Khelafat Majlish (BKM) in late December 2006. The deal between the two parties saw Wazed promise that Muslim alim (religious leaders) would be allowed to issue legally binding fatwa on religious and moral issues if the AL came to power. Similarly, Wazed's close relationship to former president and military ruler General Hussein Muhammad Ershad and his Jatiya Party has also been viewed unfavourably by her key supporters. Ershad's decision to loosely ally his party with the AL was the result of a 'bidding war' between Wazed and Khaleda Zia to buy the general's political support.

With domestic pressure building, US and European diplomats also began to signal their displeasure with Iajuddin Ahmed's regime. This culminated in the US and other international electoral monitoring missions pulling out of Bangladesh on 10 January, as allegations of electoral malpractice had dented the international community's confidence that Iajuddin Ahmed's administration could hold credible elections.

Furthermore, the EU withdrew its election monitoring mission on 11 January, stating that it was "not the business of observer teams to scrutinise elections whose credibility clearly falls short of international standards".

Growing fears about the consequences that a possible rigged election could have on Bangladesh's global reputation prompted the country's armed forces to intervene.

Following the withdrawal of EU elections observers and amid the business community's calls to save the economy, senior army officers met with Iajuddin Ahmed on 11 January in a tense three-hour meeting. There, they ordered a state of emergency be declared and the establishment of a new caretaker administration. The military also demanded that Fakhruddin Ahmed replace Iajuddin Ahmed and outlined a five-point agenda for the new government. As a result, Iajuddin Ahmed's government resigned hours after the EU election observers left the country (Wilson, John 2007, 'Dicing with democracy – Bangladesh's political process breaks down', *Jane's Intelligence Review*, 15 February).

The same report continues:

One of the army's key motives in this demand was its concern about the impact that the elections and ensuing political instability could have on its lucrative involvement in UN peacekeeping operations as Bangladesh is currently the largest contributor to UN peacekeeping efforts.

It is likely that the Bangladeshi army acted after consulting the US and European governments, or at least had the tacit support of internationally reputed, domestic non-governmental organisations (NGOs) such as Bangladesh Rural Advancement Committee (BRAC) and Grameen Bank.

Many Western diplomats see a period of military-backed technocratic rule as necessary to restore stability in the country and are prepared to support Fakhruddin Ahmed's regime as long as it does not overstep its constitutional bounds.

Nonetheless, there is a risk that the army could deepen its influence in the political sphere if elections are delayed further, especially given the country's history of military interventions (General Zia ur-Rahman and General Ershad ruled Bangladesh between 1977 and 1981 and 1982 and 1990 respectively). There are many people within Bangladesh and outside the country that have described the army's intervention as a coup (Wilson, John 2007, 'Dicing with democracy – Bangladesh's political process breaks down', *Jane's Intelligence Review*, 15 February).

An April 2007 *BBC* report states the military government has banned all political activities and had many political leaders arrested. In general, the Bangladeshi people have not regarded this treatment as repressive, seeing it as "retribution for the corruption and abuse of power of the past fifteen years". At present it is clear that Bangladesh "has reached a crossroads":

Go one way, and the road leads to cleaner politics with free elections and restoration of representative democracy. But go the other way, and the country risks sliding back into the kind of military-led dictatorship which so blighted Bangladesh's politics and economy in the 1980s. Officials say the tough campaign against "corrupt" politicians and "crime godfathers" is needed to clean-up politics once and for all. To achieve this, they need to dish out exemplary punishment to some "big fish". The biggest fish of them all is Tarique Rahman, son of former prime minister Khaleda Zia and leader of Bangladesh Nationalist Party (BNP). Rahman's arrest and subsequent charges against him reassured a lot of people that the government meant business (Mustafa, Sabir 2007, 'Bangladesh at a crossroads', *BBC News*, 5 April).

Other points of note in the *BBC* report include the following:

- Farida Akhter, who "heads a radical NGO in Dhaka", is concerned at the curtailment of political rights, and comments that corruption in the army itself is not being discussed.
- Many in Dhaka think that the caretaker government is aiming to get rid of the existing leadership of both political parties, and that some politicians may be allowed to leave the country in order to avoid imprisonment.
- There is concern that the military is showing "increasing signs of political ambition", although at this stage it seems unlikely that there will be a "military led dictatorship" such as existed in the 1970s and 1980s (Mustafa, Sabir 2007, 'Bangladesh at a crossroads', *BBC News*, 5 April.)

An April 2007 *Stratfor* report states that Bangladesh's Electoral Commission has announced that "it will need at least 18 months to verify the country's voter list and implement further reforms, and therefore will need to delay general elections until late 2008". *Stratfor* does not discount the possibility that the two main parties may reassert their power by forging alliances with the military:

The BNP and AL have laid low since [Fakhruddin] Ahmed came to power mainly because the two parties can use the extra time to shore up support. Neither party has a clear advantage over the other in the polls, and both are desperately searching for political allies to gain the upper hand.

But Ahmed cannot be confident that the political parties will remain tame for another 18 months. All too often, officials with interim governments in South Asia have a habit of falling into the pit of corruption. And when the tide starts to turn against the provisional governments while the country's main political parties are still in disarray, the responsibility falls to the military to step in and restore order.

The military's empowerment already has started taking effect in Bangladesh. The Bangladeshi army goaded the former president to impose emergency rule and ban political activity Jan. 11. Bangladeshi army chief Lt. Gen. Moeen U. Ahmed has been playing a much more visible role in Bangladesh over the past few weeks, acting more like a politician than a general by delivering speeches throughout the country on "Rethinking Political Development." The general also has issued harsh condemnations of the AL and BNP, saying "In the 36 years since independence, politicians have not given us anything good. They have even failed to give due recognition to the national leaders."

The AL and BNP are taking note of the army's increasing prominence in the caretaker government, as they realize that building closer ties to the military will become all the more necessary for them to escape political irrelevance. The BNP-AL power struggle has split the population pretty evenly, leading both parties to flirt with the country's Islamist parties for larger voting blocs. The Islamists' empowerment worries the Bangladeshi army, which wishes to preserve the country's historically secular identity. Even the BNP and AL are becoming conscious of the dangers involved in spreading Islamist influence, and would not mind military backing to help quell the Islamist rise.

The BNP probably will have a harder time than the AL in winning favor with the army this time around. In October 2006, several members of the BNP deserted to form a new group called the Liberal Democratic Party. Many of the deserters are retired high-ranking military officers that accused the BNP of being too corrupt and too lax in cracking down on Islamist extremism.

The situation in Bangladesh is in some ways similar to Pakistan, where that nation's military has successfully used political instability and security concerns to dominate the state. The difference, however, is that in Pakistan the military continues to rule the country directly through a uniformed president and civil-military hybrid state. In Bangladesh, however, the military is working through a caretaker administration composed of bureaucrats, technocrats and other government functionaries.

Bangladesh, despite its past experience with direct military rule has moved toward a civilian -- albeit somewhat turbulent -- order, so it is unlikely the military will return to direct rule. That said, the political pendulum is slowly moving back toward the military, and the Bangladeshi army is in a prime position to establish itself as the stealth kingmaker of the government ('Bangladesh: Delayed elections and army opportunities' 2007, *STRATFOR*, 5 April).

A 16 April 2007 report by *Stratfor* states that Khaleda Zia has agreed to leave the country, while Sheikh Hasina is already overseas:

Former Bangladeshi Prime Minister Khaleda Zia will leave the country for Saudi Arabia under a deal reached late April 16 designed to secure the release of her son, The Daily Star reported, citing an anonymous source. The newspaper said Zia's departure came as a result of "tremendous pressure from the military-backed caretaker government." Zia's older son has been in custody since March, while her second son was detained April 16 and then released as part of the deal. The move will leave Bangladesh without its two main leaders for the first time, as Zia's absence would coincide with former Prime Minister Sheikh Hasina's visit to the United States ('Intelligence Summary' 2007, *STRATFOR*, 17 April.)

Treatment of Christians in Bangladesh

The struggle for political power in Bangladesh has seen traditional political parties, *Bangladesh National Party* (BNP) and the *Awami League* (AL), locked in a dispute since 2004. According to the International Crisis Group website, the principal beneficiary of this political equation has been the increasingly influential militant Islamist fringe, led by

legitimate governing parties like the BNP coalition partner, *Jamaat-e-Islami* (JI) but extending to the violently militant *Jagrata Muslim Janata Bangladesh* (JMJB) and the *Jamaat-ul-Mujahideen Bangladesh* (JMB) parties. According to the International Crisis Group, underground terrorist groups have been cultivated and sheltered by those in power (Bangladesh Today' 2006, International Crisis Group website, 23 October.)

According to the latest US Department of State report, Muslims form a permanent majority in Bangladesh with 88.3 per cent of the population, followed by Hindus at 10.5 per cent and Christians at 0.3 per cent (US Department of State 2006, Background Note: Bangladesh, September). The rise of Islamic militant organisations has led to an increase in attacks on minorities in Bangladesh, especially on Hindus and Christians. While Bangladesh is party to the United Nations International Covenant on Civil and Political Rights, which ensures the rights to freedom of religion and expression, it has, nevertheless, tolerated violent assaults by Islamic extremists on religious minority communities. *According to Human Rights Watch, over the last few years, religious intolerance has increased dramatically as several thousand Hindus, Buddhists and Christians have fled the country (Human Rights Watch World Report 2006, World Report: Asia). Amnesty International has expressed concern that attacks by Islamic extremists are carried out with impunity and has requested the Bangladeshi Government to provide adequate protection to the members of the minority community (Amnesty International 2006, Bangladesh: Briefing to political parties for a human rights agenda , 23 October).*

According to the UK Home Office October 2006 report:

“There are an estimated 350,000 to 500,000 Christians living in Bangladesh, the majority of whom is Catholic. The [2005 Religious Freedom Report] indicates that Bengali Christians are spread across Bangladesh, and that some indigenous (non-Bengali) groups are also Christian... Reported incidents against religious minorities, including Christians, have included killings, sexual assaults, extortion, intimidation, forced eviction, and attacks on places of worship...” (UK Home Office 2006, *Country of Origin Information Report: Bangladesh*, October).

On 19 September 2005, Bishop Moses Costa of the Dinajpur diocese in Bangladesh expressed concern over an increase in Islamic fundamentalism. In August 2005, there were four hundred and thirty four bombings in sixty three districts in Bangladesh. Catholics and Protestant leaders in the country sent a letter to the Prime Minister requesting protection for Christians (Bangladesh: Christians worried by rising Islamic fundamentalism' 2005, *Catholic World News* website, 19 September).

In August 2005, the General Secretary of the Church of Bangladesh, Dipak Karmakar, protested against an increase in violence on Christians.

Karmakar accused the government of sheltering the culprits saying that no arrests have been made and are not likely to be made even though Christians have marched in protest in Dhaka. He said that the Islamic fundamentalist lobby has spread into the government machinery as the administration is presently headed by a coalition in which the Bangladesh Nationalist Party shares power with the Jamat-e-Islami party ('Bangladesh & Sri Lanka Christians Face Persecution Threat' 2005, *Christian Today* website, 27 August).

In July 2005, two Christian men, Tapan Kumar Roy and Liplal Marandi, were murdered by Muslims in Dhopapara village in Bangladesh for showing a film about Jesus.

Police and village residents said the victims were at home asleep when their door was kicked in at around 2am on 29 July. The attackers broke in and stabbed the two men several times. Resident said the killers chained the doors of the house to prevent anyone from going to the victims' aid. However, some people who heard their cries rushed to the scene and took them to Bolamari hospital, where they were declared dead. Police transferred the bodies to the hospital Faridpur Sadar for autopsy and they have arrested a suspect.

Abdur Rouf, a police officer in Bolamari, said the double homicide is the outcome of long-standing enmities. Harun Ar Rashid, assistant superintendent of police in Faridpur, told reporters the two may have been killed because they are Christians. Although police have not yet managed to determine the motive of the brutal homicide, some suspect it is linked to the victims' religious activities, among them screening films on the life of Jesus. According to residents, other than films on the life of Jesus Christ, Roy and Marandi invited people to watch television programs about the risk of poisoning from well water, about health risks facing women and children, about preventing marriages between people who are too young, and about the risk of AIDS ("Bangladesh: Two Christians are killed by unknown attackers" 2005, *Asia News* website, 3 August; 'CHRISTIANS CALL FOR JUSTICE IN MURDERS' 2005, *Compass Direct News* website, 23 August.

On 8 March 2005, *Christian Monitor* reported that a local evangelist at Jalalpur district was beheaded by Muslim militants.

A group of ten Muslim militants beheaded a local evangelist and preacher on 8 March, and have threatened his wife and children. Dulal Sarkar worked with the Bangladesh Free Baptist Church in Jalalpur village, and his murder came one week after he had shared his faith with several Muslim villagers. His ministry led to the planting of several churches in the area. Dulal's wife Aruna reported the murder to the police who arrested three of the ten attackers. Since then, Aruna has been threatened again and forced to move from house to house for the safety of her five children. The seven remaining attackers have reportedly tried to bribe local police to release the three arrested from prison. They have connections to the Muslim fundamentalist Jamaat-e-Islami political party, the third largest in Bangladesh.

Local Christians fear that Jamaat-e-Islami will use its political influence to prevent the case from coming to court (Evangelist Beheaded' 2005, *Christian Monitor* website, 10 April .

According to the *Associated Baptist Press* website, in September 2004, a Christian physician, Abdul Gani Gomes, was beheaded in the district of Jamalpur and in 2003, a Christian leader was murdered by a group of eight men. Christian evangelist, Hridoy Roy, was repeatedly stabbed after being tied to the bed ('Beheading of Christian leader in Bangladesh second in a year' 2005, *Associated Baptist Press* website, 19 May .In November 2006, a Bangladesh court sentenced two Islamic militants of the banned JMJB party to death after they confessed to killing Gomes ('Bangladeshi Court Sentences Militants to Death for Killing Christian Convert' 2006, *Fox News* website, 9 November

On 3 June 2001, Islamic extremists bombed Jalilpur Catholic Missionary School, killing ten people and injuring more than two dozen others (Hertz, T. 2001, Bangladesh: Bomb Kills Ten Christians', *Christianity Today* website, 6 August.

In the last thirty years, there has been an increase in the number of Muslims converting to Christianity. According to one estimate, in the period between 1971 and 1991, the number of Christian converts in Bangladesh has risen from two hundred thousand to four hundred thousand (Islam, S. 2006, 'The Crafty Project: Christianization of Bangladesh, Kavkaz Center website, 10 November).

FINDINGS AND REASONS

Essentially the applicant claims that she feared/fears harm in her country because of her Christian religion and activities and because of her political activities as a member of the Awami League. She claims that she cannot get protection in her country from the harm that she fears.

Having regard to the country information that it has been referred to and has consulted, the Tribunal accepts that the political situation in Bangladesh remains unstable and uncertain and there is sometimes violence and abuses, including between members of opposing political parties. The Tribunal also accepts that there is not always effective protection available against this violence and these abuses. The Tribunal also accepts that there are sometimes human rights abuses against Christians who are a minority group in Bangladesh. It accepts that over the last few years, religious intolerance has increased dramatically as members of minority groups, including Christians have fled the country and that violent assaults by Islamic extremists on religious minority communities have been tolerated even though Bangladesh is party to the United Nations International Covenant on Civil and Political Rights, which ostensibly ensures the rights to freedom of religion and expression.

While the Tribunal considers that the applicant has embellished her claims before it, it accepts and finds that the applicant is, and has always been, an active Christian and has talked about Christianity to others in Bangladesh. It accepts that she as a Christian she did work helping the poor in Bangladesh.

Further the Tribunal accepts the applicant's oral evidence to it that she commenced political activities with the Awami League when she was a student, that she was an executive member of the party at some stage, that during the election held in October 2001 she campaigned for the Awami League candidate, that she last held a position with the party several years ago but had contact with the party until she left Bangladesh to come to Australia and that she did volunteer work for the Party during that time.

The Tribunal finds that the applicant did not suffer or fear harm in her country because of her religion and/or her politics prior to her return to Bangladesh from a fourth country; the applicant told the Tribunal that she returned to Bangladesh from the fourth country because she had no serious problems in Bangladesh at that time and that things changed after a change in the government.

The Tribunal accepts that after this time, the applicant became generally worried about her safety in Bangladesh because of her religion and political affiliations due to the changing political climate in her country; it accepts that she left her country for that reason. The Tribunal does not accept that the specific incidents/threats of harm claimed by the applicant, namely the two incidents that she refers to, in fact occurred; the Tribunal considers that the applicant gave general evidence only about these incidents to the Tribunal and the various letters and documents produced by her to support these claims contain facts that, according to her evidence to the Tribunal, she herself gave to the writers of the letters/documents for inclusion in the letters. In the Tribunal's view the letters produced are not reliable evidence of the facts about those incidents contained in those letters. The Tribunal considers that if the applicant had been targeted as she claims she would not have been able to continue to work at the same job for many years, as she told the Tribunal she did and continue to carry out her Christian activities; she told the Tribunal that she was still working at her job when she left to come to Australia and that she continued to carry out her Christian activities until she left

Bangladesh. The Tribunal considers that the applicant has exaggerated what happened to her in Bangladesh leading to her departure from that country. The Tribunal accepts however that the applicant was generally harassed and concerned about her safety because of her Christian and political activities while she was in Bangladesh.

While the Tribunal has some doubts about the applicant's claims, given the current political climate in Bangladesh, which continues to be unstable and uncertain, the Tribunal cannot exclude the real possibility that, if the applicant returns to her country and resumes her Christian activities and her contact with her political party, she could be harmed because of her political opinion and/or her religion and may not be able to get effective protection from that harm; there is nothing before the Tribunal to cause it to conclude that she would not resume her political contact and activities with the Awami League and continue her Christian activities if she returned to Bangladesh. The Tribunal accepts the applicant's claims that the situation in Bangladesh may have changed for the worse for her since she left there, especially as regards her fear of harm because of her Christian religion and activities.

The Tribunal accepts, therefore, that there is a real chance that the applicant will be persecuted for reasons of her political opinion and/or her religion if she returns to Bangladesh now or in the reasonably foreseeable future.

The Tribunal considers that the persecution which the applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Act in that it involves a threat to her life or liberty or significant physical harassment or ill-treatment. The Tribunal considers that the applicant's political opinion and/or her religion is the essential and significant reason for the persecution which she fears, as required by paragraph 91R(1)(a), and that the persecution which she fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves her selective harassment for a Convention reason, namely her religion and/or her political opinion. In the Tribunal's view there is no part of Bangladesh to which the applicant could reasonably be expected to relocate where she would be safe from the persecution which she fears.

The Tribunal finds that that the applicant is outside her country of nationality, Bangladesh. For reasons given above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reasons of her religion and/or her political opinion if she returns to Bangladesh now or in the reasonably foreseeable future. The Tribunal finds that the applicant cannot get protection from the harm she fears in her country. There is nothing in the evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than her country of nationality, Bangladesh. The Tribunal finds that find that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (*Applicant C v Minister for Immigration and Multicultural Affairs [2001] FCA 229; upheld on appeal, Minister for Immigration and Multicultural Affairs v Applicant C (2001) 116 FCR 154*).

CONCLUSION

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in subsection 36(2) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies para.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958.

Sealing Officer's ID: PRMHSE