

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76467**

**AT AUCKLAND**

**Before:** D L Henare (Member)

**Counsel:** S You

**Appearing for the Department of Labour:** No Appearance

**Dates of Hearing:** 15 & 16 March 2010

**Date of Decision:** 29 June 2010

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a citizen of Bangladesh.

**INTRODUCTION**

[2] The appellant is a married man aged in his early 30s. He departed Bangladesh on 7 July 2009 using a false Indian passport and arrived in New Zealand on 8 July 2009. At the airport, he was issued a visitor's permit for one month. He claimed refugee status on 7 August 2009 which was declined by the RSB on 11 December 2009, leading to this appeal.

[3] The appellant predicts being persecuted on return to Bangladesh by Awami League cadres and the police because of his political association with the Freedom Party and his profile as a senior member of this party. The essential issues to be determined are those in relation to the appellant's credibility, and

then, on the facts as found, whether his claim is well-founded.

### **THE APPELLANT'S CASE**

[4] What follows is a summary of the evidence the appellant presented at the hearing. Its credibility is assessed later in this decision.

[5] The appellant was born in a village in the Comilla district in Bangladesh. He is the eldest sibling and has two brothers and two sisters. His father died in 2008 and his mother remains in the family home with two of his younger siblings. The appellant's wife and young son are living with her parents in the same district.

[6] The appellant enrolled in a Bachelor of Arts (Honours) degree in 1993 at a university in Dhaka. He did not complete this degree for reasons including "session jam", a term used in Bangladesh to refer to the failure of public universities to graduate students according to schedule. In 2000, he transferred to a private college, and received a Bachelor of Arts (Pass) degree from another university in Bangladesh in 2002.

[7] The appellant described the university he attended as a hotbed of student politics. He was inspired by a leader in Jubo Command, the affiliated student wing of the Freedom Party (FP), to learn more about the party. The principles of the FP which appealed to him were equality before the law, helping the poor and religious freedom. Jubo Command promoted student welfare and jobs for students. In 1996, he joined Jubo Command and became a member of the FP.

[8] In June 1996, the Awami League (AL) won the general election. Following the election, the AL embarked on a campaign of persecution against the FP leaders and supporters. Many were arrested and mistreated, others were forced into exile and some were killed. These acts of retaliation occurred because the founders of the FP had been at the forefront of a military coup in 1975 which had resulted in the death of Bangladesh's then president who was the father of the present leader of the AL.

[9] Notwithstanding the difficulties faced by the FP, the appellant became a committed FP worker. In 1998, at a rally celebrating the Bengali New Year he made a short speech urging support for the FP. The FP activities in which he participated were at two levels. First, he focussed on encouraging student support for the FP. Secondly, he took part in marches and events calling on the

government to release FP leaders, particularly Lt Colonel Rahman, and to withdraw the cases brought against them.

[10] The tenure of the AL government was to expire in August 2001 and a caretaker government formed to facilitate the elections in October 2001. Before the AL left power, the appellant heard from FP sources that violent attacks by the AL against FP members had intensified. He did not feel safe in Dhaka. In June or July 2001, he returned to his village home. The appellant had been at home approximately 10 to 15 days when AL cadres and the police visited him. The AL cadres used force to get him into the police car. He was taken to a police station and questioned on the whereabouts of certain FP leaders. The AL cadres wanted information about FP activists on the University campus and the FP regional and central bosses. They also wanted information about FP membership. When he did not comply with their demands, the AL cadres detailed and mistreated him by blindfolding him and beating him with batons and throwing hot water over him. They abused him for his association with the FP. He said the police had observed this mistreatment and did not take steps to prevent it because the AL was in government.

[11] The pattern of being questioned, blindfolded and beaten by the AL cadres was repeated the next day. The appellant overheard the AL cadres telling the police that he should be put in a "crossfire". A "crossfire killing" or "encounter killing", are terms commonly understood in Bangladesh to describe deaths resulting from cross fire between the police and criminals.

[12] On the second night of his detention, the appellant believed that he would be put in a "crossfire" when the police took him from his cell at midnight and put him into a police vehicle. He begged them not to kill him. He told them he was a "simple worker" at the grass roots of the FP. The officer in charge took pity on him and eventually the police took him back to the police station.

[13] The next day, he was taken by the police to a court in Comilla where he met a lawyer, AA. He was unwell as a result of the beatings. He was then transferred to a jail in Comilla where he received medical treatment for his injuries. He was released one week later. AA informed him that the deponent on the charge sheet was BB who claimed that the appellant had gone to his house with firearms, had demanded money from him and hit him. The appellant did not know BB. He attended some court hearings in 2001 but because the case was politically motivated, it dissolved after the AL lost power.

[14] The FP had given its support to the Bangladesh National Party (BNP) which won the general elections in October 2001. The FP reorganised and the appellant was nominated for a position on the central committee in Dhaka. The appellant was elected Campaign Secretary of the central committee in December 2001. His role required him to coordinate various functions and programmes between the central committee and the district branches, approve the content of FP materials and their distribution, and organise meetings.

[15] The appellant explained that under BNP rule from November 2001 to October 2006 he experienced a period of calm and enjoyment in his personal, professional and political life. He commenced employment in 2002 and in 2004 joined Z Company, a company which arranges recruitment of workers from Bangladesh for overseas companies. The appellant's role in Z Company entailed working with government agencies to obtain consents and clearances and other related documentation to support the recruitment. He attended regularly at the government manpower office about three or four times a week.

[16] He married his wife in 2005 and their son was born in the following year.

[17] The tenure of the BNP government, led by Prime Minister Zia, ended in October 2006 and a third caretaker government was formed to facilitate the next general elections. The third caretaker government was formed after the tenure of the BNP government, led by Prime Minister Zia, ended in October 2006, to facilitate the next general elections. The period 2006 to 2008 was marred by violence and protests. The caretaker government led by Dr Ahmed introduced electoral reform, including mandatory registration for political parties.

[18] The FP did not meet the conditions for registration as a political party and therefore could not have candidates stand in the general elections in December 2008. FP membership and structures had fallen away. However, there were candidates who were not authorised by the FP who registered as independents and stood under the banner of the FP in certain electorates. Since the FP could not contest the 2008 elections and there were no authorised FP candidates in the 2008 general elections, the appellant did not have an FP role during these elections.

[19] He was invited to act as a polling agent in his home electorate for Kazi Zafar Ahmed who represented the Ershad group of the Jatiya Party (there were three groups of Jatiya). He accepted this position because he admired Kazi Zafar Ahmed who was a former Prime Minister and Minister of Education. The Jatiya

Party under the leadership of General Ershad had carried out 'positive work' in Bangladesh. The appellant had assisted Mr Ahmed in his campaign, particularly with some canvassing. Every party is entitled to appoint polling agents. On election day, he wore items of identification which showed his representation for this candidate and his party. He dealt with many people who queued to vote. He checked voter identity against the voter information on the electoral roll.

[20] The AL won the elections and then formed an alliance with a number of parties including the Jatiya Party Ershad, although the appellant stated that Kazi Zafar Ahmed was against the AL. In January 2009, the AL government took office.

[21] On 13 January 2009, the appellant received a threatening call on his cell phone from AL cadres. They said he was lucky his life had been spared in 2001 and they threatened he might not have such luck in the future.

[22] Following this call, the appellant took steps to provide for his safety. He did not spend consecutive nights at his home in Dhaka and his wife and child went to live with her parents in Comilla.

[23] On 17 January 2009, the AL cadres visited his home in Dhaka. Not finding him there, they left a letter for him with his neighbour. The appellant left his home after receiving this note and stayed with friends and relatives in other parts of Dhaka.

[24] At the end of January, when he was working at the government manpower office, the AL cadres came looking for him. They did not find him since he had hidden in a bathroom. He observed them through a partition and recognised them as former students who had been involved in the AL at university.

[25] In February, the AL cadres visited the appellant again at the government manpower office. They found him on the stairs, grabbed him by the collar, hit him and threatened to put him in a cross fire. They sought to extort money from him by forcing him to sign a document promising to pay a certain sum and they demanded that he attend at the AL office within seven days and pay a further sum or he would be killed.

[26] After this incident, the appellant planned to leave Bangladesh because he felt tense and insecure. He instructed a broker to arrange a passport. He resigned from Z Company in March or April 2009 but he continued to work for the company on an informal basis.

[27] The appellant's Bangladeshi passport was issued on 22 April 2009. He instructed a broker to arrange a visitor's visa to India which was obtained on 17 May 2009. He then returned to his village home. On the evening of 22 May when he was not at home, his mother told him that AL cadres had visited and had become angry when they could not find him.

[28] The next day the appellant travelled to Dhaka and took a bus to Benapole, a city on the border with India. Whilst travelling on the bus, he received a threatening call on his mobile from one of the AL cadres who had visited him at the government manpower office.

[29] He departed Bangladesh without any problems and travelled to Calcutta. He contacted CC, a friend he had known since his university days. CC was also an AL supporter. CC warned him that AL agents operated in Calcutta. He became fearful and contacted a broker in Calcutta, explained his predicament to him and that he needed help to get to a country with strong human rights. The broker suggested New Zealand and agreed to make the necessary arrangements for the appellant for a fee, part payment in advance and the balance to be paid upon delivery of the travel documents. The appellant was advised by the broker that he would have to depart from Bangladesh, not India, in order to travel on the passport and visa that he was arranging.

[30] On 14 June 2009, the appellant returned to Bangladesh, shifting around various hotels in Benapole until the end of June. While there, he telephoned an FP colleague and asked him to arrange a loan from party funds and also to collect money owed to him by various people. The colleague subsequently visited the appellant in Benapole and gave him the money he had requested. The appellant was told by his colleague that FP supporters were being put to cross fire or had otherwise been killed by the AL and that he too feared for his life and was planning to leave Dhaka to go to Comilla.

[31] The appellant then contacted his brother-in-law, DD, and told him that he intended to travel to New Zealand. He enquired whether DD knew anyone there. DD gave him the name of EE.

[32] On 30 June 2009, the broker phoned the appellant advising him that he had arranged the travel documents to New Zealand. They agreed to meet at a hotel in Dhaka on 7 July 2009.

[33] The appellant travelled to his grandfather's house, south of his village home

and stayed there for six days. He asked his mother to arrange some money for him. He did not visit his wife and child who were at her parent's home, but he did speak to them on the phone.

[34] He travelled to Dhaka and met the broker as agreed on 6 July 2009. He paid the balance of the fee for the broker's services and received a false Indian passport with a New Zealand visitor's visa, airline tickets and hotel reservation confirmation. He departed Bangladesh and arrived in Auckland on 8 July 2009.

[35] The appellant met DD and subsequently boarded with him. He has kept in contact with his mother and his wife. His mother has informed him that on the evening that he left his village for Dhaka, the AL cadres visited the family home and asked after his whereabouts.

[36] The appellant believes that should he return to Bangladesh, he will be persecuted by the AL cadres and the police because of his FP association and profile as a senior member of this Party.

#### **Documents received**

[37] Counsel filed the following documents:

- (a) before the hearing, opening submissions dated 9 March 2010 which attached a certified copy of a letter from Mr Shajahan Khondakhar, the President, Freedom Party of Bangladesh Regional Office, Kandipar dated 24 January 2010;
- (b) during the hearing, a certified copy and the original of a note left by Awami League cadres at the appellant's home in Dhaka on or about 17 January 2009, marked Exhibit 1; and
- (c) after the hearing, closing submissions dated 1 April 2010 attaching a bundle of documents with various items of country information, website information and documents including Daily Note of Court Attendance, AA, dated 8 June 2001, all of which have been read and taken into account by the Authority. Counsel also submitted an affidavit of EE affirmed on 25 March 2010.

#### **Affidavit of EE**

[38] The Authority had asked counsel to make submissions regarding the inference the Authority could draw when there was no corroboration from EE of

the telephone call that the appellant had made to his mother, wherein he claims to have been told that AL cadres had visited his village home and spoken to his mother after he left there.

[39] The Authority has taken into account EE's affidavit and finds that it is of no assistance for two reasons. First, EE does not claim to know the details of the call the appellant made to his mother in Bangladesh. Secondly, EE states that his only knowledge of the appellant's claim has been acquired when he has been translating at the meetings between the appellant and his counsel.

### **Documents tendered at the hearing by the Authority**

[40] The following items of country information were tendered by the Authority and marked as exhibits:

- i. an article from bdnews 24.com entitled Freedom Party fails to meet constitution deadline, dated 24 January 2010, exhibit 2;
- ii. an article from the *Daily Star* entitled "Jamaat's goals still against constitution; Freedom Party to lose registration", dated 25 January 2010, exhibit 3; and
- iii. Electoral Commission of Bangladesh seat-wise tally Election commission homepage, exhibit 4, providing a summary of the results of the ninth general election 2008 in Bangladesh (available through Wikipedia).

### **THE ISSUES**

[41] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[42] In terms of Refugee Appeal No 70074/96 (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?



(b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANT'S CASE**

### **CREDIBILITY**

[43] The appellant gave his account in a straightforward manner and provided detailed explanations particularly regarding his political beliefs. However, some aspects of the appellant's evidence appeared implausible as noted below.

[44] Counsel submitted that the Authority must weigh both the positive and negative aspects of his credibility and give due consideration to both. The Authority has done so and accepts the appellant's credibility in his account of his circumstances in Bangladesh in the following respects:

#### **The appellant's FP political association and seniority**

[45] The appellant's account of the history of the FP and knowledge of its founding leaders accords with country information considered by the Authority. Therefore, the Authority accepts his account of his FP political association commencing as a university student in 1996.

[46] Counsel submitted that the appellant is a senior member of the FP as a result of his position as Central Campaign Secretary. In support of this claim, the appellant submitted a letter from the President, The Freedom Party of Bangladesh, Regional Office, Kandirpar, Comilla, dated 24 January 2010, stating that he was "the active worker of the Bangladesh Freedom Party from 1996. He is also the Central Campaign Secretary from 2001 till now".

[47] The appellant told the Authority that this letter had been obtained by his uncle from Mr Shahjahan Khondokar in January 2010. He said he knew Mr Khondokar from the communications they had exchanged in their respective roles. He said he could not obtain proof of his position from a member of the central committee because there was "no more central committee, no office in central Dhaka". He also confirmed in questioning that the letter was not "the original letterhead of my party" because it did not bear the FP monogram and "there was now no more party, no more organisation, it is defunct".

[48] If, as the appellant states, the FP as a party organisation no longer exists and the letterhead used by Mr Khondokar is not FP original letterhead, then it is difficult for the Authority to find any corroborative value from the letter. The Authority therefore finds that this letter is a false document procured by the appellant to bolster his refugee claim.

[49] The Authority is prepared to grant the appellant the benefit of the doubt that he was elected the Central Campaign Secretary in 2001, having accepted his evidence about his FP association.

#### Arrest, detention and mistreatment of the appellant in 2001

[50] The appellant's account of the dates of his arrest, detention and mistreatment by the AL cadres in 2001 were inconsistent. For example, his written statement notes the date of his arrest as September/October 2001; he told the RSB that he was arrested in July or August 2001 and his evidence to the Authority was June-July 2001. However, since the core account of this incident is consistent, the Authority is prepared to grant him the benefit of the doubt regarding the inconsistency as to the dates, and to accept his account of his arrest, detention and mistreatment in 2001.

#### The appellant's court appearances in 2001

[51] The RSB noted in its decision that the appellant's account of his arrest in 2001 was not supported by any documentary evidence despite his claim to have engaged a lawyer to secure his release from custody. The appellant was invited by the RSB to provide documentary evidence of the legal assistance he received. Before the Authority the appellant said he had been trying to make contact with the lawyer who had represented him in 2001 and to obtain his file. The Authority granted the appellant leave to submit evidence from AA to support his claims concerning his arrest, detention and court appearances in 2001.

[52] Counsel's closing submissions attached a Daily Note of Court Attendance and submitted that:

The appellant has been in contact with AA and whereas initially a copy of AA's file was requested, the appellant was advised that the file was closed and subsequently destroyed due to its age. AA advised the appellant however that he has kept for his records his Daily Notes of Court Attendance and has faxed through to our office a copy of the entry for 8 June 2001, which contains a record of the appellant's court fixture on 12 July 2001.

[53] The Authority turns to consider the Daily Note of Court Attendance. The

Authority notes the diary entry GR 261/01 FF/[the appellant] versus BB 12/07/01 appears with entries for other persons. At the bottom of the note are the words "To [the appellant], we cannot tell when someone may need help in his life.- Seneca". Although counsel has attributed this note to AA, his name does not appear on the document and there is no explanation either of the entry or the court fixture provided by AA. Indeed there is no evidence provided by AA himself of any of the matters relating to his representation of the appellant in 2001. Therefore the Authority is unable to place any weight on the document.

[54] However, since the appellant's core account is consistent, the Authority is prepared to grant him the benefit of the doubt and to accept his account of his court appearances in 2001.

#### FP support for the BNP led government 2001-2006

[55] The appellant's account of the political support given by the FP to the BNP in the general elections in October 2001 and that the BNP ruled in Bangladesh from 2001 to 2006, until caretaker governments were formed before the general elections in December 2008, accords with country information considered by the Authority; see for example, Bureau of Democracy, Human Rights and Labour, 1998, Bangladesh: Profile of Asylum Claims and Country Conditions; Bangladesh Election Commission 2003, Statistical Report: Number of Candidates by Party, October 1, 2001; Wikipedia: Caretaker government of Bangladesh.

#### FP is not a registered party for the 2008 general elections

[56] The appellant explained that by reforms instituted by the caretaker government in 2008, political parties had to be registered to contest the general elections. He said FP membership had fallen away by 2008 which had weakened the FP structures. He said that key FP leaders were either in prison or outside the country and "we could not find the proper people to go for registration". His evidence was that the failure of the FP to gain registration as a political party meant there was "officially no contest" by the FP in the 2008 general elections. As a result, the FP did not stand candidates in the elections, although certain candidates stood unofficially under the FP banner.

[57] The appellant's account that the FP did not meet the conditions for registration imposed on parties in August 2008 and was not a registered political party entitled to contest the 2008 general elections, accords with country information considered by the Authority; see for example, *The Daily Star*,

Registration of Political Parties, 19 August 2008.

The appellant's role as polling agent in the 2008 elections

[58] The Authority accepts that the appellant acted as polling agent for Kazi Zafar Ahmed and the Jatiya Party-Ershad. His account that no FP candidate stood in the Comilla 11 electorate in the general elections in 2008, and that Kazi Zafar Ahmed represented the Jatiya Party in this electorate accords with country information considered by the Authority; see for example Bangladesh Election Commission: Asset database, 2008 Elections, 29 October 2009.

The appellant's employment with Z Company

[59] The Authority accepts that the appellant worked for Z Company from 2004 until 2009. This company is involved in manpower recruitment for overseas companies, which accords with the website information about Z Company submitted by counsel and considered by the Authority.

The appellant's travel to India and return to Bangladesh

[60] The Authority accepts that the appellant travelled to India and arranged travel documentation to New Zealand, and returned to Bangladesh where he departed on 7 July 2009, using a false Indian passport

**Implausibilities**

[61] The Authority finds aspects of the appellant's account of his circumstances in 2009 are implausible as noted below.

AL interest in the appellant in 2009

[62] The appellant claimed that AL interest in him revived in 2009 and involved the following incidents:

- i. two calls to his mobile, the first of which occurred on 13 January 2009, the month the AL formed the government after the December 2008 elections. The second threatening call from AL cadres was received when he was on the bus to Benapole on his way to India;
- ii. a visit by AL to his rented house in Dhaka;

- iii. two visits to the government manpower office where he was working on behalf of Z Company; and
- iv. two visits by AL cadres to his village home when he was not there.

#### Telephone call on 13 January 2009

[63] The appellant stated that he received a threatening call on his mobile on 13 January 2009 from two persons who identified themselves as AL cadres and who reminded him how lucky he was to have been spared in 2001. They threatened that he might not be saved in the future and that he should come and see them. When asked by the Authority why they would contact him then, he replied that the AL wanted revenge on those associated with the FP, “they wanted the FP to be wiped out”. The Authority finds it implausible that the AL targeted the appellant at that time when his evidence was that the FP was not a registered party, and that he had taken no FP role in the 2008 elections. Indeed, his evidence was that he represented Kazi Zafar Ahmed and his Jatiya Party in a public role as polling agent on election day.

[64] The Authority asked how the AL would know his mobile telephone number. He stated that his mobile number appeared as FP contact on the posters and leaflets that had been distributed both to the public and to party supporters between 2001 and 2005. The Authority does not accept the appellant’s account that his personal contact details were disclosed for FP public purposes for the reasons that follow. First, the appellant said the mobile numbers of party officials were not printed on party materials from 1996 to 2001 because the AL was in power. It is inconceivable that this policy would change after 2001 having regard to the appellant’s evidence of the violence and harassment of FP leaders and workers by AL. Secondly, it is bizarre that he would use his personal contact details for public purposes having regard to his arrest, detention and mistreatment by the AL in 2001. Thirdly, he said that the FP had an office at Bangandbhu Avenue, Gulistan, Dhaka from 2002 until 2008 which operated “underground” because the FP did not want to bring itself to AL attention.

[65] For the reasons noted, the Authority rejects the appellant’s account that the AL cadres phoned him and threatened him on 13 January 2009.

#### Visit by AL cadres to appellant’s home in Dhaka

[66] The appellant told the RSB at interview of a visit by the AL to his home in Dhaka on 17 January 2009, where they had left him a letter. The RSB noted that in the appellant's written statement, he had made no mention of this visit. The appellant informed the RSB that he remembered the visit when questioned about his circumstances and the visit did not come to mind when he wrote his statement. The RSB invited the appellant to submit this letter in the interview report because he had indicated at interview he would be able to do so. The letter had not been submitted when the RSB made its decision.

[67] At the hearing of this appeal, the appellant produced the letter, translated from the Bengali language, exhibit 1, which states:

[the appellant],

We have come back to power again. Remember that even though you escaped from death last time, you will not have such luck next time. If you want to save your life, contact the Head office. There is an order from a higher authority to kill you. Your dead body will also be hidden away like others. How long will you hide? You will get caught one day or another.

Yours

[68] The appellant told the Authority that this letter was retrieved from his personal file by an uncle and sent to him in New Zealand.

[69] The Authority asked the appellant how he received the letter if he was not at home at the time of the AL visit. The appellant said the letter had been left with a neighbour who gave it to him when he returned home on 19 January 2009. The Authority asked how the appellant knew the letter was from the AL since there was no AL identification on the note and it had not been signed. The appellant explained that his neighbour was a well known and respected person whom he knew very well and trusted. This neighbour knew these people were AL cadres and informed the appellant of their visit when he handed across the letter.

[70] The appellant said after learning of this AL visit and receiving the letter he feared that the AL might visit him again at his Dhaka home so he asked his uncle to remove his belongings from his home. His lease was due to expire in March but he stopped paying the rent after this incident had occurred and vacated the property.

[71] The Authority finds it implausible that he did not refer to this visit in his statement when his evidence to the Authority was that the AL visit and the letter left for him by the AL had scared him causing him to default on his lease and to leave his home in Dhaka altogether. The appellant also said that he had kept the

letter in “his important personal file” which he had given to his trusted neighbour to hold on his behalf.

[72] The explanation provided by the appellant to the Authority of the AL visit and the letter left for him, and his subsequent actions to vacate his home because he was scared they would visit him there again, underscores the implausibility of his failing to recall a significant matter. Therefore the Authority rejects the appellant’s claim that the AL visited his home in Dhaka and also finds that the letter is a false document procured by the appellant to bolster his claim.

#### AL visits to the appellant at the government manpower office

[73] The appellant said that he resigned formally from Z Company after the AL visits to him at the government manpower office at the end of January 2009 and again in February 2009. He said that in his work with Z Company he spent most of his time at the government manpower office, going there at least three or four times per week. He told the Authority that if anyone wanted to look for him they would find him there. After the AL visits he said he reduced his workload for Z Company but continued to work for them until the first week in May on a part-time basis. He said he did paperwork at friends’ houses and would go to Z Company in the mornings about two or three days a week. He said after he formally resigned, he attended at the government manpower office about once a week. If the appellant feared for his life, taking steps to hide from the AL and changing the living arrangements of himself and his family, it is implausible that he would continue to put himself at risk by going to the government manpower office at all. The fact that he went there suggests he had no fear for his safety and contributes to the Authority finding that there was no revival of AL interest in him after 2001.

#### AL visit to the appellant’s village home

[74] The appellant’s evidence was that the AL visited his village home in mid-May 2009. The Authority does not accept the appellant’s account of this visit. The appellant’s evidence was that FP members were being targeted and he felt unsafe because the AL wanted to kill him. It is implausible that he would visit his village home at this time when he said his life had been threatened by the AL. Despite his evidence that he kept a low profile at home, it is inconceivable that he would put himself at risk of the AL finding him there. Again, this implausibility contributes to the Authority finding that there was no revival of interest in him after 2001.

[75] The Authority accepts the appellant’s credibility relating to his former

association with the FP and that he suffered arrest, detention and mistreatment by the AL in 2001 which resulted in his court appearances that year. The Authority also accepts that the appellant played no FP role in the 2008 general elections and assumed a public role for another political party in his home electorate. The Authority does not find him to be credible in his account that the AL revived an interest in him in 2009.

### **Summary of facts**

[76] The Authority finds that the appellant is of Bangladeshi nationality, is married with a young child and accepts that he attended at a university in Dhaka.

[77] The Authority finds he has been associated with FP, having joined Jubo Command, the student wing of the FP in 1996 when he was at university and having been elected FP central campaign secretary in 2001.

[78] The Authority finds that he suffered arrest, detention and mistreatment in 2001 in his home district, which resulted in his court appearances. He suffered no further difficulties after that.

[79] The Authority finds he took no active role for the FP in the 2008 general election, but gave his support to the candidate of the Jatiya Party, Ershad group, in his home electorate, acting as polling agent on election day.

[80] The Authority also finds that he was employed by Z Company in Bangladesh.

[81] The Authority also finds that he travelled from Bangladesh to India in May 2009 and returned to Bangladesh in June 2009. He travelled to New Zealand in early July 2009 on a false passport.

[82] The Authority rejects all of his other claims.

[83] It is on this basis that the appellant's claim will be considered.

### **Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Bangladesh?**

[84] In order to determine whether there is a real chance of the appellant being persecuted, the Authority considers the facts accepted, counsel's submissions and country information.



### Counsel's submissions on country information

[85] Counsel submitted that country information specific to the appellant's claim does not exist. He submitted the claim must be considered in light of what country information is available in the context of the general social and political situation in Bangladesh. He submitted a number of points regarding the appellant's risk, some of which include:

- i. The history of the political environment in Bangladesh which continues to this day, can be described as chaotic and bloody. Incidents of disorder and violence in relation to politics are widely reported.
- ii. Killings regularly occur and can be described as crossfire killings.
- iii. Extrajudicial killing occurs despite the government's public denunciation.
- iv. Successive governments are quick in presenting their own version of events and human rights violations frequently go unreported.
- v. Arrest and detention are arbitrary despite the prohibition on arbitrary arrest and detention in the constitution.
- vi. The 1975 assassination of Sheikh Mujib has ongoing repercussions to this day. Though a small and notionally insignificant party, the FP still garners the concern of the AL to the extent the AL would pressure government owned media to censor news about the FP and to seek out members of the FP for their support of the opposition BNP.
- vii. There is no indication in any recent reports that harassment of FP members has declined or ceased.

### Country conditions in Bangladesh

[86] Country information describes the general political environment in Bangladesh as volatile, violent, corrupt and unstable; see for example, an extract from RefWorld, Freedom House, *Freedom in the World 2009 – Bangladesh* (16 July 2009):

Endemic corruption and criminality, weak rule of law, limited bureaucratic transparency, and political polarization have traditionally undermined government accountability. Boycotts by both major parties while in opposition have regularly crippled the legislative process, and Parliament effectively ceased to function for much of its last term. The two parties have also maintained links to criminal networks. An ACC launched in 2004 was authorized to conduct investigations and

try cases in special courts, but it never achieved political or financial independence. The reconstituted ACC of 2007 and 2008 actively targeted political parties and their business associates. Dozens of suspects were arrested, almost 100 were convicted, and hundreds more fled the country for fear of arrest. Responding to calls from the lower ranks of the army, the ACC announced in February 2008 that it would extend its campaign to the military. However, the leaders of the two main political parties had been released by September 2008, thwarting the CG's attempts to cleanse the political system from the top down. Bangladesh was ranked 147 out of 180 countries surveyed by Transparency International (TI) in its 2008 Corruption Perceptions Index. The local branch of TI noted in April that although the CG's campaign had effectively reduced large-scale corruption, smaller-scale graft and bribery remained rampant.

[87] The UK Home Office Country of Origin Information Report (COIR) on Bangladesh, 11 August 2009 (which cites many major sources of country information) reviews Bangladesh's political history, and refers to a climate of political instability since independence, which has primarily seen two major parties at its centre, the AL and the Bangladesh Nationalist Party (BNP). The UK Home Office also refers to a Human Rights Watch Report entitled *Ignoring Executions and Torture*, published on 18 May 2009, which provides that there are no reliable statistics to support the acts of torture reported over the years.

[88] The UK Home Office COIR predicts that militancy remains a threat; see Jane's Sentinel Security Assessment, National Overview posted on April 2009, at page 50:

Between 1991 and 2006...there was an alarming growth in Islamist militancy...militancy remains a threat....clashes between activists from the Awami League and Bangladesh Nationalist Party. In early 2007 resulted in the army declaring a state of emergency. Conflict between the BNP and the AL emasculated parliament and jeopardised economic regeneration. ....There is a risk that Bangladesh may return to politically motivated violence.

[89] Country information shows that disagreements and disputes occur at all levels of political life and tactics of intimidation intensify before elections. In Bangladesh's political history, no party or political leader appears to have been spared from arrest, detention and allegations of corruption. As a result of political polarisation, the media environment became more restrictive, academic freedom was curtailed, labour union formation hampered and the judiciary has become increasingly polarised; see UK Home Office COIR on Bangladesh *ibid*.

#### The general elections in 2008

[90] The UK Home Office COIR report, at pages 22-26 and 34-36, refers to the electoral reforms instituted for the general elections in 2008 which included mandatory registration of political parties. On 12 April 2007, the Chief Adviser, Dr Ahmed stated the Caretaker Government's intention to hold the general elections

before the end of 2008. The Chief Election Commissioner set a timetable for these electoral proposals, including requiring parties to register by 20 October 2008.

Over one hundred parties applied for registration, yet only thirty nine met the criteria laid down in the Representation of the People Ordinance 2008.

Both the AL and the BNP maintained alliances with a number of other parties to contest the 2008 election: The AL led 14 party *Mohajot* or grand alliance; and the BNP led a four party alliance. *Ibid*.

[91] The Freedom House Report noted that Bangladesh had regained its status as an electoral democracy:

[The 2008 general elections] were judged to be free and fair by European Union observers and other groups. The balloting was praised for a high degree of transparency and professionalism, and low levels of fraud and violence. *Ibid*

[92] The results of the 2008 election delivered a majority to the AL. The Electoral Commission of Bangladesh seat-wise tally Election Commission homepage providing a summary of the results of the ninth general election in Bangladesh (available through Wikipedia), exhibit 4, refers to the Jatiya Party as a member of the alliance in support of the AL. The UK Home Office COIR at page 35 refers to the Election Commission website results and refers to two groups of Jatiya parties in the AL alliance, one of which is Jatiya- Ershad.

#### Country information relating to the Freedom Party

[93] Counsel has submitted that “a mission of revenge” exists against the FP as a result of the murder of Sheikh Mujibur Rahman. Counsel submitted the AL is still led by Sheikh Mujib’s daughter, Hasina, and there is no indication in any recent reports that harassment of FP members has declined or ceased. The Freedom House Report 2009, *ibid*, notes that:

The 1975 assassination of Independence leader and Prime Minister Sheikh Mujibur Rahman precipitated 15 years of military rule and continues to polarise Bangladeshi politics.

[94] This report does not refer to the FP at all. Rather it focuses on the disputes and problems between the two major parties, AL and BNP; the animosity between their respective leaders and the consequences of such conflict for social, economic and political life in Bangladesh.

[95] There is no mention of the FP in the UK Home Office COIR referred to above.

[96] Country information on the FP, particularly for the period 1996 to 2001,

does attest to the problems experienced by FP members from the AL. After coming to power in 1996, the AL ordered the arrest of many FP leaders in connection with the murder of Sheikh Mugibur Rahman. Around the time of these arrests harassment of FP members occurred. The arrested FP leaders were 15 former army officers who had plotted the 1975 military coup. A number of these former officers and FP leaders were extradited from overseas, having fled Bangladesh following the election of the AL government: Department of State, *Bangladesh: profile of asylum claims and country conditions*, Bureau of Democracy, Human Rights and Labor (February 1998).

[97] Country information indicated that the party ceased to function following the arrests of its leaders for the murder of Sheikh Mugibur Rahman; see for example, the following:

The Freedom Party is legal, but has ceased to function as a political party as its leaders are either in jail accused of the 1975 killing of Sheikh Mujib and most of his family, or have fled to the country to avoid prosecution. Those of its former activists still involved in politics are believed to have joined the BNP. They rarely, if ever, admit to having been Freedom Party members, making it difficult to estimate what the party's strength is or may have been. Ibid.

[98] In 2001 the AL lost the election to the BNP who were the traditional allies of the FP. After this election, little country information exists concerning the activities of the FP. If it does refer to the FP, it is in terms such as 'defunct' or 'moribund'. See for example *Refugee Appeal No 74631/2003* (9 September 2003).

[99] In 2008 the BNP lost the general election to the AL. An article from bdnews24.com, a Bangladesh online newspaper, entitled *Freedom Party fails to meet constitution deadline*, dated 24 January 2010, exhibit 2, refers to the failure of the FP to meet the deadline set by the Election Commission to ratify its constitution. For this reason the FP was not a registered political party entitled to contest the 2008 general election.

[100] There appears in this article a cryptic reference without any explanation, to the arrests of FP leaders and activists "after the present AL led alliance swept to power in the 2008 elections". Neither the UK Home Office Report on Bangladesh (published in August 2009) nor the Refworld, Freedom House report on Bangladesh (published in July 2009) (two sources frequently relied upon by the Authority for information regarding human rights violations) make any mention of the FP at all and do not refer to these arrests. If the report of the spate of arrests of FP leaders had been correct, the Authority would expect such arrests to have been reported in COIR or Refworld. Since no other country information has picked

up this reference in its reports, the Authority finds that it cannot place weight on the report of the arrests.

[101] The appellant's own evidence that the FP is "now, no more" accords with the country information considered by the Authority. The FP cannot be a political threat as a party when it is not a registered political party and unable to contest the general election. The *Daily Star* article, dated 25 January 2010, "Jamaats goals still against constitutions; Freedom Party to lose registration", states:

Freedom Party, formed by a number of killers of Bangladeshi Sheikh Mujibur Rahman, lost its registration as it failed to submit its ratified amended charter to the Election Commission within the deadline...

We received ratified charters of 38 political parties. Freedom Party did not submit its charter. Therefore, its registration will stand cancelled," Election Commissioner Brig. Gen (ret'd) M Sakhawat Hossain told reporters . . . .

A total of 39 political parties got registered with the EC by submitting provisional amended charters before the December 29, 2008 parliamentary election.....

Freedom Party is the only party which failed to submit the ratified charter within the deadline.

[102] It is against this background that the appellant's claim must be assessed.

#### Whether a real chance

[103] Being persecuted" comprises two elements - serious harm and the failure of state protection; see *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard is a sustained or systemic violation of basic human rights demonstrative of a failure of state protection; see, in this regard, J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1991) at p108 and *Refugee Appeal No 2039/93* (12 February 1993).

[104] The threshold is not whether an appellant will be persecuted, but whether there is a "real chance" of being persecuted if returned to their country of nationality. In that context, the Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379(HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. The standard is entirely objective.

[105] Counsel submits that the appellant is at risk of being persecuted because:

- (1) of the overall context of politics in Bangladesh;
- (2) there is a mission of revenge by the AL against the FP; and
- (3) the appellant is a senior member of the FP who will be targeted upon return.

[106] The country information reviewed above establishes that the political environment in Bangladesh is violent, corrupt and unstable. Political leaders and their parties across the political spectrum engage in harassment and hostility toward one another. This conflict has been polarized by the conflict that exists between the leaders of the two major parties AL and BNP and those forming alliances with them. Such conflict is longstanding with severe consequences for all levels of political, social and economic life in Bangladesh.

[107] Counsel submitted that “there is no sign that political harassment and extrajudicial killing will cease in Bangladesh”. Country information supports the position that harassment, arrests and detention are part of the political culture of Bangladesh. That Bangladesh is sometimes a violent and volatile country is accepted by the Authority. The chance of the appellant being a victim of serious harm arising from the insecurity and instability within Bangladesh’s political climate does not, however, rise to the level of a real chance.

[108] While country information shows a history of hostility by the AL toward FP leaders and their families, accused of the killing of Sheikh Mujib in 1975, particularly in the period 1996 to 2001, there is little information of any hostility directed against the FP in recent years. The appellant’s own evidence is that the FP is “now, no more”. Country information supports the appellant’s evidence that the FP is largely defunct.

[109] The appellant had played no FP role in the 2008 general elections because the FP was not a registered party able to contest those elections. He said those who did stand under the FP banner were unauthorised FP candidates. He acted as polling agent for a candidate in the Jatiya Party in his home electorate. He acknowledged that this was a public role in which those who voted supported parties across the political spectrum. He saw AL members and they saw him representing the particular candidate for the Jatiya Party. On his own evidence therefore his most recent public political association was with the Jatiya Party-Ershad.

[110] The Authority has considered the information in Exhibit 2 relating to the arrests of FP leaders and activists after the 2008 elections. Even if the article is accurate, the appellant is not a party leader or activist. He has not been active for some years. The Authority has found that there has been no AL interest in him since 2001. This experience constituted a grave violation of his human rights. However the Authority’s assessment is forward looking. The question is not whether the appellant has been persecuted in the past but whether there is a real

chance that he will be persecuted in the future; see, in this regard, *Refugee Appeal No 70366/97* (22 September 1997).

[111] The evidence does not establish that the appellant faces a real chance of being persecuted if returned to Bangladesh. The FP is defunct. He has not been active in it for some years and has been of no interest to the AL since 2001. His evidence of a revival of interest in him in 2009 has been rejected. There is nothing to suggest he will face difficulties on return to Bangladesh.

[112] For the reasons set out above, the appellant has not established that he has a well-founded fear of being persecuted in Bangladesh. The question of Convention ground does not therefore arise.

### **CONCLUSION**

[113] For the above reasons, the Authority finds that the appellant does not have a well-founded fear of being persecuted arising from his former FP association. The appellant is therefore not a refugee within the meaning of Article 1A (2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"D L Henare"

D L Henare  
Member