

060751121 [2006] RRTA 214 (6 December 2006)

DECISION RECORD

RRT CASE NUMBER: 060751121

DIMA REFERENCE(S): CLF2006/83995

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Giles Short

DATE DECISION SIGNED: 6 December 2006

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is a review of a decision made by a delegate of the Minister for Immigration and Multicultural Affairs refusing an application by the Applicant for a Protection (Class XA) visa. The Applicant was notified of the decision under cover of a letter and the application for review was lodged with the Tribunal. I am satisfied that the Tribunal has jurisdiction to review the decision.

The Applicant is a citizen of Bangladesh. He arrived in Australia and he applied for a Protection (Class XA) visa.

RELEVANT LAW

In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Parts 785 and 866 of Schedule 2 to the Regulations. So far as is material, section 36 of the Act provides that:

- ‘(2) A criterion for a protection visa is that the applicant for the visa is:
- (a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
 - (b) a non-citizen in Australia who is the spouse or a dependant of a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa.
- (3) Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.
- (5) Also, if the non-citizen has a well-founded fear that:
- (a) a country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion;

subsection (3) does not apply in relation to the first-mentioned country.’

Subsection 5(1) of the Act defines the ‘Refugees Convention’ for the purposes of the Act as ‘the Convention relating to the Status of Refugees done at Geneva on 28 July 1951’ and the

'Refugees Protocol' as 'the Protocol relating to the Status of Refugees done at New York on 31 January 1967'. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.

Article 1A(2) of the Convention as amended by the Protocol relevantly defines a 'refugee' as a person who:

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

The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.

The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear 'persecution'. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve 'serious harm' to the person and 'systematic and discriminatory conduct'. Subsection 91R(2) states that 'serious harm' includes a reference to any of the following:

- (a) a threat to the person's life or liberty;
- (b) significant physical harassment of the person;
- (c) significant physical ill-treatment of the person;
- (d) significant economic hardship that threatens the person's capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

In requiring that 'persecution' must involve 'systematic and discriminatory conduct' subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of 'persecution' that an individual be the victim of a series of acts:

'A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is "being persecuted" for the purposes of the Convention.'

'Systematic conduct' is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against

the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute 'persecution' for the purposes of the Convention, the threat of harm to a person:

'need not be the product of any policy of the government of the person's country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution' (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)

Thirdly, the applicant must fear persecution 'for reasons of race, religion, nationality, membership of a particular social group or political opinion'. Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless 'that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution'. It should be remembered, however, that, as the Australian courts have observed, persons may be persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'

A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

CLAIMS AND EVIDENCE

In accordance with section 418 of the Act, the Tribunal was given the Department's file relating to the Applicant. The Applicant appeared before the Tribunal to give oral evidence. The Applicant was unrepresented.

The Applicant's original application

The Applicant is aged in his mid-thirties. According to the details in his original application he completed a degree at University many years ago and he worked in family businesses after that. He said that following that, he had been employed with a company in City C. In a statement accompanying his original application the Applicant said that while still at school and college (towards the end of school in Bangladesh) he had been involved in the Chhatra League, the student wing of the Awami League. He said that while he had been at a College in City C briefly he had been elected as an office holder of the college committee of the Chhatra League during this time and had organised students to protest against the current government. He said that he had subsequently held another office of the Chhatra League at another College and he referred to the fact that General Ershad had been ousted in 1990.

The Applicant said that at the parliamentary election during that time he had been one of the chief coordinators of the election campaign of Candidate A, the Awami League candidate in the City B constituency. He said that he had gone door to door requesting that people vote for the Awami League and he had 'created innovative and creative banners, festoons', organised meetings and 'managed a number of election camps in the constituency'. He said that Candidate A had been elected but the Bangladesh Nationalist Party (BNP) had won the election. The Applicant said that in that year he had been elected into a very senior position of the Area T Awami League. He said that he had organised processions and meetings and he said that he had been arrested by the police. He said that he had been detained by the police for a few days, that he had been tortured and that he had been charged.

The Applicant referred to the fact that the Awami League had come to power at the election on 12 June 1996 but he did not otherwise refer to his role, if any, in this election campaign. He said that he had been elected as a less senior office holder of the City B District Awami League at a later time. He referred to the fact that the BNP and the Jamaat-e-Islami had won the election held on 1 October 2001 but once again he did not otherwise refer to his role, if any, in that election. He said that the BNP supporters had destroyed his family business in City B soon after. He said that the local BNP leader and his supporters had beaten him and his relative with various objects. The Applicant said that he had been 'seriously wounded' and that he was bleeding. He said that the police at the P Police Station had refused to accept the case and had instead placed him in custody on serious charges. He said that he had been beaten and that he had not been given food or water. He said that his relative had paid a sum of money to free him.

The Applicant said that soon after he had again become a less senior office holder of the district committee of the Awami League. He said that the following year they had been preparing to celebrate Independence Day when they had been fired on by BNP 'cadres' and his 'party friends' had been wounded. He said that he had run with 'the people' and had been lucky to survive. The Applicant said that the next year he had been 'away from my known place, hiding [in a place in City C]' when several young men with weapons had entered the home and had harassed and kicked his wife, causing her serious injury. He said that over a year later in the evening he had been returning to his village in a rickshaw with his friend who was a long-time Awami League leader when they had been attacked by a group of men with weapons, one of whom was a BNP activist. He said that they had killed his friend but he had merely been tied up. He said that the police had come and 'made a general diary of death asked my people to keep their mouth shut up. Otherwise I have to face the problem soon.' He said that they had also filed a false case against him.

The Applicant said that he had heard from his friends and relatives that the BNP had given his name to the Rapid Action Battalion (RAB) which he said 'kills people in the name of cross fire'. He said that he had had no choice but to leave the country. The Applicant said in his original application that he had paid a bribe to obtain his passport, issued in City C. In his statement he said that he had left Bangladesh a few months later and had lived in Country D for a short time. (In fact, according to the stamps in his passport, which he produced at the hearing before me, he travelled to Country D, City E and City F, back to Country D and then back to City F again before returning to Bangladesh a short time later.) He said that while he had been away his relatives had talked to a high-ranking police officer who had said that for a large sum of money he would 'help me clear my name from the case and I can live freely in Bangladesh'. He said that this had been why he had returned but he said that he had 'stayed hiding for [a short time] in relatives house' and that the officer had advised him to leave the country for a while.

The Applicant said that he had gone to a neighbouring country by road but according to the stamps in his passport he entered there soon after and returned almost immediately. He said that the BNP administration had 'advised the police to catch me and put me in jail or kill me'. He said that a relative had bribed an 'immigration police officer' to help him to leave from an exit of City C. He said that he had gone to Country D again. According to the stamps in his passport he left Bangladesh and travelled to Country D. He returned to Bangladesh a short time later. It was on this trip that he was granted the visa he used to travel to Australia, issued in Country D. (According to a note on the Departmental file the Applicant told an officer of the Department what his employment was and who employed him in City C, that he was in Country D to expand business opportunities and that he wished to visit Australia on his return journey to Bangladesh.) In his statement the Applicant did not refer to the fact that he had returned to Bangladesh again before leaving for the last time soon after and again travelling to Country D from where he came to Australia, as set out above, a short time after that. In his statement he said that he had learned that 'the white clothes police' had gone to his office and had forced his boss to fire him otherwise they would cancel his licence and put him behind bars. He said that he feared being persecuted if he returned to Bangladesh.

The Applicant's evidence given to the Tribunal

In a typewritten statement accompanying his application for review the Applicant said that the delegate of the Minister had misunderstood his claims although he did not particularise this assertion. He said that the delegate had not considered the prevailing situation in Bangladesh and that leaders and activists of the Awami League were facing systematic persecution in Bangladesh. The Applicant subsequently submitted a bundle of press reports (not all of them complete) relating to attacks on Awami League members in Bangladesh. Under cover of a letter he produced three pages of the US State Department *Country Reports on Human Rights Practices for 2005* in relation to Bangladesh and a press report suggesting that Bangladesh was a new regional hub for terrorist operations. The Applicant subsequently submitted further press reports and the like (again not all of them complete) relating to bomb blasts and attacks on Awami League members in Bangladesh, public distrust of the chief election commissioner and the conduct of the court case in relation to the assassination of Sheikh Mujibur Rahman in 1975. The Applicant also submitted:

- A copy of a recent undated letter faxed from Bangladesh purporting to be from Mr K, a politician and stating that the Applicant is known to him, that he is a very active and promising Awami League leader, that during one parliamentary election he was in charge of a number of 'election camps', that he travelled around Mr K's constituency

urging people to vote for him, that he worked with other leaders and political activists to deliver political speeches, that he advertised for Mr K 'with the banners, festoons, and leaflets', that Mr K has been informed that a number of false cases have been filed against the Applicant and that the Applicant will be persecuted if he returns home now; and

- A letter on letterhead in Bengali, purporting to have been signed recently also by Mr M, a senior official, and faxed from Bangladesh soon after, stating that the Applicant is known to Mr M 'politically and socially', that he was involved in politics since his students days, that he was in fact a 'renowned activist' in the region, that before leaving Bangladesh he was one of the less senior office holders of the district committee of the Awami League, that a number of false cases were filed against him and that if he returns home now he will be persecuted.

At the hearing before me I asked the Applicant whether anyone had assisted him when he had prepared his original application to the Department of Immigration for a protection visa. The Applicant said that he had done it by himself. I noted that it was fairly obvious that he had been assisted by a person who is a lawyer and registered migration agent. I noted that that person had witnessed the Applicant's signature on his original application, he had certified the copy of the Applicant's passport which had been submitted with that application and the most recent communication which the Tribunal had received from the Applicant had been faxed from the office where that person worked. The Applicant said that person was a political figure in the Awami League. He said that at times he met him and discussed the political situation in his country and he said that he had asked that person for his advice. The Applicant said that all the answers in his original application were correct and complete and that the statement accompanying that application accurately reflected his claims for refugee status.

The Applicant said that he had his family in Bangladesh. He said that his wife and child lived in City C as did his siblings and that another relative lived sometimes in City B and sometimes in City C. He said that another sibling lived in City B. He said that his siblings in City C both had businesses: these were described. The Applicant confirmed that he himself had completed his degree and in which year. He confirmed the College where he had studied although the degree had been awarded by the University of City C. He said that for some years he had worked in a family business in City B, and described what he did. He said that after this he had worked in another family business, also in City B, doing other work. He confirmed that from that time until the year he left Bangladesh he worked and he described the work he was doing in City C. He said from which years he had lived at an address in a suburb of City C. He said on which dates he had been hiding here and there, in relatives' houses. I noted that he had still been working at his last job. The Applicant said that they had fired him because of political pressure but he said that this had been after he had come to Australia. He said, however, that he had not worked there all the time: he gone there at times.

The Applicant said that he had first become involved in political activity in his student days. He said that no other members of his family had been active although they supported the Awami League. The Applicant said that he had been an office holder of the Chhatra League, the student wing of the Awami League, at his first College. He said how long he had held this position. He said that he had then held another office of the Chhatra League at his next College, also for a similar period. He said that a few years later he had held a very senior position of the Awami League in Area T. He said that he had held this position for several years. He explained that in Bangladesh the political system did not function in the same way

as in Western societies and elections for such positions were not necessarily held regularly. He said in which year he had become a less senior office holder of the City B District Awami League. He said that he had become this again some years later but that there had in fact been no break. He said that his membership had been renewed in this period. He said that he was still a less senior office holder now, even though he was in Australia. He said that he would continue to hold that position unless he resigned or they held a meeting.

I noted that the Applicant had said in the statement accompanying his original application that he had been involved many years ago in the election campaign in his local constituency. The Applicant said that he had worked for Candidate A, making banners and 'festoons', he had gone from house to house encouraging people to vote for the Awami League candidate and he had delivered lectures to encourage people to vote for their candidate. He said that he had told people that the Awami League would bring the initialisation of democracy, it would build roads and houses, it would ensure their children got a better education, it would eliminate poverty and it would bring more jobs for them. I noted that these appeared to be the sorts of things any political party would promise to do. The Applicant said that he had told the voters that the Awami League was the only party which supported secularism and that the other parties put religion first. He suggested that the other parties took advantage of illiterate Muslim people by telling them that the Awami League was a non-Islamic party.

The Applicant said that in one election campaign the Awami League had had better grounds to inform the people because the BNP had been in government. He said that the Awami League had told the voters that they were the party that would give them freedom and secularism. He said that corruption was a big problem in Bangladesh and that the BNP Ministers had made millions of dollars through bribes. The Applicant said that in that election campaign he had been in charge of election camps which he said were like election booths. He said that he had also made banners, he had gone house to house, he had delivered lectures and he had implemented the decisions of the central committee. He said that he had worked mainly in his local constituency but he had also helped with the campaign in other places. He said that they had taken his suggestions regarding advertising and campaigning needs. He said that Candidate A had stood again in his local constituency and had won and that his opponents had been opponents from the BNP and from the Jatiya Party.

The Applicant said that in the later election campaign he had again been involved in advertising, making festoons and banners, and he had gone door to door asking people to vote for the Awami League candidate. He said that the candidate on this occasion had been Mr K who was a very moderate person and an educated person. He said that Mr K was Candidate A's relative and that he was also very close to Sheikh Hasina. He said that Sheikh Hasina had made him a member of the presidium. He said that before Mr K had been elected to parliament he had been a businessman and had also held a senior government position. The Applicant said that Mr K's main opponent had stood as an independent. He said that this opponent had been a member of the Awami League but had left the party and had stood as an independent. The Applicant agreed that his local seat was an Awami League stronghold. He said that one reason for this was that there were a lot of Hindu voters and another reason was where one candidate had come from. He said that for this reason the opposing parties would be prejudiced against someone simply because they came from there.

I asked the Applicant what problems he claimed to have had as a result of his involvement in political activity. He referred to his claims of when they had burned his family's business and on 26 March 2003, on Independence Day, they had opened fire on an Awami League gathering and he had been lucky to survive. He said on what date he had been hiding at a

house in City C when some people had come there looking for him. He said that they had harassed his wife and had kicked her and that as a result of this she had a serious injury. The Applicant said that he had been in hiding because his life had not been safe. He said that he had not in fact been living at the address in a suburb of City C all the time until the date he had previously stated. He said that the BNP and Jamaat-e-Islami cadres had been looking for him and spying on him and the police had also been looking for him. He said that he had hidden in the houses of friends and relatives. He said that all of the Awami League leaders were facing the same problems. I noted that they were still in Bangladesh and the Applicant was here. The Applicant said that not everyone had the opportunity to escape. He referred to the killing of the former Awami League MP, Ahsanullah Master, and the killing of the former finance minister, Shah A M S Kibria. I noted that Mr K had almost been killed in the grenade attack on a rally in City C in recent times but he continued to travel outside the country with Sheikh Hasina and to return to Bangladesh. The Applicant said that Mr K had his own bodyguards and that he was a very rich man.

I referred to the Applicant's evidence in the statement accompanying his original application that while the BNP Government had been in power between 1991 and 1996 he had been arrested by the police during this time. The Applicant said on which date this had been. He said where he had been arrested and at which office of the Awami League in City C. He confirmed what he claimed he had been charged with, he had been held in police custody for some days and he had been tortured while in custody. He said that they had charged him with those charges to destroy his political profile. I noted that the BNP Government had been in power since 1991. The Applicant said that even ordinary Awami League workers had been harassed. He denied that he had done what he had been charged with doing. The Applicant initially said that the charge was still 'hanging', then that it had in fact been taken away or withdrawn.

I referred to the Applicant's evidence that the family business had been destroyed and in which year. The Applicant said that his family had had a shop. He said that this was separate from the family businesses for which he had worked which had been in another location. He said that he believed that the shop had been burned only because of his political activities. He confirmed that he claimed that the police at the P Police Station had charged him with a serious charge against him. He initially said that this charge was still active but he said that he had not had to go to court in relation to the charge because it was politically-motivated. However he subsequently said that his relative had bribed the police to make the charge go away. He said that if the police did not raise a charge sheet then the matter did not go to court.

I referred to the Applicant's evidence that not long ago he had been attacked when he had been returning to his village in a rickshaw. I noted that the Applicant had said that his friend had been killed but that he himself had only been tied up. The Applicant said that they had intended to kill him. He said that he had lost consciousness but he had been told subsequently that the rickshaw-puller had run to a house close by to get help. He said that people had come with various weapons. I noted that if the attackers had had time to tie the Applicant up they would presumably have had time to kill him if this had been their intention. The Applicant suggested that he had been lucky. He said that the attackers had run away because of the shouting. I noted that the Applicant had said that on this occasion the police had filed a case against him. The Applicant again said initially that this charge was still there but he then said that once again they had paid money to the police not to raise a charge sheet in relation to the matter so it had gone away.

I asked the Applicant why he said that he had had to leave the country. The Applicant referred to his evidence that he had been told that his name had been placed on the RAB list and that the RAB killed people in the name of cross fire. He said that he feared the RAB more than the BNP and the Jamaat-e-Islami. He said that his friends and family had advised him to leave the country to save his life. I noted when the Applicant had obtained his passport but he had not left Bangladesh until some months later. The Applicant said that it had taken time to get a visa. I noted that he had gone to Country D, City F, and City E, on this trip and I asked him what had been the purpose of the trip. The Applicant said that it had been just to stay away from his country. I asked him why he had returned to Bangladesh if he had feared being persecuted. The Applicant said that he loved his country and that it was a beautiful country. He referred to his evidence that his relatives had talked to a police officer who had arranged for his name to be removed from the list.

I noted that the Applicant had then gone to a neighbouring country, but only very briefly. The Applicant said that this had just been for his safety. He said where he had remained. He said that the police officer whom his relative had paid had told him to go to the neighbouring country and then, almost immediately, had told him that he could come back. I noted that the Applicant had left Bangladesh again soon after and had gone to Country D and I asked him what had been the purpose of this trip. The Applicant said that it had again been to save his life. He said that when the pressure had mounted he had left the country and then when he had been advised that it was safe he had returned. I noted that the Applicant had told the Australian Consulate in Country D which had granted him a visa that he was there to expand business opportunities. The Applicant agreed that he had said this but he said that it had not been true. He said that he had had to lie in order to save his life because his life had not been safe in Bangladesh.

I noted the date that the Applicant had obtained his Australian visa but he had then returned to Bangladesh again soon after. The Applicant said that he had again been advised that he could come back. He said that he had been thinking that he could live with his family and build up his career in Bangladesh. I put to the Applicant that the fact that he had repeatedly returned to Bangladesh cast doubt on whether he feared being persecuted in Bangladesh. The Applicant referred again to his evidence that his relatives had bribed a police officer and he said that it had been a difficult choice for him to make to leave the country. I asked him if there was anything further he wished to add before I closed the hearing. He said that if he went back they would kill him. He referred to the fact that it was election time and he said that the BNP did not want any Awami League activists to remain in Bangladesh. He said that the caretaker government and the chief election commissioner were BNP supporters. He said that they were putting pressure on his family and the situation would be very bad for him.

After the hearing the Applicant produced to the Tribunal further press reports and the like (again not all of them complete) in relation to the current dispute between the BNP and the Awami League with regard to the caretaker government established to run Bangladesh prior to the forthcoming elections.

Background

According to the US State Department's *Country Reports on Human Rights Practices for 2004* in relation to Bangladesh:

'Bangladesh is a parliamentary democracy, with broad powers exercised by the Prime Minister. Khaleda Zia, leader of the Bangladesh Nationalist Party (BNP), became

Prime Minister following parliamentary elections in 2001, deemed to be free and fair by international and domestic observers. The 2001 elections, supervised by a nonparty caretaker government, took place in a climate of sporadic violence and isolated irregularities. The higher levels of the judiciary displayed some degree of independence and often ruled against the Government; however, the judiciary was subject to influence from the executive and the legislature. Lower judicial officers were reluctant to challenge government decisions and suffered from corruption.

The Home Affairs Ministry controls the police and paramilitary forces, which have primary responsibility for internal security. The army is responsible for external security but also occasionally has been given domestic security responsibilities. The Government created a new police unit, the Rapid Action Battalion (RAB), composed of personnel from different law enforcement and security agencies, including the military, to deal with violent criminals. The civilian authorities maintained effective control of the security forces. The RAB and security forces committed human rights abuses and were rarely disciplined, even for egregious actions. Police were often reluctant to pursue investigations against persons affiliated with the ruling party, and the Government frequently used the police for political purposes. Members of the security forces committed numerous serious human rights abuses.

...

The Government's poor human rights record worsened, and the Government continued to commit numerous abuses. Security forces committed a number of extrajudicial killings. The police; the paramilitary organization, Bangladesh Rifles (BDR); the auxiliary organization, Ansar; and the military deputed to the RAB used unwarranted lethal force. Police often employed excessive, sometimes lethal, force in dealing with opposition demonstrators, and police and RAB personnel routinely employed physical and psychological torture during arrests and interrogations. Prison conditions were extremely poor and were a contributing factor in some deaths in custody. Police corruption remained a problem. Nearly all abuses went unpunished, and the climate of impunity, reinforced by 2003 legislation shielding security forces from legal challenge of their actions, remained a serious obstacle to ending abuse and killings. Violence, often resulting in deaths, was a pervasive element in the country's politics. Supporters of different political parties, and often supporters of different factions within one party, frequently clashed with each other and with police during rallies and demonstrations.' (US State Department, *Country Reports on Human Rights Practices for 2004* in relation to Bangladesh, Introduction)

In its *Country Reports on Human Rights Practices for 2005* in relation to Bangladesh the US State Department said that the government's human rights record remained poor. It referred to the death of the former finance minister and Awami League leader Shah A M S Kibria in a grenade explosion on 27 January 2005 and the grenade attack on an Awami League rally in Dhaka in August 2004 among other incidents of political violence. It also referred to the fact that the authorities used section 54 of the Criminal Procedure Code and section 86 of the Dhaka Metropolitan Police Ordinance to detain people on false charges as punishment for the expression of views critical of or different from the government. It said that the government used sections 54 and 86 to harass and intimidate members of the political opposition and their families. It said that it was difficult to estimate the total number of persons detained for political reasons but that many activists were charged with crimes and, although defendants in most cases received bail after several days or weeks, the dismissal of

wrongful charges or acquittal took years (US State Department, *Country Reports on Human Rights Practices for 2005* in relation to Bangladesh, Introduction and Sections 1.a, Arbitrary or Unlawful Deprivation of Life, and 1.d, Arbitrary Arrest or Detention).

FINDINGS AND REASONS

As I indicated to the Applicant in the course of the hearing before me, there are aspects of his evidence which I find it difficult to accept. Most notably, it is difficult to accept his account of the attack on him where he claimed that the attackers intended to kill him, given that, as I put to the Applicant, if his attackers had time to tie him up then they undoubtedly had the time and opportunity to kill him. Moreover, although the Applicant claims that he had to leave the country to save his life, he repeatedly returned to Bangladesh. He went to other places, returning very soon after, he visited a neighbouring country around the same time but returned to Bangladesh after only a very short time, and he went to Country D again in that period, returning to Bangladesh once again soon after.

The Applicant said at the hearing before me that he had returned to Bangladesh on these occasions because he loved his country, it was a beautiful country, he had been advised that it was safe for him to return and he had been thinking that he could live with his family and build up his career in Bangladesh. As I put to the Applicant, I consider that the fact that he repeatedly returned to Bangladesh casts doubt on whether he feared being persecuted in Bangladesh. The Applicant referred to his evidence that his relatives had bribed a police officer and he said that it had been a difficult choice for him to make to leave his country. He also said with regard to the various charges which he claims were brought against him that on each occasion his family had paid the police to make the charges go away.

I consider that there is a considerable element of exaggeration in the Applicant's claims regarding the problems he had as a result of his involvement in politics. However I accept the Applicant's account of his involvement in the Awami League and in particular that he was involved in the election campaigns in his local electorate over a number of years. At the hearing before me the Applicant demonstrated a knowledge of the candidates involved in these elections and I accept that he was at least close enough to Mr K for him to be prepared to sign a letter on his behalf. I accept that there is a real chance that even someone with a relatively low level of involvement in the Awami League like the Applicant may face persecution for reasons of their political opinion in Bangladesh. I have referred above to the independent evidence suggesting that the Government has misused its powers to persecute opposition activists. I consider that there is a real chance that, in the current political climate in Bangladesh, something like this could happen to the Applicant in the future if he were to return to Bangladesh and to resume his active involvement in the Awami League (as I accept he would do). I accept, therefore, that there is a real chance that the Applicant will be persecuted for reasons of his political opinion if he returns to Bangladesh now or in the reasonably foreseeable future.

I consider that the persecution which the Applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Migration Act in that it involves a threat to his life or liberty or significant physical harassment or ill-treatment. I consider that the Applicant's political opinion is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a), and that the persecution which he fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves his selective harassment for a Convention reason, namely his political opinion. Since the Government of Bangladesh is responsible for the persecution

which the Applicant fears I consider that there is no part of Bangladesh to which he could reasonably be expected to relocate where he would be safe from the persecution which he fears.

I find that the Applicant is outside his country of nationality, Bangladesh. For reasons given above, I find that he has a well-founded fear of being persecuted for reasons of his political opinion if he returns to Bangladesh now or in the reasonably foreseeable future. I find that the Applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the Government of Bangladesh. There is nothing in the evidence before me to suggest that the Applicant has a legally enforceable right to enter and reside in any country other than his country of nationality, Bangladesh. I therefore find that the Applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *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). It follows that I am satisfied that the Applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Consequently the Applicant satisfies the criterion set out in paragraph 36(2)(a) of the Migration Act for the grant of a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

<p>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 <i>Migration Act</i> 1958. Sealing Officers ID: PRRTIR</p>
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