

1100513 [2011] RRTA 345 (14 May 2011)

DECISION RECORD

RRT CASE NUMBER: 1100513

DIAC REFERENCE(S): CLF2010/48436 & CLF2010/102378

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Giles Short

DATE: 14 May 2011

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies paragraph 36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second and third named applicants satisfy subparagraph 36(2)(b)(i) of the Migration Act, being members of the same family unit as the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is a review of a decision made by a delegate of the Minister for Immigration and Citizenship on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicants] December 2010 refusing an application by the applicants for Protection (Class XA) visas. The applicants were notified of the decision under cover of a letter dated [in] December 2010 and the application for review was lodged with the Tribunal [in] January 2011. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicants, who are citizens of Bangladesh, are a husband and wife and their daughter. They arrived in Australia as visitors in March 2010 and they applied for Protection (Class XA) visas [in] April 2010.

RELEVANT LAW

3. 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 Part 866 of Schedule 2 to the Regulations. Subsection 36(2) 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 a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa.'
4. 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. Subsection 5(1) also provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person and that 'member of the family unit' has the meaning given by the Regulations for the purposes of the definition.
5. 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'

6. 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.
7. 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.
8. 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.'
9. '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)
10. 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.

11. 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.’
12. 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

13. Only the applicant named first on the cover sheet (referred to in these reasons for convenience as ‘the applicant’) made specific claims under the Refugees Convention as amended by the Refugees Protocol. His wife and their daughter claimed to be members of his family unit and combined their applications with his application as permitted by the Regulations.
14. The Tribunal has before it the Department’s files CLF2010/48436 and CLF2010/102378 relating to the applicant. The applicant appeared before the Tribunal to give evidence and present arguments [in] April 2011. The Tribunal also took evidence from the applicant’s wife. The Tribunal was assisted by an interpreter in the Bengali and English languages. The applicant was represented by [agent and agency deleted: s.431(2)], a solicitor and registered migration agent. [Agent deleted: s.431(2)] attended the hearing.

The applicant’s original application

15. The applicant is aged in his mid-thirties. In his original application he said that he had completed ten years of schooling in Dhaka in [year deleted: s.431(2)] and that he had then been employed as a [technician] from January 1993 until June 1999 and as a technician in a [company] from June 1999 until December 2003. He said that from January 2004 until December 2008 he had been the proprietor of his own firm. He provided no details about what he had been doing after December 2008. He said that he had lived at the same address

in Dhaka from January 1998 until December 2008 but once again he provided no details of where he had lived after that.

16. In a statement accompanying his original application the applicant said that he had been supposed to complete his Secondary School Certificate (SSC) in [year deleted: s.431(2)] but he had failed to pass the examinations. He said that his political involvement had meant that he could not pay attention to his studies. He said that in 1995 he had joined the Bangladesh Nationalist Party (BNP) and had become active in meetings and demonstrations. He said that he had become vice-president of the BNP committee in [Ward 1] in Dhaka in the same year.
17. The applicant said that he had worked for the BNP candidate, [Mr A], in the parliamentary election on 12 June 1996. He said that [Mr A] had defeated the Awami League candidate, [name deleted: s.431(2)], but that the Awami League had won a majority of seats in the parliament and had formed a government with the help of the Jatiya Party. He said that [in] June 1996 his home had been ransacked and looted and his father and mother had been insulted by Awami League cadres. He said that he had not been at home at the time.
18. The applicant said that the BNP had called for a half day national strike to protest against the budget on 3 July 1997 and he had led a number of processions in support of the strike. He said that in December 1997 the BNP had called a *hartal* (strike) to demand the repeal of the agreement on the Chittagong Hill Tracts. He said that he had been responsible for picketing at [location deleted: s.431(2)]. He said that after the *hartal* had ended and they had been going to the central office they had been attacked by Awami League cadres backed by the police. He said that the police had scattered their procession with baton charges and a number of activists including himself had been injured. He said that he had been admitted to a private clinic for two days.
19. The applicant said that in 1998 he had been elected as an executive member of the BNP in [District 2]. He referred to the fact that in July 1998 a student, Shamim Reza Rubel, had died while in police custody. He said that a person from the Awami League had been behind this and he said that he had led numerous demonstrations against the government. The applicant said that [in] December 1998 his brother had been arrested and had remained in gaol for about ten months on a false case. He said that the BNP had called another *hartal* on 2 August 1999 'because the government was allowing transit to India, which will endanger our sovereignty'. He said that during the *hartal* he had been leading a [procession] when the police had made baton charges and he had been badly beaten and injured. He said that he had once again been taken to a private clinic for a few days.
20. The applicant said that another *hartal* had been called on 23 August 2000 to protest the killing of Advocate Habibur Rahman Mondal, a well-known political leader. The applicant said that he had again led the procession and had been involved in picketing. He said that in the parliamentary election on 1 October 2001 he had again supported [Mr A] who had defeated the Awami League candidate, [Mr B]. He referred to the fact that the BNP had won the election and he said that he had helped the BNP people to do development work. He said that in 2005 he had been elected as one of the executive members of the [District 3] committee of the BNP chaired by [Mr A].
21. The applicant referred to the fact that after Begum Khaleda Zia of the BNP had stood down as Prime Minister in October 2006 a caretaker government had taken over and he referred to the declaration of a state of emergency and the appointment of a new, military-backed caretaker government in January 2007. He said that he had not been able to stay at home

after this caretaker government had come to power. He said that the election had eventually been held on 28 December 2008 (in fact it was held on 29 December) and he said that he had once again supported [Mr A] who on this occasion had been defeated by the Awami League candidate, [name deleted: s.431(2)]. He referred to the fact that the Awami League had come to power in coalition with the Jatiya Party and he said that ‘the Awami people started corruption, nepotism and malpractices’.

22. The applicant said that he had not normally gone to his home after the Awami League had come to power but [in] January 2009 when he had been returning home to see his father he had been brutally beaten by a group of Awami League cadres led by someone named [Mr C]. He said that he had been taken to a local [clinic] where he had spent about 19 days. He said that [in] April 2009 he had been attacked [again] when he had been returning from the party office to his sister’s place in [Village 4]. He said that once again he had been hit by Awami League cadres and on this occasion he had been taken to [Hospital 5] where he had spent 12 days. He said that in May 2009 his father had told him that the police had raided his family’s house and had told his father that they wanted to arrest him in connection with a case against him.
23. The applicant said that he had been thinking of leaving the country and he said that he had obtained a visa with the help of an agent. He said that it had been difficult for him to leave through the airport but ‘one of my brothers managed a high official by bribe to leave the country’ He said that he would not be protected by the authorities in Bangladesh and he feared being persecuted.

Further evidence given to the Department

24. Under cover of letters dated [in] July 2010 the applicant’s original representatives produced to the Department copies of photographs which they said showed the applicant at various meetings and processions in Dhaka and a copy of a letter dated [in] June 2010 from [Mr A] confirming the applicant’s claims regarding his involvement in the BNP. In a submission dated [in] August 2010 the applicant’s representatives referred to the applicant’s claims and to the law. They said that the current regime had targeted BNP leaders and activists to torture them and that the current government was violating all sorts of human rights. They produced a number of press reports in relation to events in Bangladesh which they submitted demonstrated ‘random oppression’ towards BNP leaders and activists although some of the reports refer to criminal acts - for example the killing of a BNP leader by criminals in Meherpur on 7 July 2010 - or to criminal cases brought against people associated in some way with the BNP.
25. Under cover of a further submission dated [in] August 2010 the applicant’s original representatives produced copies of:
 - A translation (without the original) of a letter dated [in] July 2010 purporting to be from [Mr D], the General Secretary of the BNP in [Ward 1], stating that the applicant had joined the BNP [in] January 1995 and that he had been made Vice-President of [Ward 1] [in] November 1995;
 - A translation (without the original) of a letter dated [in] February 1999 from the applicant’s father to the Home Minister seeking the release of one of his sons - identified as ‘[Alias A]’ - who the letter says was arrested for a false weapons case;
 - A translation (without the original) of a First Information Report which does not, however, name anyone;

- Two press reports in Bengali without translations;
- A certificate dated [in] August 2010 purporting to be from a doctor at [Hospital 5] stating that the applicant was brought to the hospital with multiple injuries ‘involving his hands back of chest and chest’ [in] April 2009 and discharged [in] May 2009 together with a Discharge Certificate and other medical records;
- A ‘General Diary’ entry dated [in] March 2010 made by one of the applicant’s brothers to the [Suburb 6] Police Station (together with a translation) stating that at 2.00 am [on a date in] March 2010 ‘unknown Honda riding youth’ came to the house to search for the applicant and threatened that he would be killed if he were caught;
- Further press reports in relation to events in Bangladesh (including, for example, one relating to human rights abuses which took place when the BNP was in power in 2002); and
- The *Human Rights Report 2009* on Bangladesh compiled by the human rights organisation, Odhikar.

The applicant’s evidence at the Departmental interview

26. The applicant was interviewed by the primary decision-maker in relation to his application [in] August 2010. The applicant said that before coming to Australia he had resided at the address given in his passport, [address deleted: s.431(2)], but he then said that although this had been his residential address he had not been able to live there. He said that this was his permanent address but because of his problems he had lived at quite a few different addresses, in Dhaka and also outside Dhaka, in [suburbs deleted: s.431(2)]. The applicant said that he could not recall the dates when he had lived in these places.
27. The applicant said that in Bangladesh he had his father, an older and younger brother and six sisters. He said that they all lived in Dhaka. The applicant said that he had had a [business] in Dhaka, but he said that because he had had problems since 2007 his business had not been doing well. He said that he had not officially closed this business but after 2007 it had rarely been open because he had not been able to go to his shop or office. He said that he was not sure of the address where his business had been located. He said that the number was either 34 or 64 and that it had been in the same suburb as his home, [suburb deleted: s.431(2)]. He said that his home address had been his ‘licence address’. He said that ‘unofficially’ two or three people had been working for him. The applicant said that before he had started this business he had been working as a [technician].
28. The applicant’s original representative said that there were a few mistakes he wished to correct in the statement accompanying the applicant’s original application. He said that the name of the applicant’s cousin who had been killed in the Liberation War was [Mr E] and that (as referred to above) the election in 2008 had been on 29 December, not 28 December. The applicant said that the name of one his sisters had been given incorrectly in Part B of the application form: [name deleted: s.431(2)].
29. The interpreter at the interview made a sight translation of the two press reports referred to above. He said that one was from the [newspaper deleted: s.431(2)] [in] March 2010 and it referred to a terrorist attack on the applicant’s house in Dhaka and identified the applicant as a BNP leader. He said that the other was from the [Newspaper 7] of the same date and likewise referred to a terrorist attack on the applicant’s house in Dhaka, identifying him as a businessman and also as the vice-president of the BNP in [Ward 1]. He said that the report

also referred to the fact that the applicant's brother had made a 'general diary' entry at [Suburb 6] Police Station.

30. The applicant said that he had left Bangladesh because of his political problems. He repeated that he had not been able to live at his residence and he said that he had been attacked over and over. He confirmed that he claimed that he had been threatened by Awami League cadres during the 1996 election campaign. He referred to the fact that the BNP candidate, [Mr A], had won this election although the Awami League had won a majority in the parliament and had formed a government in coalition with the Jatiya Party. He confirmed that he claimed that his home had been attacked by Awami League cadres [on a date in] June 1996 at 7.00 pm but he had not been at home.
31. The applicant confirmed that he claimed that in 1998 they had filed a false case against his brother and that his brother had been in prison for about ten months. He referred to the fact that the BNP had called for a half day national strike to protest against the budget on 3 July 1997 and he said that he had been responsible for organising picketing in a place called [location deleted: s.431(2)]. He said that near the end of the strike they had been walking near the party office when the police and the Awami League cadres had attacked them. He said that he had been admitted to a private clinic for two days.
32. The applicant said that after the Awami League had returned to power in December 2008 they had been trying to take revenge on their opponents. He confirmed that he claimed that he had been attacked by Awami League cadres when he had been going home to see his father at about 9.00 pm [on a date in] January 2009. He said that at this time he had not been living at his home but at different places as he had mentioned before but he could not remember where he had been living at this particular time. He said that he had not in fact been able to live at his home after the caretaker government which had taken over in 2006 had begun arresting BNP people. He said that he could not give the date when he had ceased living at his residential address. He said, however, that he had been at his home at the time of the elections in December 2008.
33. The applicant confirmed that he claimed that he had been attacked again [in] April 2009 when he had been going from his party office to his sister's place in [Village 4]. He said that by this time a few of his friends had already left Bangladesh. He said at this time he had been thinking that he could not stay in Bangladesh. He confirmed that he claimed that a false case had been filed against him. He said that the case related to a murder and 'bomb blasting'. He said that he could not get any documents about this case. He said that he believed that the BNP had found out about the case from the police but he confirmed that he claimed that his father had told him that the police had come to the house looking for him because there was a case against him and the police wanted to arrest him. He said that he believed that the police had come once more, about one month later, very late at night, but he had not been at home.
34. The applicant said that he had feared that if he were arrested he would be sentenced to death or to life imprisonment on the basis of the case against him. He referred to the fact that in 1998 a student, Shamim Reza Rubel, had died while in police custody. He said that he had also feared that if he were arrested the police would torture him and he would suffer the same fate. He said that he had asked an agent to organise a visa for him and this agent had organised a visa for Australia. He referred to the fact that the visa had been issued [in] January 2010 but he had not left Bangladesh until [a date in] March 2010. He said that he had needed to make some arrangements with the airport authorities to allow him to leave

Bangladesh. He said that his brother had made contact with a high official and had paid this official a large amount of money.

35. The applicant said that if he returned to Bangladesh he would be arrested and put in gaol. He said that his name was 'in the police list' He said that he had no information about whether anyone else in [Ward 1] in Dhaka had been charged with similar offences. He repeated that two of his close colleagues with whom he had worked had left Bangladesh even before he himself had. He said that he believed that he had been targeted because he had influence in his area. He said that at all the elections before 2008 [Mr A] had won.
36. [In] August 2010 the applicant's representatives faxed to the Department translations of the press reports from the [newspaper deleted: s.431(2)] and [Newspaper 1] of [a date in] March 2010 referred to above.
37. When the interview resumed [on a further date in] August 2010 the applicant said that he did not have any other passport besides the passport he had used to travel to Australia. He repeated that he had used the services of an agent to obtain the visa on which he had travelled to Australia. He said that this agent did not have any formal office: he had said that if the applicant gave him his passport he would be able to obtain a visa for him. He said that he had signed the application form for the visa but it had been blank when he had signed it. He said that he did not know about the documents which he had been submitted in support of this application.
38. The applicant said that he had last had contact with his family in Bangladesh two weeks previously. He said that he had spoken to his older brother, [Mr E], also known as '[Alias A]' He said that his brother had been in Dhaka but not at the family home. He said that because of his current problem his brother had to move here and there, in hiding, although he sometimes lived at the family home. He said that by his brother's current problem he meant that people came and harassed his brother looking for him and he referred to his evidence that his brother had previously been arrested [in] December 1998.
39. The applicant said that he had last spoken to his father in May 2009. He said that he had not been able to contact his father since he had come to Australia. He said that when he had telephoned his family home his father had not been at home. He then said that he had telephoned his brother but his brother had not been at home when he had called. He said that he was in contact with his sisters and brothers. He said that they had told him not to return and he had requested them to send him his papers and documents. He said that they had told him that they would not be able to get the papers and documents in relation to the case against him. He said that the case might have been lodged in the [District 2] Police Station.
40. The applicant said that he had also received information from his brother that, two or three days after his departure from Bangladesh, Awami League terrorists had attacked his home. He said that this incident had been reported in the newspaper. He confirmed that he was referring to the press reports he had produced.
41. The primary decision-maker noted that the applicant's passport indicated that he had travelled extensively and that he had visited India and Nepal in 2007 and in January 2008. The applicant said that these visits had been for business and other purposes. He said that in January 2008 he had been looking at doing some business in the lentil and onion market because the price of lentils and onions had been skyrocketing in Bangladesh.

42. The applicant confirmed that in May 2008 he had visited Thailand, Singapore and Malaysia. He said that he had gone for travel as well as looking for business opportunities. He said that he had been importing [goods] from China to Bangladesh and he had been analysing the market in Singapore but he had found that it was expensive and that China was better. He said that his business had been shut down for a long time but when he had been involved business had been very good. Asked when the business had shut down he said that after the military-backed caretaker government had taken control in January 2007 the business had been about to cease or shut.
43. The primary decision-maker referred to the fact that the applicant had visited India again in January 2009. The applicant said that by this time his business had been shut and his source of earnings had ceased so it had been a very hard time for him. He said that he had gone to India to look for business opportunities but unfortunately the result of his inquiries had not been favourable. He said that he had talked to some businessmen in Calcutta, some from Bangladesh but most from India.
44. The applicant said that he had been aware that the application he had made to the Australian High Commission had been for a tourist visa. He said that he had told the agent that he needed to go to a country where he could apply for asylum. The primary decision-maker referred to the fact that the bank statements which had been submitted in support of this application had been found to be false or fraudulently altered. The applicant said that he really did not know how the agent had done this. He said that all the documents he had provided in support of his application for a protection visa were authentic and true.
45. The applicant said that he considered that the fact that his brother had been imprisoned for ten months in relation to a false case in December 1998 was relevant to his case because they were still oppressing his family as a result of the influence his family had. He said that his brother was not actively involved in politics but he continued to be a BNP supporter. The applicant said that the influence which his family had was based on his extended family including all his cousins, amounting to 200 or 300 people. He said that a family which had a big mass in the local community had influence. He said that based on this influence he could be elected as Ward Chairman in his local area. He said that they had tried to put him under pressure by attacking his family.
46. The applicant said that while the caretaker government had been in power the RAB (the Rapid Action Battalion, a paramilitary force) and the police had been catching the leaders of the BNP. He said that he had believed that at this time the RAB and the police had been after him as well. He said that they had been targeting the members of the BNP executive committee and those who were dedicated so there would be no one left to work for the BNP. He said that he had been able to leave and enter Bangladesh during this period because he had made his trips to India and Nepal by road and the system was not computerised so they would not have known that he belonged to the BNP.
47. The applicant said that when he had travelled to Malaysia, Singapore and Thailand he had left through the airport in Dhaka but that during this time there had been no case against him. He said that there were two categories of people: those who had cases against them and who were listed, and those for whom the authorities were looking. He said that those who were listed would be arrested at the airport. He said that it had been an open secret that there had been a nexus between the caretaker government and the Awami League. He said that as a result there had been huge vote-rigging and no fair election.

48. The applicant said that the people from the Awami League had threatened him because he was a big leader, he had the capacity to influence others and to bring them to the BNP side and his family had influence. He referred again to the fact that [Mr A] had been elected at each election apart from the most recent election in 2008. He said in Bangladesh the police worked for the party in power so when the Awami League was in power they could make allegations against the BNP people and could pay money to the police who would kill the BNP people because no one could instigate any case against the police. The applicant said that he was not involved with the BNP in Australia: he was making inquiries and talking to people.

Further evidence given to the Tribunal

49. Under cover of a letter to the Tribunal dated [in] April 2011 the applicant's current representatives produced a statutory declaration made by the applicant's wife [the previous day] in which she said that 'Awami cadres led by [Mr C]'s group' had attacked the applicant [in] January 2009 and the applicant had been admitted to [hospital deleted: s.431(2)]. She said that [in] April 2009 her husband had been attacked by 'the Awami political cadres led by [Mr B]'s Group' and he had been admitted to [Hospital 5] where he had stayed for 12 days.
50. The applicant's wife said that after he had been released the applicant had stayed in different places but 'the Awami-led [Mr C]'s group' had attacked their house looking for the applicant and his brother. She said that they had threatened the applicant's father and had broken some furniture. She referred to a doctor's letter dated [in] May 2009 which was not produced. She said that she had suffered depression again since their applications for protection visas had been refused. She referred to another doctor's report which was likewise not produced. She said that she was afraid to go back to Bangladesh now. (The doctor's letter dated [in] May 2009 - actually a prescription - and the report from a doctor in Australia - prescriptions for Aropax and a request for a pathology test - were produced at the hearing [in] April 2011.)
51. In their covering letter the applicant's representatives said by way of clarification of matters set out in the applicant's statement accompanying his original application that the applicant had had contracts to build roads and culverts in his area and had also been involved in the distribution of rice to poor people. They said that [Mr C]'s group' had demanded illegal contributions from businessmen including the applicant while the Awami League had been in government but this had ceased while the BNP had been in power.
52. The applicant's representatives said that [Mr D] (the General Secretary of the BNP in [Ward 1] who wrote the letter referred to above) had been arrested under the caretaker government [in] August 2007 and detained for two to three months. They said that the applicant had been close to [Mr D] and as a consequence the police had come looking for the applicant at the end of August 2007 but he had not been at home. They said that the applicant had not returned to his home until [Mr D] had been released because he had feared that the police would be seeking him.
53. The applicant's representatives said that the applicant was not fully aware of the documents which the agent had submitted to the Australian High Commission in Dhaka but that the applicant had given the agent passports, tax certificates, his marriage certificate and photographs. They said that the applicant would provide the Tribunal with further clarification in relation to his overseas travel if requested. They produced a death certificate stating that the applicant's father had died [in] October 2010 of an adrenal crisis and septicaemia.

54. In a submission dated [in] April 2011 the applicant's representatives said that the applicant feared that he would be seriously harmed if he returned to Bangladesh for reasons of his political opinion (his support for the BNP) and his membership of a particular social group described as 'Businessmen having opposition political affiliation'. They referred to information bearing on the human rights situation in Bangladesh. They submitted that the applicant was 'a local political activist', that he reported being attacked and persecuted in Bangladesh and that accordingly he would again be persecuted if he returned to Bangladesh.
55. The applicant's representatives said that the applicant was a businessman in [Suburb 6], in Dhaka and an active member of the BNP and as such came within the suggested particular social group. They submitted that 'business persons who support the BNP face political victimization and persecution as a result of exercising their fundamental right of freedom of expression' They referred to a case in which it was claimed that a Mr Sujon, a businessman and political activist, had allegedly been kidnapped by members of the RAB from a street in Dhaka on 24 March 2010 and had not been seen since.
56. The applicant's representatives submitted that BNP members and supporters, especially those who were or had been actively involved at the local or national level, faced a real chance of suffering serious harm in Bangladesh. They submitted that the authorities in Bangladesh either engaged in or condoned human rights abuses targeting opposition party members and that internal relocation was not an option for the applicant, given that the Awami League had influence throughout Bangladesh.

The applicant's evidence at the hearing before me

57. At the hearing before me the applicant said that he had been assisted by his original representative in preparing his original application for a protection visa. He said that there were some mistakes but these had been amended. I noted that the only correction which had been made to the original application had related to the spelling of one of his sister's names. The applicant said that there was nothing else which needed to be corrected. He said that the statement accompanying his original application had been read back to him in his own language.
58. I noted that corrections had been made to the statement in relation to the name of his cousin who had been killed in the Liberation War and the date of the election in 2008. The applicant said that another paragraph said that he had been unable to return home during the time of the Caretaker Government. He said that during this time their area leader, [Mr D], had been arrested [in] August 2007 and this had triggered a fear in him that he would be arrested as well. He said that because of this fear he had not stayed at home at all until the day [Mr D] had been released. I noted that the applicant's representatives had referred to this in their letter dated [in] April 2011.
59. The applicant said that he had appeared for the SSC (Secondary School Certificate) in [year deleted: s.431(2)] but he had been unsuccessful so he had discontinued his education. He said that he had then done an apprenticeship as a [technician]. He said that he had done this work for eight to ten years. He said that after this he had had a business, [name deleted: s.431(2)], with a partner. He said that this had been in around 2005. He said that with his partner he had imported goods from China. He said that he had used a licence belonging to one of his friends. He said that he had not had to travel to China: he said that his friend had imported the goods and he had invested in the business. He said that he had been supplied with goods in proportion to his investment and he had stored them in a godown. He said that

he had sold the goods to his connections and acquaintances. He said that he had had this business until the end of 2008. He said that after that he had not really been able to do anything because the Awami League government had come to power.

60. I referred to the fact that the applicant's representatives had said that he had also had contracts to build roads and culverts in his area. The applicant said that what had actually happened had been that he had brought these contracts for the BNP people in his area from the Mayor and he had distributed the work to them. He confirmed that he had been acting as a go-between to arrange these contracts for the BNP people in his area.
61. The applicant said that he had been living in various locations before he had left Bangladesh. He said that after [Mr D] had been released he had returned to his home and that he had lived there until [a date in] December 2008. He said that for most of the time his wife had lived at her father's place in the next suburb, [Suburb 6]. He said that their daughter had sometimes attended school and some times not. I noted that in her application it said that she had been attending [school deleted: s.431(2)] from January 2005 until February 2010. The applicant said that this was correct but at the end time, when there had been a problem, in 2009, she had had to miss her school. He said that she had missed a couple of days a week.
62. The applicant said that from his school life he had been involved in politics very actively but he had become more actively involved from 1995. He said that when he had been at school he had attended demonstrations and area meetings. He said that all his family supported the BNP but his brother [Mr E], nicknamed '[Alias A]', had been strongly engaged with the BNP. The applicant confirmed that he had joined the BNP in 1995 and that he had been made vice-president of the BNP committee in [Ward 1] in Dhaka in the same year. He said that he had held this position until he had left Bangladesh for Australia. He said that his duty had been to execute the decisions and orders of the President and in the absence of the President to preside at meetings.
63. The applicant said that he had also been responsible for executing all the activities with the help of the other members of the party. He said that he had been involved with different activities at different times, for example putting up posters, 'miking', giving speeches at public gatherings and canvassing. He said that he had always tried to involve himself in the development of his area. He said that the Awami League led by [Mr C] had extorted money from their local bazar but when the BNP had formed government after the election in October 2001 he had stopped this activity. He said that this activity had started again now.
64. The applicant confirmed that he had worked for the BNP candidate, [Mr A], in the parliamentary election in June 1996. He said that [Mr A] had been standing for the seat of [constituency deleted: s.431(2)] and that he had won by a large margin. I put to him that this was not correct ([website deleted: s.431(2)]), The applicant said that it had been at the 2001 election that [Mr A] had won by a large margin.
65. The applicant confirmed that in 1998 he had been elected as an executive member of the BNP in [District 2]. He said that he had held this position too until he had left Bangladesh. He said that his main responsibility had been to execute the orders made by the executive committee members. He said that the way it worked was that the President and the Secretary were the people who had the authority to take major decisions and the responsibility of the other members of the committee had been to execute these decisions.

66. I asked the applicant what sort of political activities he had been involved in while the Awami League had been in government between 1996 and 2001. The applicant said that he had been mainly involved in demonstrating against their different activities and picketing during the time of *hartals* or strikes. I noted that he had mentioned a number of *hartals* in his statement and I asked him if he could remember any one in particular that he wanted to tell me about. The applicant referred to the *hartal* called by the BNP on 2 August 1999. He said that what the Awami League had wanted to do had been to provide a corridor road over Bangladesh and to protest this the BNP had organised many demonstrations and *hartals*. He said that at that time the BNP leaders had said that if required they would shed their blood but they would not let the Indian Government take a road in the middle of Bangladesh. He said that they had planned to build a road from Calcutta across Bangladesh to Assam. The applicant said that at the end of the *hartal* the Awami League terrorists incorporated with the police force had conducted baton charges. He said that he had been injured and he had spent a couple of days in hospital.
67. The applicant also referred to the *hartal* called on 23 August 2000 after Advocate Habibur Rahman Mondal, a well-known BNP leader, had been gunned down. I noted that the applicant had also mentioned a *hartal* the BNP had called in 1997 in relation to the agreement on the Chittagong Hill Tracts. I asked the applicant what the BNP's objection had been to this agreement. The applicant said that this peace treaty had been designed in a way which allowed the people from this area to have property in that area and in Bangladesh as well but any person from any other part of Bangladesh had not been allowed to go and buy any property in that specific area. He said that the people from the Hill Tracts had therefore been placed in a privileged position. He said that this was a humiliation to the general population.
68. The applicant confirmed that in 2005 he had been elected as one of the executive members of the [District 3] committee of the BNP. He said that he had likewise held this position until he had left Bangladesh. He said that in this capacity he had once again been responsible for executing the orders of the leaders. He said that he had been responsible for ensuring that their programmes would be successful and for different meetings. He said, for example, that there had been a proposal to build a community centre in his local area (although this had not in the end happened) and he had been responsible to organising the initial meeting to set the plan for building this community centre.
69. I noted that the applicant had already referred to one thing he had done while the BNP had been in power: he had said that he had stopped the extortion by [Mr C's] group. I asked him about other activities in which he had been involved. The applicant said that when the BNP had been in power there had been a rationing system so that people could buy rice at a good price. He said that he had ensured that the allocation of rice was fairly distributed. He said that he had also distributed contracts for development and the building of roads. The applicant said that during elections he had door-knocked and approached people to convince them to support the BNP.
70. I asked the applicant what achievements of the BNP he would have mentioned when campaigning for the BNP. The applicant said that from its foundation the leaders of BNP had always dedicated themselves for the development and well-being of the country. He said that they had never been engaged in nepotism or corruption. He said that if a BNP person did anything wrong the BNP would take action immediately. I noted that the applicant had said that he had been campaigning for [Mr A] again in 2008 and that despite what the applicant had said about corruption [Mr A] was apparently known as '[Alias 2]' ([website deleted: s.431(2)]). The applicant said that this was not correct: it was an appellation created by

Awami League people to defame [Mr A]. He referred to the fact that [Mr A] still held the position of [office deleted: s.421(2)] even though the Awami League was in power.

71. The applicant said, correctly, that at the election in 2008 [Mr A] had been standing in [constituency deleted: s.431(2)] which he said covered the same area. He said, again correctly, that [Mr A] had lost by around [number deleted: s.431(2)] votes ([website deleted: s.431(2)]). He said that the BNP had been the victim of a conspiracy which had led them to lose the election and after that the Awami League people in his local area - [Mr C's] group and [Mr B]'s group - had started harassment on a large scale. He said that after the election he had not been able to stay at his home because they had approached his home looking for him and they had demanded a big amount of money from him.
72. The applicant said that during this period of time he had heard that his father was ill and wanted to see him. He said that he had returned home late at night but at that time [Mr C's] group had been standing on the road and they had seen him. He said that he had suffered many injuries and they had left him for dead. He said that later on he had been admitted to hospital. He said that [in] April, when he had been returning from the party office to his sister's house in [Village 4], he had been attacked by people from [Mr B's] group in [suburb deleted: s.431(2)]. He said that he had again been injured and had been admitted to hospital. The applicant said that the Awami League people had repeatedly come to his home looking for him.
73. After a break I took evidence from the applicant's wife. I referred to her evidence in her statutory declaration that 'Awami cadres led by [Mr C]'s group' had attacked the applicant [in] January 2009 and I asked her how she knew the attackers had been from [Mr C's] group. The applicant's wife said that she had heard from the people in the street that it had been people from [Mr C's] group. She said that she had not been with her husband when he had been attacked. I asked her how in that case she had heard this from people on the street. The applicant's wife said that her father-in-law had heard this and had told her.
74. I referred to the applicant's wife's evidence in her statutory declaration that [in] April 2009 the applicant had been attacked by 'the Awami political cadres led by [Mr B's] Group' and I asked her how she knew the attackers had been from [Mr B's] group. The applicant's wife said that the applicant's main conflict had been with these two groups. I asked her how she had known that [Mr B's] group had been responsible on this occasion. The applicant said that her father-in-law had told her that it had been [Mr C's] group incorporated with this group.
75. I asked the applicant's wife where she had been living immediately before she had left Bangladesh to come to Australia. She said that she had been living with her parents-in-law as well as at her own mother's house in [Suburb 6]. She confirmed that their daughter had still been attending [school deleted: s.431(2)].
76. I asked the applicant's wife what she could tell me about the applicant's involvement in political activity and she said that she did not know much about this. She said that she herself had not been involved in political activity and she was not interested in politics. I noted that the applicant's wife had referred to two occasions on which the applicant had been attacked and I asked her if she wanted to tell me about any other problems he might have had. The applicant's wife said that she did not.

77. After taking evidence from the applicant's wife I resumed taking evidence from the applicant. I referred to his evidence that the police had told his father in May 2009 that they wanted to arrest him in connection with a case against him. The applicant said that so far as he was aware this was the only case against him. I noted that the letter he had produced from [Mr A] said that he had been subject to a number of false cases. The applicant said that the police had told his father directly about the case to which he had referred but that 'our people' in the police station had revealed that there were many other cases and they were enlisting his name in other cases as well.
78. I noted that the applicant had said that it had been as a result of his father having been told about this particular case that he had decided that he had to leave the country. The applicant said that he had endeavoured to stay in other areas but it had not helped him. He said that if he went to other areas he could be out of sight of his local rivals but he could not avoid the police because they were everywhere throughout the entire country. He said that in addition his wife had been traumatised mentally. I noted that from what the applicant had just told me there had been a number of false cases against him. The applicant repeated that his father had told him that the police had come to his family's home in relation to this one particular case.
79. The applicant also mentioned that the police had come to his home looking for him two days after [Mr D] had been arrested in 2007. He said that after [Mr D] had been released his case had been dismissed so there had been no other issues or problems. He said that he had therefore been able to return to his home. He said that, apart from this occasion, the one in May 2009 was the first occasion that the police had come to his home to arrest him.
80. I noted that the applicant had said before, and he had repeated at the hearing before me, that because the police had been looking for him there was nowhere he could go in Bangladesh. I noted that although the applicant said that the police had come looking for him in May 2009 he had not actually left Bangladesh until March 2010. The applicant said that he had been in hiding. He agreed that he had managed to evade the police throughout this period. I asked the applicant why he had remained in Bangladesh. The applicant said that he had not had the opportunity to leave because he had had to get a visa. He said that he had been trying to obtain a visa. He said that he had come to know an agent who had assisted him.
81. I noted that the applicant had previously travelled to India and Nepal on a number of occasions and that it appeared that it had not been difficult for him to obtain visas to go there. The applicant said that this had been under the Caretaker Government and there had been nothing to prevent him from leaving the country. I indicated to the applicant that I was not talking about any difficulty he might have had in leaving the country but about the fact that he had said that in May 2009 the police had wanted to arrest him on a charge of murder and that he had feared that if he were arrested he could be killed or that if he were put on trial he could be sentenced to life imprisonment. He had said that he had heard this in May 2009 but, as we had discussed, he had not left Bangladesh until March 2010. I put to him that this was a very long time to remain in hiding if he had thought that people were trying to arrest him. The applicant said that it had been very hard and as a result he had fled the country. He said that he had always been frightened and scared.
82. I asked the applicant why, for example, he had not gone to India. The applicant said that it was not possible to remain there. He said that another issue was that the Awami League had a very good relationship with India and they were bringing people from the BNP back to put them on trial and execute them. I asked him if he had thought of going to one of the other places to which he had been before, for example to Singapore. The applicant said that he had

heard that it was not possible and that they did not allow political asylum there. The applicant said that he had not chosen any particular country. He said that he had just asked the agent to help him to get a visa for a country where he could claim political asylum.

83. I put to the applicant that he had not even applied for a visitor visa to come to Australia until December 2009. The applicant said that he had travelled to other countries and he had known what documents were required. He said that he had had some problem collecting these documents because his business had already been shut down. I put to the applicant that if the evidence before me was correct he had not had to collect any documents for the purpose of his visitor visa application because all the documents which had been submitted with that application had been fraudulent (see folio 58 of the Department's file CLF2010/102378). The applicant said that he did not really know about this.
84. I put to the applicant that this delay cast doubt on whether he had genuinely feared being arrested in Bangladesh. The applicant said that he had been trying to get out of the country but he had needed to get a proper channel to get a proper visa. He said that it was not the case that when he had decided he had met with the agent immediately. He said that it had taken time because he had relied on other people to look for an agent through their channels and connections. He said that also the agents were not that prompt: they did not take a case instantly.
85. I noted the applicant had been in Australia for a year and I asked if he was involved in the BNP here. The applicant said that he had tried to contact the BNP people here but he said that he had promised his wife that he would not engage any more with politics. I asked him if he was saying that if he went back to Bangladesh he would not be engaged in politics. The applicant said that he could not tell. He said that his wife was ill now so for her well-being and to allow some time for her to get cured he had to refrain from politics. He said that it was not possible for him to go back to Bangladesh because there was a high possibility that he would be arrested at the airport as soon as he arrived. He said that there were many other cases where people had been arrested at the airport, for example his friend [name deleted: s.431(2)] who had been in Finland but whose application had been rejected. He said that his friend had been returned to Bangladesh and had simply disappeared.
86. I put to the applicant that the information available to the Tribunal indicated that forged or fraudulently obtained documents were readily available in Bangladesh. It was common for political party membership confirmation letters to be issued even if the information in them was incorrect. Genuine medical certificates containing incorrect information could also be issued (see Research Directorate, Immigration and Refugee Board of Canada, 'Bangladesh: reports of fraudulent documents', 20 September 2010, BGD103532.E; Research Directorate, Immigration and Refugee Board of Canada, 'Bangladesh: Prevalence of fraudulent, forged or fake documents and genuine documents obtained by fraudulent means ...', 8 August 2005, BGD100388.E; UK Home Office, *Country of Origin Information Report - Bangladesh*, 11 August 2009, paragraph 35.02; Australian Department of Foreign Affairs and Trade (DFAT) cable DA19732, dated 26 July 1988, CX2690).
87. I put to the applicant that there was evidence that journalists in Bangladesh would accept money for news coverage (Research Directorate, Immigration and Refugee Board of Canada, 'Bangladesh: Whether civilians bribe newspapers to publish fraudulent articles ...', 12 January 2004, BGD42086.E). The applicant said that 'if you contact them directly you will be able to know the truth'. He said that if it was fake news he would encourage the Tribunal to inquire with the national newspapers because they simply did not publish

anything without the reference of the police. He said that if there was any false thing published about any opposition party the ruling party would simply ban that newspaper or media company.

88. I asked the applicant what he meant when he said that nothing would be published without reference to the police. The applicant said that two or three days after he had left Bangladesh some unknown terrorists who had most probably belonged to [Mr C's] group or [Mr B's] group had gone to his home. He said that when this had been reported to the newspaper they had sought confirmation from the police and when the police had confirmed that this had happened they had then published this.
89. I asked the applicant what he meant when he said that if there was any false thing published about any opposition party the ruling party would simply ban that newspaper or media company. The applicant said this was defamation of the government because the public would inquire about it and would impeach the government. I put to the applicant that he had referred to false things being published about an opposition party. I referred to the fact that, as I had mentioned earlier, it had been published in the media that [Mr A] was apparently known as '[Alias 2]' ([website deleted: s.431(2)]). The applicant said that you could write that [Mr A] was '[Alias 2]' but you could not write that the current Prime Minister, Sheikh Hasina, was corrupt. He asked if any newspaper or media company which published this would be allowed to continue operating.
90. I put to the applicant that the evidence suggested that it would. I noted that, whichever party was in power, critical stories about the government appeared in the press (US State Department, *Country Reports on Human Rights Practices for 2009* in relation to Bangladesh, Section 2.a, Freedom of Speech and Press). The applicant said that this was true. He said that if the news was authentic and true then there was no problem but if it was not true - if it was false and fabricated - then the government would take some action. I noted that according to the applicant any report suggesting that the BNP was corrupt must be false. The applicant conceded that in fact the BNP was not free from corruption.
91. I indicated to the applicant that I was inclined to accept that he had been involved in politics in Bangladesh although I did not necessarily accept all his evidence about the problems he had had. I indicated that, in particular, I did not necessarily accept that he had been charged with murder but that his mere involvement in the BNP might be enough.
92. The applicant's representative said that applicants from Bangladesh faced an evidentiary problem in the sense that if they did not produce documents they would be asked for corroborative evidence but if they did he conceded that document fraud from Bangladesh was extreme. He said that it was true that there was a huge plethora of newspapers in Bangladesh, many of them of quite doubtful repute, but he submitted that it was generally considered that [Newspaper 1] was one of the newspapers which was reputable. He conceded that it was possible for journalists to be bought but he submitted that the report in [Newspaper 1] was probably one to which the Tribunal could have regard.
93. The applicant's representative submitted that the Tribunal could have regard to the fact that [Mr A] had written a letter in support of the applicant. He asked how a person could prove all the aspects of their case other than by getting documents. He said that it was not submitted that the applicant had been a politician at the senior levels in politics in Bangladesh but he submitted that the independent evidence was clear that people at the applicant's level, the local level, did have serious problems.

Background

94. In its *Country Reports on Human Rights Practices for 2009* in relation to Bangladesh the US State Department reported that the Awami League had won 263 of 299 parliamentary seats in elections held on 29 December 2008 which were considered by international and domestic observers to be free and fair. It referred to the fact that the elections had ended two years of rule by the military-backed caretaker government and it said that the government's human rights record had improved somewhat due to the return to a democratically elected government and the repeal of the state of emergency. It noted, however, that reports of politically-motivated violence had increased by 3.3 per cent and that, according to the human rights organisation Odhikar, 251 deaths were suspected of being politically-motivated compared to 50 in the previous year. It said that opposition party supporters claimed harassment by ruling party supporters (US State Department, *Country Reports on Human Rights Practices for 2009* in relation to Bangladesh, Introduction and Section 1.a, Arbitrary or Unlawful Deprivation of Life).
95. The US State Department reported that in 2008 the courts had released most of the more than 150 high-ranking politicians, businessmen and officials who had been detained by the caretaker government as part of its anti-corruption campaign and that during 2009 the government had withdrawn 1,817 allegedly politically-motivated cases filed under the caretaker government but that it was reported that most of these cases involved politicians from the ruling party. It said that during 2009 the Anti-Corruption Commission had filed a money laundering case against Koko Rahman, one of the sons of the BNP leader, Khaleda Zia, and that a separate money laundering case had been filed against Koko Rahman and Khaleda Zia's other son, Tarique Rahman (US State Department, *Country Reports on Human Rights Practices for 2009* in relation to Bangladesh, Section 1.e, Denial of Fair Public Trial - Political Prisoners and Detainees).
96. The US State Department reported that on occasion the new government used section 144 of the Criminal Procedure Code - which authorises the banning of assemblies of more than four persons - to prevent opposition groups from holding meetings and demonstrations and that at times police and ruling party activists used force to break up demonstrations. It reported, for example, that on 22 December 2009 ruling party activists and police had attacked BNP supporters at a reception in honour of Moyeen Khan's selection as party leader, causing dozens of injuries. It also reported that activists of the Chhatra League harassed and threatened reporters and ransacked their rooms and that no action was taken against the alleged vandals (US State Department, *Country Reports on Human Rights Practices for 2009* in relation to Bangladesh, Sections 2.a, Freedom of Speech and Press, and 2.b, Freedom of Peaceful Assembly and Association).
97. Over the course of the past year the political situation in Bangladesh has degenerated further as the BNP has resorted to the tactics of street protests which have been used successfully to destabilise governments in the past. Police have used tear gas, rubber bullets and batons to disperse supporters of the BNP and many people have been injured ('Bangladesh Shut Down by Opposition-Led Strike', *Voice of America*, 27 June 2010, CX245547; 'Further Bangladesh clashes as opposition holds strike', *BBC*, 14 November 2010, CX253665). Amnesty International has reported that the security forces used excessive force during a violent attack on those gathered peacefully inside the house of Mirza Abbas, a leading BNP politician and former mayor of Dhaka, on 27 June 2010. It said that victims described sustained and unprovoked beatings of activists, denial of medical treatment after arrests and the eliciting of signatures on blank forms as a condition of release which Amnesty International said it

suspected were for the purpose of falsifying confessions (Amnesty International, 'Bangladesh security forces used excessive force during raid', 1 July 2010, CX245778).

98. In a recent report *The Economist* summarised the current situation in the country:

'MORE than two years after the army aborted a dismal interregnum and released from jail the leaders of the country's two rival political dynasties, the politics of hate and attrition grind away in Bangladesh. The thanks go mainly to the personal vendetta of the prime minister, Sheikh Hasina, one of the two leaders, against the other, Khaleda Zia.

On November 13th Mrs Zia was evicted from her home of nearly 30 years in Dhaka's cantonment area. The move triggered a hartal, a protest strike called by Mrs Zia's opposition Bangladesh Nationalist Party (BNP). Violence broke out between her supporters and those of Sheikh Hasina's Awami League (AL). The country's third political force, the army, has backed the High Court's eviction order. Shrewdly, Sheikh Hasina has allocated the vast plot surrounding Mrs Zia's home for housing for the families of 57 military officers killed in a mutiny early last year, soon after the AL swept to power.

The eviction is part of the League's mission to break the BNP's back. It is obsessed with airbrushing from history the legacy of the political dynasty founded by Mrs Zia's late husband, General Ziaur Rahman, hero of Bangladesh's war of independence against West Pakistan in 1971.

In February the government renamed Dhaka's Zia International Airport after a respected Sufi saint. It has decided to "reprint" the 1972 constitution to reflect a landmark Supreme Court ruling in July which, among other things, declared null and void the rule of various military governments, including General Zia's, following the assassination in 1975 of Bangladesh's founding father, Sheikh Mujibur Rahman. (Sheikh Mujib, as he is usually known, happens to be the father of Sheikh Hasina.) In October a court issued an arrest warrant for Mrs Zia's younger son in a money-laundering case. Four corruption cases stand against Mrs Zia, while 13 cases against Sheikh Hasina, filed during the army interregnum, have been withdrawn.

Yet the BNP was in a shambles even before the recent onslaught. The party has just 30 seats in a 300-strong parliament, which it boycotts. It is split: Mrs Zia can count only on the support of a minority of BNP leaders. Meanwhile, the leaders of the BNP's main ally, Jamaat-e-Islami, Bangladesh's largest Islamic party, have all been jailed. They stand accused of alleged atrocities during the country's war of secession, and face possible execution. The alliance has hurt the BNP's reputation, particularly internationally, says Moudud Ahmed, a former prime minister and Mrs Zia's lawyer. Yet the BNP needs Jamaat-e-Islami's electoral support.

Mrs Zia's only hope is that people will get fed up with rising prices, power shortages and the open encouragement by Sheikh Hasina's government of the kind of predatory capitalism not seen since, well, Mrs Zia's rule in 2001-06. The government's high approval ratings are on the slide. At some point, Mrs Zia appears to calculate, mass adulation will attach to her eldest son and heir apparent, Tarique Rahman, now in British exile. Yet Mr Rahman, who left army custody with a snapped spinal cord in 2008, is the symbol of Mrs Zia's kleptocratic rule. He is loathed even among the BNP's leaders. ..

Despite the government's sliding ratings, popular support for Sheikh Hasina's clan dwarfs that for Mrs Zia's. And with such a tailwind, it is extraordinary how the

League remains stuck in a divisive politics based on personal grievances that go back nearly four decades. Time, you might think, to get on with governing.’ (‘Politics of hate - An ancient vendetta continues to eat away at public life’, *The Economist*, 18 November 2010, downloaded from http://www.economist.com/node/17525830?story_id=17525830, accessed 30 November 2010)

FINDINGS AND REASONS

99. As I indicated to the applicant in the course of the hearing before me, I accept that he was involved in politics in Bangladesh although I do not accept all of his evidence about the problems he claims he had. I do not accept, in particular, that he has been charged in a case relating to murder and ‘bomb blasting’ as he claims. The applicant claims that his father told him about this charge in May 2009 but he did not leave Bangladesh until March 2010 and as I put to the applicant I consider that this was a very long time to remain in hiding if he thought that if he were arrested he could be killed or that if he were put on trial he could be sentenced to life imprisonment. The applicant said that it had taken time for him to find an agent to assist him but I remain of the view that this very long delay casts doubt on his claims about the case against him.
100. I consider, however, that the applicant’s presentation and the evidence he gave at the hearing before me were consistent with his claims. I accept that the applicant left school without completing his Secondary School Certificate (Year 10) and that he worked as a [technician] before investing in a business. It is apparent that the applicant did well during the period when the BNP was in power (from October 2001 until October 2006) and this may be explained by his role in distributing contracts to people for work in his area which were awarded by his patron, [Mr A].
101. I accept that, as the applicant’s representative said at the hearing before me, the applicant was not a politician at the senior level in Bangladesh. Despite the titles of the various positions he held, it is clear from his evidence that his role was to carry out the orders of others. When the BNP was in opposition this meant that he took a leading role in *hartals* or strikes called by the BNP which as is normal in Bangladesh resulted in violent clashes with people from the opposing party and the police. When the BNP was in government the applicant was able to stop his political rivals from carrying out extortion and he was responsible for distributing government contracts and other benefits such as rice in his local area.
102. At the hearing before me the applicant was able to explain the reasons for the *hartal* called by the BNP on 2 August 1999 and the BNP’s opposition to the agreement on the Chittagong Hill Tracts. He also reacted in a convincing way when I put to him that his patron, [Mr A], was known as ‘[Alias 2]’ I accept that the applicant was involved in the BNP in Bangladesh as he has claimed. Although he has not been involved with the BNP in Australia I accept that this is out of deference to the wishes of his wife. Having regard to his past history of involvement in politics in Bangladesh I consider that the applicant will once again become involved in political activity in support of the BNP if he returns to Bangladesh now or in the reasonably foreseeable future.
103. As referred to above, the independent evidence suggests that the feuding between the BNP and the Awami League continues unabated in Bangladesh (‘Politics of hate - An ancient vendetta continues to eat away at public life’, *The Economist*, 18 November 2010, downloaded from http://www.economist.com/node/17525830?story_id=17525830, accessed 30 November 2010). I consider on the basis of the evidence referred to above under

‘Background’ that there is a real chance that BNP activists peacefully gathering to express their political opinions may fall victim to violence at the hands of activists from the Awami League or its student wing, the Chhatra League, or the security forces, and that no action will be taken against those responsible for such violence (US State Department, *Country Reports on Human Rights Practices for 2009* in relation to Bangladesh, Introduction and Sections 1.a, Arbitrary or Unlawful Deprivation of Life, 2.a, Freedom of Speech and Press, and 2.b, Freedom of Peaceful Assembly and Association; ‘Bangladesh Shut Down by Opposition-Led Strike’, *Voice of America*, 27 June 2010, CX245547; ‘Further Bangladesh clashes as opposition holds strike’, *BBC*, 14 November 2010, CX253665; Amnesty International, ‘Bangladesh security forces used excessive force during raid’, 1 July 2010, CX245778).

104. 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 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 I accept that the applicant would be involved in political activity in support of the BNP wherever he were to go in Bangladesh, and since the evidence referred to above does not suggest that there is any part of Bangladesh where opposition political activity can be carried on safely without the threat of violence, I consider that there is no part of Bangladesh to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears.

CONCLUSIONS

105. I find that the applicant is outside his country of nationality, Bangladesh. For the 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.
106. As referred to above, the applicant’s wife and daughter did not make specific claims under the Refugees Convention as amended by the Refugees Protocol. I am not satisfied that they are persons to whom Australia has protection obligations and they therefore do not satisfy the criterion set out in paragraph 36(2)(a) for the grant of a protection visa. I am satisfied, however, that the applicant’s wife and daughter are members of the same family unit as the applicant for the purposes of subparagraph 36(2)(b)(i) of the Act. As such, the fate of their applications depends on the outcome of the applicant’s application. As the applicant satisfies the criterion set out in paragraph 36(2)(a), it follows that the applicant’s wife and daughter

will be entitled to be granted protection visas provided they meet the criterion in subparagraph 36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

107. The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies paragraph 36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second and third named applicants satisfy subparagraph 36(2)(b)(i) of the Migration Act, being members of the same family unit as the first named applicant.