

0804820 [2008] RRTA 383 (23 September 2008)

DECISION RECORD

RRT CASE NUMBER: 0804820
DIAC REFERENCE(S): CLF2008/67090
COUNTRY OF REFERENCE: Bangladesh
TRIBUNAL MEMBER: Andrew Jacovides
DATE DECISION SIGNED: 23 September 2008
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Bangladesh, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA). The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

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

a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded

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

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department file CLF2008/67090, with the protection visa application and the delegate’s decision, and the Refugee Review Tribunal (RRT) file 0804820, with the review application.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.

Department file CLF2008/67090

21. The applicant stated in his protection visa application that he was a citizen of Bangladesh, He stated that before he came to Australia he lived in Dhaka. The applicant stated that he completed many years of education and he subsequently ran his own company for about a decade. He submitted a partial copy of his passport which was issued by the government of Bangladesh.
22. The applicant claimed that in Bangladesh he was involved with the Awami League (AL) and he was targeted by the opposing political parties of the Bangladesh Nationalist Party (BNP) and the Jamaat-e-Islami (JI). The applicant claimed that when he established his own business he had to affiliate himself with one of the political parties otherwise he would face trouble from hooligans and miscreants. He stated that he aligned himself with the AL because his father was involved with the party and he disliked the BNP and the JI. The applicant claimed that he left Bangladesh because “the BNP and Jamaat-e-Islami with the direct cooperation of law enforcing authorities tried to confiscate and occupy” his “business and tried to kill” him. He stated that they “continuously intimidated” him and “threatened to kill” him. The applicant stated that he was afraid that the same parties and the police will harass him if he returns to Bangladesh He stated that he was person of particular interest to fundamentalists from the Jamaat-e-Islami party.

23. The applicant claimed that when the BNP won government in 2001, with the support of JI, his business suffered losses and he was subjected to intimidation by business rivals who were affiliated with the government. He stated that he was a successful businessman but when the BNP came to power he had difficulty getting government contracts. He claimed that his business was destroyed and he tried to negotiate with his rivals. He claimed that they were not interested in his proposal. The applicant claimed that they threatened, harassed, and humiliated him.
24. The applicant claimed that once when he was attending a business meeting BNP and JI contractors sent “goons” to the meeting to target him. He stated that some of his older colleagues were able to save him. The applicant claimed that the following month he was attacked by miscreants who hit him with and threatened to kill him if he did not “behave properly”. He stated that they wanted him to leave the business so that they could get more contracts. The applicant stated that persons witnessing the attack intervened and took him to hospital.
25. The applicant claimed that after the two attacks he moved to another part of Dhaka to be safe from the persons who were targeting him. He stated that despite his attempts to avoid difficulties with political opponents he did not wish to abandon his business activities because he had been very successful at it. He stated that he attempted to get contracts but the BNP and JI found out what he was doing and they tried to kill him. He stated that his opponents came to his house screaming and looking for him. He stated that he hid in his house until they left. The applicant claimed that they “put some false cases against” him.
26. The applicant claimed that before he left Bangladesh the caretaker government had control of the country and “they started to chase the miscreants and corrupted people from different [parts] of the country and without consideration” He stated that some persons on their list were arrested and some killed in crossfire.
27. The applicant claimed that in Bangladesh he will be killed by rivals in business and politics. He claimed that the authorities may target him because and they have the “list” of persons who have “a severe criminal case” against them and his name is on that list. He stated that the current government was arresting citizens arbitrarily, including the leaders of the AL and the BNP. He stated that his political ideology was against fundamentalists and he had to leave Bangladesh to save his life.
28. The delegate found that the applicant’s difficulties in Bangladesh related to his business activities rather than his political ideology. The delegate was not satisfied that the applicant’s difficulties in Bangladesh were Convention related.

RRT file 0804820

29. The applicant did not provide any new information with the review application. The Tribunal received a submission from the applicant. He stated

that he was a political leader with the Bangladesh Jubo League (the youth wing of the AL). He repeated his claim that he was a successful business person until the BNP and JI came to power in 2001. He stated that his association with the AL meant that he could no longer compete for government business. He stated that when he protested he was attacked three times by persons seeking to kill him. The applicant claimed that when their activities failed to stop him they filed false cases against him. He stated that some of his colleagues informed him of the false cases so he relocated to another part of Dhaka to save his life.

30. The applicant stated that when the caretaker government came to power he hoped his life would be saved but the situation became more dangerous for him and he was forced to flee to Australia. He claimed that the caretaker government will not give him protection. The applicant stated that he could not be safe by internal relocation as he “cannot reasonably be expected to suppress the exercise of [his] inalienable human rights in order to avoid being subjected to persecutory treatment”.
31. The applicant argued that the delegate’s decision was incorrect because the decision-maker failed to recognise that all his difficulties in Bangladesh related to his leadership position with the Jubo League. He stated that if he was not a follower of the AL he could run his business without fear or interference. The applicant stated that he could not provide evidence of his involvement in politics because he fled to save his life and he could not take all his belongings with him. He stated that his subsequent attempts to contact his political colleagues in Bangladesh failed and he assumed they were in hiding. He stated that he was still trying to get a reference from his political leaders.

The hearing

32. The applicant stated that in Bangladesh he was politically active with the Jubo League and he was targeted by political opponents and later the interim government because of his political views. He stated that he left Bangladesh because he was on the “second list” of persons to be arrested for corruption. He stated that the police came to his house several times seeking to find him but his father told them that he did not know where he was. The applicant stated that he was forced to move around Dhaka to avoid the authorities. He stated that he subsequently organised his journey to Australia and he fled the country before the police could find him.
33. The Tribunal commented that in his written statement to the Tribunal he indicated that he was fleeing life-threatening violence by the BNP and the JI rather than corruption charges under the interim government. The applicant stated that he did not know who was behind the police harassment. He stated that it may have been his BNP and JI opponents or it may have been the interim government targeting him because he was active with the AL.
34. The Tribunal asked the applicant how he wrote his written submissions to the Department and the Tribunal. He stated that a friend wrote his submission to the Department but he later discovered that the statement contained many

errors. He stated that his submission to the Tribunal was written by another friend and it was a more accurate account of his circumstances. He stated that he described his circumstances to a friend and the same friend wrote his story in English.

35. The Tribunal commented that the applicant was introducing claims at the hearing which had not been included in his written statement to the Tribunal. The Tribunal commented that he had not indicated prior to the hearing that he was targeted by the interim government for corruption. He stated that he told his friend about his difficulties in Bangladesh but his friend told him not to present everything in the statement as he would have an opportunity to provide his full story at the hearing. The Tribunal commented that he had been misinformed and there was an expectation that applicants would present their claims fully and consistently throughout the processing of their application. The Tribunal indicated to him that because he did not provide a consistent account of his claims, and he was introducing claims at the hearing, the Tribunal will have to consider whether he was exaggerating or fabricating claims to enhance his protection visa application. The applicant stated that he was telling the truth
36. The applicant stated several times during the hearing that the BNP and the JI, and their associates in the business community, were seeking to destroy his business and kill him. He stated that at times he was forced to move or hide in Dhaka. The Tribunal commented that the BNP was in power from 2001 to 2006 and during that period they effectively had control of the police force and were able to influence the judiciary. The Tribunal commented that if indeed he was a person of adverse interest to the BNP and the JI, and they did want to kill him or prevent him from doing business, they would have done it while they were in power. The Tribunal commented that he was not killed, and his business still functioned during that five year period, which indicates that he was not a person of particular interest to the BNP, the JI, or their associates. The Tribunal commented that the applicant appeared to be exaggerating the harm he faced during that period to enhance his protection visa application. The applicant stated that he did face life-threatening harm while the BNP was in power.
37. The Tribunal noted the applicant's claim that the AL was targeted by the current government and commented that reports in general indicate that this is not the case. The Tribunal commented that information from external sources indicates that political violence has decreased significantly since the caretaker government came to power because it has restricted activities which in the past have led to serious violence between the main political parties. The applicant stated that he is now more vulnerable in Bangladesh than before because there is a false case against him and he will not have access to justice while the interim government is in control. The Tribunal asked the applicant to describe the nature of the false case. He stated that when he was physically attacked by political opponents, during the BNP years, they accused him of being the perpetrator.
38. The Tribunal referred to information from external sources relating to the current political situation in Bangladesh. The Tribunal noted an assessment by

the Department of Foreign Affairs and Trade (DFAT) 2007, *DFAT Report No. 723 – Bangladesh: RRT Information Request: BGD32419*, 1 November, which stated that there “has been a marked reduction in the level of politically-motivated violence, including retaliation against opponents throughout Bangladesh since January when the current caretaker government was sworn in” The Tribunal noted that DFAT advised that the BNP was having internal difficulties and it had split into factions while the AL remained united.

39. The Tribunal referred to a report by the Bangladesh human rights organization Odhihar which reported that during the state of emergency the authorities killed 134 persons. The Tribunal noted that four of those persons were AL members while eight were members of the BNP. (Odhihar 2007, *240 Days of State of Emergency: The Government must respect the due process of law*, Sabrang website, 9 September). The Tribunal commented that the number of persons killed during the state of emergency is concerning. However, it noted that relative to other groups in society, the AL was not a major target. The Tribunal noted that this report by Odhihar suggested that the AL received less attention from the authorities than other political parties.
40. The Tribunal referred to the latest US Department of State human rights report on Bangladesh and commented that this report indicates that political violence has decreased substantially under the current government (US Department of State 2008, *Country Reports on Human Rights Practices – 2007*, ‘Bangladesh’, 11 March). The Tribunal commented that the report did not support his claim that the government was targeting AL members or demonstrating preferential treatment for BNP supporters. The Tribunal noted that according to the US Department of State, many high level officials detained during the state of emergency were widely suspected of corruption and had credible charges of corruption pending against them (supra, Section 1: Arrest and Detention). The Tribunal noted that human rights have been restricted during the state of emergency in Bangladesh but the political activities were continuing.
41. The Tribunal noted the applicant’s claim that the government was preventing AL supporters from expressing their views. The Tribunal commented that freedom of expression has been limited by the current government but the information from external sources indicates that political activity continues in Bangladesh and that party members have opportunities and venues to express their views. The Tribunal referred to the following reports: ‘Barring BNP other political party offices open’ 2007, *United News of Bangladesh*, 10 September; ‘Bangladesh lifts ban on indoor politics’ 2007, *Press Trust of India*, 9 September; and ‘Bangladesh party splits over reform demands’ 2007, *Reuters*, 15 September. The Tribunal commented that these reports describe an active political scene in Bangladesh despite the restrictions imposed by the caretaker government during the state of emergency. The Tribunal noted that the government is gradually lifting restrictions on political activities.
42. The Tribunal commented that information from external sources indicates that the current government was investigating political cases from the previous governments with a view of determining whether they had merit or

if they were politically motivated false cases. The Tribunal referred to an assessment by DFAT which found that “the current Caretaker Government has been reviewing cases filed during the periods of previous governments, including both the BNP (1991-1996 and 2001-2006) and the Awami League (1996-2001), with the view to identifying those cases which have been either politically motivated or filed under false pretences. Where a case has been determined to be politically motivated or false, the charges may be dropped” (Department of Foreign Affairs and Trade 2007, *DFAT Report No. 744 – Bangladesh: RRT Information Request: BGD32651*, 5 December). The applicant was asked if the false case against him has been investigated or dropped. The applicant stated that he will be arrested and killed by the current government.

43. The Tribunal commented that the International Crisis Group (ICG) released an assessment of the political situation in Bangladesh on 28 April 2008, which essentially indicates that the AL is well placed to win the next election. The report further indicates that the interim government has set itself an ambitious reform agenda to deal with endemic corruption in Bangladesh, electoral reform and removing political influence from state institutions, including the civil service. The report indicates that the major parties in Bangladesh continue to “remain highly personalised and centralised around their founding families”. The report indicates that the AL has remained popular and viable during the interim government but the BNP and other political parties have split into factions (International Crisis Group 2008, *Restoring Democracy in Bangladesh*, Asia Report no.151, 28 April).
44. The Tribunal commented that recently local government elections were held in Bangladesh and the AL was the best performing party (*BBC News*, ‘Awami League win B’desh election’, 5 August 2008). The Tribunal commented that political conditions are more favourable now for the AL than at any time since the party lost government to the BNP in 2001. The Tribunal asked the applicant if these conditions have improved his own individual circumstances. The applicant stated that political activists were prevented from expressing their views and there was no freedom of expression in Bangladesh. The Tribunal commented that the reports referred to above did not support his view and the information indicated that AL supporters were free to express their views without adverse interest from the authorities.
45. The Tribunal asked the applicant if he was active with the AL in Australia. He stated that he was involved with the AL in Australia. He stated that he went to a conference organized by the AL. He was asked who was currently organizing AL activities in Australia and what activities were taking place. He stated that he did not know because he had a headache and he had taken two painkillers on the day of the hearing. He stated that he was concerned about his father in Bangladesh which further interfered with his memory. The Tribunal commented that if he was genuinely involved with the AL in Australia he would have had some details regarding the leadership of the group and its activities in this country. The Tribunal commented that a more plausible explanation for his lack of knowledge regarding AL activities in this country would be that he has not been involved with the group and he did not

know what they were doing or who was organizing their activities. The Tribunal commented that he appeared to have fabricated the claim to enhance his application.

46. The Tribunal noted that the applicant had been unable to provide any documentary or external evidence to support his claim that he was a member of the AL or the Jubo League. The applicant stated that he has not been able to contact anyone in the AL in Bangladesh. He stated that he could not obtain any official documentation from the AL in Bangladesh to confirm his involvement with the party. The Tribunal commented that the AL is a fully functioning party in Bangladesh and it was not difficult to contact the party from Australia by telephone. He stated that the central committee was easy to contact but not his branch. The applicant stated that he has been unable to provide any documentary evidence regarding his involvement with the party because he could not speak to anyone from his branch. The Tribunal commented that if he was a member of the party, and particularly if he held a leadership position with the Jubo League, it would have been an easy matter for him to obtain a letter from the AL in Bangladesh to confirm his involvement. He stated that he was not involved with the central committee and he has not been able to contact anyone from his local branch. The Tribunal commented that in its view members of the AL can easily obtain letters from the party to verify their involvement whether they were involved with the central committee, a local branch, or with one of the youth wings of the party. The Tribunal commented that a more plausible reason for the lack of documentation or other corroborative evidence regarding his involvement with the party was that he was not a member of the AL or a prominent Jubo League member. The Tribunal commented that it would have to consider whether these claims were fabricated to enhance the application. The applicant repeated claims already provided and he stated that he gave a truthful account of his circumstances in Bangladesh.
47. The Tribunal commented that information from external sources discussed at the hearing indicated that political activities were continuing in Bangladesh, despite the restrictions imposed during the state of emergency, and in a safer environment. The Tribunal commented that the AL was the most powerful and popular it has been since 2001. The Tribunal commented that if the Tribunal accepts that he was involved with the AL, and that he is still involved with the AL, it may find that his fear of harm by political opponents and the interim government is not well-founded.
48. The applicant stated that he feared that he would be detained and charged with corruption by the interim government. The Tribunal commented that the government launched its anti-corruption campaign approximately 13 months before he left the country and it was the Tribunal's view that if he was genuinely a person of interest to the authorities he would have been detained during that period. He stated that the police did not catch him because he was effectively in hiding in Dhaka. The Tribunal commented that this was another new claim introduced at the hearing. The Tribunal commented that the interim government had plenty of time and opportunity to detain him if he was indeed a person of interest to the police. The Tribunal stated that the lack

of action taken against him would suggest that he was not a person of interest to the interim government. He stated he was on the “second list” of persons to be detained for corruption.

49. The Tribunal asked the applicant if he was involved in corrupt activities in Bangladesh. The applicant replied he was not involved in corruption but he was a businessman and he had to make a living. The Tribunal commented that the US Department of State report referred to above indicated that the persons who were detained after the interim government came to power had credible charges of corruption pending against them. The Tribunal commented that if indeed he was suspected of corruption he would have to answer to those charges. The Tribunal commented that legitimate prosecution by a government with regards to a person who has been implicated in illegal activities is not a matter that commonly attracts the protection of the Refugees Convention. He stated that he could not receive fair treatment in Bangladesh. The Tribunal commented that information from external sources referred to earlier in the hearing indicates that those charged with corruption have legitimate cases against them and the government have been investigating those cases and dealing with them as it should. The applicant stated that there is no justice in Bangladesh.
50. The applicant stated that if the AL was in power he could safely return to Bangladesh. He stated that until the AL wins government he does not dare return to Bangladesh. He stated that the interim government could hold on to power for years on the pretext of dealing with corruption. The applicant stated that while the current government was in power he could not safely return to Bangladesh because he feared the authorities and political opponents. He stated that the false case could be used against him. The Tribunal commented that under the interim government politically motivated false cases are being investigated and with this favourable development in Bangladesh he could be cleared of the charges if indeed the accusations are false and he does have a politically motivated false case against him. The applicant stated that he still faces problems in Bangladesh.

FINDINGS AND REASONS

51. The applicant claims to be a citizen of Bangladesh. The Tribunal accepts this claim. He claims that his political opponents in Bangladesh the BNP and the Jamaat-e-Islami, with the cooperation of the authorities, tried to confiscate and occupy his business and kill him after the BNP came to power in 2001. He claims that from 2001 until 2006 when the BNP and the JI shared power in Bangladesh, he was continuously harassed and he faced life-threatening harm by political opponents and the authorities. He claims that during that period he was physically attacked and harmed on three occasions by persons associated with his political opponents. He claims that when his opponents could not find him they filed false cases against him. He claims that he is a person of particular interest to fundamentalists from the Jamaat-e-Islami party.
52. The applicant claims that he was an active member of the AL. He claims he was a leader of the Jubo League and targeted by the BNP and the JI because of his prominent status in the Jubo League. He claims that in Bangladesh he will be

killed by rivals in business and politics without access to protection. He claims he was forced to move and hide within Dhaka to avoid the persons targeting him which included political opponents and the authorities He claims that his political opponents in the BNP and JI may seek to kill him if he returns to Bangladesh.

53. He claims that the authorities assisted his political opponents to target him. The applicant further claims that the current government will seek to imprison and persecute him because of his involvement with the AL He claims that he has been falsely accused of involvement in corruption and he is fearful that the authorities will detain and may kill him for these reasons. The applicant claims that he will not have access to protection and he will not be able to defend himself against the charges.
54. The applicant claims that he will be prevented from expressing his political views in Bangladesh and he will not be able to participate in political activities of his choice. He claims he has been involved with the Awami League in Australia.
55. The Tribunal does not consider it appropriate to take an overly stringent approach to questions of credibility but neither does it consider it appropriate to accept all claims uncritically: *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Beaumont J at 451, *Sivalingam v Minister for Immigration and Multicultural Affairs* (MIMA) (unreported, Federal Court of Australia, O'Connor, Branson, & Marshall JJ, 17 September 1998), *Aruliah v MIMA* (unreported, Federal Court of Australia, Marshall J, 1 October 1997) at 6, *Sellamuthu v MIMA* (1999) 90 FCR 287 per Hill J at paragraph 40. The Handbook on Procedures and Criteria for Determining Refugee Status, suggests that it is “frequently necessary to give the applicant the benefit of the doubt... [but only after]... all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts” (United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, Geneva, paragraphs 203 and 204).
56. The Tribunal is not satisfied that the applicant provided a truthful account of his circumstances in Bangladesh or in Australia. The Tribunal accepts that the applicant supported the AL when the party was in power, and that his support led to government contracts and a successful business. The Tribunal accepts the applicant’s claim that when the BNP came to power, and during their administration, his business was not as successful as it had been when the AL held government. However the Tribunal has formed the view that the applicant greatly exaggerated the harm he faced in Bangladesh in the period when the BNP was in power from 2001 to 2006. The Tribunal is not satisfied that he was a person of particular or adverse interest to the BNP, the JI, fundamentalists, their associates, or the authorities
57. The Tribunal does not accept as credible the applicant’s claim that while the BNP and the JI were in power in Bangladesh, between 2001 and 2006, the government, the authorities, or persons associated with the government, sought to kill him or destroy his business. The Tribunal finds that if the government

wanted to either seriously harm the applicant or destroy his business they would have done it while they were in power. The Tribunal accepts that the applicant had difficulties with business competitors after the BNP came to power and that on three occasions he was physically attacked during that period. However, it finds that those difficulties relate to his business activities rather than a particular interest by the government or anyone associated with the government to harm him for political reasons. The Tribunal has formed the view that the applicant's difficulties in Bangladesh, while the BNP was in power, related to his business activities rather than his political opinion. The Tribunal does not accept as credible the applicant's claim that he was a person of interest to the BNP government, or anyone else, for political reasons. The Tribunal finds that the applicant fabricated the claim to enhance his application.

58. The applicant claims that his opponents in the BNP, the JI, business rivals, and fundamentalists, sought to harm or kill him in Bangladesh because he was a prominent member of the Jubo League. The Tribunal accepts that the applicant supported and still supports the AL. However, it does not accept that he was a prominent or influential member of the party. The Tribunal does not accept as credible the applicant's claim that he attracted adverse interest of the BNP or the JI or anyone else because of his involvement with the Jubo League or the AL. The Tribunal has formed the view that the applicant was not an active member or an activist with either organisation. The Tribunal finds that if indeed the applicant was involved with the AL, in any capacity, he would have been able to provide some external corroborative evidence to verify his involvement with the party. The Tribunal considered the applicant's claim that he has been unable to contact the AL in Bangladesh. He claims that his political associates in Bangladesh have all gone into hiding. However, after considering information from external sources referred to earlier, the Tribunal has formed the view that the AL, and its youth wing, is a fully functioning party as it was before the interim government came to power. The Tribunal finds that the AL and the Jubo League in Bangladesh are easily accessible by telephone or other electronic means. The Tribunal finds that the applicant has not been able to provide any corroborative evidence regarding his involvement with the AL or the Jubo League because he was not a member of the AL or a leader of the Jubo League. The Tribunal finds that the applicant fabricated these claims to enhance his protection visa application and the Tribunal does not accept as credible the applicant's claim that he was a prominent or active member of the AL or any of its affiliated groups in Bangladesh.
59. The applicant claims that he has been involved with the AL in Australia. However, when the Tribunal asked him to provide details regarding the AL in Australia, he had no details to provide. The applicant stated that he suffered memory loss because he had a headache and he was anxious regarding his father in Bangladesh. However, the Tribunal finds that a more plausible reason for the applicant's lack of knowledge regarding AL activities in Australia is that he has not been involved with the AL in Australia. The Tribunal does not accept as credible the applicant's claim that he has been involved with the AL in Australia. It finds that the applicant fabricated the claim to enhance his application.

60. The applicant claims that a false case was lodged by his opponents in Bangladesh while the BNP was in power. He claims he was accused of physically attacking his political opponents. He claims the police were seeking to find and arrest him regarding the false case. However, the Tribunal has formed the view after considering all the information provided by the applicant regarding his circumstances and activities in Bangladesh while the BNP was in power, that the authorities did not demonstrate any real interest in either catching him or punishing him for the alleged crime. Despite the applicant's claim that he moved around Dhaka to avoid the authorities, his evidence indicates that he maintained his business activities during that time, and it would have been an easy matter for the authorities to locate and detain him if indeed that is what they wanted to do. The Tribunal finds that the authorities had the opportunity to find and detain the applicant if they had a genuine interest in dealing with the false case against him. The Tribunal finds that the applicant greatly exaggerated the interest demonstrated by the authorities regarding the false case against him. The Tribunal does not accept as credible the applicant's claim that the authorities in Bangladesh were seeking to detain and punish him in relation to a political false case which had been lodged by his opponents.
61. The Tribunal finds that the matter of the false case against the applicant, if indeed the authorities have any interest in pursuing the matter, can now be dealt with properly by the current government. The Tribunal accepts advice by DFAT that "the current Caretaker Government has been reviewing cases filed during the periods of previous governments, including both the BNP (1991-1996 and 2001-2006) and the Awami League (1996-2001), with the view to identifying those cases which have been either politically motivated or filed under false pretences" and where "a case has been determined to be politically motivated or false, the charges may be dropped" (Department of Foreign Affairs and Trade 2007, *DFAT Report No. 744 – Bangladesh: RRT Information Request: BGD32651*, 5 December). The Tribunal is satisfied that if the applicant has a false case pending against him, lodged by political rivals during the BNP government, he can have that case investigated and dropped under the improved conditions introduced by the current government.
62. The applicant claims that he will be arrested and may be killed by the current government because he is accused of being implicated in corruption. He claims that he will not be able to defend himself. However, after considering the applicant's description of his circumstances in the 13 months before he left Bangladesh, the Tribunal has formed the view that the authorities and the government did not demonstrate any real interest in apprehending or mistreating the applicant regarding corruption or for any other reason. Information from external sources indicates that the government anti-corruption drive began soon after they came to power and those who were suspected of corruption were detained during 2007. The applicant claims that there is a second list of suspects and he is on that list. However, the Tribunal finds that the interim government was in power for approximately 13 months before the applicant left the country and during that period it had identified and arrested those implicated in corruption. The Tribunal finds that if the applicant was a person of interest to the government, regarding any real or

alleged involvement in corruption, he would have been arrested and investigated before he left the country. The Tribunal finds that the applicant's fear in this regard is not well-founded.

63. The Tribunal considered the applicant's claim that there is a second list of persons to be arrested in Bangladesh in relation to corruption. He claims he is on that list and he fears that he will be detained, imprisoned, or killed, by the current government. The Tribunal finds that the applicant has no real evidence to support his claim that a list exists or that he is on it. The Tribunal finds that it is either mere speculation on his part that such a list exists or he has fabricated the claim to enhance his application. In either case, the Tribunal finds that if the applicant was indeed a person of concern to the authorities in Bangladesh, or a person at risk of arrest by the authorities in Bangladesh, the authorities would have arrested him and dealt with the matter in the 13 months after they came to power.
64. The Tribunal has noted the applicant's claim that the police came looking for him but that his father told them that he was not there. He claims that he was able to flee the country before he was detained. He claims that he moved within Dhaka to avoid detection. The applicant also stated that he was politically active and still doing business until he left for Australia. The Tribunal finds that if he was a person of particular interest to the authorities in Bangladesh he would have been detained and dealt with in the 13 months after the interim government came to power. The Tribunal is not satisfied that the applicant was a person of adverse interest to the authorities in Bangladesh at the time when he left the country and it is not satisfied that he will be a person of adverse interest to the authorities in Bangladesh if he returns there in the reasonably foreseeable future.
65. The applicant claims that the current government is targeting the AL and he will not be able to express his political views in Bangladesh. However, the Tribunal finds that these claims are not supported by information from external sources discussed with the applicant at the hearing. The Tribunal has formed the view after considering information from external sources that the interim government is not targeting the AL or its supporters and finds that citizens of Bangladesh are able to express their political opinion without adverse interest from the authorities. The Tribunal has noted that during the state of emergency the government imposed restrictions on political activity. Nevertheless, even at the height of the restrictions, the AL was still functioning and its members had opportunities and venues to express their views. The Tribunal finds that if the applicant wishes to express his political opinion in Bangladesh he will be able to do so without adverse interest by either the authorities or political opponents. The Tribunal is satisfied that with the reduced levels of political violence since the interim government came to power it is now safer for citizens of Bangladesh to express their political views than it has been while the BNP and the AL held government. The Tribunal finds that the applicant's fear that he will be prevented from expressing his political views, or harmed if he does, is not well-founded.
66. The applicant claims that the current government will not protect him from the harm he anticipates in Bangladesh from political opponents and the authorities.

The Tribunal finds that the applicant has greatly exaggerated the risks he faces in Bangladesh from political opponents and the authorities. The Tribunal finds that conditions in Bangladesh have improved since the interim government came to power and the political targeting which was common under the previous BNP and AL governments has decreased significantly under the current government. The Tribunal accepts the advice of DFAT that there “has been a marked reduction in the level of politically-motivated violence, including retaliation against opponents throughout Bangladesh since January (2007) when the current caretaker government was sworn in” (DFAT 2007, *DFAT Report No. 723 – Bangladesh: RRT Information Request: BGD32419*, 1 November). The Tribunal has formed the view after considering information from external sources referred to above, that BNP and AL members cannot target each as easily as they did previously. The Tribunal is satisfied that the current government has no preference for either party and it has demonstrated that it is determined to reduce political violence in Bangladesh. The Tribunal is satisfied that a reasonable level of protection by the state is now available to citizens of Bangladesh who wish to express their political views. The Tribunal is satisfied that the applicant will have access to protection by the state if he wishes to express his political views. The Tribunal finds that the applicant’s fear that he will not have access to protection by the state in Bangladesh, or that he will be differentially treated by the authorities in Bangladesh because he supports the AL, is not well-founded.

67. The Tribunal considered the applicant’s claim that before the interim government took office he was attacked and beaten on three occasions. He indicated that the attacks were motivated by business rivalry and opposing political views. The Tribunal has rejected the applicant’s claim that his political opinion was a motivating factor in the attacks. However, the Tribunal does accept that he was physically attacked on three occasions while trying to obtain government contracts during the BNP administration. The Tribunal accepts that if the applicant had a good working relationship with the previous AL government he would have struggled to obtain contracts under the BNP government. Nevertheless, the Tribunal has formed the view that the attacks against him related to business rivalries involving government contracts while the BNP was in power. The Tribunal finds that the circumstances which existed when those attacks took place no longer exist. The Tribunal is satisfied that with improved conditions under the interim government the applicant will not be prevented from competing for the available work and he will not be at risk of attack from business rivals. The Tribunal finds that the applicant was not attacked by business rivals after the current government came to power and it is satisfied that he is not currently, or in the reasonably foreseeable future, at risk of attack by business rivals in Bangladesh.
68. Accordingly, the Tribunal finds that the applicant does not have a well-founded fear of persecution in Bangladesh for reasons of political opinion or any other Convention reason.

CONCLUSIONS

69. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the

applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

70. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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