

**060841966 [2006] RRTA 225 (12 December 2006)**

**DECISION RECORD**

**RRT CASE NUMBER:** 060841966

**DIMA REFERENCE(S):** CLF2006/72266

**COUNTRY OF REFERENCE:** Bangladesh

**TRIBUNAL MEMBER:** Rodney Inder

**DATE DECISION SIGNED:** 12 December 2006

**PLACE OF DECISION:** Sydney

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

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

The Applicant, who claims to be a citizen of Bangladesh, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the Applicant of the decision and his review rights.

The delegate refused the visa application on the basis that the Applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The Applicant applied to the Tribunal for review of the delegate's decision.

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**

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, in this case 30 June 2006, although some statutory qualifications enacted since then may also be relevant.

Section 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees respectively: s.5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### **Definition of 'refugee'**

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

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997)

191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

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

Second, an applicant must fear persecution. Under 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.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department's file relating to the Applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. The Tribunal also has before it the application for review.

The Applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the Applicant's brother.

The Applicant was represented in relation to the review by his registered migration agent. His adviser also attended the hearing. An interpreter was also present at the hearing.

The Applicant made claims to his age and when he arrived in Australia.

### **Claims and Evidence**

#### **Claims in his protection visa application**

The Applicant describes his family's involvement in the creation of an independent Bangladesh and claims they suffered inhumane consequences in the 1970s. He claims he has been interested in politics since he was a small boy as he comes from a politically orientated family and joined politics in the early 1990s and was an elected office bearer of a section of his high school and, during the 'A' election, he worked for the Awami League nominee Mr X. He claims that he became attracted to the ideology and philosophy of the Awami League and its secular orientation.

The Applicant claims that he started his political work with the Awami Jubo League and became an active member when he performed organisational activities and attended various recessions, meetings and other activities related to the organisation when the BNP were in power. He claims he worked hard and canvassed door to door on behalf of the Awami League candidate Mr X at the 'A' election and as a result he won the seat. The Applicant claims he was an elected office bearer of the Awami Jubo League, in his local area and actively participated in the development work initiated by the Awami government. The Applicant claims that he again worked for Mr X at the 'B' election and took many responsibilities such as looking after election camps and led election related processions but his candidate was defeated by Mr Y and the BNP formed the government and his house was ransacked by BNP and Jamat-e-Islami cadre.

The Applicant claims that he was later elected as an office bearer of the Awami Jubo League in his local area and he urged many workers to make the party stronger in the region and became known as a political activist. He claims he was arrested by the local police at this time and was held in custody for several days during which he was badly treated due to a conspiracy by the BNP leader, and in the following year he was elected as an executive office bearer of the local Awami League and attended countless meetings, demonstrations, pickets, and received unaccountable pain and suffering from the police, BNP, and Jamat-e-Islami and

claims he worked for Mr Z who won an election and his family made huge donations to the campaign.

The Applicant claims he was attacked by the BNP terrorists during a procession in Year 'M' as a result of which he has sustained a serious medical condition, which required many operations and required treatment and he was able to escape death but could not end his involvement in politics and, also in Year M, he was elected an office bearer of the local district committee of the Awami League during which he led many demonstrations and worked closely with the party and received tremendous support from the people. He claims he became an executive office bearer of Association A and claims the BNP four party alliance became jealous of his popularity and attempted to kill him on a number of occasions. He claims one day he was attacked while returning from the party office and was left on the street but was sent to a clinic where he remained for a number of days. He claims later he was again attacked by BNP activists and he took shelter in a nearby house and this convinced him he had to leave Bangladesh. He claims that they filed a number of false cases against him in order to doom his political future.

The Applicant claims he is afraid to go home because he fears that some terrorists are under the direct influence of the BNP and Jamat-e-Islami who are powerful and influential and are backed by the local MP. He claims that due to his activities in elections the opponent parties are jealous of his popularity and have attempted to kill him on a number of occasions and that if he goes back he will certainly be killed by BNP terrorists. The Applicant claims that leaders of his party are in hiding; some party leaders were attacked by BNP terrorists and are seeking to flee overseas; and a friend was attacked while going home from the office. He also claims that the Army raided his house twice looking for him and would have arrested him if they found him and that law enforcement authorities have been killing Awami League leaders and activists without trial. He claims he will be persecuted if he returns to Bangladesh and his life is not safe there and seeks refugee status in Australia.

### **Claims made in his application for review**

In his application to review, the Applicant claims he has been the victim of systematic persecution and the delegate misunderstood his claims. He also claims that the delegate made assertions without authority particularly in regard to his ability to leave Bangladesh; miscalculated his claim; refers to and draws on country's information in regard to the possibility of relocation under the current regime, and maintains it is logical that relocation is not a reasonable option.

### **Subsequent submissions**

The Tribunal received by fax a further submission. Attached to this submission are:

- a report on the Applicant by Dr A of Parramatta;
- a letter from Mr X stating that the Applicant was an office bearer of the Bangladesh Awami Jubo League in his local area and carried out "enormous party programs" during several parliamentary elections and became a victim of the BNP and four party alliance government and has been targeted by BNP terrorists who assaulted him with the intention of killing him in Year M. He states that his life is not safe in Bangladesh and BNP terrorists may kill him there;

- a letter from the President, Bangladesh Jubo League, of the applicants local branch saying that the Applicant was an office bearer of the Bangladesh Awami Jubo League in the applicants local area in a particular year and has achieved mass popularity among party leaders, members and the local community through his political activities. It is stated that he has been tortured many times and numerous false cases have been made against him; he is not safe in Bangladesh; he would be arrested and tortured by the police and BNP terrorists may kill him; and his life is not secure there;
- a letter with an uncertain date by the President of the Bangladesh Awami League, in the applicants local area, stating that the Applicant was an executive office bearer of the Bangladesh Awami League in his local area in a particular year and had contributed "an enormous strength" to Awami League politics in various branches and was well known for his great political leadership and had taken part in numerous party programs assigned by the central Awami League and local branches. It states that the Applicant was assaulted by BNP terrorists in Year M but survived the attack and is a prime target for BNP terrorists and if he returns to Bangladesh the BNP and its four party allies may kill him and his life is not secure there;
- a letter from Dr B from Bangladesh, stating that the Applicant attended for consultations on 2 occasions; and a similar letter from Dr C from the same centre, along with other notes and documents regarding the Applicant's medical condition at that time.

The Tribunal received from the Applicant's adviser a further submission which traced the chronology of the Applicant's claims; identified what he believes to be the relevant issues and puts forward what he believes to be the current political situation in Bangladesh; draws attention to several political killings since August 2003; puts forward legal arguments in support of the Applicants claims; and submits that the Applicant was a leading activists of the Awami League and Awami Jubo League who felt compelled to leave his country for fear of persecution from his BNP opponents. He also attaches a large number of newspaper and Internet clippings on Bangladesh and a booklet titled "Bleeding Bangladesh: Trampled Humanity" published by the Awami League in August 2005.

### **Claims made at the hearing**

In response to questions put to the Applicant at the hearing, he claimed that everything he stated in his protection visa application and application for review was true and correct and there were no changes he wished to make. He claims that he reads, speaks, and writes Bangla and confirmed he was legally issued with his passport in his home province. The adviser added that the Applicant claimed false charges had been made against him and wanted to mention this at the beginning of the hearing.

The Applicant claims that he worked all his life in his family's business, which employed several staff (including some family members) and several people for deliveries after he left school. The Tribunal asked Applicant if he had ever been to any other countries and he replied in the negative. He stated his highest qualification he achieved at school and while he was involved in sport he had no other qualifications. He claims he lived all his life in his family home in his local area, and his mother, brother, and sibling are still living there.

The Applicant claims that he has been involved in the Awami Jubo League since the early 1990s when he was elected an office bearer of his local branch which had many committee

members and more than 50 other members. He claims he has never stood for Parliament or other public office. The Tribunal referred to his claim that he actively participated in development work initiated by the Awami government and he claims that in Bangladesh they paid food for work in his Thana if, by way of example, it was decided to build a new road. The Tribunal repeated its question and he replied that if there were any problems in his Ward, such as a broken road or bridge, he would go to the local MP and asked him to provide wheat so the bridge or road could be repaired. The Tribunal asked the Applicant what was the most senior position he held in a political party and he replied he was elected as an assistant secretary of the Awami Jubo League and was also a member of the district Awami League. Asked what his role was in this position, the Applicant claims he was on the Ward committee, if there was a problem he tried to fix this with members of the Awami League and Awami Jubo League and resolve it with the MP. The Tribunal put to the Applicant that he was not claiming to be a major political leader in Bangladesh but he replied he was a political leader and people liked him and therefore terrorists attacked him and caused him an injury which caused him to sustain a medical condition. Asked how this happened, the Applicant claimed that in Year M, during a procession of the Awami League and Awami Jubo League when he was in the front line, he was targeted by the BNP and was attacked, as were other people, and he was taken to hospital and then for treatment. The Tribunal put to him that it had difficulty understanding his involvement in politics as he was not senior and it wanted to better understand his political activities. The Applicant claimed in reply that he was a popular political leader and was actively involved in elections. Asked what his role was in the elections, the Applicant claimed he worked for Mr X and asked people to vote for him as Mr X was honest and the BNP became jealous of them and initiated attacks on him. Asked what other political activities he was involved in, the Applicant claimed he organised meetings and explained to people that his party would be good to them.

The Tribunal put to him that he was not claiming to be involved in policy formulation (rather only simple administration) and he replied that he was involved in policy for his local area. Asked what policies he was involved in formulating, the Applicant claimed that when the Awami League or Awami Jubo League asked what needed to be developed, he gave his opinion and asked the local MP to provide it. The Tribunal asked the Applicant why he believed he was a refugee and he replied he had been attacked in Year M but survived by God's grace, and then he was again attacked by the BNP on other occasions but the government would not take action against them and had filed false cases against him. Asked what these false cases were for, he claimed they stated he destroyed government and private property, and he repeated he had sustained an injury which resulted in a medical condition.

The Tribunal asked the Applicant what he thought would happen to him if he returned to Bangladesh and he replied it was the BNP's intention to kill him and they will proceed to do so. He claims that the police did not believe he was attacked. The Tribunal put to the Applicant that independent country information indicated that sporadic violence was a regular feature of Bangladesh politics and the higher levels of the judiciary were independent. Invited to comment, the Applicant claimed that the judiciary was not independent as a lot of BNP activists were now on the judiciary and if he went to the police, many of them had previously belonged to BNP student organisations. The Tribunal put to the Applicant that Bangladesh now has a caretaker government in the lead up to the elections in January 2007 and asked him to describe recent political events in Bangladesh and the activities that have been undertaken by the Awami League in the lead up to it. In reply, the Applicant claimed that the caretaker government and the election commission have been appointed by the BNP and the Awami Jubo League believes it will be impossible to have a fair election in

Bangladesh. The Tribunal asked him to tell it in detail about the core policy that the Awami Jubo League will be taking to the next election and he replied he does not believe that they would participate due to the BNP influence on the caretaker government. The Tribunal repeated the question and he claimed that the Awami League would state that in the five years of BNP government that commodity prices have increased from 12 ½ Taka to 22 Taka and every sector of the country had been destroyed and he claimed that the son of a previous prime minister (Tarak Raham) and an ex-finance minister maintained that if you wanted to do anything in Bangladesh you must pay a percentage of it as a bribe.

The Tribunal put to the Applicant that Bangladesh is a country of over 144 million people and asked him that, if he did not wish to return to his own suburb, then why it would not be reasonable for him to live somewhere else in Bangladesh. In reply, the Applicant claimed that he came from a political family and had been actively involved in politics in the 1970s. He claims that if he returned to live elsewhere, the BNP in his local area who know him would tell other BNP offices in the area where he then lived and the BNP had been terrorising people in Bangladesh. Asked if he had any further claims before inviting the witness back into the hearing, the Applicant claims that what he had claimed in his protection visa application and at the hearing was true and they will kill him if he returns to Bangladesh. He also claims the BNP terrorists had been terrorising Awami League and Jubo League members. The Tribunal asked the Applicant if the witness was his brother and he confirmed that this was the case and stated that he had come to Australia as a student some years ago. Asked what he expected him to say on his behalf, the Applicant claimed he would tell what had happened to him.

In response to questions, the witness stated when he came to Australia as a student and that he was now a permanent resident of Australia. Asked what political activities he'd seen the Applicant participate in in Bangladesh, the witness stated that the Applicant was involved in Awami League politics for many years and attended meetings with leaders in his area. He stated that while he himself was not involved in politics, he had seen the Applicant attending meetings and meeting with political leaders in his area. Asked to describe the Applicant's political profile in Bangladesh, the witness described him as being one of the local Thana leaders who arranged processions and meetings and, while he didn't know exactly what he did, he confirmed he had seen him arriving home late from attending political meetings and sometimes saw people come to his house, but again repeated that he was not himself involved in politics. The Tribunal again asked the witness about the Applicant's profile, and the witness said he was a leader of an area and was very popular and was known by his family name in the area, both in his own right and because his father had also been involved in the 1970s. Asked if he had anything else to say, the witness asked the Tribunal to consider that he would be in danger in Bangladesh and his mother cried regularly because the Applicant was targeted by the BNP terrorists who visit his home and felt that if he went back he could be killed as he was being targeted by them.

Invited to comment, the adviser noted there were 64 districts in Bangladesh and the Applicant had a profile of the district leader so held a substantive position in Bangladesh politics, albeit not at the highest level. He had been close to Mr X and he and his family had a long history of involvement in the area. He claims he sustained a medical condition which could cause problems in the future. He submitted that his wife had left him due to his medical condition and his political involvement and this was a bad thing as this indicated in the male dominated Bangladesh society that he could not control her. In regard to the independence of the judiciary, the adviser submitted that the judiciary is not independent at the lower level and the



BNP had destroyed all sections of the Bangladesh administration including by making the appointment of judges. The adviser referred to a submission he had faxed to the Tribunal at 0330 on the morning of the scheduled hearing (the Tribunal noted it had not yet received this submission and the adviser passed across a copy to the presiding Member) and stated that this indicated that the Army had been deployed to support the BNP. The Tribunal noted from its own reading that the deployment was in part to prevent violence being instigated by the Awami League and was simply attempting to restore order and peace, but the adviser submitted that the use of the army was against all advice.

The adviser also produced a letter from an office bearer of the Bangladesh Awami League Australia, stating that the Applicant had been co-opted as an executive member of the Awami Jubo League Australian branch of which he has become a member. The adviser submitted that he was not safe in Bangladesh and had been persecuted there and some 28 members of the Awami League and Awami Jubo League had been killed since 30 October 2006 so he would be targeted and persecuted if he returns.

## **FINDINGS AND REASONS**

Based on his Bangladesh passport produced at the hearing, the Tribunal accepts that for the purposes of Article 1 of the Convention, the Applicant is a national of the People's Republic of Bangladesh. The Tribunal also accepts that his ethnic group is Sunni and his religion is Muslim.

The Applicant's core claims are that he comes from a politically orientated family and has been a member of the Awami Jubo League since the early 1990s; he participated in some election campaigns; he held a number of positions in the Awami Jubo League in his local area; he was arrested and held in custody for several days during which he was badly treated; he was assaulted and sustained an injury when in the front row of procession in Year M which required his visiting medical professionals on two occasions and resulted in him sustaining a medical condition; and that several further attempts have been made on his life because he was a popular Awami Jubo League leader.

From the claims made by the Applicant, and his responses to the Tribunal's questions at the hearing, the Tribunal accepts that the Applicant has been a low-level Awami Jubo League party worker. However, due to his lack of knowledge about Awami/Jubo League policies and based on the very limited activities that he claims he performed in his various positions in the Awami Jubo league, the Tribunal does not accept his claim repeated at the hearing that he was what could be reasonably be regarded as a party leader or that he had a high political profile in Bangladesh, even at the local or Thana level. The Applicant's case is not assisted by the production of several similarly worded letters apparently from Mr X, and two Awami party office bearers, all of which speak in effusive terms about his great political leadership, mass popularity, and significant contribution made to the Awami/Jubo League by the Applicant but provided no details of his actual involvement in politics in Bangladesh, and then go on to say that his life is not safe if he returns to Bangladesh as BNP terrorists may kill him -- and in one case that he may be tortured by the police in Bangladesh. Accordingly, and given all the above, the Tribunal finds these letters to be self-serving and are designed to support the Applicant's claims for a protection visa rather than to truly reflect his actual political activities and political situation in Bangladesh, and the Tribunal attaches no weight to them and finds that this also goes to the matter of his credibility. Further, while the Applicant claims in his protection visa application that he personally worked for Mr X in two elections, and goes so far as to suggest that his door-to-door campaigning was so effective

that this resulted in Mr X being elected to Parliament, Mr X in his letter makes no reference to the Applicant's claimed crucial role in helping him in his election victory and the Tribunal is satisfied that if the Applicant had been as influential and politically active as he claims in support of Mr X's candidacy, then Mr X would have mentioned this in his letter.

Accordingly, the Tribunal does not accept the Applicant's claim about his involvement in the elections on behalf of Mr X, and again finds that this goes to the matter of his credibility.

Nor has the Applicant's case been assisted by the production at the 11th hour of a large volume of news paper and Internet clippings and an Awami league propaganda document titled " Bleeding Bangladesh: Trampled Humanity" of little direct relevance to the Applicant's case, going back to 2001. No explanation is given to why these somewhat dated clippings were not provided with his protection visa application or his application for review. Moreover, having reviewed these documents which are some 6 cm thick and were only received by the Tribunal one working day before the hearing, the Tribunal could not find any reference to the Applicant or the Applicant's family in any of them. Further, the adviser sent to the Tribunal a further 46 page submission by fax at approximately 4.00 a.m. on the morning of the hearing which the presiding Member did not receive until after the hearing was concluded, although the adviser did pass across a copy of the fax at the hearing itself when the Member commented he had not yet received it. Again, however, the Tribunal can find no reference to the Applicant or his family in this material other than in one document: namely, the copy of the letter by an office bearer of the Bangladesh Awami League Australia. In regard to this letter, the Tribunal finds that much of it is clearly politically motivated rhetoric on behalf of the Awami League and, while accepting from this that the Applicant has become a member of the Australian branch of the Bangladesh Awami League, it does not accept that this is reliable independent country information on the actual situation in Bangladesh, and gives it no weight to it in this regard. Given all the above, the Tribunal has further serious concerns about the Applicant's credibility and integrity of his claims, and the Tribunal does not accept that he is a credible witness.

That said, however, the Tribunal found that the evidence provided by the Applicant's brother who appeared as a witness at the hearing was sober, unembellished, and supported that the Applicant was politically involved, albeit at a lower level than claimed by the Applicant himself as a party organiser in his local area. The issue therefore for the Tribunal is having not accepted that the Applicant was a party leader of the Awami Jubo League in Bangladesh but was simply a low-level worker on behalf of his party, whether he has a well founded fear of serious harm amounting to persecution for a Convention reason on this basis. In this regard, the Applicant has claimed that many attempts have been made on his life, the most serious being in Year M when he claims he was assaulted and sustained a medical condition as a result. The Applicant repeated this claim on several occasions during the hearing and attached to his adviser's submission is some medical evidence about the examination and surgery that occurred during Year M. However, it is not apparent from this material that the damage the Applicant sustained was caused by the assault or indeed that there was a Convention related reason for the sustained medical condition. Nor does the Applicant provide any medical evidence from Bangladesh or Australia that he was assaulted and sustained a medical condition. For example, the background to the report on the Applicant by Dr A is not based upon an independent medical assessment but is rather clearly based on the information provided by the Applicant himself. That said, however, the Applicant was examined in connection with his protection visa application by another doctor and in his marginal notes the doctor noted that there had been a medical condition caused by traumatic injury to the Applicant. While it is possible that this doctor was again simply recording the

Applicant's own claim about what caused the damage he sustained, the doctor does not give any indication that the injury was from any other cause. Accordingly, the Tribunal is willing to give the Applicant the benefit of the doubt and accept that he was assaulted, seriously injured and this caused the medical condition. The Tribunal is also willing to give the Applicant the benefit of the doubt and to accept his claim that he was assaulted along with several other people while participating in a demonstration in Bangladesh in Year M in support of the Awami Jubo League and, even though the Tribunal does not except that he was particularly targeted by the BNP or its affiliate's, it is nevertheless willing to accept that based on the evidence provided by his brother he would continue his local level involvement in Awami Jubo league politics if he returned to Bangladesh and that, as his brother maintained, he is widely known as a party activists there in part because of his fathers political activities.

Accordingly, given all the above and notwithstanding its findings about the Applicant's credibility and the false and misleading information provided to it, and while not accepting his claim that false cases have been made against him (for example, the Applicant has not provided a copy of any court, police, or other legal documentation to support this claim), the Tribunal is willing to give the Applicant the benefit of the doubt and accept that he would continue his (albeit limited) low level political involvement if he returns to Bangladesh and that based on his previous injury while participating in a demonstration in Bangladesh in Year M that his fear of serious harm amounting to persecution for a Convention reason if he returned to any part of Bangladesh, now or in the reasonably foreseeable future, is sufficiently well founded and, accordingly, the Tribunal finds that he is a refugee.

## **CONCLUSIONS**

The Tribunal is satisfied that the Applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the Applicant satisfies the criterion set out in s.36(2) for a protection visa.

## **DECISION**

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

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. prrt44