

**1003295 [2011] RRTA 242 (1 April 2011)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1003295
<b>DIAC REFERENCE(S):</b>	CLF2010/4233
<b>COUNTRY OF REFERENCE:</b>	Bangladesh
<b>TRIBUNAL MEMBER:</b>	Sydelle Muling
<b>DATE:</b>	1 April 2011
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] December 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] January 2010. The delegate decided to refuse to grant the visa [in] April 2010 and notified the applicant of the decision and his review rights by letter [on the same date].
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 [in] May 2010 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'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.
20. According to the protection visa application, the applicant is a Muslim male born on [date deleted] [in] Bangladesh. He lived in [district deleted] in Dhaka from birth to 2008 and from 2008 to 2009 he lived in [District 1] in Dhaka. He received 12 years education and is fluent in Bengali. He described his occupation as business. He was the proprietor of [company deleted] from September 1991 to September 2009. The applicant had previously travelled to South Korea in December 2001, Taiwan in June 2002, the United Kingdom in October 2002 and Japan in November 2008 for business. He travelled to India in July 2008 and Malaysia in November 2008 as a tourist. The applicant was divorced [in] July 2008 in Dhaka. He departed Bangladesh legally for Australia [in] December 2009. His daughter and two brothers are residing in Bangladesh.
21. The applicant claimed that he applied for a business visa to enable him to escape from Bangladesh to Australia after he received threats from the government because of his involvement with the Bangladesh National Party (BNP). He was introduced to the party by his uncle. His cousin was a BNP leader in [university deleted] and was killed because of his membership of the party. The applicant claimed that he had received serious attacks and abuse from the government of Bangladesh. They came to attack him last year, before he came to Australia, and that was the reason he decided to leave the country. He claimed the government destroyed his business premises before he left Bangladesh and he was very lucky to escape the attack. He was also attacked by the family of his ex-wife because of his membership of the BNP; a relative of his ex-wife worked for the government. The applicant claimed that he has been tortured because of his membership of "Kadiani Organisation", which he had been involved in for many years. He has been harmed because of his membership of this organisation and no protection measures were put in place for his safety.
22. The applicant claimed that he fears he will be persecuted and attacked if he returns to Bangladesh because he has received such strong punishment from the authorities. At the present time he will not go back to his country because his safety will not be guaranteed but he will return when there is a change of the party in power. The applicant claimed that his daughter is currently in hiding in secret place with friends after they both received threats to kill them. For this reason he fears he will be killed if he returns to Bangladesh.
23. The applicant claimed that he will be harmed by the authorities and their forces, including his ex-wife's relative, because of his political belief and opinion. He believes the authorities will harm and mistreat him because his elder brother was killed by the government because of his political beliefs and the same will happen to him. Due to his political beliefs and support for the BNP and membership of the Kadiani Organisation, as well as a businessman providing financial contributions to the BNP, he was threatened and attacked many times in

Bangladesh. If he returns to Bangladesh the government will harm him because of his membership of the BNP and Kadiani Organisation.

24. The applicant claimed that the authorities will not protect him; he had no family around and no one else to protect him. His parents passed away twenty years ago because of political problems and three of his cousins were also killed because of their political opinion. No one has been arrested or charged for the killing of his cousin who was a political leader in Bangladesh. It is his great concern that no one will protect him if he returns to Bangladesh.
25. [In] April 2010, the Department received the following documents in support of the applicant's protection visa application:
  - Letter from the President of the BNP [Unit A] dated [in] January 2010 stating that the applicant was selected as Deputy General Secretary of the BNP, [Unit A] in 2006, with translation;
  - Letter from the applicant to the Officer in Charge of [Police Station 2], dated [in] November 2009, detailing an incident which occurred at the applicant's business premises, when seven or eight "miscreants" demanded 5000 lak a month as extortion or they would kill the applicant and his family, with translation; and
  - Medical certificate from [doctor deleted] dated [in] July 2009, certifying that the applicant "is his patient and that he was tortured badly and wounded and at present his medical condition is very serious and he was required rest for six weeks".
26. [In] April 2010, a delegate of the Minister for Immigration and Citizenship found that the applicant was not owed protection obligations for the purposes of section 36 of the Migration Act as he did not meet criteria 866.221 of the Migration Regulations.
27. The applicant applied to the Tribunal for review of the Delegate's decision refusing his application for protection [in] May 2010. Attached to the review application was a copy of the delegate's decision.
28. The applicant appeared before the Tribunal [in] August 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.
29. The applicant confirmed that he was born on [date deleted] [in] Bangladesh. The applicant stated that he lived in [address deleted] in [District 1]. He also had another residence near his office, on [address deleted], in Dhaka. He lived in [District 1] for a long time. He lived at the other address for two years. Before moving to Australia he was living with different relatives because of the police. He could not remember what period he was living with relatives but he stayed at his sister's and aunt's homes. When asked when he started living with his relatives, he stated that it was since the police arrested him in July 2009. The applicant stated that he received twelve years education, from [years deleted]. He is fluent in Bengali and has some knowledge of the English and Japanese languages as his main business was in Japan. He had been in business in Bangladesh since 1991. He was involved in [details of two businesses deleted]. He started both businesses in 2001. Since October 2009 both businesses have been closed. The applicant stated that he departed Bangladesh in December 2009. When asked if he departed the country legally, the applicant stated that his sister's husband helped him pass

through the airport so the police could not catch him. He confirmed he left Bangladesh on a passport in his own name. Prior to travelling to Australia he had visited many countries including London, Japan, Taiwan, Korea and India. The applicant presented his passport to the Tribunal to look at. The applicant stated that he had a daughter living in Bangladesh. His parents died [details deleted] years ago. His two brothers are studying in India. He stated that they were staying there because of the political problems. He could not remember when his brothers went to India but suggested it was three or four months after he left Bangladesh. His daughter is living with his cousin. Before he departed the country he took his daughter to his cousin's house in old Dhaka. His daughter was born on [date deleted]. He used to make a call to his daughter every week. The last time he spoke to her was the previous Sunday. The applicant stated that he was divorced from his wife [in] July 2008. He does not know where his former wife lives. His wife sometimes comes to see their daughter. His former wife's husband does not accept their daughter. The applicant stated that he does not have any family in Australia.

30. The applicant stated that he first got involved with the BNP in 2004. His uncle was involved in BNP politics and introduced him to the local BNP leaders. The Tribunal asked the applicant what activities he participated in when he first became involved in the BNP. The applicant stated that it was his duty to look after the workers to ensure there was no fighting between the workers. He also gave funds to the local BNP. The Tribunal asked the applicant how he ensured that there was no fighting between the workers. He stated that he gave them money. If the workers had any problems he would help them and because he used to give them money they would follow him. As their main problems were economic, he used to give them money.
31. The applicant stated that he became a member of the BNP in February 2004. He was a member of the [District 3] branch. He did not hold an official position in the party initially. In 2006 he took an official position; he used to talk to the leaders and local government Ministers. From 2006 he held the position of joint secretary/area leader, which was one position. He stated that there were five area leaders and one was President. He was not elected into this position; the area leader requested to the head office that he be given this position. The applicant stated that he held this position from [a date in] October 2006 until he departed the country. When asked what his responsibilities were as joint secretary/area leader, the applicant stated that his main responsibility was to help economically and support the local people, secondly to ensure there was no terrorism or problems within the party and make peace within society and thirdly to make plans for Ministers or leaders visiting the area.
32. The Tribunal asked the applicant how he went about making peace within society; what exactly did he do in terms of his second responsibility. The applicant stated that he used to have meetings with the workers every Friday from 4pm to 7pm. He would tell the workers not to take money unlawfully and not get caught in any illegal systems. The Tribunal asked the applicant if he did anything else apart from these meetings. He stated no; mainly he tried to talk about social harmony during the meetings. The Tribunal asked the applicant if he did anything else in relation to his role in ensuring there were no problems within the party and making peace. The applicant stated that was his main duty. He tried to tell the workers that if they did not maintain social harmony they would not come back into power.
33. The Tribunal asked the applicant about his responsibility to assist economically. The applicant stated that when he was in business he had 10 to 20 lakhs in his account all the time and the local leaders knew he had this money in the bank so if they had any problems they came to him. The Tribunal asked the applicant about his third responsibility which was

associated with Ministers visiting the area. The applicant stated that when a Minister visited, a minimum of three thousand to four thousand people needed to be fed so they needed money for this. He confirmed that he provided forty per cent of the funds required and organised the remaining sixty per cent from other members. The Tribunal asked the applicant if he engaged in any other activities in support of the BNP apart from those which he had already told the Tribunal about. The applicant stated no. He stated immediately after the army came into power as caretaker government and then the opposition came into government.

34. The applicant stated that the BNP was founded in 1978 by army chief Zia Rahman. He cannot remember when the election was held in 2001 but he can remember how many seats the BNP won; 214 or 216. The Tribunal asked the applicant if the BNP came into power by itself in 2001 or if it was part of an alliance. He stated that the BNP was part of a coalition government with Jamaat-e-Islami, Jatiya Party and Islamic Oikkya Jote. The BNP leader is Khalida Zia. The Tribunal queried whether the BNP won all 214 or 216 seats. He stated it was the alliance; he could not remember how many seats the BNP won but suggested 172. The applicant stated that the BNP government's term of office came to an end on 28 October 2006. The next election was held in 2008 but he could not remember when. The applicant confirmed that he voted but he could not remember when the election was. He could not remember when the 2008 elections were announced. The Tribunal asked the applicant if he was involved in the elections in 2008. He stated that he was fully involved; he spent money in his local area. The Tribunal asked the applicant if he engaged in any election activities. He stated that in his area he asked people to vote for the BNP. The Tribunal asked the applicant what his responsibilities were as an area leader/ joint secretary during the 2008 election. He stated that his main duty was to list voters. Secondly, he would go to people who were undecided in their support for a particular party and speak to them about what the BNP would do if it came into power. The Tribunal asked the applicant how he identified the people he needed to speak to. He stated that in his area everyone knew who supported which party. He would go to their homes in the evening and give them some money as this was the system in his country. He could not recall when he started campaigning for the election in 2008. The Tribunal asked the applicant how many seats the BNP won in the 2008 general election. He stated thirty three or thirty eight.
35. Given that he was a local leader and he talked to people about what the party would do if it came into power, the Tribunal asked the applicant what the ideology of the BNP is; what did the party believe in and what was its aim. The applicant stated that the objective of the BNP was to come to power and develop the country. The Tribunal asked the applicant how often he engaged in political activities given he was the proprietor of two business. The applicant stated that he could not give enough time to the BNP. He would give his time on Friday's to his political activities and sometimes two or three times in a week. If a leader called him, he would go. When asked why a leader would call him, the applicant stated if there were different meetings or part of a decision making process.
36. The Tribunal asked the applicant if he experienced any problems as a result of his political activities. The applicant stated that in 2006 the opposition party went against him. The main friction was that he would talk publicly about the corrupt activities of the opposition party and threatened to go to the police about these issues so they were against him. The Tribunal asked the applicant what he meant when stated that the opposition party was against him. He stated that when the opposition came into power in 2008, they came to his office and his house. The Tribunal asked the applicant if anything happened to him in 2006. He stated nothing happened to him because his party was in power. The trouble for him started in 2009.

37. The applicant stated that in 2009 ten to twelve people came to his office to kill him. Sometimes they phoned him and threatened him because he had called the police in 2006 and they had not made any money since then. They also came to his office and said this. The applicant stated that he would receive these calls every fifteen to twenty days. He started receiving these calls in January 2009. He received one call in January, February and March and then day by day they increased. In June 2009 they came to his office twice, with arms. He was not in the office on each occasion. His manager was in the office and they asked about his whereabouts because they wanted to talk to him. The Tribunal asked the applicant if these people ever came back for him. The applicant stated that when they did not find him in June, the police caught him and these people told the police to kill him. He gave some money to the police and [in] July 2009 he was released from the police station.
38. The Tribunal asked the applicant what happened in July. The applicant stated that he was arrested [on a date in] July 2009. He made an arrangement with the police and paid them 50,000 Takka and he was released [two days later]. The Tribunal asked the applicant where he was when he was arrested. He stated that he was going from his office. The police told him he was being arrested on the command of higher officials. He was taken to the police station and detained for three days, [in] July. The Tribunal asked the applicant what he did after he was released from detention. He stated that after he was released he went to hospital at 12:30 at night. He went to the clinic because he had been hit with a wooden stick and his skin was broken. He was given some antibiotics, injections and his injuries were bandaged. The Tribunal asked the applicant if he was hospitalised. The applicant stated that he attended a clinic come pharmacy. He was there for one day and the next day he went to stay with relatives.
39. The Tribunal asked the applicant if he had been arrested by the authorities prior to this incident in July 2009. The applicant stated that he had not in the last few years but he was arrested in 2005 because of political problems but this was not a big problem. The Tribunal asked the applicant if he had been harmed by the authorities at all prior to this incident in July 2009. He stated that there were some cases against him but he gave money and solved them. These cases were before he joined the BNP in 2004. The Tribunal repeated the question. The applicant stated no, only in 2009.
40. The Tribunal asked the applicant if anything happened after the incident in July 2009. The applicant stated that he was in hiding after July and then he left the country. He did receive phone calls to his mobile phone almost weekly. The Tribunal asked the applicant if he was still operating his businesses after the incident in July 2009. The applicant stated that after the incident in July 2009 he used to go to his business and he was supported by two or three BNP people. He used to go to the party and sold his goods and collected a cheque from the party and deposited it into his account. He made these arrangements a week before his departure. The Tribunal asked the applicant whom did he receive the weekly phone calls from. The applicant stated that the calls were made by leaders of the Awami League. They called him in order to see him and he told them he could meet them and questioned why they came to his office with arms. When the Tribunal asked the applicant why the leaders of the Awami League wanted to see him, he stated that they wanted some money from him because he had disturbed their money collection activities in 2006. He did not meet them after June 2009.
41. The Tribunal asked the applicant if anything else happened apart from the phone calls he claimed he received following the incident in July 2009. The applicant stated that he only answered phone calls from numbers known to him. He confirmed he was still receiving phone calls from unknown numbers which he did not answer. The Tribunal repeated the



question. He stated that he was not really at his office so he called the different parties he supplied and asked them to pay him and he collected the cheques and gave it to his manager to deposit in a different branch. The Tribunal queried whether he was suggesting that people were looking for him after the incident in July 2009 as it noted that the question it had asked him was whether anything else happened to him following the incident in July 2009 apart from the phone calls. The applicant stated that people were looking for him and his manager knew many of these people and informed him of this. The Tribunal asked the applicant if anything happened to him. The applicant stated that he was hiding himself.

42. The Tribunal asked the applicant if he reported the incident when the people came to his office in June 2009. The applicant stated that he did not inform the police at that time. He hid for three months and in October or November he informed the police. The Tribunal queried why he waited four or five months to report what happened to him in June 2009. He stated that in his country the police do not work against the people in power. The Tribunal noted that it was the same party in power in October or November and asked why he decided to go to the police at that time if he was saying that the police do not help people associated with the opposition parties. He stated that they may have been angry about him but he believed their anger may minimise; however, it did not, so he went to the police.
43. The Tribunal asked the applicant if he was subject to any other attacks or abuse apart from what he had already told the Tribunal. The applicant stated that he would be abused by “them” that they would kill him and many times they asked him to meet them but as he refused they threatened to kill him.
44. The Tribunal asked the applicant if anything happened to his business. The applicant stated that after leaving Bangladesh, he learnt that “they” have taken everything from his business. They were looking for him but as he was not available they got information from his manager. He did not know these days the whereabouts of his manager. The Tribunal noted that at the beginning of the hearing he had claimed his businesses were closed in October 2009 so it was a bit confused how everything was taken from his business after he left the country. The applicant stated that he had more than 100,000 dollars in the local market so he told his manager to collect this money and take his wages from it every month. His manager collected the money and gave some to his daughter and to a friend. This arrangement has been in place since his departure. The Tribunal asked the applicant when he last paid his manager and assistant manager a salary. He stated that he spoke to his manager in the middle of May or June 2010. He confirmed that he paid them some money at this time. The applicant explained that when he imported his [materials], when he sold these materials he received 50% of the payment and the remaining 50% was to be paid within six months. Before he closed the business he imported [details deleted] from Japan which he had sold and received 50% of the payment and the other 50% was still to be paid within six months. He asked his manager to collect the money owed to him in the local market as his brothers were in India and he had no other relatives to do so. He told his manager to take his salary from that money and his friend has kept the money for him and if he needs money his friend can send it to him here.
45. The Tribunal asked the applicant about his claimed trouble from a relative of his ex-wife. The applicant stated that his ex-wife’s uncle was a secretary in Bangladesh and he had sometimes called and asked him why he had divorced his niece and threatened to kill him. He stated that if his ex-wife’s uncle called any police station they would arrest him because he is secretary in Bangladesh. The Tribunal asked the applicant when he received these calls from his ex-wife’s uncle. He stated many times after the divorce.

46. The Tribunal asked the applicant if anything else happened to his business apart from the visit by ten or so people in June 2009. The applicant stated that these people used to try to find him. His manager would warn him not to come to the office because they were waiting outside the office with arms or hiding somewhere in wait for him.
47. The Tribunal asked the applicant about his cousin brother, [Mr A]. The applicant stated that his cousin brother was a university leader of the BNP. The government party wanted to bring him into their party by paying him more money but he did not join so he was shot. This happened seventeen or eighteen years ago. The Tribunal asked the applicant which party wanted to give his cousin brother more money. He stated that he was not sure which party. The Tribunal queried whether the party which asked his cousin brother to join them was going to give him money or if his cousin had to pay them. He confirmed that his cousin brother was asked to change his political party and they would give him more money but he did not agree.
48. The Tribunal asked the applicant if he ever went to the police to report any problems he experienced as a result of his political activities apart from that time in October or November 2009. The applicant stated that he did not inform them of anything apart from that one time. The Tribunal asked the applicant if anything else had happened to him in Bangladesh apart from what he had already told the Tribunal. He stated that he could not remember many small incidents. He confirmed he had told the Tribunal about the main incidents which had happened to him.
49. The Tribunal put to the applicant that there are a number of inconsistencies between his evidence provided in the hearing and that which he had provided with his protection visa application and in the interview with the Department. The Tribunal explained to the applicant that it would write to him following the hearing, in accordance with section 424A of the Act, outlining what this information is and how it is relevant and he will have a chance to respond. The Tribunal explained that it will raise some of these issues now, so that he is aware of them. The first thing was that there had been no mention up until the hearing that ten or so people came to his office in June 2009. The Tribunal noted that this incident was not included in his protection visa application and nor did he raise it in the interview with the Department. The applicant stated that he has blood pressure and sometimes it goes up to 200. He cannot remember everything; he has a lot of tension.
50. The Tribunal noted that in the statement attached to his protection visa application he claimed that the authorities destroyed his business and it was closed as a result of the authorities doing this. However, he had not mentioned in the hearing that the authorities came into his business and did anything to it or locked it up. The applicant stated that he had said that the business was closed and in one location some people came and opened the lock and took everything. The applicant stated that there are some cases against him put by the government which are false and they were reported in the local newspaper. He has evidence of this. He has been punished for seventeen years in relation to an arms case. The Tribunal queried whether the applicant was referring to the material which was submitted at the beginning of the hearing. He confirmed that was correct. The Tribunal asked the applicant when he became aware that there had been false charges made against him. He stated that his manager saw the article in the newspaper last week and sent him the article. The Tribunal queried whether he had only learnt of the charges against him last week. He stated that he came to know much earlier but he only got the paper last week. He knew about the charges fifteen to twenty days before. The Tribunal stated that it would need to look at the evidence he had provided in relation to this new claim. However, it noted that there were a number of inconsistencies and other new

claims that he had raised in the hearing. It reiterated that he had claimed in his protection visa application that his business had been closed by the government and in the interview with the Department he had stated that his business was partially closed and operating on an underground basis after the government had locked it up and closed it in October 2009. The Tribunal also noted that he had also not claimed until today that he was in hiding from July 2009. The applicant's adviser interjected and stated that was not correct as in the interview the applicant had said he was moving from place to place. The Tribunal stated that it will listen to the interview and if there is an inconsistency in the applicant's evidence it will be put to him for his comment in the s424A letter but from what it had read he had not claimed to have been in hiding.

51. The Tribunal noted that his evidence in relation to his involvement with the BNP had changed over time. In his protection visa application he made no mention that he held an official position in the party. However, in the interview with the Department he claimed he was a local leader. Yet, the letter that he provided as evidence of his official position in the party following the interview with the Department stated that he was Deputy General Secretary. The Tribunal put to the applicant that it would have expected if he held such a high position within the party, he would have identified this in the interview with the Department, as opposed to saying he was an area leader, or joint secretary as he claimed in the hearing.
52. The Tribunal noted that he had made claims in relation to his membership of the Qadiani Organisation and asked the applicant about this. The applicant stated that many Qadiani people are good and their practices and beliefs are similar to Muslims. He joined the Qadiani religion in the first month of 2009 because this religion is good. The Tribunal asked the applicant if he attended the mosque regularly prior to becoming a Qadiani. He stated that he would go six days a year, on the main days such as Eid. The Tribunal asked the applicant if he was Sunni or Shia. He stated that he does not like the Muslim religion. The Tribunal asked the applicant if he has converted to Qadiani Ahmadiyya. The applicant stated that his office assistant was Qadiani and he would go to Qadiani with him. The Tribunal asked the applicant what he had to do to convert to this religion. He stated not many things. Their prayers were different to Muslim prayers. The Tribunal asked the applicant if there was anything in particular he had to learn or accept when he converted. He stated that he had to learn some new rules and practices. Many people in his area do not like him now. The Tribunal asked the applicant if there were any particular conditions he had to learn and accept. He stated yes. The Tribunal asked how many. He stated that prayer is in one line and Qadiani also has to do some work in the morning and evening. The Tribunal asked the applicant if he had to sign any particular document when he converted. He stated that he did in Bangladesh. The Tribunal asked the applicant what this document said. He stated that the paper he signed said he was doing this thing of his own mind and clear conscience. The Tribunal asked the applicant if there is a Qadiani mosque or place to worship in Australia. He knows that there is a Qadiani mosque in Melbourne. He has not attended because he is not good at speaking English so how could he find it. The Tribunal asked the applicant if he knew what Bai'at means. He stated that it was singing and many musicians.
53. The Tribunal put to the applicant that according to independent information regarding the Qadiani Ahmadiyya religion, in terms of converting there are ten conditions of initiation a person has to learn and accept, that is the Bai'at, and from what he had told the Tribunal it did not appear that he went through that initiation in Bangladesh when he claims he became a Qadiani. The applicant stated that they invited him to go there but he could not because of his problems.

54. The Tribunal asked the applicant what he fears will happen if he returns to Bangladesh. The applicant stated that he believes if he went back to Bangladesh the party in power will shoot him; they have threatened him on his mobile, at his office and in his house. The Tribunal asked the applicant why they would want to shoot him. He stated that he did not allow them to do bad things in 2006 so there has been a conflict with them since then. The applicant confirmed he is still a member of the BNP. His current membership card is in Bangladesh. The Tribunal asked the applicant if he has been involved in any politics in Australia. He stated no because his English is not good. He has met people in Australia who are BNP members. He has not engaged in any activities on behalf of the BNP while in Australia because of his blood pressure and his doctor advised him to rest.
55. The Tribunal put to the applicant that if he fears being targeted by these people, whom he reported in 2006 from his local area, why could he not relocate to another part of Bangladesh where he would not be known because he was politically active only in his local area. The Tribunal noted that he had finished high school, had experience operating two businesses over many years and has shown himself flexible and capable by coming to Australia where he had no friends or family. The applicant stated if he went outside Dhaka it would be easier for them to find him because the rural areas are quieter and are not protected. In Dhaka it is busy and he knows many places.
56. The Tribunal asked the applicant if there was any other reason why he fears returning to Bangladesh other than those which he has already discussed. The applicant stated that the police can kill him in the crossfire without justice. Amnesty International has requested several times that the government stop doing this. If he goes back he could be shot in the crossfire or killed directly and there will be no justice. He can return to Bangladesh when his party is in power. He has three problems in Australia: no friends, blood pressure and allergies. It is very difficult to live without his daughter. The Tribunal asked the applicant who had translated the news article which he had submitted. He stated that it was translated in Bangladesh. He was also expecting further evidence in support of his application in two weeks.
57. [In] September 2010, the Tribunal received translations of a letter from [an official] of the Bangladesh Kadyani Kalyan Samitee dated [in] August 2010 stating that the applicant joined the Kadyani community in January 2009; a translation of a First Information Report dated [in] May 2009; a translation of a memo to the officer in charge of [Police Station 4] regarding s submission of deposition dated [in] May 2009; and a translation 'In the court of Special Judge [court deleted] Dhaka – Metro Civil Case [number]' dated [in] June 2009.
58. [In] March 2011, the Tribunal wrote to the applicant, in accordance with section 424A of the Act, inviting him to comment on or respond to the following information:
- In the hearing with the Tribunal you claimed that you held the position of joint secretary/area leader from [date] October 2006 until you departed the country in January 2010. In your protection visa application you made no claims of holding an official position within the BNP. In the interview with the Department you claimed that you were a local leader and following that interview you provided a letter from the President of the BNP [Unit A] dated [date] January 2010 stating that you were selected Deputy General Secretary in 2006.

This information is relevant because the inconsistency in your evidence regarding the official position that you held within the BNP, raises significant doubts that you in

fact held any official position within the party and subject to your comments, this could lead the Tribunal to find that you were not active in politics as you claimed.

- In the hearing with the Tribunal you claimed that in 2009 ten or twelve people came to your office twice to kill you but you were not there on both occasions. However, in your Protection visa application and interview with the Department you made no mention of any such visits.

This information is relevant because your failure to mention these particular events in either your Protection visa application or in your interview with the Department, raises significant concerns regarding the veracity of your claim that you were visited by a group of people intending to kill you on two occasions in 2009 and subject to your comments, this could lead the Tribunal to find that you were not pursued by members or supporters of the Awami League at your workplace in 2009, as you claimed.

- In the hearing with the Tribunal you claimed that on [date] July 2009 you were arrested by the police going from your office, on the command of higher officials. However, in the interview with the Department you claimed that the police came to your house and arrested you.

This information is relevant because the inconsistency in your evidence as to where you were arrested by the police in July 2009 raises doubts that you were in fact arrested as you claimed and subject to your comments, this could lead the Tribunal to find that you were not detained from [date] July 2009 to [date] July 2009 at the behest of Awami League leaders or anyone else.

- Following the hearing you submitted to the Tribunal a First Information Report (FIR) with a submission date [date] May 2009, Memo to the Officer in Charge [Police Station 4] regarding a submission of deposition dated [date] May 2009 and 'In the court of Special Judged [court deleted] Dhaka – Metro Civil Case [number] [date] June 2009. The Tribunal requested that the Post make inquiries, without disclosing your identity, to establish whether these documents were genuine. On [date] January 2011, the Tribunal received the following response from the Department of Foreign Affairs and Trade:

**i. First Information Report (submission date [date] May 2009);**

**iii. Memo to Officer in Charge [Police Station 4] re submission of deposition, [date] May 2009.**

On [date] January, Post spoke over telephone with a duty officer of [Police Station 4] to inquire about the authenticity of the First Information Report and the Memo to Officer in Charge, both submitted on [date] May 2009. The officer informed that [Police Station 4] was opened on [date] October 2009. Prior to that date it was [name] under [Police Station 2]. Therefore no paper work could have been issued under [Police Station 4] (as written in both documents) before [date] October 2009.

On [date] January, a Post representative visited [Police Station 2] and consulted with the duty officers who provided access to the Station's case registry so that the officer could look for the document ([Police Station 4]. G.R. [number] as numbered in the First Information Report). However the case that accorded with this G.R. number was a drug abuse case where the accused is named as [name] and the investigation officer was [name] and thus did not match the documents

presented. The Post representative also checked the hand written General Diary (GD) Registration book of [Police Station 2] to check the GD [number] as written in the Memo. Neither the subject nor the date of the GD entry matched with document iii (copy attached with GD number circled).

**ii. 'In the court of Special Judge [court deleted] Dhaka - Metro Special Civil Case [number]' [date] June 2009; and**

On [date] January, a Post representative visited the Special Judge [court deleted] Dhaka to enquire about the Metro Civil Special Case [number]. No such case was registered under this number. In addition, the Registrar of the court informed that there has never been a judge named [name] in Special [court deleted] as it is the court of Justice [name]. The Post representative also visited the Chief Metropolitan Magistrate Court's General Registry Office to locate the case by its G. R. number as presented in the First Information Report. A drug abuse case was lodged under that G.R. number which corresponds to the information found during the visit of [Police Station 2].

This information is relevant because the result of the inquiries made by the Post raises concerns about your credibility generally and significant doubt about the genuineness of the documents you submitted in support of your late claim that there is a false case against you and subject to your comments, this could lead the Tribunal to find that you were not charged with any false case.

- At the hearing you submitted to the Tribunal a newspaper article titled '[title]' published in the [newspaper] which discusses the fabricated cases against the applicant, that he has been sentenced to seventeen years imprisonment and there is a warrant out for his arrest. Numerous documents can be found attesting to the high level of fraudulent documents and corruption in Bangladesh. In particular, the report "Bangladesh: Profile of Asylum Claims and Country Conditions", February 1998, section IV.A. "Bangladesh Documentation" (CX31417), the U.S. Bureau of Democracy, Human Rights and Labor observed of Bangladesh that asylum applicants from all political parties submitted "voluminous documentation to support their claims, including in particular outstanding warrants for their arrest if they return to Bangladesh and other alleged court and police documents". It observed that arrest warrants were not generally available to the public, so all such documents should be scrutinized carefully. Many "documented" claims of outstanding arrest warrants had proved to be fraudulent. The US Embassy had examined several hundred documents submitted by asylum applicants; none had proved to be genuine. It also observed that altered or counterfeit newspaper articles were another less frequent but notable example of document fraud. Similarly, DFAT confirmed that fraudulent and bogus "official" documents were commonly and easily obtainable in Bangladesh (1996, DIEA, Country Information Report No 22/96, CX13160, 5 January).

This information is relevant because the country information cited above, and the fact that you appear to have submitted other fraudulent documentation, raises significant doubt about the genuineness of the newspaper article you submitted and subject to your comments, this could lead the Tribunal to find that you were not charged with any false case as reported.

59. The applicant was advised that his comments or response should be received at the Tribunal [by a date in] March 2011 and if he could not provide his written comments or response by that date, he may ask for an extension of time in which to provide the comments or response but it must be received by the Tribunal before [a date in] March 2011.

60. [On the due date] at 6:52 pm, the Tribunal received a request for an extension of time to respond to the Tribunal's invitation. The applicant's adviser submitted that the applicant was waiting for additional documents from Bangladesh and that he, the adviser, would be away for a period of three weeks and will respond on behalf of the applicant after [a date in] May 2011.
61. The Tribunal contacted the applicant's adviser [in] March 2011 to advise him that his request for an extension had been refused, however, the Tribunal will consider any information received up to making its decision. The decision to refuse the adviser's request for an extension was made on the basis of the lateness of the request and the lack of any information as to the relevance of the documentation which the applicant was allegedly obtaining from Bangladesh in order to respond to the particular information put to the applicant for his comment.
62. [On a further date in] March 2011, the adviser contacted the Tribunal to advise that he would be submitting further documents either [that day] or the [next day]. At the time of making its decision the Tribunal had not received any further evidence from the applicant or his adviser.

## **COUNTRY INFORMATION**

### *Background Information*

63. The UK Border Agency Operational Guidance Note for Bangladesh dated 6 February 2009 provides the following background information on Bangladesh

Bangladesh is a parliamentary democracy with a non-executive president elected by parliament. Parliament and president are both elected for five years. In the elections held in October 2001, the 'Four-Party' Alliance led by Khaleda Zia's Bangladesh Nationalist Party (BNP) won an overall majority, with 219 seats out of 300. The main opposition party, the Awami League (AL) won 58 seats. International observers reported that the election was generally free and fair, but there were reports of election-related violence, ballot rigging and other election malpractice. The AL publicly refused to accept the result, however, and from 2001 to 2006 AL attendance in parliament was sporadic.<sup>1</sup>

The Government's five-year term of office came to an end in October 2006 and an interim caretaker government took office for the period leading up to the general election scheduled for 22 January 2007. Against the background of serious differences between the BNP and the AL regarding the general election, political demonstrations and civil unrest, on 11 January 2007, President Iajuddin Ahmed declared a state of emergency and announced the postponement of the general election for an unspecified period to ensure that it would be 'free, fair and credible'<sup>2</sup>

On 2 November 2008, the Election Commission declared that the general election would take place on 18 December 2008, though this was later put back to 29 December. The Caretaker Government lifted the state of emergency in December 2008 ahead of the election. In an election declared by international observers as broadly free and fair, Sheikh Hasina and her AL-led alliance won an overwhelming victory over Khaleda Zia's BNP, winning more than 250 out of 300 seats in parliament. Sheikh Hasina was sworn in as prime minister on 6 January 2009.<sup>3</sup>

Bangladesh does not have a good human rights record, though the Caretaker Government made a commitment to address human rights abuses and in 2008 established the National Human Rights Commission. While there was a significant

drop in the number of extrajudicial killings by security forces in 2007, they were accused of serious abuses, including custodial deaths, arbitrary arrest and detention, and harassment of journalists. Some members of the security forces reportedly acted with impunity and committed acts of physical and psychological torture during the year. Violence against women also remained a problem in 2007. The Caretaker Government separated the lower judiciary from executive control and placed it under the control of the Supreme Court, but corruption in the lower courts, judicial inefficiency, lack of resources, and a large case backlog reportedly remain problems.

### *Bangladesh Nationalist Party*

64. The UK Home Office Country of Origin Information Report for Bangladesh, dated 11 August 2009, provides the following information on the Bangladesh Nationalist Party:

Founded in 1978 by a former President, General Zia, and is now led by his widow, current Prime Minister, Khaleda Zia. [40a] The BNP won 193 of the 300 parliamentary seats in the 2001 general election and formed a government in coalition with Jamaat-e-Islami, the Jatiya Party and the Islamic Oikya Jote. [16] According to the Economist Intelligence Unit Country Profile 2006: “The BNP espouses Bangladesh nationalism with anti-Indian and pro-Islamic nuances; however, these nuances have not been evident in its policymaking since coming to power in October 2001... The BNP, with close links to business, is committed to fostering a market economy and liberal democracy, and encourages private sector-led economic growth.” [40a] The term of office of the BNP-led coalition government ended on 27 October 2006. [20cf] The BNP won only 30 seats in the 2008 general election and formed the official opposition. [16c]

65. According to the Bangladesh Nationalist Party website, the ideology of the party is expressed in the following terms:

The BNP promotes a very center-right policy combining elements of conservatism, corporatism, nationalism, strong defense, anti-anarchism and anti-communism. It is more popular among the country's business class, military, and conservatives, and is credited with bringing socio-economic stability in the country. Young people have showing particular interest to the party due to its open minded policy and in large the party is operated by young leaders. The party believes that Islam, is an integral part of the socio-cultural life of Bangladesh, and favors Islamic principles, as well as cultural views together. This is particularly seen through its alliance with the Islamic party of Jamaat.[1]

Prior to the 2001 General Election, party's religious points of view was largely reconsidered and although it went with an alliance with Islamic party of Jamaat, number of leaders representing the minority communities were nominated and ultimately they took part in the landslide triumph of the party. Since then the concept is established that BNP believes in a Bangladeshi nationalism which insists every person of all communities to take part in the development works toward better future.

### *Political Situation in Bangladesh*

66. After electoral violence in late 2006 a care-taker Government took power in Bangladesh. It notes that the BNP had been in power from 2001 -2006 and prior to that the Awami League. It indicated that initially the care-taker Government banned all political activity, which saw political violence fall, while in late 2007 indoor political activity was allowed for negotiations to continue. The leaders of both major parties, the BNP and the Awami League, were subsequently gaoled or charged related to corruption, although later released to participate in



elections held on 29 December 2008. (see Department of Foreign Affairs and Trade 2007, *DFAT Report 636: RRT Information Request: BGD31628*, 3 May 2007; ‘General election anytime between October and December next year, CEC says announcing electoral roadmap’ 2007, *United News of Bangladesh*, 15 July; ‘Around 286,000 rounded up since state of emergency declared on January 11’ 2007, *United News of Bangladesh*, 10 July; and ‘Police arrest ex-Bangladesh PM’ 2007, *BBC News*, 16 July [http://news.bbc.co.uk/2/hi/south\\_asia/6900177.stm](http://news.bbc.co.uk/2/hi/south_asia/6900177.stm))

67. In December 2008, national elections were held in Bangladesh, resulting in a clear victory for the Awami League. An article published on *The Daily Star* website on 6 January 2008 provides a basic summary of the results of the 299 seats contested at the 29 December 2008 Bangladesh parliamentary elections, stating that the “AL-led grand alliance won a landslide victory”:

AL-led grand alliance won a landslide victory in the recent parliamentary election winning 230 seats, while its major allies Jatiya Party, Jatiya Samajtantrik Dal, and Worker’s Party won 27, 3 and 2 seats respectively. On the other hand the rival BNP-led alliance, which had ruled the country between 2001 and 2006, managed to win only 32 seats (‘BNP to boycott cabinet’s oath as Jamaat not invited’ *The Daily Star*, 6 January <http://www.thedailystar.net/newDesign/news-details.php?nid=70248> )

68. In respect of the position of those associated with the BNP after the elections, BNP leader Khaleda Zia had disputed the results of the election, claiming that “her party had evidence of rampant vote-rigging and that the high figures given by the Election Commission for voter turnout were false”. The article speculated that Zia’s “rejection threatens to throw the impoverished south Asian nation into fresh political uncertainty” (‘Bangladesh election flawed: defeated PM’ 2008, Yahoo7News website, 31 December <http://au.news.yahoo.com/a/-/world/5239381>). An article published on the *Daily Times* website on 2 January 2009 reports a statement by a BNP spokesman indicating that Khaleda Zia had subsequently “accepted her heavy defeat in the country’s general election despite alleging the vote was rigged” (‘Khaleda accepts defeat in ‘rigged’ Bangladesh poll’ 2009, *Daily Times*, 2 January [http://www.dailytimes.com.pk/default.asp?page=2009\01\02\story\\_2-1-2009\\_pg20\\_1](http://www.dailytimes.com.pk/default.asp?page=2009\01\02\story_2-1-2009_pg20_1) ).

69. Reports indicate that the election and immediate post-election period was marked by violence between supporters of both the victorious Awami League and the main opposition the Bangladesh Nationalist Party as well student groups associated with the major parties. The UK Home Office Country of Origin Report for Bangladesh dated 19 August 2009 reported the following on post election violence:

The Dhaka-based human rights NGO, Odhikar, stated that – according to press reports – 62 people were killed and over 4,000 were injured in violence between supporters of various political parties during the first three months of 2009. [46s] Most were killed in clashes between supporters/activists of the Awami League, BNP and Jamaat-e-Islami and their affiliated student organisations, and between members of two opposing factions of Bangladesh Chhatra League, the student association of the AL. In most instances the violence involved students and it took place at several different universities and colleges throughout the country. (Odhikar) [46s] For example, clashes between AL and BNP student wings in early January at Jahangir Nagar University, located 30 km from the centre of Dhaka, spread and led to the temporary closures of a number of other higher-education institutions. According to the Economist Intelligence Unit, “The violence [at Jahangir Nagar University] was sparked by an attempt by some students to ‘establish control’ over certain dormitories.” (EIU, February 2009) [40r]

During January and February 2009, there were reports of Awami League supporters attacking the houses of BNP and Jamaat-e-Islami supporters and vandalising their property. (Odhikar) [46u] [46v]

70. Whilst a number of clashes were recorded and some deaths occurred as a result of the violence, independent monitors considered the level of violence to be relatively mild within the spectrum of Bangladeshi electoral politics with polling relatively free of ballot-rigging and other irregularities. The US-based election observers the National Democratic Institute for International Affairs stated that:

On December 29, the people of Bangladesh went to the polls for the first time since 2001 to elect the members of their national parliament. Throughout the country, people voted enthusiastically and in large numbers. With a few exceptions, the elections were well-administered and took place in a peaceful environment, resulting in a credible electoral process that met international standards. A population that has been governed under an emergency order for the past two years is eager for a return to elected government...

For the most part, election officials were well-trained and ensured that the balloting and counting processes were carried out properly, and that voters were able to cast their votes secretly. The delegation also commends the political parties' presence and the collegial interactions between the agents of the two major parties at most polling sites. Nationwide, turnout was high, with an estimated 80 percent turnout...

NDI's pre-election assessment statement expressed concern about the role the military and security forces play on election day. Prior to the elections, the military had been tasked with providing the BEC assistance with the voter registration process, specifically for logistical reasons. The BEC indicated that the military would not be present at polling stations, but would be available to respond to specific incidents.

The per-election concern regarding military involvement on election day did not materialize. Police and other security forces were present and engaged in maintaining a calm voting environment at all visited polling stations. Observers reported that security personnel, including the military, behaved professionally and interfered only when necessary. (National Democratic Institute for International Affairs, 2008, *Statement of the NDI Election Observer Delegation to Bangladesh's 2008 Parliamentary Elections*, 31 December – <http://www.ndi.org/files/Final%20Statement%20-%202008%20Bangladesh%20Parliamentary%20Elections.pdf>).

71. A report dated 1 February 2009 by the Bangladeshi human rights organisation, Odhikar, provides an overview of events in January 2009. Amongst other observations, the report states that “the security forces should be more active in countering incidents of violence, particularly in the case of the reaction-counter-reaction type of violence observed between supporters of the two major political blocs” With reference to violence following the parliamentary elections in December 2008, the report states:

According to Odhikar's documentation, 17 persons were reportedly killed and over 500 persons were injured in post-election violence in different places across the country this year, which is a continuation of the violence that commenced after the 9th Parliamentary Elections on 29 December 2008. In most cases, activists and supporters of the Awami League (AL) led Grand Alliance, and the Bangladesh Nationalist Party (BNP) led Four-Party Alliance were found to be involved in such clashes. In many districts, AL activists attacked the houses and shops of the BNP and Jamaat-e-Islami supporters and vandalised their property. This section

of the report reflects the incidents of post-election violence that took place during the reporting period.

### **Type of violence**

**a. Killed-Injured:** 17 persons (9 from BNP and 8 from AL) were reportedly killed and over 500 persons were injured due to retaliatory attacks by the supporters of the Four Party Alliance and Grand Alliance and, in particular, Awami League and BNP. From the BNP side, the deceased were Samsul Haque (Polling agent), Sohel, Nur Kalam, Nazrul Islam, Obaidul Islam, Fosir Uddin, Yunus Miah, Khokon Majhi and Bashir Uddin; and from the AL the deceased were Parabashi Begum (mother of an AL candidate), Abdur Razzak, Parvez Hawlader, Sabuj, Bilkis Begum Laily (wife of an AL leader), Shohor Ali, Mir Mobarok Hossain and Shahin.

**b. Role of the Police force:** The security forces or police were very rarely recorded as being perpetrators or victims of the violence during this reporting period. While on the one hand this suggests that the security forces were not acting as agents fostering election-related violence, on the other hand this also suggests that they may not be playing an effective role in trying to counter the violence (on the assumption that more security forces would have been recorded as victims if this was the case). This seems to suggest that the security forces should be more active in countering incidents of violence, particularly in the case of the reaction-counter-reaction type of violence observed between supporters of the two major political blocs.

While Inspector General of Police Nur Mohammad claimed that there were only 13 incidents of violence in the whole country, hundreds of incidents of post-election violence were reported in the media throughout the country.

72. There were also reports of violence and voting irregularities surrounding the *upazila* (local sub-district) elections held in late January. These elections were marked by a number of relatively small-scale clashes between supporters of the major political parties with indications that those of the Awami League were attempting to assert its ascendancy by provoking incidents with BNP supporters and also by being implicated in voting irregularities at certain polling booths. Of note is reference to Sheik Hasina specifically stating her intent to 'crack-down' on political and student violence perpetrated by both the Awami League and the BNP in the wake of the *upazila* elections. (See also 'Rajshahi Shibir files 3 more cases against 248 BCL men', 2009, *The Daily Star*, 25 March - <http://www.thedailystar.net/newDesign/news-details.php?nid=81287> )

73. With respect to violence related to the *upazila* elections in January, the Odhikar report notes as follows:

**a. Pre-election:** As a continuation of the post-election violence after the national Parliamentary Elections, the *Upazila Parishad* election campaigning faced incidents of violence. Before the *upazila* elections of 22 January 2009, a total of 4 persons were reportedly killed and more than 800 persons were reported wounded.

On 15 January 2009 Abu Jafor Mohammad Khalil, a chairman candidate from Jatio Shomajtantrik Dol (JSD) was killed by some miscreants in Kahalu, Bogra.

In Ukhiya at Cox's Bazar, Mohammad (30) was killed on 21 January 2009 when police opened fire on a clash between the supporters of AL candidate Mahmudul Haq Chowdhury and AL candidate Hamidul Haq Chowdhury.

In Rajshahi, Matiur Rahman Babu, a Jubadal leader was killed by unknown miscreants on 17 January 2009.

Moreover, in Rangamati, Santosh Kumar Chakma, an Awami League-backed chairman candidate, was abducted on 20 January 2009 by a group of unidentified miscreants.

**During and After:** Because of the clashes and anomalies by political activists as well as government officials, in many places the polling processes were stopped. In the violence, 14 persons (10 from BNP and 4 from AL) were reportedly killed and about two thousand persons were injured due to retaliatory attacks by the supporters of the Four Party Alliance and Grand Alliance and, in particular, supporters of Awami League and BNP ('Monthly Human Rights Monitoring Report on Bangladesh – Dates covered: 01-31 January 2009' 2009, Odhikar website, 1 February <http://www.odhikar.org/documents/January09.pdf> – Accessed 25 March 2009).

74. An article in *The Daily Star* on 13 February 2009 reported that the BNP was to hold a convention on the violence that had occurred since the December 2008 parliamentary elections. According to the article, the BNP Secretary General had “recently claimed at least 31 leaders, workers and supporters of his party were killed by ruling party’s cadres after the elections”:

The main opposition BNP has taken an initiative to organise a national convention on post-election violence in a bid to create public opinion against “torture and repression on their supporters” across the country after the December 29 elections.

...

Party insiders say a documentary is being prepared on leaders and workers of the party who were killed or injured by their political opponents. Besides, posters, leaflets and booklets might be published for creating public opinion against the cruelty experienced by BNP supporters after the polls.

Asked about the initiative, Ferdous Ahmed yesterday told *The Daily Star*, “The convention will be organised with a view to presenting post-election violence against BNP activists across the country.”

He said the convention might be held late this month or early March and they are now collecting information, video footages and photographs of their leaders and supporters who were tortured.

BNP Secretary General Khandaker Delwar Hossain has recently claimed at least 31 leaders, workers and supporters of his party were killed by ruling party’s cadres after the elections (Suman, R. H. 2009, ‘BNP to hold convention on post-poll violence’, *The Daily Star*, 13 February).

### *Qadiyani Ahmadiya*

75. The Ahmadiyya Jamaat (group or community) was founded by Hadhrat Mirza Ghulam Ahmad, known as the ‘Promised Messiah’, in 1889. (‘Chapter 7: Pathway to Paradise’ (undated), Ahmadiyya Muslim Association of Australia website <http://www.alislam.org/books/pathwaytoparadise/LAJ-chp7.htm>) Ahmadiyya derives its name from Ahmad.
76. Prospective Ahmadiis are expected to accept the ten conditions (Bai’at) established by Hadhrat Mirza Ghulam Ahmad, read and sign the ‘Declaration of Initiation’ form, and then register with their national headquarters or local mission. Registration includes submission of

the applicant's particulars and the Declaration of Initiation. ('Declaration of Initiation' (undated), Ahmadiyya Muslim Association of Australia)

77. Ahmadis are expected to pay 25 per cent of their income in monthly dues, as well as other additional contributions. (Immigration & Refugee Board of Canada 2005, *PAK100056.E Pakistan: The faith of the Ahmadiyya Movement in Islam, including its origin, beliefs and rituals*, 31 August)
78. After Ahmad's death in 1908, the Ahmadiyya sect split into two groups: the *Qadianis* and the *Lahorites*. The *Qadianis* are the larger of the two groups and believe that Ghulam Ahmad was a prophet and Mehdi (messiah), designating his descendents as caliphs. The *Lahorites* believes Mirza Ghulam Ahmad was a reformer and an incarnation of Jesus but not a prophet. It has its own religious hierarchy and rejects the Qadiani system of hereditary caliphs. (International Crisis Group 2005, *The State of Sectarianism in Pakistan*, Asia Report N°95, 18 April, p.4, footnote 22)

#### *Fraudulent Documentation*

79. Numerous documents can be found attesting to the high level of fraudulent documents and corruption in Bangladesh. (DFAT, 1988, *Application for Refugee Status*, 26 July; DIMIA Country Information Service, 1996, *CIR No.497/96*, 7 June (sourced from Former Second Secretary, Australian High Commission, Dhaka – 2 April 1993); DIMIA Country Information Service, 1996, *CIR No. 22/96*, 5 January (sourced from DFAT, 24 December 1995); DIMIA Country Information Service, 1996, *CIR No. 1011/96*, 18 December (sourced from DFAT, 25 November 1996); DIMIA Country Information Service, 1998, *Bangladesh: Profile of Asylum Claims and Country Conditions*, 27 August (sourced from the US Bureau of Democracy, Human Rights and Labor, February 1998); DIMIA Country Information Service, 1998, *CIR No.373/98*, 13 October (sourced from DFAT 6 October 1998) –
80. In the report "Bangladesh: Profile of Asylum Claims and Country Conditions", February 1998, section IV.A. "Bangladesh Documentation" (CX31417), the U.S. Bureau of Democracy, Human Rights and Labor observed of Bangladesh that asylum applicants from all political parties submitted "voluminous documentation to support their claims, including in particular outstanding warrants for their arrest if they return to Bangladesh and other alleged court and police documents". It observed that arrest warrants were not generally available to the public, so all such documents should be scrutinized carefully. Many "documented" claims of outstanding arrest warrants had proved to be fraudulent The US Embassy had examined several hundred documents submitted by asylum applicants; none had proved to be genuine. It also observed that altered or counterfeit newspaper articles were another less frequent but notable example of document fraud. Similarly, DFAT confirmed that fraudulent and bogus "official" documents were commonly and easily obtainable in Bangladesh (1996, DIEA, Country Information Report No 22/96, CX13160, 5 January).
81. More recently a report from the Immigration and Refugee Board of Canada 2010, *BGD103532.E – Bangladesh: reports of fraudulent documents*, 20 September [http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453136&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453136&l=e) provided detailed information regarding the prevalence of fraudulent documents

In 7 September 2010 correspondence with the Research Directorate, an official at the High Commission of Canada to Bangladesh stated that

There is a significant prevalence of fraudulent documents [in Bangladesh] including passports, birth certificates, bank statements, taxation documents, business documents, school documents, marriage certificates. If we ask for it, it can be produced.

The Canadian Official added that “[t]here is no difficulty at all for anyone to obtain these documents. Quality varies with prices paid.” (Canada 7 September 2010).

A June 2007 Asian Development Bank (ADB) study examining why individuals obtain fraudulent documents in different Asian countries, including Bangladesh, provides the following information:

In Bangladesh, those seeking to have false identity documents commonly avail [themselves] of the services of middle persons, or *dalal*. According to a dalal who was interviewed, an efficient system has developed where applicants pay an additional fee to avoid the hassle of going through the official procedures, particularly for procuring passports. The dalal pays the relevant issuing officer, who in turn pays the special branch of the police for the required verification. Such verification is generally issued regardless of whether the information provided is correct or not. (ADB June 2007, 65)

The study adds that Bangladesh has a “well-developed market for the delivery of passports through unofficial mediators or agents” (ibid., 68).

The Canadian Official stated that

Bangladeshi records are not computerized. Everything is recorded by hand and filed. It is very consuming for all involved to locate original documents or applications; additionally primary source documents are not even required for a Bangladeshi passport as births are not generally recorded at the time of birth. One only needs to make a self declaration as to one’s name and date of birth and you get your passport in that name and date of birth. Information from schools (on the students) are a more reliable way to confirm identity as the students parents names are generally included in this information. (Canada 7 Sept. 2010)

The Canadian Official said that the High Commission was not aware of any official efforts to prevent the production or to identify fraudulent documents (ibid.).

However, the 2007 ADB study notes that “the introduction of modern technology, such as machine-readable passports, is making it increasingly difficult to produce counterfeits of the more heavily regulated documents” (ibid., 66). A June 2010 Xinhua news agency article stated that Bangladesh introduced machine-readable passports partially due to concerns over forgeries of the previously manually processed passports (Xinhua 2 June 2010). According to an official from the Bangladesh Department of Immigration and Passports quoted in the Xinhua article, the manually processed passports were easy to fake since they were “hand-written and the photos and signatures are pasted manually” (ibid.). The official also explained that because of the “absence of a proper database”, a person could potentially receive more than one passport using the same name (ibid.). A 10 July 2010 article from the website *News from Bangladesh* (NFB) reports that despite the introduction of machine readable passports (MRP) in the country, some dalals still act as middlemen by selling spots in queues at passport offices.

The 2007 ADB study indicates that an “active market” for fraudulent birth certificates does not exist in Bangladesh, but this was expected to change as birth registration

became “a mandatory precondition for accessing benefits and opportunities” (ADB June 2007, 68). A United Nations (UN) Children’s Fund (UNICEF) report on birth registration in Bangladesh, updated in April 2010, explains that until the Births and Deaths Registration Act came into effect in 2006, there was little motivation to register births and to obtain birth certificates and “[t]he birth registration system was manual, ad hoc, and prone to abuse” (UN Apr. 2010, 2). In 2006, only 9.8 percent of children under five years old were registered (ibid. 1). The Act requires authorities to provide a birth certification when a person is registered and has made it compulsory to show a birth certificate to access some government services (ibid., 3). In 2009, 53.6 percent of children under five years were registered (ibid., 1).

The UNICEF report states that the government of Bangladesh has developed a Universal Birth Registration Strategy aiming to register the entire population by the end of 2010 (ibid., 3). The UNICEF report states that the government, with UNICEF assistance, is working on putting into place a Birth Registration Information System (BRIS) to centrally record all births in the country and to permit the verification of data (ibid., 4-5). According to the report, “it will increase the reliability of birth registration as the instrument of protection and identity” (ibid., 5). The system will be implemented throughout the nation after a pilot project, begun in two regions in December 2009, is successfully completed (ibid., 4).

The Dhaka-based online news service bdnews24.com reported on 13 March 2010 that the Bangladesh Election Commission was planning to issue a new type of identity card within five years, partially to stop forgery and abuse of the existing card. There were several media articles reporting on fraudulent documents: bdnews24.com reports that police had arrested a man with “a large number of fake documents in his possession”, including driver’s licenses, national identity cards and birth registration forms (28 Aug. 2010). The Dhaka-based daily *The Financial Express* reports on a 2009 case where seven drivers were caught with falsified documentation (24 Aug. 2009). The Bangladesh daily *The New Nation* reports that at least 1,500 vehicles were found to have false registration documents (9 May 2009). An article from *The Financial Express* notes efforts by the National Board of Revenue to fight against “widespread” fake tax identification certificates (6 May 2009).

## FINDINGS AND REASONS

82. In order to satisfy the Convention definition of a refugee, the applicant must have a well-founded fear of persecution. He must have a subjective fear, and that fear must also be well-founded when considered objectively. There must be a real chance that the applicant will be persecuted for a Convention reason if he returns to Bangladesh, which the Tribunal finds is the applicant’s country of nationality based on his passport. The Tribunal accepts that the applicant does not want to return to his own country. The question for the Tribunal is whether the applicant’s fear of persecution is objectively well-founded within the criteria of the Refugees Convention.
83. The Tribunal is aware of the importance of adopting a reasonable approach in the finding of credibility. In *Minister for Immigration and Ethnic Affairs and McIllhatton v Guo Wei Rong and Pan Run Juan* (1996) 40 ALD 445 the Full Federal Court made comments on determining credibility. The Tribunal notes in particular the cautionary note sounded by Foster J at 482:

...care must be taken that an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.



84. In the decision of *Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors* (1996) 185 CLR 259, the High Court also made comments on the correct approach to determining findings on credibility. Kirby J said at 39:

First, it is not erroneous for a decision-maker, presented with a large amount of material, to reach conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is not desirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court conducting a trial than to the proper performance of the functions of an administrator, even if the delegate of the Minister and even if conducting a secondary determination. It is not an error of law for a decision-maker to test the material provided by the criterion of what is considered to be objectively shown, as long as, in the end, he or she performs the function of speculation about the “real chance” of persecution required by *Chan*.

With these points in mind the Tribunal now turns to an assessment of the applicant’s claims.

85. The Tribunal accepts that the applicant may have been an ordinary member of the BNP and that he financially supported the party. The Tribunal accepts that the applicant first became involved in the BNP in 2004 and in the same year he became a member of the party. However, for the reasons below the Tribunal does not accept that the applicant was politically active or that he held any official position within the party.
86. The Tribunal does not accept that when the applicant first became involved in the party his duty was to look after the workers to ensure there was no fighting between them. The Tribunal found the applicant’s evidence in the hearing regarding his activities in relation to this particular duty vague and lacking in detail. When asked how he ensured there was no fighting between the workers, the applicant stated that he gave them money. The Tribunal finds it implausible that the applicant gave all the BNP workers in the [District 3] branch money to control their behaviour. The Tribunal notes that the applicant was unable to describe any other method by which he maintained peace between the workers. Given the applicant’s limited description of his main duty within the party, the Tribunal does not accept that he was responsible for upholding order amongst the workers.
87. The applicant claimed in the hearing that he held the position of joint secretary/area leader from [a date in] October 2006 until he departed the country in December 2009. The Tribunal does not accept that the applicant held any leadership position within the [District 3] branch of the BNP. The Tribunal notes that in the applicant’s protection visa application he made no mention of holding an official position within the party. However, in the interview with the Department he claimed he was a local leader. He subsequently provided a letter from the President of the BNP [Unit A] dated [in] January 2010 which stated that he was selected Deputy General Secretary in 2006 and in the hearing he described his position as joint secretary/area leader. The Tribunal does not accept that if the applicant was Deputy General Secretary as stated in the letter from the President of the branch, the applicant would not have referred to this particular title in either the interview with the Department or in the hearing. Given the discrepancies in the evidence provided by the applicant regarding his particular position within the BNP, the Tribunal places little weight on the document he submitted from the President of the BNP [Unit A], as evidence that he in fact held an official position within the party.
88. The Tribunal also found the applicant’s evidence in the hearing regarding his alleged responsibilities in his role as joint secretary/area leader inadequate. The Tribunal notes that the applicant identified three main responsibilities which he had in his official position; the first was to help economically and support the local people; the second was to ensure no



terrorism or problems within the party and make peace within society; and the third was to make plans for Ministers and leaders visiting the area. The Tribunal found the applicant's evidence regarding his role in making peace within society to be extremely general and lacking in detail. Essentially the applicant claimed that he held a three hour meeting each Friday over a period of three years at which he spoke about social harmony and not taking money unlawfully. Given that the applicant claimed in the hearing that this was his main duty, the Tribunal found the applicant's description of this particular responsibility to be negligible and unconvincing.

89. Similarly, the Tribunal found the applicant's evidence regarding the third element of his alleged role as joint secretary/area leader simplistic and unpersuasive. The applicant did not elaborate on what was involved in making plans for visits by Ministers and leader of the BNP to the area. His evidence focussed entirely on the financial aspects of hosting such an event and his personal monetary contributions and participation in fundraising for the remaining funds required. As the Tribunal has discussed above, it accepts the applicant supported the BNP financially and therefore it accepts the applicant may have made financial contributions to events held by the BNP when Ministers and leaders visited the area. However, the Tribunal does not accept that this was part of any specific responsibility or role as joint secretary/area leader of his branch of the BNP.
90. The Tribunal notes the applicant's evidence in the hearing that he did not engage in any other activities in support of the BNP other than those mentioned above. Based on the Tribunal's findings discussed previously, the Tribunal does not accept that the applicant was an active member of the BNP. Rather, it finds that the applicant was a low-level member who supported the party with his financial means. The Tribunal also does not accept that the applicant engaged in any election activities in 2008, apart from possibly spending money to fund the campaign in his local area. Given the applicant could not remember when the election was held in 2008 or when campaigning for that election started, the Tribunal does not accept the applicant was fully involved as he claimed in the hearing. The Tribunal does not accept that he would speak to people about the BNP and encourage them to vote, even by giving them money.
91. As the Tribunal does not accept that the applicant was a leader or held an official position within his branch of the BNP and did not engage in any political activities, the Tribunal does not accept that in 2006 the opposition party went against him because he would talk publicly about their corrupt activities and threatened to go to the police. Nor does the Tribunal accept the applicant's claim he made in the hearing, that he was arrested in 2005, despite him asserting that it was not a big problem.
92. The Tribunal therefore does not accept that when the opposition party came to power following the 2008 elections, they came to his home or his office on a number of occasions and threatened him repeatedly over the phone from January 2009.
93. The applicant claimed in the hearing that in 2009 ten or twelve people came to his office to kill him. He claimed they came twice in 2009 but he was not there on both occasions. As the Tribunal noted in the hearing, the applicant had not made any mention of this incident in his protection visa application, nor did he raise this in the interview with the Department. The Tribunal does not accept that the applicant's high blood pressure, tension or forgetfulness adequately explains why he failed to mention important incidents such as these. The Tribunal notes the applicant's evidence in the hearing that it was because these people could not find him at his office that the police then caught and detained him in July 2009. Given the

significance of these alleged events in June, the Tribunal finds the applicant's delay in raising them raises serious concerns about the credibility of these claims and leads the Tribunal to find that they have been made in an effort to bolster the applicant's claims. The Tribunal does not accept that the applicant was visited by supporters of the government in June 2009.

94. As the Tribunal does not accept that the applicant's workplace was visited by ten to twelve people looking for him because of his past activities, the Tribunal does not accept that the applicant was arrested by the police [in] July 2009 and detained until [a further date in] July 2009 when he was released after paying some money. The Tribunal notes that in the hearing the applicant claimed that he was going from his office when he was arrested by the police on the command of higher officials. However, in the interview with the Department he claimed that the police came to his house and arrested him. Given the Tribunal does not accept that the applicant was arrested and detained as he claimed, the Tribunal does not accept that the applicant was hit with wooden sticks and that he was hospitalised at a clinic come pharmacy for one day. The Tribunal has taken into consideration the medical certificate submitted by the applicant from [doctor deleted] dated [in] July 2009, however it places little weight on this as evidence confirming the cause of whatever injury the applicant sustained at that time, for which he required six weeks' rest.
95. As the Tribunal does not accept the applicant was of interest to members or supporters of the government or the police, the Tribunal does not accept that after the incident in July 2009 the applicant went into hiding or that he received phone calls to his mobile from leaders of the Awami League. The Tribunal concedes that the applicant did in fact mention in the interview with the Department that he had been in hiding, moving from place to place, however, given the Tribunal's findings above, the Tribunal does not accept that there was any need for the applicant to conceal himself from anyone. It therefore follows that the Tribunal does not accept that the applicant's daughter is currently being kept in secret or in hiding.
96. The Tribunal has taken into consideration the "application for protection of life and assets" the applicant submitted as evidence that he reported the incident/s in June 2009 to the police. The Tribunal notes that the applicant wrote this document in November 2009, four months after the event. The Tribunal finds it implausible that if the applicant had been subjected to threatening phone calls, had been visited at his store on two occasions by a group of people with arms, had been detained by the police at the behest of members of the ruling party and subsequently gone into hiding, he would wait such a long period of time to seek protection from the police. The Tribunal also found the applicant's explanation for the delay in him going to the police flawed and nonsensical. The applicant claimed that he did not go to the police earlier because they did not work against the party in power, yet when he sought protection in November it was still the same party in power. The Tribunal also notes that the document the applicant submitted is simply a letter addressed to the officer in charge of [Police Station 2] and there is nothing before it to confirm that the applicant in fact sent this letter to the police or that it was received by the intended recipient, therefore the Tribunal places little weight on this document.
97. The Tribunal notes in the applicant's protection visa application he claimed that he had received serious attacks and abuse from the government of Bangladesh. He claimed that they came to attack him in 2009 before he came to Australia; the authorities came into his business and it was closed as a result. However, despite the Tribunal asking the applicant several times about what happened to his business in the hearing, the applicant did not mention anything about the authorities coming there or doing anything to it or locking it up. The Tribunal therefore does not accept the applicant's claims regarding any attacks or abuse against him by

the government or the authorities being responsible for the closure of his business. The Tribunal also found the applicant's claim in the hearing regarding 'they' taking everything from his business, to be confusing and lacking in detail. The applicant did not indicate who he was actually referring to and what had been taken from his business, particularly given that he also claimed at various stages of the process that his business had been closed. In light of the vagueness of the applicant's claim, the Tribunal does not accept that either the authorities or opposition members or supporters were responsible for the closure of the applicant's business.

98. In the hearing the applicant also claimed that there were false cases against him which were reported in a newspaper and that he had been sentenced to seventeen years imprisonment in relation to an arms case. The applicant presented the Tribunal with an article purportedly from [newspaper deleted]. Following the hearing the Tribunal received a First Information Report (FIR), memo to the officer in charge and court document as evidence of the false case the applicant claimed was registered against him. The Tribunal does not accept that these particular documents are genuine.
99. The Tribunal notes that following inquiries made by DFAT, both the FIR and Memo from May 2009 were found not to be genuine as [Police Station 4] was not opened until [a date in] October 2009 and prior to that date it was [name deleted] under [Police Station 2]. Therefore, no paperwork could have been issued under [Police Station 4], as written in both these documents, before [a date in] October 2009.
100. In addition, an overseas post representative visited [Police Station 2] and examined the station's case registry for [Police Station 4] GR [number deleted] as numbered on the FIR submitted by the applicant. However, the case that accorded with that particular GR number was a drug case where the accused was named [name deleted] and investigating officer was [name deleted] and therefore it did not match with the document submitted by the applicant. The post representative also checked the handwritten General Diary Registration Book of [Police Station 2] to check the General Diary [number deleted] as written in the Memo provided by the applicant. Neither the subject nor the date of the General Diary entry matched with the document submitted by the applicant.
101. In regard to the third document submitted by the applicant, the court document, the Tribunal has taken into consideration the result of inquiries made by the post to determine the authenticity of Metro Civil Special Case [number deleted]. A post representative visited the Special Judge [court deleted] Dhaka and found that no such case was registered under this number. In addition the Registrar of the Court informed the post representative that there has never been a judge named [name deleted] in Special [court deleted] as it is the court of Justice [name deleted]. The post representative also visited the Chief Metropolitan Magistrate Court's General Registry Office to locate the case by its G.R number as presented in the first information report and found that a drug abuse case was lodged under that G.R number, which corresponds with the information found by the representative during the visit to [Police Station 2].
102. Based on the information above, the Tribunal finds that the applicant has concocted these claims in an effort to bolster his case. The Tribunal has also taken into consideration country information which attests to the high prevalence of fraudulent documents and corruption in Bangladesh. Given the lateness in which the applicant raised this significant claim and the fact the applicant has willingly produced false documentary evidence, the Tribunal places no

weight on these particular documents or the newspaper article which reports on this alleged case against the applicant.

103. Given the Tribunal's findings above, the Tribunal does not accept that the applicant was an active member of the BNP. The Tribunal does not accept that the applicant was threatened or harmed either in 2006 or following the 2008 elections, by either Awami League members or supporters or the authorities, including the police, because of his political opinion. As the Tribunal does not accept the applicant was of interest to either the Awami League or the authorities in the past, the Tribunal does not accept that if the applicant returns to Bangladesh he would be shot by the party in power or harmed in any way by either the Awami League or the authorities. Nor does the Tribunal accept the applicant's claim that he could be killed in the crossfire. The Tribunal finds that based on the applicant's low-level profile as an ordinary member of the BNP who was not politically active, the applicant would not face a real chance of persecution for reason of his BNP political opinion, now or in the reasonably foreseeable future, if he returns to Bangladesh.
104. The Tribunal has considered the applicant's claim that various members of his family have been killed in the past because of their political beliefs including his cousin brother [Mr A]. The Tribunal does not accept on the basis of the applicant's limited evidence surrounding the circumstances of the death of family members such as his parents [details deleted] or three of his cousins, that it was due to their political opinions. The Tribunal has taken into consideration the applicant's evidence in the hearing regarding the alleged murder of his cousin brother [Mr A] seventeen or eighteen years ago and does not accept that even if this incident occurred, it has any relevance to the applicant's situation now, so many years later, and in light of the difference in profile between the applicant's cousin brother who was a university leader of the BNP and the applicant, who the Tribunal finds was not an active member of the BNP.
105. The Tribunal has also taken into consideration the applicant's claim regarding threats he received from his ex-wife's family, in particular, her uncle who is a Secretary with the government. The Tribunal accepts that the applicant may have received some calls from his ex-wife's uncle, as well as other relatives of his ex-wife, following their divorce. The Tribunal notes that apart from calls asking him why he divorced his wife and threatening to kill him, nothing else happened to the applicant. According to the applicant's protection visa application, he divorced his wife in July 2008 and did not depart the country until a year and a half later, in December 2009. The Tribunal does not accept that if the applicant's ex-wife or her family, including her uncle, intended to harm the applicant, they would have done so during that period. The Tribunal also finds that any interest the applicant's ex-wife's uncle may have had in the applicant following his divorce was not for reasons of his political opinion, as contended by the applicant, but rather personal reasons associated with his role in the failure of his marriage with his ex-wife. The applicant has suggested that given the influence of his ex-wife's uncle, he could be arrested by the police at her uncle's behest, however the Tribunal notes that the applicant did not claim this happened following his divorce and given that the applicant's ex-wife has now remarried, the Tribunal finds it implausible that either the applicant's ex-wife or her family would be interested in the applicant, now or in the reasonably foreseeable future.
106. The applicant also claimed that he faces harm on his return to Bangladesh as a member of the Qadiani organisation. The Tribunal does not accept the applicant joined the Qadiani in January 2009. The Tribunal found the applicant's evidence regarding his conversion to the Qadiani religion to be lacking. He did not know what Bai'at is, the ten conditions of initiation

a person has to learn and accept when converting to Qadiani. Instead, the applicant claimed Bai'at was singing and many musicians. The Tribunal does not accept that if the applicant had become a member of this religion he would not have some awareness of the process of initiation he would have been required to perform on joining this religion. The Tribunal also notes that in the applicant's protection visa application he stated that he had been involved in the Qadiani organisation for many years yet he only joined in in January 2009 and he demonstrated very little knowledge of their practices. Although the applicant was aware of there being a Qadiani mosque in Melbourne, he had not managed to attend. The Tribunal does not accept that if the applicant was an adherent of this religion he would not have made some effort, through the friends and acquaintances he had made, to locate the mosque and practise his alleged faith. The Tribunal has taken into consideration the letter the applicant has provided from the Bangladesh Kadiyani Kalyan Samitee, however given the Tribunal's findings above and concerns regarding the veracity of the supporting documentation the applicant has submitted, the Tribunal places little weight on this letter. As the Tribunal does not accept that the applicant converted to or joined the Qadiani organisation, the Tribunal therefore does not accept the applicant's claim in his protection visa application, that he was tortured for this reason. For the reasons provided above, the Tribunal finds that if the applicant returns to Bangladesh, he would not face a real chance of persecution for reasons of his alleged religion.

107. Based on the above, the Tribunal finds that there is no real chance that the applicant will face persecution if he were to return to Bangladesh, now or in the reasonably foreseeable future for reason of his political opinion, religion or any other Convention reason. The Tribunal therefore does not accept that the applicant's fear of persecution is well-founded.

### **CONCLUSIONS**

108. 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**

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