

0803509 [2008] RRTA 330 (8 September 2008)

DECISION RECORD

RRT CASE NUMBER: 0803509

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Antoinette Younes

DATE DECISION SIGNED: 8 September 2008

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Bangladesh, arrived in Australia on [date] and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa on [date] The delegate decided to refuse to grant the visa on [date] and notified the applicant of the decision and his review rights by letter dated [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 on [date] 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. In support of the application for a protection visa, the applicant provided a Statutory Declaration in which he claimed that:
21. He was born in Bangladesh on [date]. The date of birth in his passport is different from his original date of birth as he had to change his date of birth in order to obtain the passport. He was a victim of political conflict between Bangladesh Nationalist Party and Bangladesh Awami League.
22. During his studies at [School A], he witnessed many strikes called by the Awami League for no real reason. They used to go to the School and asked students to leave classes and any student or teacher who refused to obey their orders, suffered severe harassment. He has witnessed the beating of a teacher, [name] who had done nothing wrong but asked them to allow him to finish a routine class. Since witnessing that horrific incident, he became anti Awami League. But at that time he was very young and he could not do much against them.
23. In [year] and on his first day at [College B], he was approached by the leader of the different political party, like every new student has. From the very beginning, "*I was unknowingly supported right wing political party*". He was approached by the Chattara Dal (student wing party of BNP) leader [name], [position title] of Chattara Dal, [City C] police station who explained to him the philosophy of the Bangladesh Nationalist Party and gave him a booklet.
24. He decided to join the Chattara Dal. He completed a form and he gave it to the College [position title] [name]. In first year, there were about [number] students; [number of] students became members of the Chattara Dal by filling the form and taking an oath. There were other students who did not sign the form but they showed their support to Chattra Dal.
25. At the beginning, his college political activities were within College campus, but several months later, his activities expanded outside the college. When he was living in the [Building D] inside the college campus, he became more involved in politics. Within [number] months of being in the [Building D], he became [position title] of the [Building D] and the [position title] was [name].
26. He had a responsibility to ensure that enough students had joined the regular procession in college campus. In his [Building d], they had unwritten rules that every student must join the procession at the beginning of the class.
27. In the middle of [year] and during an event for new students, [Person E] (son of BNP [position title] [Person F]) was invited as a special guest along with the local M.P. During that time, they had "*to do extra procession within the college and outside the college campus*". One day, they were marching from the northern side of the college and Chattra League procession was coming from the opposite side. They were crossing in the corridor and they clashed; [number of]

students were injured. He had a [description of minor injury], but the Chattara League leader blamed the applicant personally for that incident. They wanted to expel him from the college but the principal did not agree with them. The applicant became one of the main targets of Chattara League, but that time, the BNP was in power and any false accusation against him were carefully scrutinised.

28. During that college meeting, he met [Person E] and they had a long discussion about Chattara Dal's future in the college. [Person E] was so impressed with the organisation and publicity about the meeting. They had an unexpected number of students attend the meeting and the applicant worked very hard for that event. Through this work, he became well known to the opposition party. [Person E] gave the applicant his number to contact him if he needed help. Every month, the applicant and other college leaders went with [Person E] whenever he had to go to other districts or any Cattara Dal meeting. Through him, the applicant had an opportunity to meet BNP [position title] [Person F].
29. In [year], he completed secondary studies and he was admitted to a [course type] in [year]. In that year, the BNP lost the election and the Awami league formed government. The same night, the Chattara League "goons" went to his room looking for him but he was at the Party headquarter with the BNP leader. They ransacked his and others' rooms and "took the position with the outsider".
30. They could not return to the [Building D] and he went to [City G] to avoid arrest. [Person E] arranged accommodation for him. After a [period of time], he was informed by his family that the police were looking for him. The Awami League made a list in which they included his name. [Number of] weeks later, they killed one of their active members who used to do announcements for the Party.
31. He had intended to finish his degree and join the Party advisory committee in higher level, but he was so scared of the Awami League cadres as they are very barbaric. Mentally, he was not ready to fight all the way. News were coming to the office that Awami 'goondas' were taking the position of BNP party members and killing without any justification. They killed around three hundred BNP and Jamath leaders and supporters around Bangladesh.
32. He had a long discussion with his family and senior political leaders and decided to leave the country to save his life. [Person E] arranged his passport with a different date of birth and visa to travel to [Country H]. On [date], he left Bangladesh. At the beginning he had difficulty with work and he got financial assistance from [Person E] who used to send money to his account. Later he started to work full time and earned his living.
33. In the middle of [month, year], he went to Bangladesh and got married very secretly. He had [period of time] vacation but he had to leave early because "somehow they knew that I got back to Bangladesh. My different D.O.B. in my passport saved me that time".
34. He was living in [Country H] with a permit that was due to expire on [date]. When he had no option to renew his permit, he decided to come to Australia and hoped to get a protection visa. He cannot return to Bangladesh. His close ally with [Person E] made his life more difficult. [Person F] and [Person E] are in jail. In the name of emergency, the army unlawfully detained political leaders and supporters, they tortured them to extract confessions.
35. He has been told by close relatives that the Bangladesh secret service personnel got names, addresses and details of those who had contact with [Person E].

36. He is very depressed because of his helpless situation and he is very worried about his future and his young family. He is seeking protection in Australia so that he does not have to go back to Bangladesh.
37. The applicant did not provide any documents in support of his application for a protection visa.

Documents relating to the applicant's [temporary] visa

38. Contained in the DIAC file, there are documents relating to the applicant's [type of] visa, namely:
 - a. Letter dated 28/9/2007, from the applicant to the Australian Embassy in Washington, stating, *inter alia*, that he would like to visit Australia to see Sydney and that "*I am leading my life very smoothly and very much satisfied with my present job...*" There is no mention of any harm or fear.
 - b. [Government J] [Office], Entry Permit to [Country H];
 - c. Social Security card;
 - d. Car registration;
 - e. Travel details for the applicant;
 - f. Bank account details for the applicant;
 - g. "*Criminal Record*" (no conviction recorded) for the applicant;
 - h. Wages and Tax Statement for the applicant.

The review application

39. In the application for review, the applicant claimed that he was denied procedural fairness by the delegate who reached conclusions "*not obviously open on the known material, without giving me an opportunity to be heard in respect of those matters*".

HEARING

40. The applicant appeared before the Tribunal on [date] to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali (Indian/Pakistani) and English languages.

Documents provided in the course of the hearing

41. The applicant provided the following documents:
 - a. an untranslated document;
 - b. a copy of his child's passport;
 - c. a document entitled *Certificate of Live Birth*, relating to the applicant's child;
 - d. a documented entitled *Government Republic of Bangladesh Birth Certificate*;

- e. a document entitled *Provisional Pass Certificate, Board of Intermediate and Secondary Education, [City C], Bangladesh*, Referring to the applicant's completion of his higher secondary certificate in humanities at an examination held in [year];
- f. a document entitled *[College B]*, certifying the applicant's attendance at the higher secondary certificate from [month, year] to [month, year];
- g. a document entitled *Statement of Results*, from the Board of Intermediate and Secondary Education [City C], Bangladesh;
- h. a document entitled, *Testimonial from [School A]*, referring to the applicant passing the SSC examination held in [year] with first division;
- i. a document entitled *Secondary School Certificate Examination [year]*, from the Board of Intermediate and Secondary Education [City C], Bangladesh, referring to the applicant's passing the secondary school certificate examination held in [year] and passing with First Division;
- j. a document entitled *Board of Intermediate and Secondary Education [City C], Bangladesh statement of results*.

The applicant's evidence

- 42. The Tribunal referred to the Statutory Declaration provided by the applicant in support of his application for a protection visa. The applicant recognised his signature. The applicant gave evidence that he wrote a document in Bengali which was later translated by a friend into English. The Tribunal asked the applicant if he had any changes to make to the application for a protection visa or to the Statutory Declaration provided in support. The applicant confirmed that he did not wish to make any changes to either of those documents.
- 43. The applicant gave evidence that he has been in [Country H] since [year]. He stated that he has remained in [Country H] until he came to Australia. He said he was working in [Country H] as a [Occupation K]. He said that the first year he went to [Country H] he was unemployed but subsequently he has been working as a [Occupation K]. The applicant gave evidence that he returned to Bangladesh around [month, year] and was there for about [number of] days. He was asked and he confirmed that he travelled to Bangladesh using his own passport which has now expired. The Tribunal noted that the applicant has a new current passport which was issued on [date] by the Embassy of Bangladesh in [Country L].
- 44. The applicant gave evidence that he is married and that he got married by telephone prior to going to Bangladesh in [month, year]. He said when he went to Bangladesh in [year] they had a marriage ceremony. The applicant told the Tribunal that his wife joined him in [Country H] in [month, year] and she remained in [Country H] until [period of time] before his arrival to Australia. He said he has a child who was born on [date]. He said that both his wife and his child are currently living in Bangladesh.
- 45. The applicant gave evidence that he came to Australia on a [type of] Visa. The Tribunal asked the applicant if he had disclosed any harm in Bangladesh in his application for [the type of] Visa and he stated that he did not disclose any such harm. He said at that time he wanted to [purpose of coming to Australia]. He said when he was in [Country H], he had a special permit which had

to be renewed annually. He said in [year] his boss told him that he could no longer give him authority to renew the [type of] permit and therefore he had to leave [Country H]

46. The applicant stated that his original intention was to [purpose of coming to Australia] and he had no intention of remaining here and applying for a protection visa. He said, however, this intention changed because his boss had told him subsequently that he was not going to authorise the renewal of his permit in [Country H] He said he therefore decided that he could not return to Bangladesh. He said that he got the Australian visa in [month, year] and he came to Australia in [month, year] He said his boss told him of his unwillingness to renew or authorise the renewal of the permit at the beginning of [month, year], after he had applied for the [type of] Visa. He said he had no intention of remaining in Australia when he applied but merely to [purpose of coming to Australia].
47. The applicant gave evidence that he is now almost [age] which means that he would have left Bangladesh when he was about [age]. The applicant said he had completed secondary school certificate when he was about [age]. He said he went to [School A] He said after the secondary school certificate he went to [College B] which was an intermediate college between high school and university. He said he attended [College B] from [year] until [year] but because of his political involvement he could not sit for the examination until [year]. He explained that he sat for the test in [year] but he did not pass because of his political involvement. He said he had to sit for the test again in [year] and he then passed.
48. The Tribunal referred to the document entitled “[College B]” stating that “*While studying at this College he was not known to have taken part in any activities subversive of the state or of discipline*”; the Tribunal suggested that the document itself does not mention anything about his political involvement and that the document not necessarily supported his claim that he was involved in politics or that he had failed because of his political involvement. The applicant stated that usually such documents do not mention anything about political activities. He said they do not know why he did not pass the test. The Tribunal indicated that the matter would be considered further.
49. The applicant confirmed that he attended the College between [year] and [year] but he had to sit for exams again which he later passed in [year]. The applicant explained to the Tribunal that he was providing the document from [College B] as this was one of the issues that had been raised by the delegate who appeared not to have accepted that the applicant attended the College. He said he was providing such a document in support of his claim that he had attended the College rather than as evidence in support of his claim of involvement in any political activities.
50. The applicant gave evidence that after passing his exams in [year] and because he was involved in politics he could not get into the degree course until [year]. He said he became the [position title] of the [Building D] at the [College B]. He said that [Person E] at the time was also a student at the College. He said members of the opposition party, namely the Awami League threatened him.
51. The applicant gave evidence that he attended classes but he did not sit for the exams. He said he attended the [College K] He said that he was enrolled at the College. The Tribunal noted that he does not have any evidence in support of his claim that he was enrolled at the College. He said he was at the College from mid [year] until [year] when he left Bangladesh to go to [Country H] The Tribunal indicated that the matter would be considered further.

52. The Tribunal asked the applicant about his political activities; the Tribunal asked him when he became involved in political activities. The applicant stated that he was actively involved during the first year of his higher secondary schooling whilst he was at [College B] He said but prior to that he was involved in politics at the secondary school certificate level (SSC). He said at that time he had attended meetings and joined in demonstrations.
53. The Tribunal asked the applicant to explain his exact activities at the SSC level. He said at the SSC level, he joined in demonstrations and attended meetings. He said he did not personally know leaders of the Party but had heard about them. The Tribunal asked the applicant about the demonstrations which he said he had joined. He said that they were small demonstrations and meetings to discuss activities. He said he did not join in meetings regularly but from time to time. He said that at the SSC level, leaders of the Awami League went to school to explain their aim. He said that some students did not like them but they were harassed by the leaders.
54. The Tribunal asked the applicant again to explain the meetings and the demonstrations that he said he had been involved in. The applicant said that leaders of the BNP came to their area and tried to explain matters to them. He said he attended those meetings. The Tribunal asked the applicant when those meetings took place. He said he could not remember the exact time when the meetings took place but they were during [year] He said they came to the school asking students to join them. He explained to the Tribunal that it was leaders of the Awami League who went to the school asking students to join them. He said that leaders of the BNP never went to the class but to the fields. The Tribunal asked the applicant to explain the meetings that he said he had attended. He said the BNP leaders went to the sports field where the applicant was with other students and they asked them to join the party.
55. The Tribunal suggested to the applicant that his evidence thus far about the meetings and the demonstrations is vague and appears to be incoherent. The Tribunal invited the applicant to clarify. He said they were not special meetings but general meetings during which the BNP explained their aim. He said he was at the sports field when members of the BNP came and explained their aim. He said at that time he was not keen to get involved in politics and as such he did not join them. He said he was very young at the time, perhaps about [age]. He said leaders of the Awami League called him but he did not attend the meetings. The Tribunal asked the applicant why leaders of the Awami League would be interested in him personally. He said that it is their view that college students are involved in politics. The Tribunal indicated that the matter would be considered further.
56. The Tribunal asked the applicant to explain the demonstrations in which he claimed to have been involved in. He said they were not serious demonstrations. He later asked the Tribunal what is meant by demonstrations, to which the Tribunal responded by stating that it was he who had used the word and asked him to explain what he meant. He said they were “*funny sort of demonstrations*” during which they were offered snacks and therefore he was interested. He said those were demonstrations organised by the BNP. The Tribunal asked him when he was involved in the demonstrations and he said in [year] and during the [year/year] election.
57. The Tribunal asked the applicant again about the demonstrations that he said he was involved in. He said he was not involved in any “*serious thing*”; he said there were “*processions*” and the leaders were very delighted. The Tribunal suggested to the applicant that his evidence about the meetings and demonstrations in which he said he was involved was vague and incoherent which could raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited him to comment or respond. The applicant stated that the BNP had called them to join the party. The Tribunal indicated that the matter would be considered further.

58. The Tribunal asked the applicant if apart from the activities about which he told the Tribunal he was involved in any other political activities at the SSC and the applicant confirmed that he was not involved in any other activities but the one about which he had told the Tribunal.
59. The Tribunal asked the applicant about his political activities at the higher secondary school level. The applicant stated that the tradition in Bangladesh is that when new students go to college they are welcomed. He said when he went to the College, BNP students organised a welcoming ceremony. He said [College B] is a famous College and [Person E] was the chief guest of the welcoming ceremony for the students. The applicant stated that there is accommodation at the College and only the best students can get into the [Building D]. He said he was able to get accommodation at the [Building D] He said different leaders of different political groups tried to involve students of the [Building D]. He said from the beginning of the [Building D] life, leaders of political parties tried to talk to the students and invited them for snacks. He said he started going with leaders of the BNP and did not wish to be involved with leaders of the Awami League. He said he decided to become active in the BNP He said they formed a committee. He said the president and the secretary at the district level attended. He said BNP students went to the [Building D] and formed a committee. He said he cannot recall when that occurred but that it happened in [year] at [City C].
60. The Tribunal asked the applicant when he started to become actively involved with the BNP. He said during his [Building D] life. The Tribunal asked the applicant to outline the specific activities in which he was involved whilst he was at the [Building D]. He said when the committee was formed and although he was not intending to, he was forced to become the secretary of the committee. The Tribunal asked him about other activities; he said when the central leaders visited he had to be with them. The Tribunal asked him when he was forced to become the secretary and he said that occurred at the end of [year]. He said he could not remember exactly when but it happened at the end of [year]. He said it could have happened in [month/month] of [year]. The Tribunal indicated that the matter would be considered further.
61. The Tribunal asked the applicant about any other activities of the BNP in which he may have been involved at the higher secondary school level. He said [College B] was famous. He said he visited different colleges and tried to motivate other students to join the BNP. The Tribunal asked him when he had done so. He said this occurred mostly during evenings. He said from about [month, year] at [season] time, which was the best time, late afternoon and/or evening. The Tribunal asked him how often he had done so. He said once or twice a week.
62. The Tribunal asked him again if he was involved in any other BNP activities. He said as a secretary he motivated students to join. He confirmed that he was not involved in any other activities and that his main duty was to motivate others to join the BNP The Tribunal asked the applicant if he was involved in any other political activities by the time he had left Bangladesh. He said that he visited different areas and sometimes argued with the opposition leaders. He confirmed that he was not involved in any other activities.
63. The Tribunal indicated to the applicant that it is difficult to understand given his level of activities and given the fact that he had been in [Country H] for many years that he would be of any adverse interest to anyone in Bangladesh He said that when he went to different places, he argued with other party leaders but at that time the BNP was in power. He said he was, however, threatened that they would hurt him when the BNP would lose power. He said [Person E] visited the [Building D] and the applicant was with him at the [Building D]. He said they went out to dinner with him and therefore the opposition leaders threatened the applicant. The Tribunal indicated that the matter would be considered.

64. The applicant gave evidence that he was never involved in fighting whilst he was at the College. He said that the teachers liked him. He said that the [Person E] also liked him. He said he was a peaceful student. The Tribunal suggested to the applicant that the Tribunal needed to further consider whether there is a real chance that he would be harmed if he were to return to Bangladesh given the political activities that he discussed with the Tribunal. The applicant stated that he motivated so many students and opposition leaders were not happy with him. He said at the time the BNP was in power. He said his family did not like him being involved in politics and he could not study well. The Tribunal indicated that the matter would be considered further.
65. The Tribunal discussed with the applicant the documents relating to his schooling and advised him that the matter would be considered further and that the Tribunal would further consider the weight it would place on that material.
66. The Tribunal noted that one of the documents that the applicant provided was not translated. With the assistance of the interpreter the document was translated by the interpreter. The interpreter noted that the document is dated [date] and refers to the Bangladesh Chattradal Annual Conference during which a committee was formed. The name of the president was noted as well as the name of the secretary. The document referred to the applicant as being elected as [position title] of the committee. The Tribunal indicated to the applicant that the document would be carefully considered by the Tribunal. The Tribunal suggested that it would not be difficult to create such a document and that the Tribunal needed to further consider its authenticity and/or the accuracy of the information contained in that document. The applicant stated that the document is authentic. The Tribunal indicated that the matter would be considered further.
67. The applicant told the Tribunal that when he went to Bangladesh in [year] to get married, he thought that given that [number of] years had passed, he should be okay. He said, however, leaders of the opposition still remembered him and he got scared. The Tribunal asked the applicant if he had suffered any harm when he went to Bangladesh in [year] and the applicant stated that no-one harmed him. The Tribunal suggested to the applicant that the Awami League has widespread networks and if he were of any adverse interest to the Awami League, it is difficult to understand that they would not have harmed him as they would have had a chance when he went to Bangladesh in [year]. The applicant stated that they wanted to harm him legally but not physically. He said they wanted to put his name as a suspect. He said he was told by local leaders of the Awami League that it is time to put his name on the list. The Tribunal suggested that it was implausible that a local leader of the Awami League would tell him that they were intending to put his name on the list to be harmed. The Tribunal indicated that the matter would be considered further.
68. The Tribunal suggested to the applicant that the fact that he had returned to Bangladesh in [year] and he was not harmed could raise doubts about the veracity of his claims and his credibility generally. The Tribunal invited him to comment on or respond. The applicant stated that he tried to live a peaceful life and they did not find any reason to harm him. He said, however, they tried to harm him through the legal system. The Tribunal asked him how they had tried to do so. He said there was an incident during which [specific event referred to]. He said the Awami League put the applicant's name as a suspect. He said he got very scared afterwards and left. The Tribunal suggested to him that it would appear that he had renewed his passport through the Bangladesh authorities in [Country L] which might suggest that he was not on any wanted list by the authorities. He said someone later told him that he was not on the list. The Tribunal indicated that the matter would be considered further.

69. The Tribunal indicated to the applicant that the Tribunal had before it his application for a [type of] Visa during which he does not mention any harm and that his intention was [purpose of coming to Australia] The Tribunal indicated that this matter would be considered further but if the Tribunal had any intention of using this information in an adverse manner the Tribunal would write to him seeking his comment and/or responses.
70. The Tribunal asked the applicant if he had anything else to say. The applicant said that he did his job in [Country H] sincerely for [number of] years and he simply wanted to [purpose of coming to Australia] and then return to Bangladesh. He said he asked for a holiday but his boss told him that he was not going to renew his work permit. He said his family in Bangladesh had told him that because of his involvement with [Person E] years ago he would be taken. He said that if he were to return to Bangladesh he is scared that he would be jailed and harmed.
71. At the end of the hearing, the Tribunal indicated to the applicant that as the Tribunal had mentioned he was entitled to seek additional time to comment on or respond to the information that the Tribunal had given him in the course of the hearing that the Tribunal considered could or would be a reason for affirming the decision to refuse him a visa. The Tribunal asked the applicant if he needed more time to comment on or respond to that information and the applicant gave an indication that he did not wish any further time.

FINDINGS AND REASONS

72. On the basis of available information the Tribunal is satisfied that the applicant is a national of Bangladesh and that he is outside that country.
73. In consideration of the evidence as a whole and for the reasons explained below the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason. In the course of the hearing, the applicant came across as being particularly vague about central aspects of his claims. The applicant's evidence in relation to his political activities was overall vague, incoherent and lacked substantive details which raised doubts about the veracity of his claims and his credibility generally.
74. In summary and on his own evidence, the applicant has been in [Country H] since [year] (aged about [age]), working as a [Occupation K] He returned to Bangladesh (using his own passport) around [month, year] and was there for about [number of] days. The applicant is married and his wife joined him in [Country H] in [month, year]. The applicant has provided a number of documents relating to his child; the Tribunal accepts that the applicant has a child who was born on [date]. Both his wife and his child are currently living in Bangladesh. In essence the applicant claims that he does not wish to return to Bangladesh because he fears harm because of his political activities and/or opinions.
75. On the basis of the available information, the Tribunal is satisfied that the applicant attended [College B] between [year] and [year] and that he passed in [year] The Tribunal accepts that the applicant attended [College K] from mid [year] until [year] when he left Bangladesh to go to [Country H]
76. In the course of the hearing, the applicant's claims of political involvement were extensively explored. The applicant gave evidence that he was actively involved in politics during the first year of his higher secondary schooling whilst he was at [College B] and that prior to that, he was involved in politics at the SSC level. He said at that time he had attended meetings and joined in demonstrations.

77. The Tribunal asked the applicant to explain his exact activities at the SSC level. He said at the SSC level, he joined in demonstrations and attended meetings. He said he did not personally know leaders of the Party but had heard about them. On a number of occasions, the Tribunal asked the applicant about the demonstrations which he said he had joined. He said that they were small demonstrations and meetings to discuss activities. He said he did not join in meetings regularly but from time to time. The applicant said that leaders of the BNP came to their area and tried to explain matters to them. He said he attended those meetings.
78. Despite credibility concerns, the Tribunal has decided to give the applicant the benefit of the doubt and accepts as plausible that the applicant attended meetings during [year], when BNP leaders went to the sports field where the applicant was with other students and they asked them to join the party. On his own evidence, which the Tribunal accepts, the meetings were not special meetings but general during which the BNP explained their aim. The Tribunal accepts as plausible that whilst at the sports field, members of the BNP came and explained their aim and that he did not join them. The Tribunal accepts as plausible that leaders of the Awami League made contact with him as they held a view that college students are involved in politics.
79. In the course of the hearing, the Tribunal asked the applicant to explain the demonstrations in which he claimed to have been involved in. He said they were not serious demonstrations. He said they were “*funny sort of demonstrations*” during which they were offered snacks and therefore he was interested. He said those were demonstrations organised by the BNP. He said he was involved in the demonstrations in [year] and during the [year/year] election. Asked again to clarify the nature of the demonstrations in which he claimed to be involved. He said he was not involved in any “*serious thing*”; he said there were “*processions*” and the leaders were very delighted. The Tribunal found the applicant’s evidence about the demonstrations to be vague, incoherent and lacked important details. In consideration of the evidence as a whole and given those concerns, the Tribunal is not satisfied that the applicant was involved in any demonstrations during [year] and [year].
80. The applicant gave evidence that at [College B], he decided to become active in the BNP. He said when a committee was formed and although he was not intending to, he was forced to become the [position title] of the committee in [month/month] of [year]. In support of this claim, the applicant provided an untranslated document dated [date] and refers to the Bangladesh Chattradal Annual Conference during which a committee was formed. The name of the president was noted as well as the name of the secretary. The document referred to the applicant as being elected as [position title] of the committee. Whilst the Tribunal considers that such a document would not be difficult to construct, the Tribunal has decided to give the applicant the benefit of the doubt and accepts as plausible that the applicant was forced to become [position title] of the committee in [month, year] and that in that role, he visited different colleges and tried to motivate other students to join the BNP.
81. Whilst the Tribunal has serious concerns about the applicant’s claims the Tribunal has accepted as plausible that the applicant was involved in various activities relating to the BNP whilst he was at school and at the Higher Secondary School level. The applicant gave evidence that he was never involved in fighting whilst he was at the College. He said that the teachers and [Person E] also liked him. He said he was a peaceful student. In consideration of the evidence as a whole, and even if the Tribunal were to accept that [Person E] liked him and that they went out to dinner, the Tribunal is satisfied that the applicant’s involvement in politics was low key and his connection with [Person E] was superficial, both of which would not have given the applicant a profile that would have meant that he would have been of adverse interest to members of the opposition, namely the Awami League. Furthermore, the Tribunal considers that it is particularly

significant that the applicant returned to Bangladesh in [year], although he claims that he did so secretly. On his own evidence, he had his marriage ceremony when he went to Bangladesh in [year]. His wife and child are currently living in Bangladesh, which indicates that they are not of any adverse interest.

82. In consideration of the evidence as a whole, the Tribunal is not satisfied that he went to Bangladesh secretly in [year]. In consideration of the evidence as a whole, the Tribunal is satisfied that the fact that he went to Bangladesh in [year] is evidence that he did not fear persecution because he is not of any adverse interest to anyone, including but not limited to, the Awami League. The applicant stated that he tried to live a peaceful life and they did not find any reason to harm him. He said, however, they tried to harm him through the legal system. The Tribunal asked him how they had tried to do so. He said there was an incident during which [description of the event]. He said the Awami League put the applicant's name as a suspect. He said he got very scared afterwards and left. The Tribunal considers that the fact that he had renewed his passport through the Bangladesh authorities in [Country L], indicates that he was not on any wanted list by the authorities. In consideration of the evidence as a whole, the Tribunal does not accept that the applicant has ever been threatened, harassed or harmed in any way for his political activities with the BNP or Chattara League and/or any imputed political opinions. In consideration of the evidence as a whole, the Tribunal does not accept that the applicant argued with political leaders, or that there was an incident in the middle of [year] when students of opposing parties clashed and that following the incident, students supportive of the Chattara League wanted him expelled but the principal refused, or that the applicant was ever targeted or ill-treated in any way by the supporters and/or members of the Chattara League, or that Chattara League goons went to his accommodation or that they ransacked his rooms, or that the police were ever looking for him, or that he left Bangladesh to save his life, or that his passport was arranged by [Person E], or that he changed his birth date in order to obtain the passport, or that he has been told by close relatives that the Bangladesh secret service personnel got names, addresses and details of those who had contact with [Person E]
83. The applicant has been away from Bangladesh for many years, since [month, year] (apart from [year] visit). The Tribunal appreciates that an applicant does not have to demonstrate past harm in order to prove potential future harm, however, the past is nevertheless a guide to the future. In consideration of the evidence as a whole, and given his level of activities and profile as noted above, as well as the fact that he had been in [Country H] for many years, the Tribunal is not satisfied that he would be of any adverse interest to anyone in Bangladesh, or that his enemies have wanted to harm him through the legal system, rather than physically.
84. The Tribunal is of the view that given his 'political' profile, it is implausible that many years after he had left Bangladesh, members of the Awami League would remember him and would want to harm him. The Tribunal appreciates the applicant's claims that he was associated with [Person E] which arguably would have imputed him with a higher profile, however, the Tribunal is satisfied that the applicant's activities were low key which would not have given him a profile, even if he was associated with [Person E] that would have warranted him being of any adverse interest.
85. Bangladesh is a nation that has human rights issues; The US Department of State, *Country Reports on Human Rights Practices - 2007* Released by the Bureau of Democracy, Human Rights, and Labor March 11, 2008, indicates that

Bangladesh is a parliamentary democracy of 150 million citizens. Khaleda Zia, head of the Bangladesh Nationalist Party (BNP), stepped down as prime minister in October

2006 when her five-year term of office expired and transferred power to a caretaker government that would prepare for general elections scheduled for January 22. On January 11, in the wake of political unrest, President Iajuddin Ahmed, the head of state and then head of the caretaker government, declared a state of emergency and postponed the elections. With support from the military, President Ahmed appointed a new caretaker government led by Fakhruddin Ahmed, the former Bangladesh Bank governor. In July Ahmed announced that elections would be held by the end of 2008, after the implementation of electoral and political reforms. While civilian authorities generally maintained effective control of the security forces, these forces frequently acted independently of government authority.

The government's human rights record worsened, in part due to the state of emergency and postponement of elections. The Emergency Powers Rules of 2007 (EPR), imposed by the government in January and effective through year's end, suspended many fundamental rights, including freedom of press, freedom of association, and the right to bail. The anticorruption drive initiated by the government, while greeted with popular support, gave rise to concerns about due process. For most of the year the government banned political activities, although this policy was enforced unevenly. While there was a significant drop in the number of extrajudicial killings by security forces, they were accused of serious abuses, including custodial deaths, arbitrary arrest and detention, and harassment of journalists. Some members of security forces acted with impunity and committed acts of physical and psychological torture. Violence against women and children remained a major problem, as was trafficking in persons.

86. The Tribunal has carefully considered the applicant's claims in their relevant country context; the Tribunal notes that the applicant had claimed that he was compelled to act as secretary of the Committee. In consideration of the evidence as a whole, the Tribunal is satisfied that the applicant would not engage in political (or other type) of activities that would lead to any chance of being harmed in the reasonably foreseeable future. In consideration of the evidence as a whole, the Tribunal is satisfied that the applicant would not engage in such activities not out of fear, but out of a lack of interest given his low key past activities.
87. In consideration of the evidence as a whole, the Tribunal finds that the applicant was not denied procedural fairness by the delegate.
88. In consideration of the evidence as a whole, the Tribunal is not satisfied that the applicant has suffered any of the claimed harm or that there is a real chance that he would suffer any such harm in the reasonably foreseeable future.
89. In essence, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason.

CONCLUSIONS

90. 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

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

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

Sealing Officers ID: PRRTIR