

0901007 [2009] RRTA 539 (2 June 2009)

DECISION RECORD

RRT CASE NUMBER: 0901007

DIAC REFERENCE(S): CLF2008/143838

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Diane Barnetson

DATE: 2 June 2009

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 [in] September 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] October 2008. The delegate decided to refuse to grant the visa [in] January 2009 and notified the applicant of the decision and his review rights by letter dated [in] January 2009.
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] February 2009 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. The applicant appeared before the Tribunal [in] March 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.

Protection visa application

21. In the protection visa application, the applicant indicated that he was born in Bangladesh [in] 1971. He was married [in] September 2005 and was working as an internal auditor before arriving in Australia. He travelled to Australia on his Bangladeshi passport, issued [in] May 2007 and valid [for 5 years].
22. The applicant was educated to post-graduate level, attaining a Bachelor of Social Science in 1983 and a Masters of Social Science in 1998. He was employed in local government as an internal auditor from July 2000 to September 2008. He lived at the same address in Dhaka from January 1995 until January 2007. He does not indicate where he lived after this date.
23. The applicant's father is deceased and his mother lives in Bangladesh. Three brothers live in Bangladesh and his two sisters live in USA and Canada.
24. In the application form, the applicant states that he left Bangladesh because of his political affiliation with the Bangladesh Awami League and he was forced to leave "*after the arrival of this government*" He states that he was targeted by the RAB and other military forces. He fears that he will be arrested and put in jail if he returns to Bangladesh. He claims to have had a leadership position in the Awami league in Dhaka and he was also a leader in [District 1] and he became targeted by the RAB.
25. The applicant provided a copy of his passport with the application, together with a written submission setting out his claims for protection.
26. In the written submission, the applicant gave details of his claims for protection. He went to [college name deleted in accordance with s.431(2) of the Migration Act 1958 as it may identify the applicant] College for his Higher School Certificate. While there, he was associated with a number of top ranking student leaders at the college. He was influenced to join the Chatra league, the student wing of the Bangladesh Awami League. In 1988 he became the [Position A] of the college committee of Chatra

League. He participated in every demonstration led by the Chatra League at the college. In 1989 he passed the HSC and in 1991 obtained a bachelor degree from the college.

27. Later, he went to Dhaka College for a further bachelor degree. The reason for this was that he had a very poor result from [his] College because of his serious participation in student politics.
28. In 1994 he obtained a bachelor degree from Dhaka College At this time, the country was run by the BNP government. The Awami league stood against the BNP.
29. During his stay in Dhaka he was involved in student politics. He held the position of [Position B] of the college Chatra League. In 1998 he passed the masters of social science degree (political science). His post-graduate degree is equivalent to an Australian bachelor degree as an internal auditor.
30. After completing his education, he worked in [a local government department]. In 1998 a false case was filed against him by his political opponents (BNP) to ruin his political life. As his party was in power at this time, he did not worry about the case. He helped people in development work.
31. An election was held in 2001. He worked for the Awami League candidate named [name and position deleted: s.431(2)]. The main opponent was [name deleted: s.431(2)], the BNP candidate, who defeated their candidate. The BNP formed government with the help of Jamat-e-Islam, a fanatic Muslim party who opposed the creation of Bangladesh in 1971.
32. [In] October 2001, his house was ransacked and looted. His elder brother [name deleted: s.431(2)] was brutally tortured. In 2002, the applicant was elected as [Position B] of the [District 1] Awami League. In 2002, he was attacked on a number of occasions by his political opponents. The then Prime Minister Begum Zia “*directed RAB in October 2002 to drive out anti crimes*”. This was Operation Clean Heart and thousands were arrested, most of them from the Awami League. Many were killed without trials.
33. The applicant visited Australia in 2003 and returned to Bangladesh He was able to manage the situation with an army officer by paying him a huge amount of money.
34. He was targeted by the Jamat and BNP cadres for a long time. He tried a lot to settle in Australia and tried various ways to settle here but failed. One of his brothers has been living here. As a government employee he was in serious observation by detectives in [District 1] and Dhaka.
35. In the meantime a national movement was emerging to oust Begum Zia from power. She resigned and transferred power to a caretaker government. On 11 January 2007 a caretaker government was sworn in and a state of emergency was declared. All kinds of human rights were curtailed. The applicant feared that he would be arrested and so his brother sponsored him to come to Australia. Once he arrived, he spoke to his wife and political friends and every one directed him not to return to Bangladesh.
36. The applicant was targeted by the caretaker government because of his strong voice against it. He wrote an email to the Government Chief Advisor in relation to food

crises, war fear and distribution problems. Within two days, the Chief Advisor sacked four advisors. His email influenced him to sack them. The applicant also made an oral deposition with a number of high ranking officials at his cabinet.

37. The four sacked advisors were powerful people. After that, all the advisors “*are anxious to me. They have involved in international pressure group. Also they will be capable of creating pressure any time to government. I was targeted by them, at any time I may loose my life. I smelled it through a killer group. I had no other alternatives but to leave the country. I am subject to a false case.*”
38. The applicant states that he had also applied to USA and Canada for migration sponsored by his sisters and mother and is waiting for the decisions. He was granted four visas to visit Australia and visited on three occasions. He did not lodge any protection visa applications as his situation was not so serious before.
39. In an additional written statement the applicant outlined his attempts to obtain student visas in Australia in 2007 and for a third time after that. He lost his life savings on the student visas and migration purposes.
40. A copy of an email from the applicant to the Chief Advisor, dated [in] January 2008, was provided. [Information regarding the email deleted: s.431(2)]
41. The applicant also provided a copy of his provisional certificate in Master of Social Science at the National University. This stated that he has obtained the degree at Dhaka College “*at the final examination of 1994 as held in July-September 1997*”. He also passed the Master of Social Science Part 1 Examination of 1993.

Review application

42. The applicant did not provide any additional material with the review application.

Hearing

43. At the hearing the Tribunal took the applicant through his protection visa application. He confirmed his name and date of birth and place of birth. He stated that he was married [in] February 1998. The tribunal drew his attention to the date of marriage [in] September 2005 in his protection visa application. It explained the significance of any inconsistencies in evidence, in terms of the assessment of his credibility and the assessment of his claims for protection.
44. The applicant explained that in Bangladesh, marriage is a two step process, a contract to marry and then the registration of the marriage. The marriage was actually registered in 2008. There was a social marriage in 1998. He lived together with his wife after this. The applicant then said that the information on the form was wrong, nothing happened in 2005. He said that the lawyer who completed the form made a mistake and the date should be 2008, not 2005. The contract was [in] February 2008 and the registration was [in] September 2008. These were the correct dates. The official records would have [date deleted: s.431(2)] February 2008 on them.
45. The applicant then confirmed that his lawyer filled out the form. He spoke to him on the phone, he filled it out and then the applicant signed it. The lawyer translated it for him before he signed it.

46. The applicant said that he originally came to see a lawyer in Australia called Robert. He said that the applicant's visa had already expired and that he should leave. The applicant then saw a Bengali lawyer who said to give him the information and he would fill in the form. The form was completed in a hurry because of the short time there was.
47. The applicant went on the say that he had a child born [in] December 2008.
48. The Tribunal raised with the applicant that he did not mention his wife's details on Form 866B, where it was asked whether there were any family members not in Australia at the time of the application. The Tribunal explained the significance of this omission in terms of its assessment of his credibility and claims. The applicant said that the lawyer did not have time to put this information in. The applicant arrived in Australia [in] September 2008 and signed the form [in] October 2008, the day it was lodged at the Department. His child had not been born when he left Bangladesh or at the time of the application. He did know that his wife was expecting a child when he left. He said that his intention was to return to Bangladesh but so far he had not been able to resolve his problem.
49. The Tribunal asked the applicant where he had lived in Bangladesh. He said that he lived at the [name deleted: s.431(2)] Hospital staff quarters in Dhaka when he was studying from 1995 to 1997. He also lived in [District 1] in his own home which he inherited from his father. He went there on weekends. He lived in Dhaka after 1997. He got a job in 2000. He initially stayed in the [location deleted: s.431(2)] area with a relative, then with his older brother. The Tribunal pointed out that the applicant had not indicated these changes of address in his application and the significance of this to the review. The applicant said that he stayed two days in the week in [District 1] then in Dhaka. The Tribunal pointed out that on the application he said that he lived at the hospital from 1995 to 2007.
50. The applicant said that he finished school at about 15 years in 1986. He attended [a] College in [District 1]. He obtained his intermediate level in 1989. He obtained a Bachelor of Arts (Third Class) from this college in 1991. He then moved to Dhaka and started studying there in 1994. He enrolled at the National University and did a Bachelor of Arts, in different subjects to the previous degree. He sat for the tests in 1994. He obtained a second class pass. He started a masters course in 1993 and completed it in 1996. After that he was admitted to a three month English course in Dhaka. He then came to Australia for some time. Eventually, after he had trouble in Bangladesh, he came to Australia. After he got his results in 1998 he came here.
51. The applicant told the Tribunal that he came to Australia in 1998 on a visitor visa for one month. He came again on a visitor visa for three months in 2003. In 2005, he got a visa but did not travel to Australia. He said that he did not come because he had problems in Bangladesh He had enemies there, he was involved in politics. The Tribunal asked why this would prevent his travel to Australia in 2005. The applicant said that he negotiated to take control of things over there then and so he did not want to come to Australia He arrived in Australia on this occasion in a one month visitor visa.
52. The applicant said that he applied for a student visa three times, twice in 2007 and once in 2008. All three were refused.

53. The Tribunal explained to the applicant that his three previous unsuccessful attempts to travel to Australia as a student may lead it to conclude that he had manufactured his claim for protection because he had been unable to obtain a visa to stay in Australia. The applicant denied this. He said that in 1998, he could have applied and easily got a visa, as his English test results were satisfactory, but he did not apply.
54. The applicant told the Tribunal that he had not been in touch with his wife for some time now. She is in [District 1] but has not been at his house for 15 days. She fled because of persecution by [Person A]. To save the baby she left because of persecution by the government and [Person A]. He was an advisor and the applicant sent a letter about him and he was sacked and they became opposed to the applicant. [Person A] was a neighbour. [Person A] was [an] advisor to the government. He was sacked after the applicant sent a letter about him. After that, he thought his life was not safe.
55. After the ministers were sacked, he fled to a remote area in [District 1]. This was in January 2008. [Person A] grabbed his land.
56. The Tribunal attempted to clarify the issue of the applicant's letter. He confirmed that the email on the file was the relevant letter. The [information] on the file dated [in] 2008 reported on the sacking of [several] ministers. The applicant believes that the email led to the sackings. The Tribunal explained that there was no apparent link between the events. The applicant said that he was writing about the food crisis and this led to the ministers resigning.
57. The intelligence branch of the police came to his home in disguise [in] January 2008 to establish his credibility. [Person A] was a neighbour and he told them to arrest him under section 154, when police can catch and detain people for 90 days. He fled to his friend's house on [the same day]. The people who helped him were his wife's family. He got married there. This was in [District 1]. This was in February 2008. He and his wife then lived at his father-in-law's house in [District 1].
58. He did not continue working with the local government, he stopped in January 2008. This was because of [Person A] visiting the office. One night he was in a rickshaw and was beaten. This was January 2008 but he does not remember the date.
59. He did not resign from work. He was given a social grant, from a fund created by staff. They knew his problem and told him to stay in hiding for the time being and he did not have to come to the office. He did not seek financial assistance but they gave him help.
60. "In hiding" meant that he was living with his wife's family in [District 1] or with friends and relatives. The places were raided and so he left and went somewhere else.
61. The Tribunal raised with the applicant that he did not provide this information about events after January 2008 in his application, despite it being a fairly detailed statement. This may lead the Tribunal to conclude that they did not take place and that he had now manufactured them to strengthen his claim. The applicant responded that he did not have much time when he wrote the statement. The Tribunal asked why he did not add the information later, given that several months had elapsed since the application in October 2008, either to the Department or the Tribunal. The applicant did not give a direct answer to this question, simply reiterating his previous statements. The Tribunal restated the question, emphasising that the lack of detail until the hearing may lead to a

conclusion that the claims were manufactured. He said that he did not have deep knowledge. The lawyer prepared the statement and he signed it. He did not have a chance to get the documents in time because of recent events, such as his wife being in hiding. He could get the documents about the land. But his wife could not get them because of the problem. The Tribunal confirmed that the statement on the Department file at folio 71 was provided at the time of the Department interview. It pointed out that this statement did not contain these details.

62. The Tribunal advised the applicant of the effect of this omission, in accordance with the legislative provisions of section 424AA(b) of the Act.
63. The applicant told the Tribunal that he joined the Awami League in 1998 at the [name deleted: s.431(2)] College when he was doing his HSC. At this time, the Tribunal asked the applicant what the document was that he was reading. He passed the document to the Tribunal. It was a copy of the applicant's statement. The Tribunal explained that if he referred to this in responding to the Tribunal may adversely affect the Tribunal's assessment of his evidence.
64. He joined the Chatra League which is part of the Awami League. He is not active or a famous or a high ranking leader in Bangladesh, he is not high profile. The Tribunal attempted to clarify the applicant's statement and evidence in relation to the dates of his education. After some considerable hesitation, the applicant said that 1998 was not right, he joined Chatra League in 1989-1990. The Tribunal pointed out that in his application he said that he was [Position A] in 1988. The Tribunal again pointed out to the applicant the significance to the review of the discrepancies in his evidence He said it is a long time ago but it was 1988 that he joined.
65. The applicant said that he was [Position C] of the college committee in 1990. The Tribunal pointed out that in his statement he said that he was [Position A] and explained the significance of this discrepancy to the review. The applicant said that at this time the [person in Position C] passed away and he was given the responsibilities.
66. The applicant said that he was committee member of the Chatra League in Dhaka. In Bangladesh this does not count for much. Then he joined Awami league in 2002. The Tribunal asked what happened when he went to study in Dhaka. He said that he went there in 1992. He was involved with Chatra League. He was [an organiser] in 1994. The Tribunal pointed out that he said in the statement he was [Position C]. The applicant said that there was no committee at this time, he was preparing to form a committee. He was the [organiser] of that committee. The committee was formed. He was offered but refused the position of [Position B].
67. The applicant finished his education in 1998. He started work in July 2000. He joined the AW then, in 2002. He believed that he should do something for his country. The Tribunal asked what involvement he had in politics after he joined the AW. He said that he had social activities, established clubs, prayed at the mosque, opposed the BNP government, exposing the mistakes of the BNP government.
68. The Tribunal asked the applicant happened to him because of his membership of the Awami League. The BNP MP harassed him in different ways. They looted his house in 2000. This was his own house. The Tribunal asked why this would be as he only joined in 2002. He said it was because of his student politics. The Tribunal said that his

statement gave 2001 as the date of the looting of the house. The applicant said that there was looting several times. The Tribunal advised the applicant that this lack of detail in his statement may lead to its not accepting his claims.

69. The Tribunal asked if he held any position in the Awami League. He said that he was a district member. He said that he did not want a position. The Tribunal pointed out that in his written statement, the applicant said he was elected as district [Position B], explaining the significance of the discrepancy. The applicant said that this is wrong.
70. The Tribunal asked the applicant about his visits to Australia. It asked why, if he was having problems in 2003, he did not seek protection when he visited Australia then. He said that he was scared but he could mutually do it. The Tribunal asked what he meant by this. He solved the problem with money. He said he would give \$10,000 if they left him alone. He paid this to the BNP MP. In his written statement, the applicant said that he paid money to an army officer. Now he is saying money given to BNP MP. The Tribunal explained the significance of the discrepancy in evidence. He said that he did not know why the army officer was mentioned in the statement.
71. The Tribunal asked the applicant whether he was harmed in Bangladesh. He said that he was attacked several times. He was attacked at night. Once he was in a rally and bricks were thrown. The house was broken into. The Tribunal pointed out that the applicant had not mentioned this until the hearing. The applicant said that he could not put everything in a statement. The Tribunal explained the significance of this to its review. The applicant said that his wife was not free in Bangladesh It was not proper to put evidence in writing.
72. The Tribunal asked if anyone in his family was harmed. His brother was beaten up by BNP people. He was in the AW. The police did not take action. The applicant gave the Tribunal a number of media reports from Bangladesh.
73. The Tribunal asked the applicant why he feared any harm in Bangladesh now, as the Awami League was now in government. He said, in a fairly convoluted manner, that the sacked ministers, including [Person A], would harm him. This was because they were sacked because of his email. The Tribunal asked whether he feared harm from any other source. He said the militant group, the JMB They were targeting him because they are in favour of religion and he is secular. The Tribunal asked why he in particular would be targeted. He said that they were backed by the BNP They have bombed a police office and the president's wife was killed.
74. The Tribunal pointed out that the applicant had not mentioned this organisation until the hearing. He said that everything could not be put in writing.
75. After the Awami League came to government, the army was still in control.
76. The applicant told the Tribunal that [Person A] had seized his land adjacent to his house. He did this because of politics. The Tribunal questioned how [Person A] was able to do this; the applicant responded that he is with the Awami League and has power and is deriving benefits.
77. At the hearing, the applicant gave the Tribunal a number of articles relating to Bangladesh and the political situation there.

78. At the conclusion of the hearing, the Tribunal explained again to the applicant about its concerns about contradictions and omissions in his evidence. It explained that he could respond orally or in writing. It then went through each of the issues in turn, specifically regarding the evidence about his addresses, his wife's details, his failure to make a protection claim in 2003, the discrepancy in his evidence regarding the bribe he paid, the significance of his three previous attempts to travel to Australia, his failure to mention fleeing prior to the hearing, the failure to mention events which occurred after January 2008, the lack of dates about when the house was looted, the discrepancy in his evidence about the positions he held in the Chatra League and in the Awami League, his failure to mention several attacks until the hearing. The Tribunal offered the applicant the opportunity to respond to these issues in writing and he indicated he wished to do so. The Tribunal allowed the applicant one week; he asked for two months, but the Tribunal did not allow this, as preparing a response would not entail this much time.
79. The applicant did not provide any further information to the Tribunal after the hearing.

FINDINGS AND REASONS

80. The Tribunal finds that the applicant is a citizen of Bangladesh, as evidenced by the copy of the passport which he provided. He is outside that country at this time.
81. The Tribunal is required to determine whether the applicant has a well-founded fear of persecution in Bangladesh and, if so, whether this is for one or more of the convention reasons. When determining whether an applicant is entitled to protection in Australia, a decision-maker must first make findings of fact on the claims he or she has made. This may involve an assessment of the applicant's credibility. When assessing credibility, it is important to be sensitive to the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are genuinely credible but unable to substantiate all of their claims. That said, the Tribunal is not required to accept uncritically any or all allegations made by the applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. Indeed the Tribunal is not obliged to accept claims that are inconsistent with independent evidence regarding the situation in the applicant's country of nationality. *Randhawa v Milgea (1994) 52.FCR.437 at 451, per Beaumont J, Selvadurai v MIEA and ANOR (1994) 34.ALD.347 at 348 per Heerey J and Kopalapilli v MIMA (1998) 86.FCR.547.*
82. The Tribunal found the applicant to be evasive in giving evidence at the hearing. He avoided giving answers to questions from the Tribunal; regularly attempted to speak over the Tribunal; gave convoluted and diversionary answers to questions. After he ceased using the notes he had with him, his answers became hesitant and confused.
83. The applicant gave contradictory evidence on a number of issues and made claims to the Tribunal at the hearing which had not been made in his protection visa application.
84. He gave contradictory evidence about the date of his marriage, 2005 on his protection visa application, then 1998 in his evidence to the Tribunal, which he then changed to 2008. He explained this as being because marriage was a two step process in Bangladesh; he had a social marriage in 1998 and registration in 2008. He then changed this to both events being in 2008.

85. The applicant failed to provide details of his wife in the protection visa application. His explanation for this was that his lawyer did not have time to put this in. The Tribunal finds it unlikely that a professional completing a protection visa application would omit such information.
86. The applicant gave evidence about his various addresses in Bangladesh which was different to the information he provided in his protection visa application. He did not provide any explanation for this.
87. The applicant gave contradictory information about when he joined the Awami League. In his written statement, he said he joined in 1988; in his evidence at the hearing, he said it was 1998. He changed this to 1988 when the Tribunal pointed out the discrepancy. He explained the contradiction as being because the events were a long time ago.
88. At the hearing, the applicant told the Tribunal that he was the [Position C] of the college committee in 1990. However, in his written statement, he said that he was [Position A]. He explained the discrepancy as being because the [person previously in Position C] died and he was given the responsibilities. The Tribunal is of the view that this explanation for the difference in evidence is implausible and does not accept it.
89. The applicant said in his written statement that he was [Position C] of the Chatra League in Dhaka; at the hearing he said that he was [an organiser] in 1994. The applicant said that at this time, there was no committee, he was preparing to form a committee and was the [organiser] of that committee. The Tribunal is of the view that this does not satisfactorily explain the discrepancy.
90. The applicant said that he joined the Awami League in 2002. He also said that the BNP looted his home in 2000, because of his membership of the Awami League. When questioned by the Tribunal about why this would occur before he joined the Awami League, the applicant responded that it was because of his student politics. He also wrote in his statement that his house was looted in 2001, not 2002. The applicant explained this was because there was looting on several occasions. The Tribunal finds it unlikely that the applicant would not include information which was significant to his claims for protection in his visa application or later to the Department or Tribunal.
91. The applicant gave evidence at the hearing that he was attacked several times. He had not mentioned this prior to the hearing. The explanation was that he could not include everything in a statement. Because his wife was in Bangladesh it was not proper to put everything in writing. Again, the Tribunal finds it inherently unlikely that the applicant would not raise significant issues related to his claims for protection in his application.
92. The applicant said at the hearing that he was a district member of the Awami League. He said that he did not want a position. In his written statement, the applicant said he was elected as district [Position B]. The applicant explained this as being incorrect information in the statement. As the applicant has confirmed that his lawyer wrote the application based on the applicant's information, the Tribunal finds the explanation that it was a mistake to be implausible.
93. The applicant arrived in Australia in [date deleted: s.431(2)] September 2008. He gave evidence to the Tribunal about many events he claimed occurred prior to this, after

January 2008, but none of these were raised in his protection visa application or his later written statement. These included [Person A] seizing his land; his wife having to flee; his being in hiding himself. The applicant explained the omission as being because he did not have much time when he wrote the statement. However, the statement is detailed and quite comprehensive, and the events would be very relevant to the applicant's claim for protection. Therefore, the Tribunal does not accept that these claims were omitted for this reason.

94. The applicant claimed at the hearing that he was being targeted by the JMB, because they are in favour of religion and he is secular. He had not previously raised this. The explanation given for the omission was that not everything could be put in writing. Again, the Tribunal finds it unlikely that the applicant would omit significant claims in relation to his protection application in the actual application and later statement.
95. The nature and extent of the contradictions and omissions in the applicant's evidence, which have not been adequately or even logically explained by the applicant, together with his evasiveness, confused evidence and hesitancy at the Tribunal hearing, leads the Tribunal to find that he is not a credible or truthful witness. The Tribunal is therefore not prepared to rely on the applicant's evidence alone in deciding on the genuineness of his claims for protection.
96. The applicant has not availed himself of the opportunity to provide a submission following the hearing and has not provided any further evidence.
97. The applicant claims that he joined the Chatra League and then the Awami League. He claims that he held positions in both groups, though his evidence is contradictory as to what those positions were. As there is no evidence supporting this claim, and the Tribunal has found that the applicant is not a truthful witness, it is not satisfied that the applicant was a member of the Chatra League or the Awami League or that he held any positions in them.
98. The applicant claims that he was targeted by the RAB and other military forces. He has not provided any details of this claim and, as it is not supported by any evidence other than that of the applicant, whom the Tribunal has found is not a truthful witness, the Tribunal is not satisfied that the applicant was targeted by the RAB.
99. The applicant also claims that a false case was filed against him in 1998. He did not give details of this in his evidence to the Tribunal. As the Tribunal finds the applicant is not a witness of truth, it is not prepared to accept the applicant's evidence alone and so is not satisfied that a false case was filed against him in 1998.
100. The applicant claims that, as a government employee, he was in serious observation by detectives in [District 1] and Dhaka. He gave no details of this in his evidence to the Tribunal. As the Tribunal finds the applicant is not a witness of truth, it is not prepared to accept the applicant's evidence alone and so is not satisfied that this occurred.
101. The applicant claims that he was targeted by the caretaker government because of his voice against it. However, there is no evidence of this, other than the applicant's, and the Tribunal is unable to accept this, as the applicant is not a witness of truth. The Tribunal is not satisfied that the applicant was targeted by the caretaker government.

102. The applicant claims that he was attacked and his house looted by the BNP, and his brother injured. The Tribunal does not accept this as the applicant is not a witness of truth and there is no information to support the claim.
103. The applicant claims that, as the result of an email which he sent [in] January 2008, several ministers were sacked and that they blame him for this. The Tribunal has looked at the email carefully and at the newspaper reports which the applicant provided. The Tribunal could find no apparent link between the email and the sacking of the ministers. It finds that the email did not lead to the sacking of the Ministers as the applicant claimed. Further, the Tribunal can see nothing in the email which would lead the ministers to believe that the email had led to their sacking. In fact, there is nothing to indicate that any of the ministers was even aware of the existence of the email; it was not addressed to any specific person.
104. The applicant claims that, since the email was sent, his land has been taken by [Person A], one of the sacked ministers, who is in the Awami League and so has the power to do so. There is no information to support this claim and the Tribunal is not prepared to rely on the applicant's evidence, given that it has found he is not a witness of truth. The Tribunal finds that the applicant's land has not been seized as he claims.
105. The applicant claims that the intelligence police came in disguise [in] January 2009 to test his credibility and that [Person A] ordered them to arrest him. The applicant claims that he has had to flee because of the danger to himself. However, his evidence is that he "fled" and was in hiding with friends and his parents-in-law and was married in 2008. This does not indicate any fleeing; rather, it indicates his being able to continue his life in a normal way. There is no information to support his claim that he had to move around because of threats made. The Tribunal finds that the applicant was not questioned by the intelligence branch of the police and that [Person A] did not order his arrest and also finds that he has not fled or been in hiding after January 2008.
106. The applicant claims that his wife is now in hiding because of [Person A]'s threats and fears about the child's safety and because of persecution by the government. The applicant did not give any reason why she would be persecuted by the government. As there is no information to support either claim, the Tribunal is not prepared to accept the evidence of the applicant alone. The Tribunal finds that the applicant's wife has not had to go into hiding because of threats by [Person A] or because of persecution by the government.
107. The applicant has applied for student visas to Australia on three occasions; all three were unsuccessful. This indicates to the Tribunal that the applicant has been attempting to live in Australia for some time. The contradictory, and inherently implausible claims made in relation to the protection visa, together with his previous attempts to live in Australia, lead the Tribunal to find that the applicant's claims now are for the purpose of staying in Australia.
108. The Tribunal finds that the applicant was not a member of the Chatra League or the Awami League; has not been threatened or harmed; has not had to flee and remain in hiding after January 2008; that his wife is not in hiding with their child; that his email had not led to the sacking of several ministers; or that these ministers, in particular [Person A], are retaliating against him because of this. The Tribunal finds that the applicant has not been targeted or threatened by the JMB.

109. The Tribunal considered the articles which the applicant gave the Tribunal at the hearing. These referred to the sacking of the four ministers [in] January 2008; the investigation of the soldiers' rebellion on February 25-26 and the postponement of the cricket tour of Pakistan. However, the Tribunal is of the view that these articles are not relevant to the applicant's claims and are not supportive of them. They simply highlight the issues facing Bangladesh in general, rather than the specific claims of the applicant.
110. The Tribunal finds that the applicant did not leave Bangladesh because of any harm he feared from the BNP or the JMB as a result of his political involvement in the Awami League; or his claimed contribution to the sacking of ministers and their retaliation against him.
111. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution in Bangladesh for a Convention reason or that he faces a real chance of being persecuted for a Convention reason if he returned to Bangladesh.

CONCLUSIONS

112. 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

113. 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: RCHADW