

DECISION RECORD

RRT CASE NUMBER: 0803611

DIAC REFERENCES CLF2008/65265

COUNTRY OF REFERENCE Bangladesh

TRIBUNAL MEMBER Andrew Mullin

DATE DECISION SIGNED: 10 September 2008

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named Applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second and third named Applicants satisfy s.36(2)(b)(i) of the Migration Act, being the spouse and dependant respectively of the first named Applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the Applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The Applicants, who are husband, wife and child and who claim to be citizens of Bangladesh, arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the Applicants of the decision and their review rights by letter.
3. The delegate refused the visa application on the basis that the Applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
4. The Applicants applied to the Tribunal for review of the delegate's decisions.
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 Applicants have 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.
9. 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'

10. 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.

11. 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.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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.
19. 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

20. The Tribunal has before it the Departmental and Tribunal files relating to the Applicants. 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.**
21. The Applicants appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.
22. The Applicants were represented in relation to the review by their registered migration agent who attended the hearing.
23. Only the Applicant husband/father has made specific claims to be a refugee, his wife and child relying on their membership of his family. For convenience, therefore, I will refer to the Applicant husband/father as the Applicant.

Summary of written claims

24. In his application for protection the applicant claims to have been born in Bangladesh. He claims to have been married. He claims to have lived at several other locations in the preceding years
25. The Applicant claims to have received a formal education. He claims to have been self-employed for a number of years. He claims to have made a brief visit to Country 2.
26. The Applicant's substantive claims are set out in his protection visa application and an attached statement, running to ten pages of typescript. They may be summarized as follows:
 - He came from an affluent Hindu family. The family's wealth derived from business and farming. However, most of the family land was occupied by Muslim terrorists or fundamentalists who are the leaders of political organizations prominent in Bangladesh. By trickery these used the 'Vested Property Law' to take over the family lands and forced them to close their business.
 - The Hindus in his area always suffered discrimination, harassment and oppression at the hands of Muslim fundamentalists. They had no safety or

dignity and their religious freedom was very limited. In response, they formed a number of organizations aimed at protecting Hindu rights and promoting Hindu welfare. He joined two of these organizations and later became an official of a third. He actively participated in celebrating religious festivals and social development activities. A relative was an office bearer of another such organization.

- He strongly supported efforts to observe a Hindu religious festival in his College. This was opposed by Shibir, the student arm of Jamat-i-Islami and his stance brought him to the attention of the fundamentalists. Shibir activists warned him not to appear at the HSC examination but he ignored the threat and was attacked and injured after completing part of the exam, preventing him from completing his HSC in that year. He was fearful for his life and ceased attending his College, hiding in the house of a relative. The 'seniors of his area' negotiated with the terrorists and he was allowed to sit for his HSC the following year, on condition that he abstain from all social activities. He passed his HSC but terrorist threats prevented him studying for his degree at that College. Instead he enrolled at another institution but was unable to complete his degree for fear of persecution and for his personal safety.
- At the time of the communal rioting over a particular issue, many Hindus in his area were attacked by Muslims and much Hindu property was destroyed. His family's home was attacked and members of the family were severely beaten. The terrorists warned his father that his relative would be killed if found. He himself was attacked but managed to escape his assailants, suffering an injury.
- The BNP and Jamat-i-Islami hooligans began collecting donations from Hindu families in his area. He protested against these activities and reported them to the local authorities but was told that, as a member of a minority religious group, the Hindus would have to endure them. Fundamentalist terrorists stole crops from the family land. They beat his father when he tried to stop them and threatened that he would be killed and the whole family evicted if he reported the matter.
- Following the destruction of a Mosque, communal tensions escalated between Hindus and Muslims in his area. Fundamentalist Muslims attacked and severely wounded his relative, going so far as to threaten him in hospital. His relative disappeared and was not seen for some years. As an active member of the Puja Parishad he organized the local youths into different groups to guard the village.
- The terrorist group attacked his village. They attacked many houses and he was assaulted on his way to the college a few days before the commencement of his exams. He was seriously injured. The terrorists demanded a large amount of money from his family to permit him to return to his area. His family paid the ransom. In another incident, they took produce from his father's land in front of the family members.

- He became an officer of Political Party 1. He also started his own business. His family home was attacked and his relative was taken away by the terrorists and severely tortured. He became an officer of Political Party 2. His business was ransacked and robbed.
- He was threatened many times. He became an officer of Political Party 3. He was advised by his family members to go into hiding for his safety and he went into hiding.
- He was in hiding until he decided to leave Bangladesh for Country A. In Country A he approached a person who organized his Country A passport. He has lived in Country A illegally since then. He travelled to Country 2 briefly.
- He heard from his wife that the terrorists came to search for him. Muslim terrorists ransacked his house and looted everything. They attacked his child and assaulted his wife. His wife and child came to Country A to join him, by entering illegally. A contact organised Country A passports for them.
- There is no safety and security in Bangladesh for him and his family. He has been discriminated in every walk of life and deprived of his liberty and he will be the victim of systematic harassment. He will have no access to employment and his freedom of worship will be very limited.

Submissions to the Tribunal

27. The Tribunal received a submission from the Applicant's advisor attaching, relevantly:
- Certified copies of documents said to be Bangladesh Secondary and Higher Secondary education certificates relating to the Applicant and a Higher Secondary certificate relating to the second-named Applicant.
 - A document in Bengali, with an English translation, said to be a letter from an officer of Political Party 1 confirming that the Applicant was an officer of the organization. The President's name is given.
 - A document in Bengali, with an English translation, said to be a letter from an officer of a political party confirming that the Applicant was a long-time member of the organization, a social and cultural body which conducts various activities. He was actively involved in the organization. The President's name was given.
28. The Tribunal received a further submission from the advisor attaching a bundle of documents including educational, health, identity and other records relating to the Applicants, said to be from official Bangladesh sources. The advisor submits that the documents evidence that the Applicants are nationals of Bangladesh.

Claims at hearing

29. The Applicant said he had prepared his protection visa application with the help of a Bangladeshi friend and had not engaged an advisor at that time. He wrote out the attached statement in Bengali and his friend translated it into English. He said he was

aware of everything he had claimed in the application and statement, it was all true and he did not wish to change anything he had claimed.

30. Asked why he had left Bangladesh and come to Australia the Applicant set out in some detail his claims to have suffered harm in Bangladesh at the hands of Muslim extremists because of his support for Hindu community organizations. He said he had been forced to leave his home and live in hiding for a number of months but was found there and had to escape to Country 1. He had briefly visited another country from Country 1 to find a safe location for himself and his family but found the circumstances there unfavourable. He and his family had obtained falsified passports but these did not guarantee him the ability to remain in Country 1.
31. Asked what he feared would happen to him if he returned to Bangladesh the Applicant said he feared he would be killed by the extremists. His relatives were still receiving threats, and they reported to him that people were asking for his whereabouts and making threats that they would kill him. He attributed their continuing enmity to his leadership in Hindu religious activities in his area and his efforts to promote peace and harmony among the religious communities.
32. Asked if he knew the identity of any of the Muslim extremists who wished to harm him the Applicant named and gave brief background details of several persons he said lived in his area. He said there were a number of others besides these.
33. Asked if he feared harm for any reason apart from his Hindu religion the Applicant said he had worked for the Awami League and suffered further pressure because of this. He agreed with my observation that this was not mentioned in his protection visa application. A further reason was that he had complained against the seizure of some of his family's land. He was told that he had no choice but to accept the theft but the people responsible were angry that he had accused them. I asked why, if no action was taken by the authorities, these people would have been angry with him. He said that even though no action resulted they felt themselves to have been insulted by him.
34. The Applicant confirmed his claim to have lived in his own house until going into hiding. He said the house was now occupied by his family. Asked about his employment in Bangladesh he said he had owned a business and later started another business. When he went into hiding he had various casual work.
35. Asked about his addresses in Country 1 the Applicant said he had lived at a specified address and later elsewhere. I noted that his Country 1 passport had been altered to show a different address. He said he had not lived there. Asked why this address would have been entered in the passport he said it was done by a friend. Asked why the amendment would have been made a few years after the passport was issued he said that when his wife and child came to Country 1 the friend tried to get passports for them. It was necessary to amend his passport to show a new address for them and for this purpose it was necessary to change the address in his own passport. I put to him that this could not be correct since his child's passport was issued earlier, indicating that there cannot have been any difficulty with his child's passport which would have necessitated a change to his passport. He said his child's passport was obtained first and did not encounter any problems. His wife's passport was obtained later and, because of problems with it, the address in his passport had had to be changed. Asked why his wife's and child's passports were not produced at the same time he said he was

not sure what had happened. His friend had arranged the passports and may have applied at two different times.

36. Regarding his employment in Country 1 the Applicant said he was unable to work because this would have required a voter registration identity card or a ration card. The person who had helped him obtain his falsified Country 1 papers had a shop and he sometimes helped there, for which he received pocket money. I put to him that he must have had some other form of income. He said that when he left Bangladesh he took with him an amount of money in cash. His relative also sent him money. I put to him that it was hard to understand how he had been able to afford a trip to another country by himself, and the trip to Australia with his family, on the basis of pocket money. He said he had brought in a large amount of money from Bangladesh, in various instalments, and his wife had brought a further amount with her.
37. The Applicant confirmed that he arrived in Australia using a Country 1 passport. Asked if he had ever held a Bangladesh passport he said he had not. He had not realized the need to obtain a Bangladesh passport and had simply acted to save himself. I put to him that it was very simple to obtain a Bangladesh passport. He said he would have to do so in his own area in Bangladesh and there would be an investigation. I put to him that there were minimal requirements for the issue of a passport. He said he had not intended to leave and had not thought about it. Asked how he had crossed into Country 1 he said he was helped to do so by people who had connections with a paramilitary group who paid them a bribe to allow him over the border. I asked why he would have needed to do this when he could have obtained a passport and crossed into Country 1 legally. He said he had little time and no documentary evidence.
38. I put to the Applicant that the prima facie evidence of his passport seemed to indicate that he was a citizen of Country 1. He said he obtained the passport through a friend but he had no connections with Country 1 and owned no property there. He had simply obtained it to leave Country 1. Noting that the passport was issued earlier I put to him that this was not for the purpose of leaving Country 1. He said his friend told him it would take some time to arrange for him to go overseas. I put to him that the fact that he had been able to pass through the international airport twice during his visit to the other country and on a further occasion when leaving for Australia seemed to indicate that the Country 1 authorities believed him to be a Country 1 citizen. He said he did not know if his passport was genuine or a duplicate. He had simply passed through Customs on his way to the other country, in the company of a friend. Asked why this person would have accompanied him he said his friend was travelling on business to do with his shop and had tried to place him in the other country. Additionally, his friend had used him to bring goods back to Country 1 in his luggage.
39. Noting that his application for an Australian visa had been supported by documents showing him to be a Country 1 citizen and the owner of a business I asked the Applicant if these documents were false. He said he had nothing to do with this. He had simply signed the application forms. I repeated the question and he said his friend did it. I repeated the question and he agreed that all the documents submitted in support of the application were false. I observed that he had provided one set of false documents to the Country 1 authorities to obtain a passport and another set of false documents to the Australian authorities to obtain a visa. I asked him if there was anything, against this background, to prove that the documents submitted in support of his protection visa

application were authentic. He said he had given his true life history and the Australian government could verify this.

40. I asked the Applicant if he had ever been the subject of Bangladesh media reporting because of his leadership of the local Hindu community. He said there had not been any newspaper reporting but his name was mentioned in leaflets which had been distributed. I asked if there were any medical or hospital records relating to the injuries he claimed to have suffered when attacked. He said he had not brought such records with him and had not realized they would be needed. Asked if the attacks on him had ever been reported in the local media he said they had not. However, there had been a report of the incident when his family was attacked and his child was injured. This had appeared in a local paper but the report identified his family as being that of his relative, as was customary in Bangladesh.
41. I asked the Applicant if he was aware of the organization named Bangladesh Hindu Bouddha Christian Oikya Parishad (BHBCOP) and he confirmed that was a member. I noted that the organization publishes a regular detailed report of attacks on Bangladesh's religious minorities. He said his incident was not mentioned and that he did not know if it was written up. Noting that the organization pays very close attention to such attacks I asked why they would not report an attack on a person who was a Hindu activist and one of its own members. He said some incidents are reported and he did not know what had been reported. I asked him whether any of the other incidents in his account had been reported by the organization. He said they had not been reported. The organization had not written any reports but other people had done so. He named Political Party 2 and Political Party 4. Asked where these reports were he said the organisations generally produced information in leaflet form which were distributed to local people.
42. I noted that the letter written by the officer of the Political Party 2 did not mention of any harm having occurred to the Applicant. He said he had asked his relative to obtain certificates from all the organizations in which he had worked. He had not asked for them to report the incidents which had happened to him, simply to confirm that he had worked them as a member of the organization. If necessary he could ask them to provide details of the incidents. I noted that there was a letter from the officer of a political party which, again, made no mention of any harm he had suffered. He repeated that he could get his relative to ask for reports about this harm.
43. Asked if he had ever reported any of the attacks to the police the Applicant said he had done so after the incident in which he and his relative were beaten and another relative had died. However, the police refused to receive the complaint because of pressure from the top. Asked if he had any police documents he said the complaint was not registered. Asked if he had only complained on one occasion he said that when he was beaten after his exams his relatives tried to report the matter but the police would not accept the complaint.
44. I asked the Applicant why, if conditions had been so bad, he had not taken his family with him to Country 1 at the time. He said the situation had been horrible and he had been moving from one place to another. He spent some time in another town but he was recognized there by a Muslim extremist. He knew this person would complain about him and the police were looking for him. He never thought of taking his wife but simply wanted to save himself by going to another country. I asked why, if he was

wealthy and was subjected to regular harm, he would wait a number of years before bringing his family to join him. He said he had not known what to do and his only thought was to save himself. He thought he might have no food or shelter in Country 1 and believed his family to be safe in Bangladesh. I asked why he would think they were safe and not worry about them, given that his family members had been attacked many times. He said he thought that if he was not there the harm might not be so extreme. If he could not guarantee their food and shelter, how could he live with them in Country 1? I noted that he had been able to bring a large sum of money with him to Country 1. He said that if his family joined him this money would have finished very quickly.

45. The Applicant added that another reason for the delay in bringing his family to Country 1 was that his child would have no future there without Country 1 identity papers. I noted that his child had a Country 1 passport. He said he had tried to obtain a voter registration identity and a ration card but these were very difficult to get. Without them it was hard to put his child in a school. I put to him that it was hard to believe that the friend who had obtained falsified papers for him could not also obtain a voter registration and a ration card. He said he had tried to get these by himself and had been told they were only issued by local authorities. This was a problem because his accent would reveal him as not being from the area. I asked why his friend could not organize the papers for him and he said his friend told him it was not possible. I put to him that his friend was able to obtain a range of false documents in support of his Australian visa application. He agreed this was so but repeated that the friend told him a voter identity card and ration card were not possible.
46. Asked if he had sought protection as a refugee in Country 2 the Applicant said he was only there for a few days. His friend tried everybody in order to obtain a work visa for him so that he and his family could stay in Country 2 permanently as refugees but this was not possible. Asked if he himself had spoken to anyone about his case he said he had not, and had never left his hotel room. I asked him why, as a mature, educated and experienced adult, he would have placed his destiny completely in the hands of his friend. He said that when he left Bangladesh he had not been thinking properly and had lost his confidence. I put to him that I had some doubts about this apparently miraculous intervention by this friend at every point raised some doubts about the accuracy of his account. He said he was not a Country 1 citizen and his friend helped him out of sympathy. He had gone along with all his friend's decisions.
47. I noted that the independent country information indicates that the Hindu minority in Bangladesh is a relatively large one, at about ten percent of the population, and that although there was a wave of anti-Hindu violence following the 2001 election violence directed at members of the Hindu community has been an essentially isolated and sporadic problem since then. I noted that the information indicates that Hindus are allowed to practise their religion freely and celebrate their holy days; and that the government provides protection for them on such occasions, including for the Durga Puja. I put to the Applicant that this information seemed to indicate that he would not suffer harm in Bangladesh because of his membership of the Hindu minority. He said there were incidents following the election of the BNP government in 2001 but in his area such things had been occurring since he was young. The government gave some assistance to Hindus but Bangladesh was a Muslim country and there were many restrictions on Hindus as regards their worship, dress and cultural practices. When his relative died after being beaten, Muslim extremists interfered with the cremation so that

it could not be carried out according to Hindu rites. The media did not publish such incidents of discrimination and physical attacks on Hindus. None of the incidents of harm he and his family had suffered had been reported. There was discrimination against Hindus in appointment to government jobs.

48. In oral evidence the Applicant wife/mother stated that the situation in Bangladesh was very difficult. She and her husband's family members had been subjected to beatings and torture and her child had been injured. While she was still in Bangladesh she had received threats that if her husband did not return either her child would be abducted or she would have to pay money. If she returned to Bangladesh they would kill her and her child. Asked about her medical treatment in Bangladesh after the attack on her she said she remained in hospital for a number of days. Asked how the family had managed financially in Country 1 she said she had taken a large amount of money with her when she left Bangladesh. They were not allowed to work and her relative continued to send money.
49. The Tribunal also heard evidence from a witness who said he had known the Applicant since childhood. The Applicant was active in supporting Hindu religious, cultural and social activities in his village and he believed this had made him an enemy of Muslim fundamentalist groups there. He had not personally witnessed any of the incidents in which the Applicant had suffered harm but he believed that the situation in their area was very bad for minorities. The Hindus had been persecuted for a very long time and had lost their property and been regarded as dogs.
50. A third witness said he had known the Applicant since primary school. He had left Bangladesh and lived in Country 1 before coming to Australia as a refugee. Asked if he had personally witnessed any harm being suffered by the Applicant and his family he said he knew that these things had happened to them. The Applicant and his relatives had been active in supporting Hindu religious activities in the community. He had personally witnessed the Applicant being harassed by Muslims when he was a school boy.
51. I put to the Applicant that, on the information before the Tribunal, I had some doubt as to his nationality. While he had supplied a number of documents showing that he was a citizen of Bangladesh he had also submitted various documents to the Australian government showing that he was a citizen of Country 1. This could indicate that, although he might previously have been a citizen of Bangladesh, he was now a citizen of Country 1. This was important for the decision in his case because, as he did not claim to fear harm in Country 1, it could indicate that he did not have a well-founded fear of persecution there and the decision to refuse to grant him a protection visa should be affirmed.
52. I invited the Applicant to respond to this information, noting that he did not have to do so immediately and could comment at a later time, in the manner of his choosing. In consultation with his advisor the Applicant said he would like to respond in writing.
53. I put to the Applicant that, on a second issue, I had some doubts as to his claims to have suffered harm in Bangladesh, none of which was supported by any independent source in the information before the Tribunal. I explained that this could lead to a conclusion that he would not suffer harm if he were to return to Bangladesh, and that the decision to refuse to grant him a protection visa should be affirmed. Invited to respond to the

information the Applicant said he could obtain further documentation from Bangladesh and it was agreed that a period of three weeks would be allowed for this purpose.

54. Asked if there was anything he wished to add the Applicant said he had been a member of a number of other organizations in Bangladesh and foreshadowed that he would obtain documents from these as well.

Documents at hearing

55. At the hearing the Applicant submitted:
- A medical certificate from a Hospital stating that the Applicant's wife and child were admitted and hospitalized for a number of days. The Applicant's wife was treated for bruising and lacerations while his child had been injured
 - Originals of documents already submitted to the Department and the Tribunal, together with an envelope indicating that they had been sent to the Applicant from Bangladesh.

Documents received post-hearing

56. Documents received following the hearing include:
- A letter from an officer of an Australian-based Bangladeshi organisation stating that the Applicant is personally known to him and that he participates in the work of the organisation. The Applicant is committed to upholding and the human rights of religious and ethnic minorities in Bangladesh.
 - A letter from an officer of Political Party 2, stating that the Applicant was an active executive member of the organisation. 'His work voluntary role in organizing the Party as well as the Hindu Community was highly commendable for which he was the target in the eye of some Communal Persons.'
 - A letter from an officer of the Awami League stating that the Applicant was personally known to him for many years. He states that the Applicant was a youth leader in the local Hindu community and that he supported the Awami League, in particular during elections. His campaigning for the Awami League made him the target of attacks by pro-Islamic communal parties.
 - A letter from another officer of the Awami League stating that the Applicant was a young leader of the Hindu community in his area and was involved in various community and social organisations. He assisted the writer's campaign in a Parliamentary election, arranging meetings and distributing posters and leaflets. These activities 'triggered harassment and torture against him and his family by our political opponents BNP and Jammata e Islami.'
 - A letter from a priest, confirming that the Applicant was a disciple of Sri Krishna and the Swami of the organisation. He has a very religious mind and attended the Mission on a regular basis. He suffered discrimination and persecution because of his Hindu religion and the leading role he played in the Hindu community. He and his family members were harassed and physically

attacked several times, forcing him to go into hiding and, later, to leave Bangladesh for Country 1.

- A letter from one of the Applicant's teachers who states that he knew the Applicant was experiencing problems with local Muslim fundamentalists and that he left Bangladesh in fear of them.
- A letter from a medical doctor stating that, according to his records, he treated the Applicant for a number of injuries suffered during a beating.
- A further letter from an officer of Political Party 2 stating that the Applicant was actively involved with the organisation in protecting and promoting the rights of Hindus. As a result of these activities he was targeted by Islamic fundamentalists who 'tortured' him and his family on a number of occasions. He was forced to go into hiding to save his life and it is not safe for him or his family to return to Bangladesh.

FINDINGS AND REASONS

57. A threshold question for the Tribunal is the Applicant's nationality. He claims to be a citizen of Bangladesh, having been born in Bangladesh. He entered Australia using a Country 1 passport which shows him to be a Country 1 citizen who was born in Country 1. His evidence was that this passport was falsified, or was obtained using false documents, with the help of a friend. He claims that this same friend helped obtain a number of falsified documents which were submitted in support of his application for an Australian tourist visa in which he is said to be a Country 1 businessman.
58. The Applicant's own evidence is thus that he has submitted falsified documents to both the Country 1 and Australian governments bearing on the basic issue of his nationality. As put to him at the hearing, this raises for the Tribunal an obvious question about the authenticity of the documents he has now submitted which show him to be a citizen of Bangladesh.
59. The Applicant's response on this issue was to suggest that he had played little or no part in obtaining the falsified documents, and that these were supplied by his friend. He claimed that his only role was to sign his name to documents as they were put to him.
60. I accept that if the Applicant had wished to obtain false documents while he was in Country 1 he might well have relied on another person to act as his agent in dealing with those whose job it was to create the forgeries. His friend might well have been such a person, whether or not he was also a friend of the Applicant. I also accept that the Applicant might not have been aware of the exact steps by which such documents were created. However I am not satisfied it is at all plausible that he was unaware that false documents were being produced for him. Nor am I satisfied that he was unaware that at least some of these documents were being produced for the purpose of deceiving the Australian authorities. His claims of non-involvement in this process do not reduce the doubts which exist as to his nationality.
61. Further doubts about the Applicant's nationality are raised by three more issues.

62. First, the Applicant was able to travel to and from Country 2 and to Australia, passing through the airport each time. He does not report having experienced any difficulty in doing so and there is nothing to indicate that the Country 1 border control authorities questioned his nationality. However, I accept that if his Country 1 passport was genuine, in the sense that it was not forged or falsified but was obtained on the basis of falsified documents, it could well pass muster on these occasions.
63. Second, his Country 1 passport bears the official notation that his residence was changed an address which is not listed by the Applicant in his protection visa application. If this passport was falsified in some way it is difficult to understand why it should have been offered up for endorsement and inspection, with all the attendant risks that the falsification would be detected. At the hearing the Applicant offered a confused and incomplete explanation for this endorsement, suggesting that it was needed to match an address which was being used in obtaining his wife's similarly falsified passport.
64. Third, the Applicant claims never to have held a Bangladesh passport. As put to him at the hearing, this appears unusual given that such passports are easily obtained. If he had been subjected to serious harm over a long period, to the point where he decided he had to leave the country to save his life, it seems hard to understand why he would not simply have applied for a Bangladesh passport in the normal way. Instead, he claims to have crossed into Country 1 illegally, paying a bribe to Bangladesh army personnel to do so. His explanation for this amounted to little more than the claim that he had not been thinking properly at the time.
65. Against these considerations I have carefully considered the documents submitted by the Applicant in substantiation of his claim to have been born in Bangladesh. Originals of a number of these documents were supplied at the hearing. I have also taken into account the witness evidence on this point, including from two people who stated that they had known the Applicant from his childhood in Bangladesh. While it is common knowledge that falsified documents are easily and cheaply available in Bangladesh and are often used in migration or protection applications, in the present case I am satisfied that the Applicant's documents are genuine. I note in particular a number of documents relating to his early youth in Bangladesh which appear to be in a condition consistent with their claimed age. One of these includes a photograph of him which seems to date from that period. On this basis, as well as on the witness evidence, I accept that the Applicant was born in Bangladesh, as he claims.
66. I have also considered the possibility that the Applicant obtained Country 1 citizenship at some point after entering Country 1. As noted, the principal evidence for this is his Country 1 passport, together with a number of supporting documents he provided when applying for a visa. I note, however, that his Country 1 passport shows him to have been born in Country 1 rather than in Bangladesh and, as I am satisfied that he was in fact born in Bangladesh, I accept that this demonstrates that his passport is not genuine or, at least, that it has been obtained on the basis of false information. On this basis I accept that the weight of evidence indicates that the Applicant is most probably not a Country 1 citizen and is instead still a citizen of Bangladesh.
67. The Applicant claims that he will be harmed by extremist Muslims if he returns to Bangladesh because of his activism in support of Hindu community organizations.

Past harm

68. The Applicant claims to have suffered a range of harm in Bangladesh at the hands of Muslim extremists. He claims that his family lost its land to Muslims through the action of the Vested Property Law. He claims to have experienced discrimination and harassment from an early age. He claims that on a number of occasions he was beaten and threatened by Muslim extremists, and that other members of his family, his wife and his child were also beaten and abused. He claims another relative had died after he was beaten in one of these incidents. He claims the harm was so severe that he was forced to go into hiding and, when he was detected there by one of his persecutors, to have been forced to go to Country 1 to save his life.
69. I have some concerns as to the accuracy of these claims, for the following reasons.
70. In the first place, as put to the Applicant at the hearing, it appears unusual that the many reported incidents of serious harm suffered by him and other members of his family should not have been reported in the local media. He claimed that news of the incidents was included in leaflets distributed among the people of his area by two of the Hindu organizations with which he was involved, but he has not submitted any such leaflet. He claims that a local newspaper reported the attack on his wife and child but did not name him, instead reporting the incident as an attack on the family of his relative. He has not produced this report and was not sure about its date of publication. He could offer no convincing explanation for the failure of the Bangladesh Hindu Bouddha Christian Oikya Parishad (BHBCOP) to report these attacks, despite the thorough nature of that body's recording of such incidents and his own claimed membership of it.
71. Second, the Applicant could offer no clear explanation as to why, having decided to flee to Country 1 because he and his family members were being repeatedly subjected to serious harm in attacks by fundamentalist Muslims, he would have left his wife and young child behind in the family home and not arranged for them to join him for some time. He said he had been faced with starvation in Country 1 and could not ask them to join him, a claim which is at odds with the information that he had access to significant funds from Bangladesh. He also claimed that it would not be possible for his child to enrol in a school in Country 1 in the absence of a ration card or a voter registration identity. However, given the copious false documents which he has clearly been able to supply to the Australian and Country 1 governments I am not satisfied that such documents could not also have been obtained by him. Finally, he claimed again that he had not been thinking clearly and had only been worried about saving himself. However, while this might account for his departure to Country 1 without his family it seems hard to understand why his mind would have remained unclear on the point over that time if his claims about previous abuse and physical assaults were accurate.
72. Third, the Applicant's explanation for his visit to Country 2 leaves a number of questions unanswered. He claimed at the hearing that the visit was arranged by his friend who intended it both as a business visit, in connection with his shop, and as an opportunity to arrange for the Applicant and his family to stay permanently in Country 2. He also claimed, somewhat inconsistently, that it was intended that he help his friend by carrying goods for the shop back in his luggage. He claimed that during the entire visit he remained in his hotel room, leaving his friend to enquire about a work visa for him. These enquiries, he claimed, proved fruitless. He did not seek to claim protection in Country 2 as a refugee.

73. Finally, and in connection with the above point, a somewhat implausible feature of the Applicant's account is the frequency with which his friend appears and rescues him from difficulty. It is his friend who provides his falsified documents for his Country 1 passport and his Australian tourist visa. It is his friend who employs him in his business, paying him pocket money. It is his friend who arranges for Country 1 passports and other documents for his wife and child. And it is his friend who takes him on a visit to Country 2 and tries to arrange permanent residence for him there. In all of these dealings the Applicant plays a strangely passive role, leaving it to his friend to make all the arrangements. He apparently understands little or nothing of these arrangements and, despite their obvious importance for his future, is insufficiently curious to find out about them. In the other country, for no obvious reason, he remains in his hotel room for three days while his friend speaks to people on his behalf. As put to the Applicant at the hearing, this conduct appears hard to understand in a mature adult who had received a good education and had operated his own business.
74. Against these considerations the Applicant was able to give a detailed and generally consistent account at the hearing about the harm he claims to have suffered in Bangladesh. This tallied in most respects with the claims in his protection visa application. Although there were signs of exaggeration in some of his claims I gained the impression that there was a basis of truth in his descriptions of the incidents he described, and that he was speaking of them with the benefit of first-hand knowledge. In this context I have carefully considered the documents relating to the medical and hospital treatment said to have been received by him and his family and I am prepared to give these some weight. I also note the documents submitted after the hearing which are said to have been written by various Hindu leaders and the officer of the Awami League. These have clearly been requested by the Applicant following the hearing and they expand on the information previously provided by the same sources, adding the detail that he was the target of attacks by Islamic fundamentalists. While I have some concern about their reliability, given their sometimes similar format and phrasing, I accept that they provide some further support for the Applicant's claims. Finally, I note the evidence of the three witnesses at the hearing who generally supported his claims, even though his two friends stated, quite candidly, that they had not personally witnessed any significant harm being directed at him.
75. When this information is considered as a whole a number of doubts must remain as to the overall accuracy of the Applicant's claims of past harm in Bangladesh. However, I am prepared to give him the benefit of the doubt by accepting that he and other family members were harmed on a number of occasions by persons who were connected in some way to Islamic fundamentalist groups and who were angered by his role in a number of community organizations devoted to preserving and celebrating Hindu religious and cultural practices. Even making some allowance for exaggeration I am also prepared to accept that, in the circumstances of the incidents he describes, this was serious harm amounting to persecution.

Future harm

76. The Applicant claims that if he returns to Bangladesh he will be at risk of harm from the same persons or groups who targeted him in the past. He claims that before his wife left Bangladesh to join him in Country 1 she received threats designed to force him to return and that his relatives report that his enemies there are still looking for him.

77. Given that it is several years since the Applicant last lived in the area I am not satisfied it is at all plausible that Islamic fundamentalists there are still looking for him or that they have any active plan to harm him in any way. Nor am I satisfied that if he returned he would be harmed by such people because of any grudge arising from the past.
78. However, I also accept that the Applicant was an active member of a number of Hindu community organizations in his area and that he worked to promote the Hindu religion and Hindu culture. I accept that these activities reflect a strong and genuine commitment to his Hindu community. There is evidence from the Australian Bangladeshi organisation that, to some extent at least, he has continued an involvement in the affairs of the Hindu minority since his arrival in Australia. I accept on this basis that he would most probably seek to resume these activities if he returned to Bangladesh. As I accept that it was these activities which made him a target of Islamic fundamentalists in the past it seems reasonable to assume that they would once more target him for this reason if he returned there. On this basis I am satisfied that if the Applicant returned there would be a real chance that he would suffer serious harm amounting to persecution because of his Hindu religion.
79. I have considered whether the Applicant might be able to escape this harm by relocating to another area of Bangladesh and whether in his particular circumstances he would reasonably be able to do so. In this context I note his claim that when he was living in hiding he was seen by one of the fundamentalist Muslims who had been targeting him, leading to his decision to flee Bangladesh for Country 1. I have some reservations about the coincidental nature of this incident but, as I am satisfied with the general credibility of the Applicant's evidence at the hearing about the harm he suffered, I am prepared to accept this claim. Having done so I also accept that it is possible, although perhaps not very likely, that he would again come to the notice of Islamic fundamentalists from his area if he were to live elsewhere in Bangladesh and continue an active role in Hindu community organizations. On this basis there is some chance that he would suffer harm from these sources once more, indicating that relocation would not be a viable option for him.

Summary

80. In the light of all the information before the Tribunal I am satisfied that the Applicant suffered serious harm amounting to persecution when he lived in his village and that there is a real chance he would again suffer such harm if he were to return to live there. I am not satisfied that in his particular circumstances he could avoid this harm by relocating to some other part of Bangladesh. I am satisfied that he has a well founded fear of persecution for reason of his Hindu religion should he return to Bangladesh now or in the reasonably foreseeable future and I am satisfied that he is a refugee.

CONCLUSIONS

81. The Tribunal is satisfied that the first named Applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named Applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria.

82. The other Applicants applied as members of the first named Applicant's family. The Tribunal is satisfied that they are the spouse and dependent of the first named Applicant for the purposes of s.36(2)(b)(i). The fate of their applications depends on the outcome of the first named Applicant's application. As the first named Applicant satisfies the criterion set out in s.36(2)(a), it follows that the other Applicants will be entitled to protection visas provided they meet the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

83. The Tribunal remits the matter for reconsideration with the following directions:
- (i) That the first named Applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
 - (ii) That the second and third named Applicants satisfy s.36(2)(b)(i) of the Migration Act, being the spouse and dependant respectively of the first named Applicant.

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

Sealing Officer's I.D. prrt44