

071640442 [2007] RRTA 274 (2 November 2007)

DECISION RECORD

RRT CASE NUMBER: 071640442

DIAC REFERENCE(S): CLF2007/096723

COUNTRY OF REFERENCE: Bangladesh

TRIBUNAL MEMBER: Louise Nicholls

DATE DECISION SIGNED: 2 November 2007

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

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).

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

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

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

I find that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act and the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for

the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and 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:

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

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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.

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be

enough that the government has failed or is unable to protect the applicant from persecution.

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

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

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

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

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

CLAIMS AND EVIDENCE

I have before me the Department's file, which includes the application for a protection visa and the delegate's decision record. I have also had regard to the material referred to in the delegate's decision, and other material available to me from a range of sources.

Information given to the Department by the applicant

Application for Protection Visa

The following personal details of the applicant and the written claims are contained in the protection visa application and accompanying statement.

The applicant claims he is a citizen of Bangladesh and was born and educated in Chittagong, Bangladesh. He is in his thirties, speaks Bengali, English and Hindi, and is a Muslim. He described his occupation and gave a history of his employment.

The applicant is married and his wife and child are living in Bangladesh. Prior to his arrival in Australia he lived at an address in a third country for a period of time.

The applicant arrived in Australia travelling on a Bangladeshi passport and entered Australia on a visitor visa issued in the third country.

In the statement accompanying the application for a protection visa the applicant claimed that;

- He left Bangladesh for the third country when his life was in danger due to his political activities as a leader of the Bangladesh Awami League.
- He became involved in Awami League politics during his years at college. He was an office holder of a particular branch for a number of years.
- He held further high office after this period.
- He then travelled to a fourth country for a job and stayed there for a number of years. He returned to Bangladesh for a short visit then travelled back to the fourth country.
- He returned to Bangladesh shortly after and became actively involved in politics and his business. During this time he faced a lot of pressure from the BNP activists and Islamic fundamentalists because of his free movement and secularism. He openly criticised the corruption of the BNP officeholders and for this reason his opponents made a plan to kill him. When he found out about their plan he fled to the third country and stayed there for a further period of years.
- In the meantime he obtained an Australian visa with a view to seeking asylum in Australia on the grounds of his political opinion.
- His family and friends assured him that Bangladesh now was being governed by the caretaker government and he should return to Bangladesh. He returned for a short visit but found there was a charge sheet against him and the police came to his home to arrest him. To avoid arrest he returned to the third country and then travelled to Australia.
- If he returns to Bangladesh he will be harassed humiliated and falsely accused of crimes by members of the BNP and Islamic fundamentalist parties and by government authorities.
- The present caretaker government is hostile to politicians and has put many politicians into jail for no reason. If he was present in Bangladesh he would openly criticised their activities.
- The harm he fears would be from the BNP, Islamic fundamentalists and government authorities.
- He believes this will happen to him because of his past experience and the hostility of the present government to politicians.
- He does not think that the Bangladeshi authorities will protect him if he returns to Bangladesh because they are influenced by the government which is hostile to politicians at the moment.

Information given to the Tribunal by the applicant

Application for Review

Following the primary decision to refuse the protection visa an application for review was lodged.

The applicant lodged written submission elaborating on his claims together with

- Letter from an office holder of the Bangladesh Awami League certifying that the applicant is a worker for the party.
- Letter from two office holders of the Bangladesh Awami League certifying that the applicant is a member of a particular branch.
- Copy of a letter from the Bangladesh Student League certifying that the applicant was an active office holder of a particular branch for a period of years.
- Press reports on some aspect of the current situation in Bangladesh.

His written submissions set out his claims including a claim that false charges had been brought against him. The submissions also discussed; the extent of state protection offered by the current caretaker government, the loss of political freedoms under the current government, the detention of many political leaders, the issue of relocation, and the failure of the present government to protect politicians both high and low profile figures.

Evidence Given at Hearing

The applicant was invited to attend a hearing at the Tribunal to give evidence and present arguments. Prior to the hearing he submitted further letters from members of the Awami League certifying that he was a member of the party and held various posts, and generally that he was a supporter and active worker of the Awami League.

The applicant attended the hearing held at the Tribunal and was assisted at hearing by an interpreter of the Bengali language. The applicant brought his passport to hearing and a copy is held on the Tribunal file.

After I gave a general introduction explaining the purpose and conduct of the hearing I asked the applicant a series of questions about his personal background and claims. I emphasised that as I was taking a fresh look at the application he should give me a detailed and accurate account of those matters.

The applicant gave evidence that he was born in Chittagong, Bangladesh and gave his age. He is married with one child and his wife and child are living with his wife's family. His parents are still alive and living in Bangladesh and he has one brother who is living in an overseas country. His wife and child are financially supported by her family.

He arrived in Australia after being issued a visa for Australia whilst he was in a third country and came directly from there to Australia. The applicant had a friend in Australia who helped him arrange for accommodation when he first arrived in

Australia. He told his friend about his experiences in Bangladesh and was advised to make an application for a protection visa. His friend helped him prepare his application form and statement.

I referred him to the written statement he had given to the Tribunal and he told me that his friend had helped him translate his statement into English and that it had included all his claims. He also stated that he had provided a number of letters to support his claim that he had been a member of the Awami League and that those letters were accurate and correct.

The applicant attended school and college and told me he received a pass from college. While he was at college he became interested in the student organisation of the Awami League (Chatra League) and later became a member. When I questioned him as to his activities he told me he used to go to meetings and demonstrations and was a supporter of the Chatra League.

He held an official position at a particular branch for a number of years. He was not able to tell me in any detail about his activities with the Chatra League but gave a general description as "being involved in organisational activities". After this time he claimed that he continued his involvement in politics as a member and office bearer of the Awami League however was not able to describe his activities in any detail. He told me he was not working during this period and was financially supported by his parents. Even though I pressed him to give me a more detailed description of his political activities during that time his response was that "he gave some time to politics and gave some time over to nothing".

During this time he told me he was also involved in the Bangabandhu organisation, was passionate about politics and was inspired by the example of Sheik Mujibur Rahman who was his idol. I questioned the applicant about his knowledge of the Awami League and he was familiar with; the structure of the Awami League, the associate organisations, the flag and symbols and had a familiarity with the overall character of the party. Nonetheless, despite my attempts to draw out further detail he was not able to elaborate on any earlier description of his political activities over the years.

In the 1990's he travelled to a fourth country and worked there for a period of years. In his first year there he worked in different jobs and then found a job with an advertising company. He worked there for some years before he returned to Bangladesh. When he returned to Bangladesh he married and stayed in Chittagong for a short period. He travelled back to the fourth country for a brief time but returned to Bangladesh after the company he worked for in the fourth country had closed down.

After he returned to Bangladesh he and his wife lived in Chittagong and he became involved in his father's business. He was also an active supporter of the Awami League during this period because he found it impossible to live his life without being involved in politics. He described his activities as helping leaders in meetings and demonstrations. He and his wife were generally living with his family in Chittagong whilst he was helping his father in his business.

He left Bangladesh for a third country claiming he was scared and had gone there to avoid threats of harm. He told me that he was not working in the third country but when pressed agreed that he had done some paid work for a friend for a short period. He then returned to Bangladesh for a period of weeks and then returned to the third country. He applied for an Australian visa whilst in the third country and travelled directly to Australia. He has worked part-time in Australia since he obtained permission to work.

I asked the applicant to tell me if anything had happened to him in Bangladesh as a result of his political activities. He stated that he became engaged in politics and was often threatened by members of the strongest party in his area and a member of the coalition government. He claimed that they threatened him a lot and he was afraid of them. He continued to be involved in Awami League politics but lived "here and there" often with his family. He claimed that his opponents threatened to kill him and as a result he decided to leave Bangladesh. He was also afraid of the Rapid Action Battalion (RAB), a branch of the Bangladeshi police, who had been known to kill people in his area.

He told me he feared returning to Bangladesh because he could be harmed or killed by his opponents because of his political activities. I put it to him that the country information suggested that since January 2007 a caretaker government had been installed and the situation was now quite different in Bangladesh. He stated that attitudes were unchanged and the coalition parties were unchanged. I put it to him that the country information indicated that violence between the Awami League and the BNP had been effectively controlled by the caretaker government. He stated that he was really concerned about the Islamic fundamentalists and the Chatra Dal. His particular reason for this fear was because he had been involved in politics since he was a student, had organised people and the Islamic fundamentalists wanted to target him.

I explained to the applicant that I wished to put to him information which may not have supported his refugee claims. I explained that he could ask for further time to comment or respond to the information. He did not seek further time.

I told the applicant that the Tribunal had made enquiries with the Awami league in Bangladesh about his membership of the organisation and an officer of the Awami League had confirmed that he had been a member and an office bearer as claimed. The Awami League official also advised that these two organisations represented small areas and a small number of people and his position could not be regarded as high ranking or influential within the Awami League.

I further advised that advice from Bangladesh had indicated there was no information suggesting that the current caretaker government had targeted low profile political figures including members of the Awami League for reasons of their membership of their respective political parties. The information indicated that the government's main targets had been senior political leaders, influential businessmen and senior government officials who were engaged in large scale corruption and misuse of power and that arrests had been made on the basis of corruption rather than political party membership.

I explained that this information could lead me to the conclusion that he would not be at risk of harm if he returned to Bangladesh. The applicant agreed that the government was taking action against corrupt officials from both sides of politics, however, his problems were with Islamic fundamentalists and that the caretaker government had not taken any action against those persons.

I put it to him that the country information indicated that since a state of emergency had been called in January 2007 that the interim caretaker government had taken action against corruption and had also taken action against Islamic fundamentalist groups. He agreed that the government had charged corrupt persons from the Awami league and the BNP but claimed they had not taken any action against the Islamic parties such as Islami Jamaat, only against Islamic terrorists.

I put to him that in the written statement he had made in connection with his application he had claimed that there were false cases brought against him. He told me that at the end of the coalition government he had been told that there were cases brought against him and that he should attend a police station. He did not go to the police station and moved from a member of his family's home to other places. He did not have any documents or any official knowledge of any false cases but had been told by other people that this had occurred. He appeared to be speculating about the possibility of false cases and did not appear to have any clear knowledge of whether any complaints had been lodged. I put it to him that if cases had been brought he could have hired a lawyer to prove that the cases against him were false. He told me he was too scared to do this and just wanted to get out of the country.

In his final remarks he told me he could not think of going back to Bangladesh unless there were changes. In his position as a married man with a family the only reason that he would not be at home was because he had to leave and there was no other way for him.

I put it to him that there was no country information to suggest that he was at any risk of harm for reasons of his political activities if he returned to Bangladesh as much of the inter party violence between the Awami league and the BNP had been controlled by the caretaker government and that they had also taken strong action against militant Islamic groups. He agreed they had taken action against the militant groups but not against the Islami Jamaat party and he would be harassed and killed by members of that party if he returned to Bangladesh.

Independent Information

State of Emergency and Caretaker Government

The UK Home Office Country of Origin report on Bangladesh released on 31 August 2007 noted that the five-year term of office of Khaleda Zia's BNP-led coalition government came to an end at midnight on 27 October 2006. An interim Caretaker Government was due to take office on 28 October, for the period leading up to a general election in January 2007. Thousands of opposition protesters took to the streets as the Government and the opposition Awami League failed to reach agreement on who should lead the Caretaker Government.

As a result of massive demonstrations, unrest and violence led by the Awami League leading up to the planned election

the evening of 11 January 2007, President Iajuddin Ahmed proclaimed a State of Emergency in Bangladesh under Article 141 of the Constitution. The announcement was made amid the growing political crisis over the general election scheduled for 22 January. (*The Daily Star*, 12 January) [38ah] The President's office stated that there was a "grave emergency in the country, threatening public security and [the] economy". (*The Guardian*, 12 January 2007) [55b] The issuance of this proclamation effectively suspended the operation of Articles 36, 37, 38, 39, 40 and 42 of the Constitution, which provide for freedom of movement, freedom of association, freedom of thought, conscience and speech, freedom of profession or occupation and property rights. (*Daily Star*) [38ah] A curfew was imposed in Dhaka and more than 60 other cities and towns for the hours 11pm to 5am. (*BBC News*, 11 January)(Para 4.05)

Elections were postponed for an unspecified period to allow the voter list to be rectified and to ensure that elections were "free, fair and credible. (para. 4.06)

The military also assumed a significant role in the caretaker government and the report notes that

Although Bangladesh had been under military rule for 15 years and had experienced at least 19 failed coup attempts since 1971 it had become widely assumed in recent years that the army's involvement in politics was over. Immediately after the proclamation of the state of emergency, however, the *Economist* was to declare in an article: "The army, not the politicians, now runs Bangladesh." The article expressed a widely-held view that the state of emergency had been implemented at the behest of the army. According to the *Economist*: "The army insisted the president step in before the Bangladesh National Party (BNP)...could rig the election and secure itself another term." The *Financial Times* (FT.com), in an article of 16 January 2007, also said that the state of emergency had been declared "at the insistence of the army". The article quoted diplomats as saying that the 'generals' had charged Chief Advisor Fakhruddin Ahmed with executing a five-point agenda; this reportedly consisted of a drive to clean up the country's biased electoral machinery; a pledge to improve governance in the civil service; an anti-corruption drive that would cleanse the nation's politics; the depoliticisation of the judiciary; and reform of the crippled power sector.

Paragraphs 4.15 to 4.59 of the COI report describe many of the measures taken by the caretaker government to control political violence and corrupt practices, strengthen judicial independence, arrest and punish Islamic militants and terrorists, arrest and punish high profile politicians, officials and businesspersons accused of corruption and to reform the police force and the electoral process to ensure free, fair and credible elections.

Major Political Parties in Bangladesh

An October 2006 report by the International Crisis Group (published not long before the declaration of a state of emergency in early 2007) provides a detailed analysis of politics in Bangladesh, and includes discussion of the main parties.

two main political parties are often described in opposing stereotypes: the BNP is right of centre, middle class, urban, anti-Indian, pro-Pakistani, of an Islamic bent and generally favoured by the business community; the Awami League is left of centre, secular, pro-Indian, rural and favoured by farmers. While these descriptions are generally true, they disguise some realities. Both parties are highly personalised and centralised, revolving around the founding families and brooking no dissent to their views and interests. Neither is particularly ideological nowadays, and neither views policy development and implementation as central to their missions. Both are about power, often in its rawest forms. Both are widely believed to maintain links to criminals, who are used as enforcers, fundraisers and election mobilisers. The parties have also spread their networks across a wide swathe of institutions: civil society is increasingly divided, as is the media and civil service. There is very little non-partisan space. While the BNP is said to be the business party, most powerful and wealthy families maintain a foothold in both camps.

1. The BNP

by General Zia in 1978, the BNP has moved away from its origins in the military but is still seen as the more overtly nationalistic party, mostly because it takes a harder line against India. General Zia moved the country away from its secular nationalistic origins, establishing a more conservative state whose identity merged Bengali cultural aspects and Islam. The BNP favours closer relations with Muslim majority states and tends to view the AL as willing to compromise this Bangladeshi identity through ties with India and secularism. Military governments under Zia and Ershad had close ties to the Pakistani military.

BNP's conservatism has meant it has been mostly comfortable in alliances with religious parties such as the Jamaat-e-Islami, though the relationship is not always easy. BNP leaders maintain that JI is firmly under their control but critics believe the Jamaat is hollowing out the BNP and making it more religiously based. The BNP certainly suffers in some comparisons with the Jamaat, a Leninist-style party with generally disciplined and well-educated cadres who are not seen as corrupt. Religious minorities such as Hindus are suspicious of the BNP, which has targeted them in the past. Although Khaleda Zia's grip on the party remains strong, there are tensions as her son, Tareq Rahman, builds his own powerful base. Widely credited with crafting the 2001 election strategy, he and his advisers have become a second source of power within the party. When senior leaders criticised him in August 2006, they immediately faced calls from the national executive committee to resign.

2. The Awami League

AL was founded by Sheikh Mujibur Rehman to struggle for Bengali rights in Pakistan before the 1971 split. Its manifesto has long been based on four principles: nationalism, secularism, socialism and democracy. Its brief time in power before it was overthrown by the military and Sheikh Mujib assassinated has left it with distrust for the military and the BNP. Like the BNP, it has opted for patron-client relationships rather than internal democracy.

...of the involvement of religious parties in government, the AL reminds voters of the role of groups like Jamaat in violence during the independence war. It has forged its own ties to religious parties in the past and is now linked to smaller, left-leaning parties. Despite attempts to groom her son Joy for office, Sheikh Hasina is unlikely to

hand over the party in the near future. Her son has shown no great appetite to abandon his life in the U.S. and enter Bangladeshi politics, nor are there powerful anti-Hasina factions that might force an early retirement (International Crisis Group 2006, *Bangladesh Today*, Asia Report No.121, 23 October, pp.3-4)

Bangabandhu Smriti Sangsad appears to be Awami League (AL) affiliated and dedicated to the memory of Sheikh Mujibur Rahman. News sources suggest that it is a socio-cultural and/or development organisation, and was founded by Afsar Uddin Chowdhury who was killed in November 2001, allegedly by “BNP-Jamaat-backed terrorists”.

Islamic groups

The International Crisis Group report on Bangladesh also discusses the challenge of increasing Islamisation and the influence of the legitimate Islamic political groups as well as those groups which have a militant agenda.

...are two significant legal Islamist parties: the Jamaat e-Islami (Jamaat) and the Islamic Oikya Jote (IOJ). The Jamaat is larger and incorporates an influential student wing, the Islami Chhatra Shibir (Shibir).

the underground Islamist groups, three are worthy of note: the Jamaat-ul- Mujahideen Bangladesh (JMB), which claimed responsibility for the August 2005 bombings; the Jagrata Muslim Janata Bangladesh (JMJB), led by Bangla Bhai, who was arrested in March 2006; and the Harkat-ul-Jihad-al-Islami (HuJI, Movement of Islamic Holy War), which has a more overtly global agenda and has been least damaged by state action.

...rise of Islamist parties, however, is underpinned by demonstrable attractions and strengths. Islamist parties, in particular the Jamaat, are seen as being much cleaner than the mainstream parties. They have been active in building support bases through work in local communities, including interest-free Islamic micro credit programs and other schemes, such as providing water pumps that are aimed at those close to the poverty line. Their social policies are restrictive in many respects but appear more progressive in others: for example, their opposition to the dowry tradition is seen by many young people as part of “a very strong social agenda” A focus on education has also won new supporters. The founding of madrasas is both a traditional good deed worthy of social respect and a concrete service to communities poorly served by the state education system.

The report notes that Jamaat e Islami is content to work within the parliamentary system and has a clear vision of moving over the next 15 years into a position of more decisive influence. The party’s goal is to make Bangladesh an Islamic state gradually by working within the system. The party also has a strong anti corruption platform. The student wing of the party has been concentrated in particular areas and university campuses and has been involved in violent clashes with other student organisations.

DFAT advice of 3 August 2007 states:

...student wing of Jamaat-e-Islami is the Islami Chhatra Shibir, commonly referred to simply as “Shibir”. Leaders and members of Shibir, along with other student groups

have also been caught up in the anti-corruption drive, and they have been restricted in their level of activity under the State of Emergency provisions. While student wings of political parties are often responsible for politically-motivated violence, it is misleading to refer to Shibir as “the terrorist wing” of Jamaat-e-Islami (Department of Foreign Affairs and Trade 2007, *DFAT Report No. 679 – Bangladesh: RRT Information Request: BGD31915*, 3 August.)

Rapid Action Battalion (RAB)

The police have to date had a poor reputation in Bangladesh and little public confidence. The report by the International Crisis Group referred to above notes;

...of the police’s poor reputation, the creation of a new paramilitary force dedicated to tackling organised crime, the Rapid Action Battalion (RAB) met with widespread approval. From a standing start in mid- April 2004, it now includes twelve regional battalions (four based in Dhaka) support by intelligence, forensics and air support wings. It answers directly to the home ministry and has drawn most of its officers from the armed forces, some from the police. According to official statistics, by 31 July 2006 it had made almost 11,000 arrests, including of five “top terrorists” and 419 “other terrorists”, and killed 283 people in “exchanges of fire”.

Applicant’s Membership of the Awami League

On 3 October 2007 DFAT reported that they had contacted the Awami League head office in Chittagong and spoke to the [an office bearer] who verified that the applicant held the positions claimed and had been

...office bearer in the [details deleted] as he claimed”.

He further commented

...the party-organisations [details deleted] represent relatively small areas and a small number of people. None of these positions could be regarded as high-ranking or influential within the Awami League party in Chittagong.”

...of Foreign Affairs and Trade 2007, *DFAT Report No.519 – Bangladesh: RRT Information Request: BGD32346*, 3 October)

Treatment of Members of Political Parties

In relation to the arrests and detention of political figures DFAT advised that

“5. There is no evidence to suggest that the current caretaker government has targeted low profile political figures, including members of Awami League, for reasons only of their political party membership. The government’s main targets have been senior political leaders and their acquaintances, influential businessmen and senior government officials who were engaged in large-scale corruption and misuse of power. Arrests have been on the basis of corruption rather than political party membership.”

...of Foreign Affairs and Trade 2007, *DFAT Report No.519 – Bangladesh: RRT Information Request: BGD32346*, 3 October)

False Charges

DFAT also advised that

“6. Under the Bangladesh criminal law, there are two ways of making a complaint or a charge: a) to file a charge directly at the police station, or b) to file a complaint in local courts.

7. The laying of false charges or complaints has been a widely prevalent occurrence/practice in Bangladesh. According to a report submitted by the Bangladesh Government to the Bangladesh Supreme Court on 15 April 2007, the number of cases pending with the magistrate’s courts across the country as at 28 February 2007 was 484,832. While it is not possible to determine the percentage of these cases which may be false, it illustrates the extent to which some cases may be held up in the backlog before being brought to trial.

There are no special protection measures available for persons who claim they have been falsely charged. The accused can hire an advocate to prove their innocence in the court. To discourage the laying of false charges, where a person has been found to have filed false charges against someone, charges are automatically filed by the court against the complainant under Section 211 of the penal code

...of Foreign Affairs and Trade 2007, *DFAT Report No.519 – Bangladesh: RRT Information Request: BGD32346*, 3 October)

FINDINGS AND REASONS

The applicant claims to fear persecution from members of the political parties in Bangladesh who are opposed to him because of his activities with the Awami League and associate organisations. He claims that he was threatened by members of political parties opposed to the Awami League before he left Bangladesh and fears that if he returns to Bangladesh he will be harmed or killed because of his political opinion and associations. He does not believe that the state authorities of Bangladesh will protect him against his opponents. In his written claims he also stated that he feared he could be detained by the current caretaker government because of its hostility to political figures.

I have considered the claims set out in the application for a protection visa and the application for review, the oral evidence given at hearing and the documents given to the Tribunal in support of the claims.

I am required to determine whether the applicant has a well founded fear and if so whether what he fears amounts to persecution for a Convention related reason. My task is to consider all the evidence, make findings on material questions of fact and then to give reasons for my decision.

I accept that the applicant is a citizen of Bangladesh.

The applicant gave evidence and I accept he is in his 40's, married and was born and grew up in Chittagong, Bangladesh. He left Bangladesh and lived and worked in a fourth country for a number of years when he returned to Bangladesh. On his return he married and lived with his wife at the home of a family member. He worked with his father until he left for a third country. He returned to Bangladesh for a short period then travelled back to the third country before he travelled to Australia.

The applicant gave evidence and provided credible supporting documentation that he was a member of the Awami League and an office bearer of several small associate organizations of the Awami League for a number of years. He also gave evidence, which I accept, that he had remained a supporter of the Awami League after this time, and provided some assistance and support to Awami League organizations. However I do not accept that he was, or is, a high profile or well known political figure in the Awami League. I also do not accept that he was engaged in political activities full time or for a major part of his time in Bangladesh. He was not able to describe his political activities other than in a very generalized manner and he admitted that before he left for a fourth country that he would spend some of his time on political activities and the rest of the time "doing nothing". After considering his written claims, his oral evidence and information provided by the Awami League in Bangladesh I have concluded that he did not undertake any significant political activities for the Awami League and was not a well known or high profile figure. I accept that he supports the Awami League and may well seek to become involved in the party in a minor way when he returns to Bangladesh.

I do not accept that the applicant has suffered any threats or mistreatment from members of any of the political parties opposed to the Awami League, from the RAB or police for reasons of his political associations. He did not give any evidence of specific mistreatment by members of the opposition parties, including the Islami Jamaat or their student wing. He made a vague and non specific claim of being threatened from time to time by members of the fundamentalist Islamic parties in Chittagong, a claim that was not elaborated in any way. He also claimed that he feared the Rapid Action Battalion but did not point to any incident or specific reason for his fear of harm from this police squad. Accordingly I do not accept that he has suffered any harm or threats of harm either from members of the opposing parties or from the RAB or police for reasons of his political activities and associations during his time in Bangladesh.

I do not accept that the applicant has had false charges brought against him. He was unclear about this claim at hearing and admitted when questioned that he had been told by unspecified persons that there were false charges against him but he had no knowledge or information relating to such charges. Furthermore he accepted that he could have obtained a lawyer to show that he was innocent of any false charges, if indeed, any had been brought against him.

I have considered the applicant's situation if he returns to Bangladesh now or in the foreseeable future and I do not accept that he faces a real chance of persecution upon his return. He has been a low level office bearer, member and supporter of the Awami League and remains a supporter of the party. He may seek to become involved with the party if he returns. However there is no evidence sufficient to satisfy me that he would suffer any harm or mistreatment from the present caretaker government if he

returned to Bangladesh. Those members of all political parties who have been arrested and charged have been high profile politicians, officials and businesspersons accused of serious corruption or offences. There is no credible evidence to show that members of any party are being targeted for reasons only of their political opinion or association.

The applicant claims that he fears members of the Islamic parties as they oppose him because of his political opinion and involvement with the Awami League. I accept that members of those parties may disagree with him or oppose him but I do not accept that he will be targeted for harm by those persons if he returns. He cannot point to any specific incident or reason as to why he would be harmed and I do not accept that he has a sufficient profile to attract any adverse attention now or in the future. He stated that the caretaker government has not taken any steps against the Islamic parties in government. The country information available to me suggests that those Islamic parties who have been involved in government have maintained a strong anti corruption stance and have not been involved in large scale corruption to the same extent as some members of the other major political parties. The government has taken measures against those Islamic groups which have violent or radical views and many members have been arrested.

The country information suggests that the current caretaker government is taking strong measures to reform the electoral process, prevent political violence and reduce corruption in the police and public service. In these circumstances I do not accept that the applicant would be targeted by either the legitimate or radical Islamic groups. The country information also suggests that the caretaker government and the previous coalition government had taken strong measures to combat Islamic terrorism and had been quite successful in suppressing such activities. Further I do not accept that the applicant has come to the adverse attention of these groups whilst living in Bangladesh.

The applicant claimed in writing that the current caretaker government had banned certain political and trade union activities and restricted demonstrations, processions and strikes to maintain discipline in public life. He claimed that if he returned he would not be able to stand by without protest if he was aware of such restrictions and could therefore be subject to arrest. At hearing I raised the issue of the caretaker's government's attitude to control of political violence however the applicant did not elaborate any further on such a claim.

The country information set out in the UK Home Office report suggests that whilst there have been arrests of persons involved in violent demonstrations only those who have been charged with serious violations of corruption laws or charged with offences involving significant violence have been subject to continued detention. I do not accept that the applicant, and he has not claimed, that he would be a perpetrator of violence if he returned and I therefore do not accept that he would be subject to detention amounting to persecution. Whilst there has been a suspension of certain democratic freedoms in the period of time following the state of emergency declared in January 2007 I do not accept that the effect of these restrictions would result in the applicant facing targeted persecution for reasons of his political opinion.

I have considered all the evidence before me and I conclude that the applicant does not face a real chance of persecution for reasons of political opinion if he returns to Bangladesh now or in the foreseeable future. I am, therefore, not satisfied that the applicant has a well founded fear of persecution for any Convention related reason.

CONCLUSIONS

Having considered the evidence as a whole, 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

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