



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

BANGLADESH  
IAA reference: IAA20/08529

Date and time of decision: 20 July 2020 11:39:00  
V Price, Reviewer

**Decision**

---

The IAA affirms the decision not to grant the referred applicant a protection visa.

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.*

## Background to the review

---

### Visa application

1. The referred applicant (the applicant) claims to be a national of Bangladesh. He lodged an application for a protection visa with the Department on 22 August 2017.
2. On 22 June 2020 a delegate of the Minister for the Department (the delegate) refused to grant the visa to the applicant.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The material provided by the Secretary included information provided by the applicant in the Irregular Maritime Arrival and Induction interview (the arrival interview) in July 2013. It is not clear whether this material was before the delegate at the time of making the decision, and whether it constitutes new information for the purpose of s.473DC(1) of the Act. In the event that it does, I note that it includes relevant information pertaining to the applicant's background and circumstances. I have obtained it and am satisfied that there are exceptional circumstances to justify considering this information for s.473DD(a) of the Act. I am not prevented from considering it. I have considered whether to obtain information from the applicant in relation to the new information. However, noting that the applicant provided this information to the Department and that it is not adverse to his claims, I have determined that obtaining further information is not warranted in this case.
5. No other material has been received or obtained.

### Applicant's claims for protection

---

6. The applicant states that he was born in, and resided in, [Village 1], Sharsha, Jessore, Bangladesh. He is a national of Bangladesh and an adherent of the Muslim faith. His claims as set out in the written statement accompanying his protection visa can be summarised as follows:
  - His father and one of his brothers, KR, engaged in activism on behalf of the Bangladesh National Party (BNP), attending rallies and trying to recruit members. They were not members of the party but his father in particular was passionate about politics.
  - The applicant owned a shop his local area, which offered [occupation 1] and [other] services, such as [details deleted]. In 2011 leaders of the BNP began visiting his shop for [occupation 1] and [the other] services. In particular, the former BNP office secretary, an active BNP party member, the Chairman of the local union council and the leader of the youth with of the BNP. Around August 2011, the BNP placed orders for him to [prepare electoral materials] and he did so a number of times, up until he left Bangladesh.
  - The applicant was not a political person and did not become an "official" member of the BNP. However, he did attend numerous BNP meetings, protests and rallies for the BNP from approximately mid-2011 onwards, attending about eight to ten events. In early July 2011, on his own initiative, he directed his employee, JA, to anonymously circulate

[propaganda] material about the BNP party leaders and activities. The BNP party leaders encouraged him to continue this activity.

- In early 2013, 10 to fifteen members of the Awami League (AL) came into the applicant's shop. They had become aware of his involvement in disseminating the BNP [material]. They verbally abused him, threatened him and demanded he cease his disseminating the material.
  - In about March 2013, at the request of the Chairman of the local union, the applicant attended a protest after Islamic Leader Delwar Hossain Sayeedi was sentenced to death. There were more than 2000 people at the protest and the applicant was at the front. In about the same time, the applicant also attended a meeting regarding the same issue with more than 1,500 other people.
  - [Later in] March 2013 the applicant and his employee were attacked at the shop by 15-20 people from the AL who physically assaulted them and destroyed the shop. The applicant was injured in his leg and shoulders. Some bystanders intervened and the applicant escaped and went to hospital. The applicant has scars from this incident. The same day he, his mother and his brother went to the police station and tried to file a complaint regarding the incident but they refused to take the complaint.
  - [Days later] a group of men came to the family home looking for the applicant. However, he was in hiding with a cousin in Jessore Town. His brother contacted him and advised that his employee at the shop had gone missing. His whereabouts remain unknown but he is believed to have been forcibly disappeared. The applicant arranged to travel to Australia.
  - His family continued to receive threats since he left the country: on about four or five occasions, groups of men have visited the family home seeking the applicant and warning his family not to participate in politics, the most recent incident was in 2016; and in 2014 his brother was assaulted by members of the AL who asked after the applicant.
7. The applicant feared harm, including torture, from the AL and the authorities on return to Bangladesh for the above reasons, stating that it is possible they have filed an unsubstantiated case against him.
8. At interview the applicant expressly stated that he did not fear any harm on return for reasons of his religion. Further, no claims were expressly or implied made to fear any future harm for reasons of his illegal departure, his asylum application and/or as a returnee from Australia/the west. I note that the delegate did not consider these matters, and nor am I satisfied that any claims arise in relation to these matters on the material and evidence before me. I have not considered these matters further in my assessment.

### **Refugee assessment**

---

9. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

## Well-founded fear of persecution

10. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
11. On the documentary and oral evidence before me I accept that the applicant is a national of Bangladesh, that he is of Bengali ethnicity, and he is an adherent of the Muslim faith. I find that Bangladesh is receiving country.
12. The applicant was born in [Village 1], Sharsha uppazilla in Jessore District Bangladesh. Apart from a very brief period of residence in Chittagong immediately prior to his May 2013 departure from the country, the applicant resided in Jessore District. His father is now deceased, he has one [sibling] in Chittagong, but his mother and remaining siblings continue to reside in Jessore District and I find this is the area to which he would return.
13. I accept the applicant's evidence that he ceased schooling after year [grade]. I accept that he learned [occupation 1] and that he ran a store in a store in Jessore which provide [occupation 1] services as well as [other specified] services. He stated his store was in the main street of their village and I accept this claim. I also accept his evidence that he had one employee, JA, who worked in the [other] side of the business
14. The applicant has claimed to fear harm on return to Bangladesh due to the association of he, his father and his brother with the BNP. He has claimed that they were not official members and I accept this evidence. He has provided consistent and credible information regarding his father and brother's support and involvement with the BNP and I accept that: his father and brother both supported the BNP; they canvassed for the party; they organised people to attend rallies; and they attended meetings and demonstrations. I accept the applicant's evidence that his father was passionate about politics.
15. The applicant stated that he was not particularly politically minded, but that he started supporting the BNP party in 2011 due to his father and brothers' work with the party. I accept that he began to support the BNP at this time as claimed. The applicant stated that several senior leaders within the BNP and its youth wing frequented his business and asked him to produce [electoral materials] for their rallies. The applicant was broadly able to describe the process of [preparing the materials] and the description of [these materials] and consistently stated that he [prepared amount range of materials]. I accept that he made [these materials] for the BNP to use for their rallies and meetings as claimed. The applicant also claimed that he and JA circulated [propaganda] materials about BNP party leaders and activities. At interview he explained that this entailed [distributing party information to] their customers. He explained

that the BNP leaders secretly encouraged this activity and that it was done anonymously. I accept that the applicant and JA [distributed party information to people].

16. The applicant claimed that he attended numerous BNP meetings and rallies, and I accept that he did so. He also claimed that he attended a protest and a meeting in February/March 2013 in protest of the death sentence imposed on Islamic leader Delwar Hossain Sayeedi. Information supports widespread protests at this time arising from his conviction for crimes against humanity and I accept the applicant attended the protests as claimed.<sup>1</sup> I have considered his evidence that he was at the front of the first protest and I accept he was. However, the applicant was one of 2000 at the first protest and one among more than 1,500 at the second; he did not claim that he was photographed at these event or that AL members witnessed him participating in these events; and nor has he stated that he organised or otherwise had a prominent role in these events. While the information before me states that 100 people were killed during the protests, it does not indicate that the authorities or the AL afterwards targeted individuals for participating in those events.<sup>2</sup> On the evidence before me I consider the applicant was one participant among thousands at these events and I am not satisfied that he was identified as a participant in these events or that he was targeted by the AL, the authorities or anyone else for his participation in these events.
17. The applicant has consistently claimed since his arrival in Australia that he was threatened by members and supporters of the AL. In his written statement and at interview, he claimed that he was threatened on two separate occasions in early 2013 due to his activities with the BNP including [preparing] and disseminating the [material]. Independent information before me supports longstanding political rivalry between the AL and the BNP and that Bangladesh is historically prone to high levels of politically motivated violence including among supporters of rival parties.<sup>3</sup> However, in this case I have some concerns with aspects of the applicant's evidence on these particular claims, which taken cumulatively, lead me to doubt that the applicant and JA was threatened as claimed.
18. The applicant stated that the orders for the [electoral materials] were made directly by senior leaders of the BNP and that the products were collected by the BNP, and in respect of the [propaganda] material he stated that it was done in secret and anonymously. In these circumstances, it is unclear how the AL came to be aware of his involvement in either of these activities and nor was the applicant able to adequately explain this when asked. At interview he stated that the AL members were local and would have known the BNP leaders frequented his shop and this must be how they knew. However, this does not sit easily with the applicant's evidence that the [propaganda] activities were done anonymously and secretly, and nor does it sit well with his statements that he began to [prepare electoral materials] for the BNP in 2011 and that he disseminated the [propaganda] material in early 2012. On the applicant's explanation, it is not clear how the AL members/supporters would not have become aware of his activities until 2013, or if they knew earlier, why they waited over a year, almost two in the case of the [electoral materials], to target the applicant. Further, while the applicant's father died in 2011, it was his evidence that his brother had a similar longstanding profile with the

---

<sup>1</sup> BBC News, 'Bangladesh Islamist Delwar Sayeedi death sentence commuted', 17 September 2014, CX1B9ECAB12527.

<sup>2</sup> Ibid.

<sup>3</sup> Australian Department of Foreign Affairs and Trade, 'Country Information Report Bangladesh', 22 August 2019 20190822132438 (DFAT 2019 Report); UK Home Office, 'Country Policy and Information Note - Bangladesh - Opposition to the government', 18 January 2018, OG9EF767910 (UK Home Office 2018 Report); International Crisis Group (ICG), 'Mapping Bangladesh's Political Crisis', 9 February 2015, CISEC96CF1145 (ICG 2015 Report); ICG, 'Political Conflict, Extremism and Criminal Justice in Bangladesh', 11 April 2016, p.1, CIS38A8012646 (ICG 2016 Report); Bertelsmann Stiftung, 'BTI 2020 Country Report Bangladesh', 1 April 2020, 20200501092233 (BTI 2020 Report); and Odhikar, 'Annual Human Rights Report 2019 Bangladesh', 8 February 2020, 20200218104232 (Odhikar 2020 Report).

BNP party, canvassing on their behalf and organising people to attend rallies, and yet he was not similarly targeted during this period.

19. I am also not persuaded by the applicant's evidence regarding the second attack against his shop, noting that he did not provide many additional details beyond that set out in the written statement which would be indicative that he was recounting a lived experience. I also have serious doubts about the plausibility of the account that several unarmed men on the street were able to come to his aid by confronting 15-20 men all wielding weapons including machetes, and he was simply able to escape out the back door without being noticed. Further, the applicant somewhat contradicted his own evidence regarding this incident in his written statement stating both that he did not report this incident to the police, and that he and his mother and brother did report it to the authorities but they refused to take the report.
20. The applicant stated that he understood the interpreter at the interview and appeared to respond to the questions put to him and to engage with the interview process. I am not satisfied that there were any issues with the interpretation during the interview such that his evidence on these matters could be misunderstood. Further, even taking into account the passage of time, I consider that the applicant should have been able to provide a plausible account of these events had they occurred as claimed. The applicant appeared to show scars to the delegate during the interview and I accept that he does have scars to his shoulder and leg as claimed. However, I am not satisfied they or themselves corroborate that the applicant was attacked by members or supporters of the AL as he claimed. These matters do not overcome my concerns with the applicant's claims.
21. Having regard to the above matters, I am not satisfied that members/supporters of the AL were aware of applicant's involvement in [preparing] the [electoral materials] or disseminating propaganda material for the BNP. I am not satisfied and he or his assistant JA, were threatened, abused, and physically assaulted by members/supporters of the AL on two occasions in early 2013 for any reason. I accept that the applicant has scars and while this evidence he sustained an injury/injuries at some point, I am not satisfied that he obtained them in the manner claimed, or that his injuries are indicative of a real chance or risk of harm to him on return to Bangladesh now or in the reasonably foreseeable future. Nor am I satisfied that the AL or the authorities searched for him after his departure from the country, or that they have filed any unsubstantiated court cases against him or will do so in the future.
22. Independent information supports that enforced disappearances do occur in Bangladesh; however, targets are typically members of opposition parties, journalists and political activists.<sup>4</sup> It is not evident on the claims and evidence before me that JA had any such profile and I am not satisfied that he was subject to an enforced disappearance as claimed. However, even if he was, given my above findings, I am not satisfied that this was in any way related to his activities while working for the applicant, or that his disappearance evidences a real chance or risk of harm to the applicant on his return to Bangladesh now or in the reasonably foreseeable future.
23. The applicant stated that his brother was attacked in 2014, that his family were threatened not to participate in elections, including in the recent 2018 election, and that his brother's home had been attacked in 2018. On the information before me regarding election related violence, including that set out below, I accept these incidents occurred. However, having regard to my findings above, I am not satisfied either that they corroborate the applicant's

---

<sup>4</sup> DFAT 2019 Report; and United States Department of State (USDOS), 'Country Reports on Human Rights Practices for 2019 – Bangladesh', 11 March 2020, 20200312085617 (USDOS 2020 Report).

claims to have been targeted in the past, or that these events were in any way associated with the applicant's past activities in support of the BNP. Nor I am I satisfied that his brother was asked about the applicant during these incidents.

24. Having regard to the totality of the evidence before me I am not satisfied that the applicant was of any adverse interest to the AL, their supporters or the authorities on his departure from the country in 2013. Given my findings above and that it has now been seven years since he departed the country, I am not satisfied that he is of any ongoing interest to the AL or their supporters, or the authorities. I am not satisfied he faces a real chance of harm from the AL, their supporters, the authorities, or anyone else due to his, his employee JA's and/or his father and brothers' past activities in support of the BNP, or due to the past attacks on his brother, if he returns to Bangladesh now or in the reasonably foreseeable future.
25. I have accepted that the applicant supported the BNP in the past and must consider what he would do on return to Bangladesh. The review material indicates that the AL remains in power following the December 2018 election.<sup>5</sup> The national system of policing can be effective, however information also states that the governing political party, including the AL, have used the police to undermine opposition forces and advance their personal interests.<sup>6</sup> Information from a range of credible sources is that physical and psychological torture is endemic in law enforcement agencies in Bangladesh and that there is an assumption that individuals who are arrested and detained, including on remand, will face treatment amounting to torture.<sup>7</sup>
26. The information also supports that AL members or their affiliates continue to carry out acts of violence towards BNP supporters, including in the recent December 2018 elections.<sup>8</sup> Information confirms allegations of election fraud and voter intimidation in the recent election and that people were threatened not to vote.<sup>9</sup> However, overall the information indicates that the December 2018 election was relatively peaceful in comparison to Bangladesh's previous election cycles.<sup>10</sup> The Australian Department of Foreign Affairs and Trade (DFAT) recently advised that the AL maintains strong disciplinary policies to deal with rogue candidates, and has used these policies on occasion to expel such candidates from the party.<sup>11</sup>
27. In 2018 the United Kingdom Home Office (UKHO) stated that there may be a risk of harassment, threats and prosecution to human rights defenders, journalists, internet bloggers and writers who report on issues sensitive to the government.<sup>12</sup> The UKHO also states that opposition leaders and activists may face harassment or risk arbitrary detention and arrest.<sup>13</sup> This is broadly consistent with information from DFAT that high-profile figures, and senior members of opposition political parties, including the BNP, face a high risk of politically motivated arrest

---

<sup>5</sup> DFAT 2019 Report; USDOS 2020 Report; and UKHO 2018 Report.

<sup>6</sup> DFAT 2019 Report.

<sup>7</sup> DFAT 2019 Report; Human Rights Watch (HRW), 'World Report 2020 Events of 2019', 14 January 2020, 20200115082903 (HRW 2020 Report); World Organisation Against Torture (OMCT) and Odhikar, 'Cycle of Fear Combating Impunity for Torture and Strengthening the Rule of Law in Bangladesh', 25 July 2019, 20190911123050 (Cycle of Fear Report); and United Nations Committee against Torture (CAT), 'Concluding observations on the initial report of Bangladesh UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment', 26 August 2019, 20191115123502 (CAT 2019 Report).

<sup>8</sup> DFAT 2019 Report; UKHO 2018 Report; USDOS 2020 Report; ICG 2016 Report; ICG 2018 Report; Odhikar 2020 Report; BTI 2020 Report.

<sup>9</sup> DFAT 2019 Report; UKHO 2018 Report; USDOS 2020 Report; ICG 2016 Report; ICG 2018 Report; Odhikar 2020 Report; BTI 2020 Report; and HRW 2020 Report.

<sup>10</sup> DFAT 2019 Report.

<sup>11</sup> Ibid.

<sup>12</sup> UKHO 2018 Report.

<sup>13</sup> Ibid.

and legal sanctions.<sup>14</sup> DFAT also stated that active members of opposition political parties who also openly engage in opposition against the current government or engage in political activities and demonstrations, face a high risk of arrest, criminal charges and physical violence from security forces and ruling party activists.<sup>15</sup> Information from both DFAT and the UKHO indicates that politically motivated violence occurs during heightened periods of unrest, particularly national elections and strikes.<sup>16</sup> DFAT states that those who are members of opposition political parties and auxiliary organisations but who do not engage in political activities and demonstrations face a lower risk of arrest, although this may vary according to location and timing.<sup>17</sup>

28. Importantly, both DFAT and the UKHO also state that intra-party violence between AL League factions is now the most common form of politically motivated violence largely due to the party's complete control over state institutions.<sup>18</sup> Overall, in proportion to the size of the major parties, the UKHO assesses that the number of people affected by political violence remains low and has determined that in general, the evidence does not indicate there is a real risk of state or non-state persecution or serious harm (and significant harm) for ordinary party members or supporters, though this will depend on their particular circumstances.<sup>19</sup> I accept and give weight to this information.
29. In this case, I note that the applicant was not arrested or detained by the authorities for any reason in the past, including for any political activities of he, his family, or his employee JA. I have not accepted that the applicant was of any interest to either the AL or the authorities on his departure from Bangladesh, or that he had or will have an unsubstantiated court case filed against him and nor am I satisfied he will be of any interest to the AL or the authorities on his return. I am not satisfied that there is a real chance he will be arrested or detained on his return to Bangladesh or that there is a real chance he will face harm or torture on return to Bangladesh now or in the reasonably foreseeable future.
30. I accepted that in the past the applicant attended meetings, protests and processions in support of the BNP. He has not engaged in any political activities of any kind here in Australia including in support of the BNP despite having the opportunity to do so, and has not claimed that he would do so on return. He further stated that he is not particularly politically minded and his past activities were largely due to his father and brothers' role with the party. Independent information states that about 80 per cent of Bangladeshis have a limited interest in politics and DFAT states they have not seen evidence of forced recruitment to political parties, and considers it unlikely to occur.<sup>20</sup> On the evidence before me, I am not satisfied that the applicant has any interest in engaging in any political activities (including participating in any rallies, meetings or demonstrations) in support of the BNP or anyone else, on his return to Bangladesh and am not satisfied that he will do so now, or face a real chance of harm for this reason now or in the reasonably foreseeable future. Nor am I satisfied that he will be forced to do participate in politics or to support/join a political party on return or face a real chance of harm for this reason on return.
31. However, even if he does engage in some political activities on return, I consider it will be at similar level to that of the past. I consider that he will not be a member but he may attend the

---

<sup>14</sup> DFAT 2019 Report.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid; and UKHO 2018 Report.

<sup>17</sup> DFAT 2019 Report.

<sup>18</sup> DFAT 2019 Report; and UKHO 2018 Report.

<sup>19</sup> DFAT 2019 Report; and UKHO 2018 Report

<sup>20</sup> DFAT 2019 Report.



occasional meeting, protest or rally in support of the party. I have accepted that his brother was attacked on two occasions in the past, including in 2018. I have also accepted that his family were threatened not to vote. However, several years have now passed since these events and, with the exception of one [sibling] who resides in Chittagong, his family continue to live and work in the same area and have done so without further threats or harm. I note that in the past the applicant was not arrested, detained, injured or harmed during any of the eight to ten meetings or two protests that he attended, and I give weight to recent information that: the most recent election was more peaceful than previous election cycles; that in general the number of people affected by political violence remains low; ordinary party members or supporters do not face a real risk of violence; and intra-party violence between AL members (which does not arise in the applicant's circumstances) is now the most common form of politically motivated violence. I accept that violence does occur during election cycles, however having regard to all of the information before me, and the applicant's particular circumstances, I consider that the chance of him facing politically motivated violence or that he will be arrested, detained and/or tortured for supporting and/or voting for the BNP now or in the reasonably foreseeable future is remote. I am not satisfied that the applicant faces a real chance of harm, or torture, due to any politically motivated violence or his political opinion or those of his family, on return to Bangladesh now or in the reasonably foreseeable future.

32. Information indicates that those with strong political connections find it easier to obtain employment.<sup>21</sup> However, in this case, the applicant has been employed as [an occupation 1] and owned his own business in Bangladesh in the past. He has family in Bangladesh, including his mother who continues to reside in the family home and several siblings who reside in the same district. While I accept he may have difficulty accessing formal employment without relevant connections, on the above information and his profile I am not satisfied he will be unable to access informal work including for reasons related to the political activities of he, his brother or his father. I am not satisfied on the evidence that the applicant will be unable to find accommodation and employment on return to Bangladesh now or in the reasonably foreseeable future or that he otherwise faces a real chance of harm.
33. On the totality of the evidence before me, I am not satisfied that the applicant faces a real chance of harm, including torture, on return to Bangladesh now or in the reasonably foreseeable future from the government, any members or associates of the AL, the authorities, or anyone else due to politically motivated violence, or any reason associated with the actual or imputed political opinion and activities of the applicant, any of his family members and/or his employee JA.
34. I am not satisfied that the applicant faces a real chance of harm on return to Bangladesh now or in the reasonable foreseeable future for any of the reasons he has claimed, including taken individually and cumulatively. He does not have a well-founded fear of persecution.

#### **Refugee: conclusion**

35. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

---

<sup>21</sup> DFAT 2019 Report.

## Complementary protection assessment

---

36. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

### Real risk of significant harm

37. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person
  - the person will be subjected to torture
  - the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
38. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
39. I have found above that the applicant does not face a real chance of harm on return to Bangladesh. As 'real chance' and 'real risk' involve the same standard,<sup>22</sup> I similarly find for the same reasons and on the evidence set out above (including the applicant's accepted claims and circumstances and the independent information cited above), that the applicant's claims as discussed above do not give rise to a real risk of harm for the purpose of s.36(2)(aa) of the Act.
40. Having regard to the applicant's claims individually and cumulatively, I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there is a real risk that he will suffer significant harm for any of the reasons he has claimed.

### Complementary protection: conclusion

41. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

## Decision

---

The IAA affirms the decision not to grant the referred applicant a protection visa.

---

<sup>22</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

---

### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

***cruel or inhuman treatment or punishment*** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***degrading treatment or punishment*** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***receiving country***, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

***torture*** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
  - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
  - (c) for the purpose of intimidating or coercing the person or a third person; or
  - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
  - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.  
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.  
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### **36 Protection visas – criteria provided for by this Act**

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

#### *Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

#### *Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.