



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA21/09132

Date and time of decision: 1 June 2021 10:51:00

I Sheck, 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) is a Bangladeshi national born in Jessore district. He departed Bangladesh [in] February 2013 and arrived in Australia [in] June 2013. On 20 July 2017 he lodged an application for a protection visa (PV).
2. On 30 April 2021 a delegate of the Minister (the delegate) refused to grant the visa. The delegate did not accept that the applicant would be killed on return to Bangladesh by people to whom he owed money, or by the Bangladeshi authorities due to being a Muslim man. The delegate concluded that the applicant would not face a real chance of harm in Bangladesh due to his illegal departure from Bangladesh or for having claimed asylum in Australia.

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). No further information has been obtained or received.

Applicant's claims for protection

4. After his arrival in Australia the applicant was interviewed by an officer of the then Department of Immigration and Border Protection on 13 June 2013. Together with his PV application lodged on 20 July 2017 he provided a statement of claims. The applicant attended a telephone interview ("the PV interview") with the delegate on 23 April 2021. The applicant claims:
 - If he is returned to Bangladesh he will be harmed due to being unable to repay debts. He borrowed around [amount] so that he could go overseas and find a better life. If he is returned to Bangladesh he will not be able to repay this;
 - He also fears harm from the Bangladeshi authorities. He has heard that the police in Bangladesh are killing Muslims.

Factual findings

5. Based on the information consistently provided in his application, documents and oral evidence, I accept that the applicant's background is as follows: he was born on [date] in [his home] village, Jessore district. He is of Bengali ethnicity and Sunni Muslim faith. He [has specified family members]. He completed [number] years of primary education only. The applicant was employed [in industry 1] and in [industry 2 businesses] (engaged in [two specified tasks]) in Bangladesh. He married in 1999 and his daughter was born in [year]. His wife and daughter remain in his family home in Bangladesh. In Australia, he has been employed in [industry 1] since 2017.
6. At the outset of the PV interview the applicant claimed that he was not a Bangladeshi citizen. He based that claim on the fact that he did not currently hold a national identity card. In her Reasons for Decision, the delegate noted that "on the Departmental records, the applicant's citizenship has been recorded as 'Stateless'". It is not clear why the Department's records would show this. At both his arrival interview in 2013 and on his PV application in 2017 the applicant stated that he was a citizen of Bangladesh. He provided with his PV application copies of his Bangladeshi birth certificate and a "Chairman's Certificate" from the chairman of his local

upazilla (administrative region), certifying that he is a permanent citizen of Bangladesh. I am satisfied that the applicant is a Bangladeshi citizen. The delegate also asked the applicant whether he had a passport when he departed Bangladesh and the applicant responded that he did, but the people smugglers had taken it from him in [Country 1]. In his arrival interview the applicant described his journey from Bangladesh to Australia in detail. He advised that he had flown from Chittagong in Bangladesh to [Country 1]. He used his legally issued Bangladeshi passport, which had been issued to him in 2010. In his statement of claims he again submitted that he departed Bangladesh on his genuine passport. I find that this was the case.

7. The applicant has consistently stated that he fears returning to Bangladesh because he owes people money and they will kill him if he cannot repay what he borrowed. He has heard of people being killed because they owe much lesser amounts. He advised at the PV interview that he owned a piece of land so in 2013 he mortgaged this for the sum of)[amount].¹ It is unclear whether the land in question was used for farming or some other purpose. From his work history, the applicant has only been employed in [industry 1] and [industry 2], not farming. The applicant's oral evidence at the PV interview was quite confused, but it appears that he may have borrowed from another person or persons in order to pay the [amount] Taka a month repayments on the mortgage. He did not know the name of the man who held the mortgage, it appears that this person was a friend of the applicant's father, who passed away in 2017. He has not given any details of the other people to whom he may owe money, including whether they are family members. The applicant stated that he has been sending money to his wife, to make the repayments on the money he owes. He also sends his wife [amount] by way of family support.
8. Although I accept that the applicant borrowed money in order to fund his travels to Australia, I am not persuaded that his failure to repay any amounts that he still owes will result in his death or beatings as claimed. As is usual with a mortgage, and as the applicant confirmed at the PV interview, his failure to repay will result in the mortgage holder becoming the owner of the piece of land. As he has now been absent from Bangladesh for eight years, this may already have occurred, although the applicant did not state that it had. It is unclear how much if anything the applicant owes to any other parties by way of unsecured loans. The delegate put to the applicant that if he returns to Bangladesh and no longer has his land, how will he earn money? The applicant responded that he did not know, however I note that it appears that the piece of land was to an extent irrelevant in determining the applicant's available funds prior to his departure from Bangladesh, as he was employed [in industry 1] or in [industry 2 businesses]. On the evidence before me, I do not accept that the applicant will be harmed by the holder of the mortgage or any other people to whom he owes money, on return to Bangladesh.
9. The applicant also claimed in his statement of claims that he feared harm from the Bangladeshi authorities as he had heard that the police were killing Muslims. He did not mention this claim at all during the PV interview. The applicant has provided no country information or media articles to support this claim however as some 89 per cent of Bangladesh's population is Muslim² it is a logical conclusion that most Bangladeshis who are killed by the police will in fact be Muslim. It appears that the applicant contends that the Bangladesh police are killing people because they are Muslim. This is not supported at all by any country information and I reject the claim.

¹ Department of Foreign Affairs and Trade (DFAT), DFAT Country Information Report Bangladesh, 22 August 2019, 2019082213243842; 3.73

² Ibid; 3.27

Refugee assessment

10. 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

11. 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.

12. As I have found the applicant is a Bangladeshi national; it follows that Bangladesh is his receiving country. I have not accepted that the applicant faces a real chance of harm on return to Bangladesh, from any people that he owes money to. I have rejected his claim that the Bangladeshi police are killing people because they are Muslims.

13. Although not raised by the applicant, and although it does not appear to me to clearly arise on the materials, the delegate considered whether he faced any chance of harm as a returning failed asylum seeker who had departed Bangladesh illegally. I have found that the applicant departed Bangladesh using his legally issued passport. He no longer has that document. The International Organization for Migration's Assisted Voluntary Returns and Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Bangladesh government; Bangladesh accepts both voluntary and involuntary returnees.³ There is nothing in the material before me indicating any mistreatment of returnee asylum seekers. DFAT assesses that most returnees, including failed asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily.⁴ I am not satisfied that the applicant faces a real chance of any harm in Bangladesh on the basis of having made an application for asylum in Australia. The review material does not support a claim that people who have spent time in Western countries will face any adverse attention on return to Bangladesh, other than high-profile individuals who have engaged in political activities outside Bangladesh.⁵ The applicant does not claim to have been politically active in any way either in or

³ International Organization for Migration, "Bangladesh", 1 August 2014, CIS29397

⁴ DFAT Country Information Report Bangladesh, 22 August 2019, 2019082213243842; 5.30

⁵ Ibid

outside of Bangladesh. I am not satisfied that the applicant faces a real chance of any harm due to the time that he has spent in Australia.

Refugee: conclusion

14. 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).

Complementary protection assessment

15. 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

16. 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.

17. 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.

18. I have concluded above that the applicant does not face a real chance of harm from people to whom he owes money or because he sought asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard,⁶ I am equally not satisfied that the applicant faces a real risk of significant harm on return for the purposes of s.36(2)(aa) for these reasons.

Complementary protection: conclusion

19. 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).

⁶ *MIAC v SZQRB* (2013) 210 FCR 505

Decision

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

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.