



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA21/09701

Date and time of decision: 9 October 2021 16:05:00

N Micallef, 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 citizen of Bangladesh. He arrived in Australia [in] August 2013 as an unauthorised maritime arrival. On 10 August 2017 he lodged an application for a subclass XE-790 Safe Haven Enterprise visa (SHEV) claiming to be a member of the Jamaat-e-Islami political party in Bangladesh and claiming to fear serious or significant harm in Bangladesh on the basis of actual or imputed political opinion.
2. After interviewing the applicant on 19 May 2021 about his protection claims (the SHEV interview), a delegate of the Minister for Immigration (the delegate) refused the visa application on 16 August 2021. The delegate did not accept his claimed political involvement nor that he had any adverse profile of interest to any authorities or political parties or other actors in Bangladesh. She was otherwise not satisfied that the applicant faced a real chance of serious harm or a real risk of significant harm in Bangladesh for any reason.

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) (the review material).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's SHEV application claims can be summarised as follows:
 - He is a Bangladeshi citizen from [Village 1], Nilphumari District of Rajshahi Province in Bangladesh, where he was born in [year] and grew up. He worked in [Industry 1] after completing college education to [grade].
 - Since 1995, he has been a member of the Jamaat-e-Islami political party (JI)[detail deleted]. He attended meetings, although less frequently after [year] when he commenced work (about 11-12 times a year).
 - In about 2000/2001, members of the then-ruling Bangladesh Nationalist Party (BNP) offered him employment and bribes to do projects. When they did not pay him and he continued to ask for payment, they caused trouble and burned down his family home. He and his family all went into hiding for several years in different locations, until the BNP lost government, when he returned to his home village.
 - When the Awami League party (AL) came into power in about 2008/2009, AL members demanded payments to the party of income percentage from workers earning under 100,000 Taka. He refused to pay and was beaten one day in December 2009 by a group of about eight armed AL members. They made him swear to pay up 500,000 Taka in a few days and work for them. Instead of paying he escaped and went to live in Chittagong. He avoided being found by moving house every nine months and no-one there knew him. He got married during this time. In the three years he lived in Chittagong he would go home to visit his family in secret.
 - After he escaped his village, the AL beat up his father and then put a court case against his father and prevented him from going to mosque during Ramadan. After he left

Bangladesh for Australia, the AL came to his village to look for his wife and in 2017 had gone to his village and questioned his neighbours about his whereabouts.

- He has read in news and heard from friends that since coming to power the AL have targeted JI followers as terrorists. JI leaders were killed by the government for following Islamic rules. He fears that the AL will target him as a JI member as people may have told them of his membership, and as a registered JI member his name may be on a government list of political parties and its members.
- In Bangladesh he will be seriously harmed by the Awami League, including being followed, harassed, abducted for money, killed, imprisoned or seriously injured. He will be harmed by them for his political activities and opinions; and because he refused to pay them the money demanded in 2009; and because they would know of his return through the airport and presume that he had a lot of money from living abroad.
- There is nowhere in Bangladesh he would be safe or protected and he cannot live permanently in hiding.

Factual findings

6. The applicant has consistently maintained his claimed identity and nationality since arrival in Australia, including since first interviewed in the Irregular Maritime Arrival Entry Interview of 30 August 2013 (2013 Arrival interview). There is no serious contention of this claim and I note that in August 2020 he approached the International Organization for Migration (IOM) for assisted voluntary return to Bangladesh. I accept his evidence, supported by a Bangladesh-issued international driving licence. I accept his identity as claimed, with the spelling and date of birth as clarified by the delegate and that he is a citizen of Bangladesh, born there as claimed. I accept that he is [an age]-year-old Bangladeshi from [Village 1] in Nilphumari District of Rajshahi Province. I accept that Bangladesh is the receiving country for purpose of this review.
7. I accept the applicant married in Bangladesh in about 2012, but is now divorced and his wife has remarried in Bangladesh, and that he has a new partner in Australia, also a Bangladeshi asylum seeker. I accept that after completing college in [year] with [grade] the applicant commenced work in his cousin's [business] in their village and then became a partner in 2002, working mainly in Nilphumari District, all over the District, and sometimes in Rangpur.
8. The applicant's claims of harm in Bangladesh and his reasons for leaving and fearing return, concern politics in Bangladesh and his own claimed political involvement with the JI. I have considerable concern with the applicant's claimed political involvement and claimed ensuing political problems in Bangladesh.
9. As background context, from the country information before me I note that national politics in Bangladesh has long been dominated by a bitter rivalry between the two main parties in opposition to each other, the AL party and the BNP.¹ These parties have, since 1991 alternated in government power. The JI is and has always been a separate and distinct political party from the BNP; however, it supported the BNP to form government in 1991, and, despite joining with the AL in some anti-government street protests in the mid-1990's, has been allied with the BNP since at least 1991, and was a coalition partner in the BNP

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438 (DFAT Bangladesh Report 2019); Frances Harrison, "Political Islam and the Elections in Bangladesh", New Millennium, 1 June 2013, CIS27813 (Political Islam Report) (including pages 41; 44; 122)

government of 2001 to 2006, until the AL came into power in January 2009 after winning the 2008 elections. The AL has remained incumbent since 2009. The vast majority of Bangladeshis are Muslim, and Islam is the state religion. The JI is the largest Islamist party in Bangladesh, committed to the creation of an Islamic state with a sharia legal system, and to the removal of 'un-Islamic' laws and practices. In contrast, the AL party promotes a secular political identity. After it assumed government in 2009 the AL instituted the war crimes trials before the International Crimes Tribunal in which several JI leaders were tried for abuses committed during Bangladesh's Liberation War, in which JI had sided with Pakistan against Bangladesh. Several JI leaders were convicted and sentenced either to death penalty or life imprisonment, leading to several strikes and violent protests by JI activists in this aftermath. Since coming to government power the AL has considerably restricted the activities of opposition political parties, in particular the BNP and JI. I do not accept that any JI leaders, members or supporters have been killed for following Islamic rules.

Claimed political involvement

10. There was significant escalation in his claimed political involvement from the SHEV application Statement of Claims (SHEV statement) that he was a member of JI since 1995, who sometimes attended meetings, but less frequently and only when called after he had commenced working - to his SHEV interview evidence that he had been a JI member since 1990, and not just a member but had held a "big position" in the party - the role of Thana (or Upazilla²) -level [Official A] of the JI, [assisting] the Thana President. His role was to look after the meetings, for which he was required to collect all the documentation of the agenda from the hierarchy, collect all the people for the meetings and give speeches at the meetings on topics specified by the hierarchy. The President would lead the meetings, at which up to 2000 people would attend. I note that the SHEV statement was prepared with legal assistance and advice from [Agency 1]. Notwithstanding the limited time available in the [Agency 1] assistance, given that JI membership and attendance at JI meetings was raised in the SHEV statement, I find it very difficult to believe that, if indeed the applicant had held a formal and big role in the JI party and was not just a meeting attendee but instrumental in organising and giving speeches at large party meetings, that this would never have been mentioned at all in the SHEV statement. This raises considerable credibility concern.

BNP Attack

11. The applicant's first incident of claimed political problems was the burning down of the family home. His written claim was that this was by BNP members, in 2000/2001, because he had demanded from them payment of money they had offered him to do [specified] works for them and for which work they did not pay. This was not at all supported by his contrary SHEV interview evidence. Asked to describe the problems he had faced from the BNP in Bangladesh, his response at first indicated bemusement about any BNP problems, until reminded by the delegate that he had claimed they burned his house down. He then stated that it was nothing to do with him – it was an issue his family had had when he was very young and still at school (which, on his earlier evidence, he had completed in [earlier year]) because his family were in JI and some BNP gangsters demanded money from his family and burned the house when his family did not pay up. The delegate's concern at these very different and conflicting claims put to him, the applicant did not explain the contradiction, stating only that it was long ago, and he feels pressured and needed time to think about it. After a relatively long pause in the interview at that point (whilst the delegate made notes), he then agreed that the BNP had offered him a job but then said they demanded lots of

² Political Islam Report

money but which they (his family) could not pay. He said the BNP and JI were now friendly and he has no concerns with them.

12. The contradictions in this claim are significant and material and, even taking into account nerves and pressure felt by applicants at interviews, I am not satisfied that the applicant would easily forget or confuse whether the family home being burned down was due to his demands to be paid by the BNP for work done for them when he was working in [Industry 1] several years after having left school, or did not involve him at all and was due to BNP gangsters extorting his family for money whilst he was still a young boy at school.
13. Moreover, the applicant's written claims were that after the BNP burned the house in 2000/2001 he went into hiding from them, in Faridpur, only returning to his village when the AL defeated the BNP and came into power in 2009. In the wider context of his claims of being JI and his family targeted for that, I consider this claim of being in hiding from the BNP for nearly eight years to 2009 not only improbable but also difficult to reconcile with the fact that the JI was in alliance with the BNP and part of the national BNP government of 2001 to 2006, with 17 parliamentary seats, and remained in alliance with BNP for the 2008 elections (after the intervening military caretaker government).³ There is no information before me to support that any BNP members or associated groups or persons targeted JI members for any form of harm, nor that, with the influence of the JI party, in government with BNP, that JI members would be unable to seek protection or police assistance from any harm. In addition, his claims of years in hiding from BNP, even during the period of being in school, which he said he completed in [year], is inconsistent with the country information that the AL party had alternated into government in 1996 to 2000, and also with his SHEV application education history claims which record that he attended his education from primary to college level [grade], uninterrupted, in his home area.
14. I find the applicant's evidence inconsistent, contradictory and unpersuasive. I do not accept that his family home was burned down by any BNP members or supporters or affiliated gangsters, or any other groups or persons, or that he or his family went into hiding because of this or for any reason or at all.

JI Involvement

15. The applicant's claims that the BNP and JI were one party in the 1990s and then separated, leading to him going into hiding from them until 2009 when the BNP lost power, are plainly wrong on the country information described above about the BNP/JI alliance and the periods of it, even if he was inferring a coalition alliance rather than being the one and same party. I consider this fundamentally incompatible with his claimed role of being a long-term member of the JI and a titled office-holder and unpersuasive of the level of political engagement with JI he claims to have had in Bangladesh. Moreover his evidence indicated fundamental ignorance of the existential threat to the JI as a political party in Bangladesh, as indicated by the country information of a High Court case concerning the legality of JI as a registered political party in Bangladesh, and the subsequent banning of JI from participation in the 2014 and 2018 elections due to its anti-secular views.⁴ Asked in the SHEV interview if the JI still contest in elections in Bangladesh the applicant responded that "there were no elections because even the BNP are not contesting, everyone was boycotting the elections". Yet the BNP did contest the 2018 election, under a coalition banner of Jatiya Oikya Front.⁵ He made no mention at all of the formal banning of JI's participation in the process, and stated he did

³ Political Islam Report; DFAT Bangladesh Report 2019

⁴ Ibid.; Ibid.

⁵ DFAT Bangladesh Report 2019

not know who the current President of the JI is, despite his claimed continued involvement in the party and that it is his heart and soul, and I consider his evident ignorance of such matters incompatible with his claimed JI involvement .

16. The applicant's evidence of becoming a JI member did not accord with the country information.⁶ Contrary to his written claim that he joined in 1995, he stated in the SHEV interview that he became a member in 1990. As pointed out to him by the delegate he would have been only [age] years old at this date, and I find this improbable and not credible. The applicant explained that in school the Islamic clerics or mullahs would come and put their names on a list and make them attend lectures or discussions by JI – he would just stand and listen. So, his name has been and remains on the membership list since [school grade]. Then when he went to college, he became more involved in JI and slowly worked his way up in stages to become the Thana [Official A] of JI. The applicant was asked several times what the requirements were for becoming a JI member and how he became a member, but he said only that his name was on the list since school, that he paid the 25 Taka membership fee and had to attend monthly meetings. In complete contrast, the Political Islam Report indicates that the requirements to become a full member of JI (Rukon), from associate or primary members (Shohojogi Shodohyo) through workers (Kormi) involves recruits having to complete personal report cards including details of fulfilling required mosque prayers, completing required Quran readings, and passing examinations on Islamic texts and undergoing self-criticism sessions. Members must pay not only an annual 'Islamic tax' but also monthly donations and other one-off donations. The Chhatra Shibir is the student wing of JI - an auxiliary organisation, and a separate structure. It was not mentioned or claimed at all by the applicant, and given its notoriety and that it is one of the largest Islamist student organisations in South Asia it is not credible the applicant would not have mentioned it if this was the organisation he claimed to be member of. Its membership requirements also require that volunteer workers keep personal records of religious activities, preach Islam, attend meetings and make donations; and associate members and full members further have increasing pre-requisites of Islamic texts studied and to pass tests and make oath of allegiance.
17. It was put to the applicant by the delegate that becoming a JI member was a rigorous process and he was asked what steps he had to take to become a member, but his evidence was only that because he was young when he was signed up, he knew nothing about that. Even if the applicant had not yet completed the stages and become a full member of JI (which I do not find he even commenced), I consider his evident ignorance of the process of becoming a member of JI (or Chhatra Shibir) completely at odds and incompatible with his claimed long involvement in the JI as a member and as an office holder of [Official A] at Thana level. The applicant claimed he attended an Islamic high school. I am willing to accept that when the applicant was a child at school, there may have been occasions when the students were required by the local mullahs to attend lectures or meetings by people associated with JI. However, for all of the reasons discussed above, I do not otherwise find his evidence of JI involvement to be credible. I do not accept that he was a member of the JI, even if his name was once put on a list, when he was at school, of students attending a JI meeting. I do not accept this equates to or would be perceived as his name begin on a list of JI members, workers or associates. I do not accept that he was any level of worker or member of, or was otherwise actively involved in supporting the JI (or Chhatra Shibir) after completing school.
18. Moreover, the applicant's evidence about going into hiding was very vague and shifting. His evidence veered from his SHEV statement claims that he left his village in December 2009

⁶ Political Islam Report; DFAT Bangladesh Report 2019

and went into hiding in Chittagong, to his contradictory SHEV interview evidence that because of his political problems he stopped working altogether and stayed in hiding after 2005, to stating that his 'political problems' escalated in 2011 and it was after that that he left his village to go into hiding. His interview evidence varied between that he had gone to Chittagong in 2009 and stayed there until he left for Australia, to that when he left his village he was in hiding in different places, including Faridpur, Dinajpur and Dhaka for nearly three years before going to Chittagong where he lived in hiding for about one and half years before departing for Australia. I find this evidence unpersuasive and unreliable, even accounting for difficulty of recollection of precise dates after prolonged time.

19. Although in both written and interview evidence the applicant maintained that the AL were demanding payment from all people in business or earning a certain level of income, and that he did not pay it, however, his evidence of being personally targeted by the AL, causing him to leave his village, was also contradictory. His SHEV statement claim was that it was because in December 2009 he had been beaten up by a group of eight or nine armed AL people who only let him go when they made him swear to pay up [amount] Taka in a few days, and go work for them. However, his SHEV interview evidence was that he was targeted because he was JI, that a group of 23 people stopped him on his bike and said they were going to beat him because he was JI. He managed to persuade them not to by offering to give them some money at another time and so they let him go. After one or two days at home he ran away from his village. He could not recall where he went to but thought maybe it might have been to Dinajpur. He thought this was at the end of 2010.
20. The applicant did not agree with the delegate when put to him that these details were inconsistent. However, I consider they are, in material aspects. I consider it very surprising and undermining of his credibility that if this incident had occurred, claimed to be the ultimate incident that caused him to leave his village home, that there would not be a consistent recollection of the number of men who confronted him, of whether he was beaten or not, of whether it was because they were enforcing money he had not paid or were targeting him because of being JI and he offered to pay for his release, and that he would not clearly recall where he went to stay on his immediate escape from his village in such a circumstance.
21. I note DFAT observed that in rural areas, AL activists and members have reportedly extorted business owners associated with the BNP, threatening them with violence if they do not comply with demands for money.⁷ However, I do not consider the applicant's claims that all the people were being extorted by the AL to be consistent with this reporting. I also do not consider it credible that if as claimed he had returned to his village from BNP hiding when the government changed from BNP to AL in the 2008 elections, and was a prominent JI member and speaker at large JI meetings, and was conducting a [business] partnership with his cousin and was refusing to pay monthly money demanded by the AL, that it would only be in December 2009, or the end of 2010, or sometime in 2011 (on his variable evidence) that this came to the notice of the AL to act upon. I consider it incongruous and inconsistent that there was no indication that the [business] was similarly targeted or impeded but rather, evidently on his claims, continued in business as his cousin supported him financially in all the years he was in hiding by remitting him money from the partnership.
22. The applicant's claimed repercussions on his father of his escape – being beaten up by the AL, a false court case against him and obstructed faith practise - were not supported in his SHEV interview evidence. When asked about any impact on his family, his evidence was only that

⁷ DFAT Bangladesh Report 2019

his brothers also face problems and are also living in hiding away from the village, for their JI involvement, which they only continue in secret. His written claim that he has no idea where his siblings are living in Bangladesh was inconsistent with his knowledge of their continued but secret JI involvement and with his evidence that he calls his brothers every one or two months and that his sisters are married and live with their husbands 45 (or 4 to 5) km away from their village.

23. Overall, for all the reasons discussed above, I find the applicant's evidence was vague, inconsistent and contradictory in material aspects. Even taking into account that recounts of events and recall of exact dates can vary to some degree over time, and the complexities of cross-cultural communications including through interpreters, and any nerves or pressure the applicant may have felt in the interview and the lengthy questioning, including if, as claimed late in the interview he has diabetes. However, on careful assessment overall, I am not satisfied that these concerns about the evidence, claimed to be of personally experienced matters are explained by any such factors. I am not satisfied that he has given a genuine account of his circumstances in Bangladesh or his reasons for leaving Bangladesh. I do not find his claims that he faced any threat to his life or fear of harm in Bangladesh to be credible and I do not accept them.
24. Unlike the delegate, I do not place weight on the applicant's omission to mention any JI involvement in the Arrival interview (the second Irregular Maritime Arrival Entry Interview, of 24 October 2014 (2014 Arrival interview)). Such omission does raise some concern in light of his subsequent claims. And I have some doubt about the applicant's explanation in the SHEV interview when put to him under s.57 of the Act, namely amazement that he would not have said so; then that maybe he had not understood; that when he came off the boat he did not realise he had to submit a case; that he had told no-one of it after going into hiding until after realising after being in Australia that he could tell everything, as I note that this 2014 Arrival interview was held over a year after he had arrived in Australia, and on his claims he specifically came to Australia for protection from the profile he had in Bangladesh as a JI member. Nevertheless, from listening to the audio of this interview, I note that the applicant was not assisted by a Bengali interpreter in this interview, which was conducted in English. And whilst he had a relatively good command of English, answers to some questions at the relevant section of Part C concerning reasons to leave Bangladesh and events there were a little confused, and at some relevant areas the interviewing officer and applicant talked over each other, with some succeeding questions quickly moved onto without clarification. I rest my assessment of the applicant's claims and their credibility on the preceding analysis and discussion above. I also place no weight on his request to IOM for assisted voluntary return to Bangladesh, noting different pressures on applicants particularly in financial straits with lack of family support here, and noting it was withdrawn.
25. On my analysis discussed above, I do not accept that the applicant was or is a member or supporter of JI (or Chhatra Shibir) or had any active involvement in the party or was [an Official A] or any other level of worker or office holder in JI (or Chhatra Shibir). I do not accept that the applicant ever had or has any imputed profile of JI (or any other political party) involvement, affiliation or support from any AL members, supporters, or any AL-associated persons or groups or any other state or non-state actors. I do not accept his name is on any list of JI (or Chhatra Shibir) members or any list of other adverse concern to authorities. I do not accept any of the applicant's claims of being threatened or assaulted or extorted for money and I do not accept that he faced any harm in Bangladesh as claimed or for any reason or left Bangladesh in fear for his life or safety. Whilst the applicant may have lived in Chittagong before departing for Australia, I do not accept that he went into hiding there or anywhere else, for any reason or any length of time before he left Bangladesh for

Australia. I do not accept that his brothers or family had any such political involvement as claimed or were targeted after the applicant left, or are living in hiding. I find that when the applicant left Bangladesh, he had no profile of any adverse concern or interest for any reason with the AL or any state or non-state actors. I do not accept that any AL groups or persons have been searching for or asking about the applicant since he left his village or came to Australia.

Refugee assessment

26. 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

27. 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.
28. As I noted earlier, since coming to power in Bangladesh the AL-led government has increasingly repressed the activities of opposition political parties, particularly the BNP and JI (and JI has since been disqualified from election participation). I acknowledge that AL activists and law enforcement agencies in Bangladesh have perpetrated various forms of harassment and intimidation, including arrests and legal proceedings and politically motivated violence or human rights abuses against actual or perceived political opponents.⁸ The country is historically prone to high levels of politically motivated violence, predominantly in the form of violent clashes between supporters of different factions of the same party (intraparty violence), supporters of rival parties (inter-party violence), and between party supporters and law enforcement agencies, and which tends to peak during periods of heightened political unrest, including during elections, hartals, strikes and blockades. However, overwhelmingly, such politically-motivated violence or law-enforcement action including arrests have predominantly been against the senior leaders, high-profile members and activists of opposition political parties and their auxiliary wings, in particular

⁸ DFAT Bangladesh Report 2019

the student wings, with risk of adverse attention from authorities or AL activists increasing for those active opposition members who engage in political activities, demonstrations and violent protests.⁹ Moreover, DFAT reported that inter-party violence is reported to have declined since 2015, with most politically-motivated violence increasingly involving rival factions within the AL party. And whilst perceived or actual JI supporters have reported being followed or intimidated, significantly, I note DFAT also reported that it was not aware of any arrests, harassment or other discrimination against JI-member candidates (running independently noting the party's deregistration) in the 2018 elections.

29. As and for reasons already discussed, I do not accept that the applicant is a JI or Chhatra Shibir member, supporter or activist. His evidence did not persuade me that he has any genuine political affiliation or interest in any party. I am willing to accept he may not be a supporter of the AL. There is no credible indication before me that he has been engaged in any form of political activity or group since leaving Bangladesh. I am not satisfied on any evidence before me that the applicant would become a member or active supporter of JI or any other opposition party or auxiliary organisation upon return to Bangladesh, or that he desires to or would actively participate in any opposition party's political activities or demonstrations, strikes, clashes or rallies. And I find that this would purely be from lack of any political interest, rather than any fear of consequences.
30. The country advice before me does not support that ordinary politically non-aligned citizens are for that reason, or for not belonging to or supporting the AL political party, targeted or subjected to acts of harm or mistreatment, including extortion or threats, nor does it support that such Bangladeshis are imputed to hold adverse profile of JI or any other opposition political party support for those reasons. I consider the chance of the applicant being targeted or subjected to any or any such form of harm or imputation on those bases to be very remote.
31. Whilst I accept that politically motivated violence can occur around elections and times of heightened political unrest, the evidence indicates that for the foreseeable future it will remain the case that the civilians harmed in outbreaks of political violence will, overwhelmingly, continue to be the members and activist supporters of Bangladesh's rival political parties (and the rival factions within those parties) who participate in clashes with each other and with the security forces during such times. Even if the applicant were in the reasonably foreseeable future to exercise his right to vote in any elections, and even if not for the AL, on all the information before me I consider the chance of him facing or being caught up in any politically-motivated violence or intimidation or any other harm at the hands of the police or any government authorities, or AL officials or members or supporters or any other groups or persons to be very remote.
32. I am not satisfied that on return to Bangladesh or in the reasonably foreseeable future, the applicant would face a real chance of any harm for reasons of any actual or imputed political opinion, arising from being politically non-aligned or not an AL member or supporter, or voting for any other party in elections, from any state or non-state actors.

Returnee/Data Breach

⁹ Ibid.; Political Islam Report

33. The applicant claimed that he would be perceived by the AL to have money on return to Bangladesh from abroad and face harm. For reasons discussed, I do not accept the applicant is or would be of adverse interest to the AL if he returned to Bangladesh, including from abroad. More broadly, the DFAT report indicates that Bangladesh has a very large diaspora, and tens of thousands of Bangladeshis exit and enter Bangladesh every year. Absent having a profile of adverse concern to authorities such as certain political profiles, particularly with the BNP, or high-profile individuals who have engaged in political activities abroad, or people convicted of war-crimes in absentia, none of which apply to the applicant on the evidence before me, DFAT assesses that the authorities are unlikely to take any interest in returnees from abroad, including failed asylum seekers (which the applicant would be).¹⁰ And there is no indication or support in the material before me that returning from Australia, including as a failed asylum seeker, whether returning voluntarily or involuntarily, would cause the applicant to come to any adverse attention of any authorities in Bangladesh or the AL or any other persons or groups, or would cause any groups or persons, state or non-state actors to perceive the applicant to be wealthy or to have money on that basis. I am not satisfied that the applicant would face real chance of being imputed to be wealthy or to have money, or to have any other profile of adverse interest or concern on the basis of being a returnee from Australia after failing to secure asylum here, in the reasonably foreseeable future.
34. I acknowledge that there is poverty-driven crime in Bangladesh, including criminal violence, extortion, and abduction of business-people for ransom.¹¹ However, I am not satisfied that the country advice indicates that this is targeted at returnees from abroad, nor that it is at any prevalence that indicates or supports that this presents a chance of harm that is any more than remote for the applicant on return or in the reasonably foreseeable future as an ordinary Bangladeshi citizen, including as a returnee from Australia after failing to secure asylum, even if he were to resume working in his [Industry 1] business or any other business. There is no indication before me that any of his family members or relatives in Bangladesh are experiencing or being targeted for any or such crime.
35. I am not satisfied that the applicant would face any real chance of being followed, harassed, abducted for money, killed, imprisoned or seriously injured or any other form of harm, by any state or non-state actors, on return to Bangladesh or in the reasonably foreseeable future as a returnee from Australia after failing to secure asylum, even if he were to resume working in his [Industry 1] business or any other business, even taking into consideration his profile as a politically non-aligned person and not a supporter of the AL.
36. The delegate considered the impact to the applicant of the inadvertent disclosure on the Department of Immigration and Border Protection's (DIBP) website in February 2014 of personal information of people in immigration detention as at 31 January 2014, which included the applicant (the Data Breach). However, the applicant had raised no claim to fear harm on this basis. I assess it as it is raised before me by the delegate in the review material. It is possible that authorities or other persons in Bangladesh saw or accessed material in the Data Breach. As evidenced by the DIBP letter concerning this Data Breach, accessible information included the name, date of birth, nationality, gender, and details of when, reason for and where the immigration detention was and whether any family members were in detention of such people including the applicant. No personal address or contact details or health information was included nor any information concerning any protection claims.

¹⁰ DFAT Bangladesh Report 2019

¹¹ DFAT Bangladesh Report 2019; The Daily Star, "Population boom setting development efforts at naught", 25 July 2009, CX248444

37. Even if any Bangladeshi authorities or other persons saw the applicant's identity details in the Data Breach, I am not satisfied any persons or authorities would know from that any more than that he was in Australian immigration detention at that time. Whilst that information might allow Bangladeshi authorities or others to infer that the applicant had departed Bangladesh and might seek asylum in Australia, such an inference would be available in any event to the authorities from the circumstances of the applicant's return on vetted and issued travel documents after failing to secure asylum here.¹² People known to him from his village may know of his return from abroad in any event; however, I consider it extremely remote that any persons or groups beyond those would identify or recognise him from that Data Breach on his return. As discussed above, I find that being a returnee from Australia, including who failed to secure asylum here, would not result in or lead to a real chance of any harm for the applicant. I am not satisfied that there is any real chance that the Data Breach would change or elevate that assessment, or that the applicant would face a real chance of any form of harm as a result of the Data Breach from any state or non-state actors in Bangladesh in the reasonably foreseeable future.

Health

38. The delegate assessed consideration of health treatment in Bangladesh for diabetes, stress and high cholesterol in the decision. The applicant mentioned in the SHEV interview only that he has diabetes and has stress. The delegate invited the applicant to provide further information after the interview about any claims, including his health issues, before a decision was made; however, he did not do so. I am willing to accept the applicant has diabetes, which I accept is a condition requiring ongoing treatment. I am willing to accept the applicant may be under stress related to the interview and the protracted process and uncertainty of his visa application. There is no diagnosis of any mental health concern before me nor evidence of any, or ongoing treatment for such, and I am not satisfied that the applicant has any mental health illness or issues that require ongoing treatment that he would need in Bangladesh. I do not agree that the applicant mentioned high cholesterol in his interview. There is no evidence before me that he is on or requires ongoing treatment or medication for cholesterol. I am not satisfied that he is or does.

39. I note that Bangladeshis have access to public government-funded healthcare, as well as through non-governmental organisations (NGOs) and private sector.¹³ Health services are available at local level in village clinics which support larger primary care hospitals, and then secondary district or central hospitals. DFAT reported that health care facilities in Bangladesh are generally poor in quality. Although some private sector services offer better quality, they are more expensive. Nevertheless, the country information indicates that Bangladesh has committed to achieving universal health coverage by 2032, and has made exceptional progress in health, with infant mortality down, life expectancy up and good disease control, and major achievements in immunization rates.¹⁴ Bangladesh has a significant pharmaceutical industry, and is principally self-sufficient concerning medicines, with a wide range available, including insulin and statin medicines.¹⁵ The UK Home Office reported in 2019 that treatment and medication is free for adult patients with Type 1 diabetes and otherwise a range of insulin products are available in Bangladesh including locally produced medications, and imported product although this can be more expensive. A range of

¹² DFAT Bangladesh Report 2019

¹³ DFAT Bangladesh Report 2019; United Kingdom Home Office (UKHO), 'Bangladesh Medical and Healthcare issues', 1 January 2019, 20190805134111 (UKHO Healthcare Report 2019)

¹⁴ UKHO Healthcare Report 2019 (citing 2018 report of The World Bank); Reuters, "Bangladesh makes "exceptional health progress despite poverty"", 21 November 2013, CX315815

¹⁵ UKHO Healthcare Report 2019 (also citing Landinfo and at Annex A)

healthcare services for diabetes are provided through the Bangladesh Institute of Research and Rehabilitation in Diabetes Endocrine and Metabolic Disorders and also by and/or in conjunction with the Diabetic Association of Bangladesh. Although there is increasing demand for diabetes medication, putting pressure on resources, the UK Home Office reported from sources that the share of the population believed able to afford diabetes treatment had increased, and treatment costs had decreased over the years. Whilst there may be some variability in access to and expense of certain medicines or treatment in Bangladesh, the country information indicates that this is due to increasing demand on resources and shortage of healthcare professionals in Bangladesh. I am not satisfied that the applicant would be unable to obtain care, treatment or medication in Bangladesh for diabetes or any other health concern, and I am not satisfied that any barriers to care, treatment or medication he might encounter from accessibility issues or expense, if any at all, would be for or due to a s.5J reason, nor that he would be denied necessary care or treatment or medication for any such a reason.

40. In the SHEV interview, reiterating his claimed fear of return to Bangladesh, the applicant added that on top of everything else there is Coronavirus now. It is completely speculative that the applicant would catch any coronavirus infection in Bangladesh or would otherwise fall ill or face harm from that virus or any other illness and I am not satisfied that there is a real chance that he would do so on return to Bangladesh or in the reasonably foreseeable future, nor, noting the information above concerning general and hospital healthcare, that he would be unable to obtain necessary care or treatment in Bangladesh. Further, in any event, I am not satisfied that any possible coronavirus infection in the future is or would be for or due to a s.5J reason, nor that he would be denied necessary care or treatment for any such a reason.
41. Considering the circumstances of the applicant in their totality, and on the all evidence before me, I am satisfied that the applicant does not have a well-founded fear of persecution in Bangladesh within the meaning of s.5(J)(1) of the Act

Refugee: conclusion

42. 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

43. 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

44. 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.
45. 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.
46. As and for reasons discussed above, I accept the applicant has diabetes and some stress; and I accept he may require ongoing treatment for diabetes if returned to Bangladesh. I find it completely speculative as to whether the applicant might be infected with or adversely affected by Coronavirus if returned to Bangladesh in the reasonably foreseeable future. As discussed in detail above, the country information indicates that there is a range of public, NGO and private health care resources available to Bangladeshi citizens including community level and primary and tertiary hospital care, including services specifically for diabetes patients, and with a range of insulin (and other essential) medicines available in Bangladesh including locally manufactured ones.¹⁶ Whilst there may be some variability in access to and expense of certain medicines or treatment in Bangladesh, the country information indicates that this is due to increasing demand on resources and shortage of healthcare professionals in Bangladesh. I am not satisfied that there is a real risk that applicant would be unable to obtain or would be denied care, treatment or medication in Bangladesh for diabetes or any other health concern he may have, including, if at all, any possible Coronavirus. Moreover, I am not satisfied that the applicant’s diabetes, or stress or any possible Coronavirus infection, if any, in the future, or such challenge of access or expense of care, treatment or medicine (if any) would constitute significant harm for the applicant, as I am not satisfied that these amount to nor would cause or lead to any real risk of the intentional infliction of cruel, inhuman or degrading treatment or punishment, or of the death penalty, torture or an arbitrary deprivation of life if the applicant were returned to Bangladesh in the reasonably foreseeable future.
47. I have otherwise found that there is no real chance of the applicant facing any harm in Bangladesh for any reason claimed or arising before me. Having regard to the same information and analysis, I find there is not a real risk of the applicant facing significant harm as defined for any or any combination of those reasons if returned to Bangladesh.

Complementary protection: conclusion

48. 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.

¹⁶ Including: DFAT Bangladesh Report 2019; UKHO Healthcare Report 2019; Reuters, “Bangladesh makes “exceptional health progress despite poverty””, 21 November 2013, CX315815

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.