



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA19/07048

Date and time of decision: 18 September 2019 14:31:00

S McNeill, 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 national of Bangladesh. On 28 April 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV application). He claims to fear persecution from the Awami League (AL) because of his involvement with Hefazat-e-Islam (HI) and he is a 'half-caste' because his mother is Rohingya.
2. On 22 August 2019 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa.

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. In this review I have obtained new information. I have obtained the Australian Department of Foreign Affairs and Trade (DFAT) Country Report for Bangladesh published on 22 August 2019.¹ This report replaces the DFAT Country Report for Bangladesh of 2 February 2018 relied on by the delegate. The 2019 report has been prepared specifically for the purpose of assisting in the determination of protection status and provides more up to date information of country conditions in Bangladesh. I consider there are exceptional circumstances to justify considering this new information.
5. On 17 September 2019 the IAA received an email from the applicant's new representative which included a legal submission. The submission consists mostly of legal argument as to why the delegate's decision was wrong and to that extent it may be considered as argument rather than information, and which I have noted.
6. The representative notes in her submission the delegate relied on the 2018 and 2016 DFAT reports in her decision and submits exceptional circumstances exist to justify the consideration of the most recent report, that of 2019. As noted above I have already obtained the 2019 DFAT report. The representative's submission also contains further detail or explanation that was not in the review material.
7. Firstly, the representative notes concern was raised by the delegate that the applicant was unable to provide the name of the HI leader, but identified him as Mawlana Shafiullah (as per his written claims). The representative submits "ullah" written after Shafi is a prefix in Arabic which means "of god" and the prefix Mawlana means Master. The representative submits the applicant was correct to identify the HI leader as Mawlana (being master) Shafi-ullah (meaning Shafi of God) and the delegate should have given weight to the cultural naming and prefixes used when referring to a senior member of the party that the applicant supports. Whilst the delegate noted Mawlana was a title used for respected Muslim religious leaders, the literal English translation and meaning provided to Mawlana Shafiullah is new information.
8. Secondly, the representative states the applicant's father is currently disabled down one side of the body having had a stroke. He is bedridden and unable to move without assistance and does not leave the house. This is new information.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Bangladesh", 22 August 2019, 20190822132438.

9. Thirdly, the submission includes an extract from the Freedom House Annual Report on Political Rights and Civil Liberties in 2018 for Bangladesh.² This is new information.
10. The legal submission does not identify these three matters as new information contrary to the requirements of the IAA 'Practice Direction for Applicants, Representatives and Authorised Recipients' (Direction) which came into effect from 17 December 2018. A copy of this Direction was emailed through to the representative on 28 July 2019. Under this Direction there is an obligation on the applicant or their representative to clearly identify which parts of the material given to the IAA is new information including any new information referred to in submissions. Furthermore, an applicant or their representative must provide an explanation in writing as to why this information could not have been given to the Department before the decision was made, or the information is credible personal information which was not previously known and may have affected the consideration of the applicant's claims, had it been known. Given these instances of noncompliance with the Direction I have decided not to accept this new information per s.473FB(5). The applicant's representative was aware of the requirements of this Direction but has disregarded them. Moreover, there has been no effort to explain how this information might meet s.473DD, noting it is for the applicant to satisfy the IAA that s.473DD(b) is met.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:

- He was born in [year] in [Village], Comilla district, Bangladesh and is a Sunni Muslim of Bengali ethnicity.
- His father was a well-established [businessman] with a [shop] in the local [Bazaar]. His father used to live in Cox's Bazar where he met his mother who was Rohingya and had fled with her family from Myanmar. He and his siblings are derogatorily regarded as half castes; they suffered a lot and he had to drop out of school in year [number].
- His family are devout Muslims and were well-connected with an Islamic teacher Mawlana Shafiullah who established the Hefazat-e-Islam (HI) organisation. It is not a political party.
- In early 2013 young Bangladeshis were demanding capital punishment for the '1971 War Criminals'. This was challenged and opposed by the opposition parties (Bangladesh National Party (BNP) and Jamat-e-Islami (JI)) and the HI.
- On 5 May 2013 HI organised a protest demanding a trial of "atheist bloggers" and new legislation to provide punishment for blasphemy and called on devout Muslims to march on the capital Dhaka.
- On 4 May 2013 he travelled with three friends to Dhaka on an open-hood truck. His father and uncles travelled by different means. Their truck was intercepted by police and paramilitary after [a location] and they were offloaded from the truck and walked to Shapla Square with tens of thousands of followers.
- On 5 May 2013 at 6.30am they entered Dhaka. With his cousin A and three village friends he went to the Central mosque (Baitul Mukkaram) to perform their midday prayer then returned to Shapla Square opposite the Bangladesh Bank. The whole day they chanted and demonstrated against the current regime.

² 'Freedom in the World 2019 – Bangladesh', Freedom House, 4 February 2019, 20190418140340.

- Problems started after sunset. He went with A and his friends to take shelter under the shade of the Dhaka Stock Exchange building. AL supporters entered the square and around 8pm they stormed on them with arms and weapons. The police did nothing.
- The attackers beat them and he saw someone shoot in the crowd and then run off. Two people were shot dead; one K was a BNP worker from his village, the other a JI member from Comilla city. He and his friends escaped. That midnight the AL escalated the violence and hundreds of HI supporters, workers and followers died by the police.
- On 7 May 2013 he returned to his village in the afternoon. The next day BNP and JI leaders accompanied him to the local police station to give evidence of their fellow's murder. The police refused to enter a General Diary (GD) and told them it should have been reported where it happened.
- On 8 May 2013 a local MP called him to his house but he was too afraid to go. That evening AL worker approached his father to tell him to stop cooperating with the opposition parties.
- On 9 May 2013 in the afternoon some police officers questioned him about the murder and asked him to come and make a statement the next afternoon. That evening the AL stormed his house, threw bricks at his house and demanded his parents hand him over. He hid.
- On 10 May 2013 in the evening along with his cousin they secretly left, arriving in Chittagong on 11 May and took shelter at his aunt's. They left Bangladesh by boat.
- He fears being killed by AL people if returned to Bangladesh. They have threatened to kill his father. The BNP and JI will ask him to appear as a witness in the murder case. He also fears the community will not support him because he is racially a half-caste.

Refugee assessment

12. 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

13. 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.
14. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Bangladesh and that Bangladesh is the receiving country for the purpose of this review.
 15. I have carefully considered the applicant's claims for protection but overall I find the applicant to be lacking in credibility. At his SHEV interview of 12 August 2019 the applicant presented a different account of events to that of his written claims included in his SHEV application; there were also a number of significant discrepancies between the two versions. The applicant's knowledge of HI was vague and insufficient given his claimed devotion to the organisation and his claim that his family were well-connected to its founder and Islamic teacher. There were also a number of discrepancies between his entry interview and his SHEV application that the applicant was unable to adequately explain.
 16. Information before me indicates the applicant arrived in Australia [in] June 2013 and that he participated in an entry interview on 28 June 2013. I have the transcript of this interview and I have also listened to its recording. Asked his reasons for leaving Bangladesh, the applicant stated he came here because of the political problems; he was involved with JI and AL activists were causing him problems. There was a club in his area and they pressured them to go there and if he did not they would come and torture them. This first happened in 2012 whilst he was involved with HI. Told he had said he left on 5 May 2013 and asked whether something specific happened, the applicant said 'he was going there and the police obstructed their way. He returned in the evening, the afternoon. In the afternoon when he returned from there he went directly to Chittagong because his mother rang and told him the AL followers were causing problems and looking for him at home. Asked what he thought would happen if he returned to Bangladesh; the applicant said he would be caught by the police. The JI were under very strong police surveillance and he will be in a difficult situation.
 17. Asked whether he or any members of his family had been associated with or involved with any political group or organisation, the applicant stated 'yes'. He was involved with the JI attending meetings and processions and went to the office when the leaders called them. Asked whether he or any family members were involved in any activities or protest against the government, the applicant said 'no'. Asked whether he was a member of any social or religious group, the applicant stated he was involved with HI and JI.
 18. The applicant in his entry interview whilst acknowledging an involvement with HI primarily spoke of his involvement with JI; that he attended their meetings and processions. In his SHEV application the focus shifted wholly to an involvement with HI with no reference to any active or passive involvement with JI. When he did mention JI it was that he claimed the BNP and JI people approached him to support them as a witness in the murder case of their colleagues and that he was threatened by the BNP and JI to support them in the probe of a murder. At his SHEV interview the applicant stated he wasn't politically active in any political party only that he supported JI but that it was banned in Bangladesh.
 19. Whilst the applicant in his entry interview alludes to going somewhere on 5 May 2013 he does not specifically state it was to participate in the 'Shapla Square Protest'. He only stated that he was going there, the police obstructed their way and he returned in the evening, then the afternoon. This presents as a one day occurrence. In his SHEV application he talks about the HI protest of 5 May and that he, his friends, cousin, father and uncles all set off on 4 May and that they arrived in Dhaka on 5 May at 6am. He stated they chanted, demonstrated and rallied the whole day until 8pm when the AL civilian group attacked. After the shooting they escaped and

the violence escalated after midnight, he returned to his village on the afternoon of 7 May 2013.

20. At his SHEV interview the applicant was still present in the Square at 1.30 to 2am on 6 May when they turned off the electricity, lights and cameras and started shooting, they somehow managed to escape and he arrived home the evening of 6 May. In his SHEV application it was on the following day after he arrived home (8 May) that he was approached to go to the police station with BNP and JI leaders but the police refused to take his GD. He claimed the following morning on 8 May 2013 he was called by the local Parliament Member to his house and that evening AL workers approached his father. On 9 May 2013 the police approached him in the afternoon about whether he had seen a murder and to come to the police station the following day on 10 May. The same evening (9 May) AL stormed their house and on 10 May he and his cousin left for Chittagong arriving on 11 May. His address history in his SHEV application has him living in Chittagong from 11 to 21 May 2013 a period of almost 10 days.
21. In comparison at his SHEV interview the applicant stated on 7 May people approached his father asking about him and on 8 May the police came to his house and he was present. His father said it was not safe to stay there and he went to Chittagong. On 9 or 10 May the police came to know he was in Chittagong. He stated he stayed in Chittagong three to four days. Asked when he first decided it was unsafe for him to live in Bangladesh, the applicant stated 10 or 11 May but he couldn't remember the exact date as it was six years ago. This is a difference from his entry interview date given of 5 May for the date he went to Chittagong because his mother called to say the AL followers were looking for him.
22. Furthermore, in his entry interview the applicant did not mention witnessing a murder. In his SHEV application on 5 May at Shapla Square after 8pm he witnessed two men shot dead by an assailant, one from man his village named A, a BNP worker, and the other a JI member from Comilla city. Again this narrative changed at his PV interview when he stated he only witnessed one person being killed from his area and he didn't know his name, it was on 5 May in the afternoon when they were close to Shapla Square and they went to Shapla Square with his dead body.
23. Whilst in his SHEV application the applicant provided a somewhat detailed description of the events leading up to the protest arriving in Dhaka at 6.30 and attending the Central Mosque to then returned to Shapla Square (dead opposite to Bangladesh Bank). He took shelter under the shade of the Dhaka Stock Exchange building in Motijiheel C/A. Whilst the applicant demonstrated some knowledge of Shapla Square at his SHEV interview, he described it as a roundabout with roads running of it and that it had a flower at its centre unlike his claims he was not able to name any of the buildings surrounding the square. The applicant when asked about the buildings could only state there were a lot of buildings surrounding the square but he did not have any family in Dhaka (his reason for being unable to name any buildings.)
24. The applicant's knowledge of HI and his involvement with them was also unimpressive. The applicant stated HI was not a political party but an organisation. His parents and grandparents were religious and always practiced religion, praying and this influenced him to join in the activity. Asked about these activities, the applicant said most of the time they called them to join their different meetings and Islamic gatherings. He started his involvement began in 'maybe' 2010 or 2011. Asked why he had not been involved before that, the applicant said because before that 'they' were not so strong, there was no promotion or ad so he did not know anything about them at that time. His father was involved with HI and he didn't know or think anyone in his family were involved with them. Asked about the benefits of him joining HI, the applicant said they used to help the conditions of Muslims in his country and in that way

they helped people to develop themselves especially Muslim people. They used to meet them and invite people to come and when people came there they used to stay with them. Asked what the aims of the HI were, the applicant stated their aims were to stop incidents and things happening to Muslims in Bangladesh such as people using social media to be critical of Islam. Asked what sort of things were happening that H was trying to oppose, the applicant stated lots of incidents but he couldn't remember them properly. He stated he spent about two to four hours a week with HI, not too much.

25. Asked who found HI, the applicant said Mawlana but he had forgotten his name. (In his SHEV application he claimed it was Mawlana Shaffiullah) It was founded in 2004, 2005 or 2006 and he couldn't remember who its current leader was although he knew it. HI was linked to JI. He was involved with JI but not for very long. Asked what the protest on 5 May was about the applicant said HI had 13 demands, he couldn't remember all their demands. The ruling party was not interested in accepting those demands. In discussing the protest the delegate asked the applicant what happened when they got to the Communist Party office; the applicant said they were not going to the office but to Shapla Square. Asked what happened at the AL headquarters, the applicant said when they went there they were attacked although they did not attack them. The AL damaged cars and they said the HI people did it.
26. In my view the applicant's description of his involvement in HI activities lacked both substance and contextual detail to convince me of any actual participation by the applicant. Whilst the applicant demonstrated some familiarity of HI, his knowledge of HI, its 13 demands and key events at the protest was also deficient considering his claimed allegiance and connection to HI.
27. Country information in the review material indicates HI is an association based fundamentalist group in Bangladesh formed January 2010 to protest against the secular education policy of the Bangladeshi government and is politically backed by JI. Ahmad Shafi, director of Hathazari Madrasa and Mufti Izrahul Islam, the chairman of an Islamist party, are regarded as its founders and its current leader is Allama Shah Ahmad Shafi. In 2013 HI started protesting against the Shahbag movement, which demanded capital punishment for Bangladesh liberation war criminals. It arranged a siege and rally in Dhaka on 5 May 2013 to demand their 13 points. These demands included execution of so-called "atheist bloggers", a blasphemy law, cancellation of the country's pro-women development policy, a ban on the mixing of men and women in public, a ban on candlelit vigils and erecting sculptures in public and an end to "shameless behaviour and dresses". On 5 May they attacked the Communist Party of Bangladesh's office at Motijheel and burnt it. A clash was also carried out by them in front of the AL headquarters at Paltan, Dhaka. In the early hours of 6 May security forces launched operation '2013 Operation at Motijheel Shapla Chattar' to prevent HI violence and drive them out of Dhaka and the police cut the power supply to the city's commercial area.³ The information also indicates the HI were responsible for causing damage including torching the Communist party headquarters and 50 vehicles and several buildings at Motijheel and set fire to 100 shops including book stores beside the National Mosque; security forces got involved after the scheduled demonstration exceeded its time limit and turned violent.⁴ The applicant's claim that it was AI who destroyed the cars in front of their office contradicts country information that the HI people were responsible for the damage. The applicant could not

³ Hefazat-e-Islam Bangladesh, World Heritage Encyclopaedia, 17 February 2016, CIS38A8012255; 'Bangladesh clashes rage over blasphemy law', Aljazeera, 06 May 2013, CXC28129414946; 'Hefazat-e Islam Islamist coalition', BBC News, 06 May 2013, CXC28129414966; 'Bangladeshi capital wears an eerie calm a day after Islamists battle police', Cable News Network (CNN), 07 May 2013, CX307110.

⁴ Hefazat-e-Islam Bangladesh, World Heritage Encyclopaedia, 17 February 2016, CIS38A8012255; 'Bangladesh clashes rage over blasphemy law', Aljazeera, 06 May 2013, CXC28129414946.

clearly identify HI's leaders. He also could not pinpoint its foundation stating between 2004 and 2006 when it was only formed in 2010.

28. As noted above the applicant has provided inconsistent accounts of the sequence of events which lead him to depart Bangladesh throughout the protection application process and this includes differing period of time he gave for spending in Chittagong on his departure. Whilst I note the passage of time since his claimed stay in Chittagong, a difference of five days is still substantial given this was the period when he was purportedly fleeing harm. Furthermore given the claimed impact of witnessing the two murders at the protest resulting in his need to flee Bangladesh I would expect this incident, and the pressures he faced from the various political parties resulting from it, to be included at his entry interview for his reasons for leaving.
29. When presented with inconsistencies between his entry interview and his later evidence, the applicant stated during his (entry) interview he made lots of mistakes and he was mentally sick and if the delegate listened to the recording of that interview she would understand. I have listened to the recording of the entry interview and I am not satisfied the applicant was 'mentally sick'. In other discussions about his entry interview the applicant himself again stated he had made some mistakes in his entry interview, he now had a recording of the entry interview and it made him laugh when he listened to it. The applicant did not state at any time that he was feeling unwell during his entry interview. Although this interview took place over six years ago there is no evidence before me from a medical professional to corroborate the applicant's claim to have been mentally unwell then or at any time since he has been in Australia.
30. Taking all my concerns into consideration I am not satisfied the applicant participated in a protest in Shapla Square on 5 May 2013 with HI. I do not accept he was present in Shapla Square or that he witnessed the murder of a BNP worker and a JI member. I do not accept that he was asked to appear as a witness by the BNP or JI to give evidence of these murders. I do not accept the police came to his house looking for him or that he was called by the local Parliament member or that his father was approached by AL workers and threatened him (the applicant) to stop cooperating with opposition parties. I do not accept that on 9 May 2013 the AL people attacked his house or that the AL has threatened to kill his father. I reject this claim in its entirety.
31. The applicant has consistently claimed to have had some involvement with HI throughout the protection application process. Despite his tenuous knowledge of HI and the rejection of his claim to have participated in the Shapla Square protest in 2013 orchestrated by HI, I am willing to accept the applicant holds some affection for the religious organisation and that he may have had some low level support for HI whilst in Bangladesh. However, I am not satisfied his interest in HI brought him to the attention of the authorities or any other political party prior to his departure from Bangladesh. The applicant has not claimed to have had any ongoing involvement with HI this past six years whilst in Australia. There is no information before me to suggest that HI, other than their protests in 2013, have encouraged ongoing protests and demands from the government. I am not satisfied that the applicant faces a real chance of any harm in Bangladesh from the AL due to his past and limited involvement or support of HI over six years ago now or in the reasonably foreseeable future.
32. The applicant has also provided conflicting evidence in relation to his involvement with the JI. In his entry interview he attended JI meetings, processions and went to the office when the leaders called them. This contrasts significantly with his written claims where his only connection to JI is witnessing the murder of the JI member and being approached by JI to

support them in the murder probe. At his SHEV interview he stated he was not active in any political party but he supported JI but that was banned. The applicant has not claimed to have been politically active in his support for JI whilst in Australia. I am willing to accept the applicant is a low level passive supporter of JI but that he is not otherwise politically active.

33. DFAT notes that since the AL came to power in 2008 it has considerably restricted the activities of opposition parties, particularly the BNP and JI. These restrictions have included using the police and other security forces to arrest thousands of oppositional political party members and supporters, often in conjunction with political demonstrations, prevented them from holding meetings or demonstrations and pressured oppositional candidates to withdraw from local and municipal elections.⁵ DFAT assesses that under the current AL government, senior members of oppositional political parties (particularly the BNP) face a high risk of politically motivated arrest, legal charges, and travel bans. Active members of opposition political parties and auxiliary organisations who participate in demonstrations also face a high risk of arrest and physical violence, both from security forces and ruling party activists. This risk is elevated around times of heightened political tension, including elections. Those who are members of opposition political parties and auxiliary organisations but who do not engage in political activities face a lower risk of arrest.⁶ Bangladesh is historically prone to high levels of politically motivated violence (PMV) especially during elections, strikes and blockades. Intra-party violence has become more common than inter-party violence, particularly among AL factions.⁷
34. JI is the largest Islamist party in Bangladesh within historical strongholds in Chittagong. JI's size has significantly reduced in recent years in the wake of mass arrests, with many former JI members joining other parties (including the AL). DFAT understands that despite its reduced size, JI is still well organised and influential in Bangladesh. Authorities have particularly targeted for arrest the JI's senior leadership, few of who remain free and active. Other targets include prominent leaders including its student wing members and family members. Lower-level members have reportedly been able to avoid attention either by paying bribes or relocating. DFAT assesses as credible reports that the situation is better for JI members in villages than in cities. People perceived as being JI supporters have reported being followed or intimidated. DFAT assesses senior JI leader face a high risk of arrest but ordinary members who do not engage in political activities and demonstrations face a low risk of arrest.⁸
35. Whilst I have accepted the applicant is a low level passive JI supporter I have found him not to be politically active. The information before me indicates it is JI's senior leaders or its active members who are targeted and at greater risk of arrest or harm. The applicant does not fit this profile. Whilst the information indicates some people perceived as being JI supporters have been followed and intimidated, this appears to be limited to government critics and I am not satisfied there is a real chance of the applicant being intimidated or followed given his political inactivity. I am not satisfied the applicant is a member, cadre or active supporter of the JI or any other political party in Bangladesh. Given his lack of credibility and the absence of any political involvement or participation in Australia, I am not satisfied he has a genuine commitment to be politically engaged or that he would seek to be actively involved in politics on his return to Bangladesh. The applicant has not indicated that he would engage in political activities on his return to Bangladesh and in light of my rejection of his prior participation in the HI protest at Shapla Square, I am not satisfied that the applicant would become politically active on his return to Bangladesh.

⁵ DFAT, "DFAT Country Information Report - Bangladesh", 22 August 2019, 20190822132438, 3.67.

⁶ Ibid 3.70.

⁷ Ibid 3.92-3.94.

⁸ Ibid 3.83-3.88.

36. Whilst I accept PMV remains a problem in Bangladeshi, taking into account the applicant's personal circumstances and the country information before me, I am not satisfied that the applicant faces a real chance of any harm in Bangladesh from the AL or other political groups or for any other reason. I am not satisfied the applicant faces a real chance of any harm on a political basis on his return to Bangladesh now or in the reasonably foreseeable future.

Rohingya mother and being considered a half-caste

37. The applicant claimed his mother is a Rohingya born in Myanmar but sometime in the early 70's his grandfather had to flee Myanmar to avoid persecution and attack by the Burmese regime. They crossed the land border to Bangladesh and settled in a township named Teknaff. His father used to live in Cox's Bazar for business purposes and became connected to his maternal side and married his mother. He and all his siblings were derogatorily regarded as 'half caste'. They suffered a lot especially the eldest three and could not continue their schooling and he had to drop out of school from year [number]. As a half caste he was bullied and harassed at school. I note in his SHEV application his mother although recorded as being born in [Arakan], Myanmar; her citizenship is listed as Bangladeshi. The applicant's Bangladeshi birth certificate included in the review material also indicates the applicant's mother is a Bangladeshi national.

38. At his SHEV interview the applicant confirmed he was a citizen of Bangladesh. The applicant stated he finished school in either year [number] or [number], he couldn't remember. Asked why he stopped studying, the applicant said he wanted to continue studying but his mother was from overseas; she was Rohingya and he would be teased. Lots of students would tease him but he could not remember their names. Asked how people in his area knew his mother was Rohingya, the applicant said everyone in his area knew she was Rohingya; when his grandfather was alive he did not allow his father to come home and he stayed in Chittagong most of the time and after his grandfather died he moved back to their village. Asked if he lived in another part of Bangladesh would people know his mother was Rohingya, the applicant said people did not bother about these things these days and they didn't bother politically who is Rohingya.

39. Country information in the referred material indicates Bangladesh has a long history of hosting Rohingya with the majority in Cox's Bazar.⁹ Rohingya refugees from Myanmar have arrived in Bangladesh since at least the 1978, that there were an estimated 900, 000 to one million undocumented Rohingya in Bangladesh now living in almost all of the 64 districts.¹⁰ Regardless of their arrival date in Bangladesh, Rohingya are not eligible for Bangladesh citizenship including through marriage.¹¹ Rohingya can be difficult to distinguish from local Bangladeshis.¹²

40. DFAT notes that prior to the influx of August 2017 relations between the locals and Rohingya in Cox's Bazar have generally been peaceful but the new influx had raised tensions within the local community because of competition for jobs.¹³ DFAT understands there is widespread sympathy in Bangladesh for the Rohingya based on the perception that their persecution in Myanmar is due to their Muslim faith.¹⁴

⁹ Ibid 3.15.

¹⁰ Country Reports on Human Rights Practices for 2017 – Bangladesh, US Department of State, 20 April 2018, OGD95BE927381; 'Rohingya refugee census - Refugees spread across Bangladesh ', New Age (Bangladesh), 13 December 2016, CXC9040667493;

¹¹ DFAT, "DFAT Country Information Report - Bangladesh", 22 August 2019, 20190822132438, 3.22.

¹² Ibid 3.25.

¹³ Ibid 3.18.

¹⁴ Ibid 3.16.

41. Despite some evidence to the contrary and despite my credibility concerns regarding the applicant, I am willing to accept the applicant's mother is a Rohingya. The applicant himself is a Bangladeshi citizen. Other than some teasing or bullying at school the applicant did not otherwise identify any substantive problems stemming from the fact his mother is Rohingya. I accept the applicant may have experienced some teasing at school but I am not satisfied the primary reason he left school at the end of year [number] or [number] in [year] (according to his SHEV application) approximately [number] years ago was because of this.
42. Based on the applicant's own evidence that people in Bangladesh do not care about these sort of things these days, that his mother is a Rohingya, and on the above country information, the fact that the applicant himself is a citizen of Bangladesh, I am not satisfied the applicant faces a real chance of any harm in Bangladesh now or in the reasonably foreseeable future due to his mother being Rohingya or that he might be perceived as a 'half caste'.
43. I am not satisfied the applicant faces a real chance of any harm on his return to Bangladesh now or in the reasonably foreseeable future.

Refugee: conclusion

44. 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

45. 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

46. 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.
47. I have concluded that the applicant does not face a real chance of any harm for the reasons claimed. Given 'real chance' and 'real risk' involve the same standard, I am not satisfied he faces a real risk of any harm on these bases.

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.

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.