



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA19/07111

Date and time of decision: 4 October 2019 19:04:00
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] June 2013 as an unauthorised maritime arrival. On 18 April 2017 he made an application for a sub-class XE-790 Safe Haven Enterprise Visa (SHEV) claiming that he will be harmed in Bangladesh for reasons of actual or imputed political opinion. After interviewing the applicant on 8 August 2019, a delegate of the Minister for Immigration (the delegate) refused to grant this visa on 30 August 2019, on the grounds that Australia did not owe protection obligations to the applicant.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
3. On 26 September 2019 the IAA received a written submission from the applicant's representative. To the extent that the submission reiterates information that was before the delegate and addresses the findings of the delegate, and makes criticism of the lack of reasoning of the delegate in making her findings, this is argument and not information. I have had regard to the submission in my review.
4. The submission argues that the applicant should be afforded an interview with the IAA if the IAA has concern with the applicant's credibility. The submission argues this is especially so as the delegate made bold assertions against credibility without providing reasons for such assessment.
5. I have regard to the fact that the IAA is a limited form of fast-track review, and is confined to reviewing the decision to refuse a visa application upon the review material, subject to provisions of Part 7AA of the Act. The IAA conducts a de novo review and is not bound by the delegate's findings on the evidence of any matter or their reasoning. The IAA allows for certain written submissions to be received from an applicant outlining reasons for disagreeing with a delegate's decision or highlighting presented claims or matters that were overlooked by the delegate. The applicant has availed himself of this allowance and has provided his written submission to the IAA about his concerns, including addressing issues of credibility and, as already noted I have taken it into consideration in my review below. The applicant has presented his claims to the Department and has been afforded an interview at which his protection claims were fully discussed in person and at which he was represented. He was afforded and responded to the opportunity to make written submissions after the interview and before the delegate's decision, and those are also before me in the review material and I note they address issues of credibility. I am not satisfied an IAA interview is necessary and have decided not to invite the applicant to an interview.

Applicant's claims for protection

6. The applicant's written claims from his SHEV application and post-interview submissions can be summarised as follows:
 - He is a Sunni Muslim and a citizen of Bangladesh from Chandpur District where he was born in [Year]. He has no legal rights of residency in any other country.

- In 2000 he moved to live and work in Dhaka District but also visited his home village. Members of opposition political parties, Awami League (AL) and Bangladesh Nationalist Party (BNP) regularly exhorted him to join their parties. He was not politically interested and did not join any party. He regularly attended Mosque prayers where many Mosque leaders supported the Jamaat-e-Islami (JI) party.
- He was imputed with a political opinion in support of JI and BNP and being an opponent of the AL because of his devout faith and religious commitment to his Mosque activities; his refusal to join the AL; that he followed and worked for Yasin Ali the BNP General Secretary of Dhaka, who regularly spoke in the Mosque; and was the [relative] of [Mr A] who was well-known as a BNP [member] and owner of the [workplace] he worked in.
- Because of his imputed political opinion he was threatened by the AL to join them, in April 2012, and was later abducted by them. They detained and beat and stabbed him and demanded he join the AL. Passers-by later took him to hospital. After that he hid at home as much as he could doing only casual work.
- In December 2012, he happened to be near a political rally with friends. The AL fired shots at BNP supporters. His friend, SA, was shot dead and SH was injured. He took them to hospital and reported the incident to the police. The police detained him and tortured him and accused him of harming his friends as AL members had accused him of violence at the rally. After release from custody he kept a low profile to avoid harm, afraid of the police and of AL members.
- His leader, Yasin Ali, was kidnapped in 2012 and disappeared, leaving him vulnerable. His [relative], [Mr A] was shot dead in 2011, he believes by the AL.
- The local authorities searched for him at his mother's and have continued to question the family about his whereabouts after he fled Bangladesh [in] March 2013 for his safety.
- Because of his imputed political opinion and religious faith he fears he will be seriously harmed, including possibly arrested, interrogated, tortured or killed in Bangladesh by the authorities including the police, who have previously falsely accused him of violence. He also fears such harm from the AL and will be coerced to join the AL. He is at risk of cruel, inhuman, degrading treatment and torture if he refuses to support them. These parties and their violence are prevalent throughout the country in all areas and there is no protection from the authorities, who assist the AL.
- He fears such arrest and serious harm will also occur upon re-entry to Bangladesh because due to having left Bangladesh illegally, necessary background checks would reveal his profile and past allegations and he would be detained on suspicion and interrogated.

Factual findings

7. The applicant has consistently maintained his claimed identity and origins and provided a translation from Bangladesh of his birth certificate. I accept his claimed identity and that he was born in Bangladesh in Chandpur District in [Year] and is a Bangladeshi citizen. I find that Bangladesh is the receiving country for the purpose of the review.
8. I accept from his evidence which has been broadly consistent, that the applicant grew up in his family's village in Chandpur District, and where the family had farm land, and completed school up to Year [number], leaving school in approximately [year]; that after leaving school he worked on the family farm before moving to live and work in Dhaka in about 2000, where he

worked in [workplaces] until leaving for Australia in March 2013. I accept his mother and [siblings] live in Dhaka and other family and siblings live in the village in Chandpur. The incidents claimed by the applicant of interactions with the AL or BNP or police that caused him harm purportedly occurred when he was living in Dhaka.

9. The applicant gave evidence about his claims for protection in the Irregular Maritime Arrival and Induction Interview (Entry interview),¹ his SHEV application form and the accompanying Statutory Declaration dated 31 January 2016 (SHEV Statement) at an interview with the delegate on 8 August 2019 (SHEV interview). Further information was provided in post-interview submissions from the applicant's representative. I have also had regard to the IAA submission, in which raised criticism of the delegate's findings and the reasons for or lack of reasoning for those findings and reiterated aspects of the applicant's evidence claimed to substantiate his claimed fears.
10. I have had regard to the applicant's submissions both to the delegate and to the IAA addressing consideration of credibility generally and as raised by the applicant and I take those matters into account. Nevertheless, having considered the applicant's claims and evidence I have substantial concerns about the reliability and credibility of the applicant's accounts of his circumstances in Bangladesh and his reasons for leaving. Both of the applicant's submissions argued that his testimony had been overall consistent throughout the immigration process. On my assessment of the applicant's accounts I cannot agree with this. On the contrary the claims have shifted and escalated and presented contradictory evidence. Significant aspects include those discussed below.

Imputed Political Opinion

11. The SHEV interview evidence and post-interview submissions claimed that the applicant feared harm from the AL if returned to Bangladesh because they have imputed him to be a supporter of the JI and the BNP, due to his refusal to join AL, his religious devotion and encouragement of adherence to the Muslim faith and his close relationship to high profile BNP Leaders Yasin Ali and his [relative] [Mr A]. This is materially and significantly different to his earlier claims. In the Entry interview the applicant had claimed that it was the BNP that he feared would kill him if he returned to Bangladesh, because he was a Muslim and because he had not joined them. In the SHEV statement he had claimed that he feared harm if returned to Bangladesh from not just the AL but from the BNP. He stated the BNP, like the AL, had continually pressed him to join them but he had refused to. He also stated that when he had been released by the police from his purported detention (after reporting the murder of his friend SA at a rally in 2012) that he had stayed home keeping a low profile, afraid of the police and of AL and BNP members.
12. The applicant had made no claim in the SHEV statement that he was, or had been imputed to be, a BNP supporter at all, referring only to assumed JI support based on his religious practices and that some leaders in his mosque were JI supporters. He had claimed that he avoided any political involvement and had not wanted to be associated with the AL or BNP because of their violence. Moreover he had claimed to fear violent coercion if he refused to join, inter alia, the BNP. This significantly contrasts with the SHEV interview claims of his close relationship to his [relative] [Mr A] and to Yasin Ali, both claimed to be high profile BNP leaders, and that he personally identified with the BNP, referring in the interview to Khaleda Zia as "our leader", and that he followed the local area BNP Leader Yasin Ali, not as a religious leader but as his

¹ The records of this are referred to as the "Entry Interview" in the Minister's referral of the review material to the IAA. It was conducted in two parts on 22 June 2013 and then 1 August 2013

political leader, and did work for him. He described his political activities with Yasin Ali as [deleted]. Although asked, the applicant was unable to give any meaningful evidence about what was discussed at such meetings he attended; just that it was "in regards to party matters and some work". I consider this to be vague and unpersuasive of any genuine involvement in political activities or working closely with a political leader.

13. Moreover, the applicant made no mention at all of his close relationship to either of the claimed high profile BNP Leaders, his [relative] [Mr A] or Yasin Ali in either the Entry interview or the SHEV statement. Indeed in the Entry interview, when asked if he or any family members had been associated or involved in any political group or organisation the applicant had responded "No". I consider it most surprising and implausible that such significant factors as those relationships and his claimed political activities, as would indicate him to be a BNP supporter and worker, as now claimed and relied upon, would not, if true, have been mentioned in the Entry interview, or more particularly the SHEV statement for which he had professional legal advice and assistance. Notwithstanding that the SHEV statement purported to be only a summary of claims and not exhaustive and that further information would be provided in the interview nevertheless I consider these new matters to be more materially inconsistent with previous claims than merely adding more context or detail to claims as made in summary form.
14. Queried by the delegate about the previously claimed fear of the BNP upon return to Bangladesh the applicant explained in the SHEV interview that he did not fear the BNP; but that long ago the BNP had tried to pressure JI people to join their party, but that after the BNP and JI joined as a coalition party in 2009 there were no more problems with the BNP or pressure from them. He explained that Yasin Ali used to be a JI leader, and who spoke at the Mosque the applicant attended, but after the coalition with the BNP Yasin Ali was BNP and was the BNP MP for their local area. This does not satisfactorily explain why in 2013 and again in 2016 the applicant would claim that he feared the BNP and was only imputed to be a JI supporter because of his activities at a mosque encouraging people in the community to attend for prayer. Given his evidence that BNP and JI had been in coalition since 2009, long before he left Bangladesh, I am not satisfied that at any stage after arrival in Australia the applicant would be genuinely mistaken about whether the leader he claimed to work for in Bangladesh was a BNP MP or a JI leader or whether or not the BNP were trying to harm him.
15. The Entry interview was addressed in the SHEV statement. In it the applicant asserted that in the Entry interview he had been asked to be brief in his claims and so not all claims were given and it had not been explained to him what was relevant for the purpose of assessment of his claims. I accept that he may not have had professional migration advice before the Entry interview, and that it may not be a forum for complete exploration of all claims for protection. Nevertheless, I note that at the commencement of the Entry interview the applicant had been advised that the purpose of the interview was for him to provide reasons why he should not be removed from Australia and further that any information he later gave in future interviews that was different might raise doubts about his credibility. I note that he considered it relevant to raise claims of political groups and his perceived involvement in JI as reason for fear and it is apparent that he was aware of the relevance of such political party issues. In my view making these claims demonstrates no fear of the Australian authorities. I have serious concern that such significant matters as his political work for and relationship with BNP leaders, as now relied upon, would not have been raised in the Entry interview and moreover, my concerns about the evidence arise not only from such lack of mention in the Entry interview but also from its contradictions with later evidence now relied upon as central to his claimed fear, including unequivocal responses to direct questions. I consider it appropriate to have regard to and give some weight to the Entry interview.

16. Whilst the applicant did in the Entry interview raise a claim that he had been involved in JI activities, I am not satisfied that this is consistent with the claims now raised of political work for Yasin Ali with BNP and noting the inconsistency with his SHEV statement claims that he had not been politically involved. Even in the Entry interview he was inconsistent, claiming first that because of being involved in JI activities, he was harassed and beaten by the police when he tried to go to work, and so could not work to support his family, then later stating that he was not involved in JI activities. When quizzed in the Entry interview about that earlier statement he stated that he worked for JI leaders, talking to people about their responsibility to pray. In my view only this last element has any broad consistency with claims maintained by the applicant.
17. His SHEV statement and interview evidence was that he regularly attended prayers at the Mosque, where many Mosque leaders were also JI supporters, and where he listened to discussions about belief in God, prayer and Islamic law and how to behave with others. After prayers he assisted the religious community by trying to persuade people to join the mosque and attend prayers. The applicant made no claim in the SHEV application or interview that in this activity, or otherwise, he was recruiting or encouraging people to join the JI party or that he was talking to people about JI political platforms. Moreover I am not satisfied that his description of talks at the Mosque amount to JI political activity rather than discussion of religious matters in a place of religious worship. I do not accept that he ever engaged in any JI party activity and I do not accept that he would be perceived to have been conducting JI party activities. I do not accept that he was paid to encourage people to attend prayer. I consider his claim in the SHEV interview that after leaving school he attended a Madrassa in his village for seven years to be embellishment to strengthen his claimed perceived Islamist connection to JI and I do not accept it. This claim was never previously raised and is inconsistent with the time-frames previously given of moving from his village to live and work in Dhaka. Whilst the JI party is an Islamist party that advocates for an Islamic state under *sharia* law, given that Bangladesh is a majority Muslim country where about 89 percent of the population is Muslim, Islam is the official state religion and those with secular, non-conformist views can face societal opprobrium, I do not consider it would be unusual that any Mosque leaders or attendees might include people who were in the JI party.² I do not accept that simply being an attendee at such a mosque, or even evincing devout faith by regular attendance, listening to religious discussion by mosque leaders, even if from the JI party, and encouraging others to attend prayer would thereby impute a Muslim Bangladeshi as being a member or supporter of the JI party in the eyes of the police, the AL, or any other state or non-state actors.

Harm to BNP leaders

18. The applicant gave contradictory evidence about the claimed kidnapping, disappearance and possible murder by the AL of Yasin Ali. He stated first in the SHEV interview that this had occurred after his arrival in Australia (which was in March 2013); then later stated in the interview and post-interview submissions that Yasin Ali went missing in 2012, and that after that he did not feel safe to stay in Bangladesh. He also claimed that his [relative], [Mr A] had been killed, shot by AL people on 8 January 2011. He stated that if such high profile people could be killed this way, demonstrated the danger to him. As discussed above, I consider it quite implausible that if true, such material and significant matters would not have been raised earlier than in the SHEV interview. Whilst the applicant may have had an [relative], [Mr A], I do not accept that he was a BNP leader of any kind.

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; Freedom House, "Freedom in the World 2019 - Bangladesh", 4 February 2019, 20190418140340

Abduction April 2012

19. The applicant gave contradictory evidence about his purported abduction and torture in April 2012. In his Entry interview he stated that both the BNP and AL came and called him out of his home, kidnapped and tied up him in a room where he was beaten and stabbed because they wanted him to join their parties and he would not. He stated they came in first one group and then the other. He was rescued after being held for a few hours overnight and went to hospital in the morning. That the rival BNP and AL would work in tandem in this way is utterly implausible. Then this changed to the SHEV statement claims that it was the AL who kidnapped and beat him like this and threatened him to join their party and accused him of being aligned to JI. They were assisted by his friend SA who called him to come out of the house, which I consider quite improbable. He was detained for eight hours before being rescued. This changed again in the SHEV interview to that when kidnapped and mistreated by the AL, because he had continued to follow Yasin Ali when they had told him to stop, they left him locked up for three days until people rescued him. I consider his evidence completely lacking in credibility. I am not satisfied that any country information before me supports that any of the political parties engage in threats of or abduction or violence as a means of recruitment to their parties or against people who refuse to join their parties.³
20. Additionally his SHEV interview evidence that after this happened he left home and went to Chittagong and then finally managed to leave his country from Chittagong, and had been located and harassed by the AL people in Chittagong, stands in contrast to his claims that he left Bangladesh in March 2013, and had been living and working in Dhaka when he purportedly witnessed SA's killing at the rally for which he was detained by police in December 2012. Moreover the SHEV statement makes no claim of him going to live in Chittagong or being tracked there by AL people and the address history details in his Entry interview and SHEV application form do not record him living in Chittagong before his departure from Bangladesh.

Killing at Rally December 2012

21. The claims about SA's killing at a rally in December 2012 were further contradictory. Between the Entry interview, SHEV statement and SHEV interview they shifted from:
- That it occurring when he was going to a shop with SA and SH; to that it was when he was walking to work with SA and SH; to that it was when he was returning after work with SA and SH.
 - That it was because the police believed they were doing JI activities, and police shot and killed SA and SH was hit, and others were killed as well; to that it was because they had to go past a BNP rally and it was the AL who fired shots at the rally and SA was shot and SH injured; to that there was a BNP meeting on that side and the AL did a bomb blast or grenade attack and SA died.
 - That the applicant fainted when it happened and SH's body was sent to the police station; to that the applicant took SA's body to the hospital and took SH got treated.

³ Human Rights Watch, "Annual Report on the human rights situation 2018", 17 January 2019, (<https://www.hrw.org/world-report/2019/country-chapters/bangladesh>); United States (US) Department of State, "Bangladesh – Country Reports on Human Rights Practices for 2018", 13 March 2019, (CISNET number 20190314092801); DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; Freedom House, "Freedom in the World 2019 - Bangladesh", 4 February 2019, 20190418140340

22. Beyond these inconsistencies that raise considerable doubt about the reliability of these claims I consider it implausible that when he reported SA's death to police the BNP and/or the AL had already been there and named him personally as causing harm at the rally so he was detained and tortured by the police as a suspect before simply being released. There is no claim or evidence that he was charged with any offence, which I consider undermines any claim that he is wanted by and was named by ruling party AL witnesses as a perpetrator of a serious event, to police looking for a scapegoat, given country information of use of false charges against opposition supporters by authorities at instigation of the ruling party or its activists.⁴ Moreover, I note in the Entry interview that in response to the question whether he had ever been arrested or detained by police or security organisations, the applicant answered "No". Whatever scars the applicant may have, I do not accept that they were caused by any of the claimed incidents of harm by BNP or AL or the police.
23. Overall I consider the shifting and contradictory claims and evidence to be incapable of supporting any assessment of the applicant as having given a credible, reliable account of his circumstances in Bangladesh or his reasons for leaving and claiming protection in Australia. I am not satisfied they are explained by any matters such as nervousness, or lack of education or familiarity with interview process, or cross-cultural interpretation issues.
24. Whilst I accept the claim that he is a Muslim who regularly attended his local Mosque, for prayer and to listen to religious discussion and that he encouraged people in his community to attend prayer, and that some Mosque leaders were also JI supporters, which has been broadly consistently maintained, otherwise I do not accept any of the claims he has made about reasons why he would be imputed with any political profile in Bangladesh. I do not accept that he was or would be imputed with any political opinion of support of JI or BNP or as being anti-AL because of his religious observance. I do not accept the claims regarding any relationship with high profile JI or BNP leaders or that those people came to harm by the AL or any other actor or that he is imputed with any political opinion from any such claimed relationship.
25. I do not accept the claims that he was ever threatened, or kidnapped or subjected to any physical harm by any AL or BNP or other party supporters to coerce him to join them or as a result of not joining them or for any other reason. I do not accept that the applicant has any profile of adverse interest to any authorities, the AL or any other actors on the basis of not joining the AL party or any imputed political opinion.
26. I do not accept that his friend SA was killed and SH injured at a political rally and I do not accept that the applicant was ever accused, detained or tortured by police as a suspect in such an event or as an imputed JI or BNP supporter. I do not accept that he was ever in hiding or that any AL people, or police or any other state or non-state actors were ever, or are, searching for the applicant at his home or at his family's homes.

Refugee assessment

27. 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

⁴ Human Rights Watch, "Annual Report on the human rights situation 2018", 17 January 2019, (<https://www.hrw.org/world-report/2019/country-chapters/bangladesh>); US Department of State, "Bangladesh – Country Reports on Human Rights Practices for 2018", 13 March 2019, (CISNET number 20190314092801); DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438

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

28. 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.

29. I have not accepted that the applicant was imputed with any political profile as a BNP or a JI supporter or as being anti-AL at the time of his departure from Bangladesh for any reason. I do not accept that he had been detained by police for any reasons and I do not accept he was of any adverse interest to any authorities in Bangladesh or any political parties. Accordingly, I do not accept his claims that he faces any form of harm in Bangladesh on those grounds.

30. I note the complaint in IAA submissions that the delegate only referred to a 2019 DFAT report in her decision, which report post-dated the SHEV interview and therefore could not have been the country information put to the applicant as suggesting that the political violence in Bangladesh was not usually directed at people uninvolved in politics. However, I note that that assessment is supported by the Freedom House report referred to by the delegate and present before me in the review material, and which was published well before the interview.

31. The country information before me⁵ indicates that the AL remains the ruling party in government in Bangladesh and since coming to power in 2008 has restricted the activities of opposition political parties particularly the BNP and JI. The information also indicates that there are high levels of political violence in Bangladesh however, overwhelmingly the country reports indicate that this involves inter-party clashes, intra-party clashes of rival factions within a party and clashes between party supporters or issues-based protest groups and law-enforcement and predominantly occurs during periods of heightened political unrest, such as elections, strikes and blockades and predominantly involves the members and activist supporters of those parties or groups. Targeting of opposition parties by authorities is

⁵ DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; US Department of State, "Bangladesh – Country Reports on Human Rights Practices for 2018", 13 March 2019, (CISNET number 20190314092801); Human Rights Watch, "Annual Report on the human rights situation 2018" 17 January 2019, (<https://www.hrw.org/world-report/2019/country-chapters/bangladesh>); Freedom House, "Freedom in the World 2019 - Bangladesh", 4 February 2019, 20190418140340; Dhaka Tribune, "Five years of political violence, 1028 deaths and 52,000 injuries", 21 November 2017, (<https://www.dhakatribune.com/bangladesh/2017/11/20/1028-deaths-52000-injuries>)

predominantly against senior leaders and members or activists of those parties. The country information indicates, graphically demonstrated by the Dhaka Tribune article that predominantly recent political violence in Bangladesh has increasingly been between rival factions within the AL.

32. I have not accepted that the applicant was involved in any way in any political party in Bangladesh or had any interest in any political party in Bangladesh. On his own evidence he had never voted in Bangladesh although he was aged almost [age] by the time of his departure. He has not claimed to have been involved in any political parties in Australia and there is no evidence before me that he has been. I am not satisfied that upon return to Bangladesh or in the reasonably foreseeable future the applicant will become politically involved as a member or activist or supporter of any party.
33. I have considered whether upon return to Bangladesh or in the reasonably foreseeable future he would face harm on the basis of refusing to join the AL or any other political party. I note DFAT's report of a 2018 survey by the Asia Foundation that 80 per cent of Bangladeshis have a limited interest in politics and those that do are not necessarily members of any party. Whilst I accept that the parties hold annual membership recruitment campaigns, and at such or other times the applicant might be approached by various party members including the AL, and encouraged or solicited to join them, however, I note DFAT's report that it has not seen evidence of forced recruitment to political parties and considers it unlikely to occur. I am not satisfied on any information before me that refusing to join the AL or any other party, or the fact of not being a member of the AL or other party would thereby cause the AL or any other party or authority to inflict violence or any other form of harm on the applicant. I am not satisfied on any information before me that efforts to encourage new recruits to the AL or any other party would be threatening or forceful or accompanied by violence and I am not satisfied that any attempted recruitment to the AL or any other party constitutes or would result in any real chance of harm to the applicant by threats, violence or force or any other harm. I am not satisfied that refusal to join the AL would cause the applicant to be imputed with a political opinion of support of the JI or BNP or being anti-government or anti-AL.
34. I have accepted that the applicant is a practicing Muslim who attended prayers and religious discussion at mosque in Bangladesh. I accept that he continues to go to prayer at mosque in Australia and that he would continue to do so if returned to Bangladesh. Given the country information previously discussed that Bangladesh is a majority Muslim country and that Islam is a central part of Bangladeshi culture and identity and is designated as the official religion, I am not satisfied that such behaviour would upon return or in the reasonably foreseeable future cause the authorities or any AL people to impute the applicant with a political opinion as a supporter of the JI or its former ally the BNP. The distinction between the AL and JI parties is not the fact of whether or not its members and supporters hold the faith of or practice Islam, it is that the AL holds political policies of secularism and liberalism for civic life, whereas the JI is committed to the creation of an Islamic state with a *sharia* legal system and the removal of 'un-Islamic' laws and practices. I am not satisfied on any information before me that any such policies of the AL or the government translates to any treatment of/belief that Muslims who practice their faith in accordance with the tenets and practices of that faith, including devoted ones who encourage others to attend prayer, are on that basis imputed to be politically Islamist or members of any particular political party. I am not satisfied that the applicant would face a real chance of any harm in Bangladesh upon return or in the reasonably foreseeable future on the basis of his religion or practice of it.
35. The evidence indicates that for the foreseeable future it will remain the case that the civilians harmed in outbreaks of political violence in Bangladesh 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 as described above. I am not satisfied that as a politically uninvolved person the chance of the applicant being subjected to or caught up in political violence, arrested or detained or otherwise harmed by any state or non-state actor is any more than very remote. I am not satisfied that the applicant would face a real chance of any harm upon return to Bangladesh or in the reasonably foreseeable future on this basis.

36. I have not accepted that the applicant had any profile of adverse concern to the ruling AL party or to any authorities and I do not accept that background checks that DFAT reports would be conducted by the authorities, in order to verify his identity and Bangladeshi citizenship, in order to issue him with travel documents and to authorise his return to Bangladesh, would expose him to the harm claimed. The returnees who might come to attention of the authorities upon re-entry, according to DFAT, are those who left on false passports and whose case becomes of media attention or reporting, and people with particular political profiles, including convicted of war-crimes in absentia or of high-profile who engaged in political activities outside Bangladesh. The applicant does not have any of these profiles on the material before me. I am not satisfied that the applicant would face a real chance of any harm upon return to Bangladesh or in the reasonably foreseeable future on this basis.
37. Overall, I am not satisfied that the applicant has a well-founded fear of persecution in Bangladesh.

Refugee: conclusion

38. 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

39. 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

40. 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.

41. I have concluded that the applicant does not face a real chance of any harm in Bangladesh for any of the reasons claimed. Noting that the Full Federal Court⁶ has set out that the “real risk” test for complementary protection is the same standard as the “real chance” test, it follows that, based on the same information, and for the reasons stated above, I am also satisfied that there is not a real risk that he would face significant harm for any of these reasons if returned to Bangladesh.

Complementary protection: conclusion

42. 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.

⁶ *MIAC v SZQRB* [2013] 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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