



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA19/07372

Date and time of decision: 4 December 2019 17:43:00
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 national of Bangladesh. He came to Australia as an unauthorised maritime arrival. On 27 July 2016 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 imputed political opinion in support of the Bangladesh Nationalist Party. After interviewing the applicant on 27 June 2019, a delegate of the Minister for Immigration (the delegate) refused to grant this visa on 21 October 2019, on the basis that she was not satisfied that the applicant would face a real chance of serious harm or a real risk of significant harm in Bangladesh.

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. The applicant's representative provided a written submission and further information to the IAA on 27 November 2019. The submission reiterated information before the delegate and addressed concerns in the delegate's assessment and findings regarding the applicant's claimed fear of the Awami League and their interactions with him and his own reactions, and his father's support of the Bangladesh Nationalist Party, and requested to be given notice if the IAA was considering making an adverse decision on different grounds than led to the delegate's decision. To the extent that the submission is argument and not new information I have had regard to it in the review.
4. The submission asserted misinterpretation by the interpreter in the SHEV interview regarding "simplifying the intensity of the attack" on the applicant by the Awami League. No further information describing the attack was advanced in the submission to clarify the asserted misinterpretation and I regard this as argument about the evidence rather than new information. Two photographs were provided purporting to show a scar on a limb claimed to be of the injury sustained in the attack. Also provided was a copy of an article of country information headed Australian Government, Refugee Review Tribunal, Country Advice Bangladesh, dated 28 April 2010.¹ These were provided to corroborate, or offer country consistency with, the applicant's claims that he had been assaulted and that he had been extorted by the Awami League. These photographs and report were not before the delegate before the decision was made on the SHEV application and are new information.
5. The IAA is bound by the fast-track review procedures under Part 7AA of the Act, and is under no obligation to get, request or accept any new information. If it does so, the IAA must not consider any new information unless both preconditions of s.473DD(a) and (b) are satisfied.
6. Although the photographs show only a mark on a limb, and are not on their face identifiable as being a scar on the applicant, nevertheless he has previously claimed to have a scar. For the threshold purpose of s.473DD(b)(i) I am satisfied that the photographs may be capable of amounting to credible personal information which was not previously known, and had it been known, may have affected the consideration of the applicant's claims. Although the claimed assault was addressed in the SHEV interview with the delegate, the issue of any scar was not

¹ Australia: Refugee Review Tribunal, "Country Advice Bangladesh, - BGD36477 - BNP - Security situation - Political activists - Kidnappings - Extortion - Returnees", 28 April 2010

subject of any questioning. I note that at the end of the SHEV interview the applicant's representative raised whether to provide post-interview submissions. The delegate responded "No", and stated that whatever concerns or information she needed had already been asked for and if she later had any concerns or needed more information she would send an email before a decision was made. Although mindful that the onus is on the applicant to provide all information that is sought to be relied upon to the Department before the decision is made, I consider that this exchange with the delegate at the end of the interview may have resulted in misunderstanding in all the circumstances, and I am satisfied the country report was not, and could not have been, provided before the decision was made. I note also that the report is dated 2010, more contemporaneous with the applicant's claims than a similarly-themed report referred by the delegate in the review material, dated 29 August 2018. For all of the above reasons I am satisfied that there are exceptional circumstances to justify consideration of the new information of the photographs and the report.

Applicant's claims for protection

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

- He is a citizen of Bangladesh where he was born in [year] and grew up in [a] village in Faridpur District in Bangladesh.
- The rivalry between the political parties the Bangladesh Nationalist Party (BNP) and the Awami League (AL) was particularly intense in his village and surrounds.
- The local AL leader, [Mr A], and his supporters, whose office was near his [work place], frequently harassed him to join the AL. He had no interest in politics and declined. After several months refusing their forcible threats, he was compelled to join the AL as a member and made to pay a 500 Taka contribution fee to the AL every month.
- [In] November 2012, before a national stop-work protest planned for [the next day in] November, he was forced with threats by the local BNP leader, [Mr B], to join a large BNP protest procession. [Mr A] saw his participation in the BNP rally and was furious.
- AL members obstructed the procession. There was an altercation and many people were injured. He ran away.
- On [the third day in] November 2012 the AL members searched for him at his home, ransacked the house and threatened his parents. The next day they went to his workplace with sticks and knives and beat him, badly injuring [him] and leaving a scar. He managed to flee. They threatened to kill him if they saw him again and threatened his employer - causing him to lose his job.
- He pleaded with [Mr A] to let him work in the area but [Mr A] refused and threatened to kill him if he was seen again.
- He knew the AL would refuse to let him work anywhere in Bangladesh. With the help of a friend in Chittagong he arranged to leave Bangladesh by boat to save his life. His parents sold off their property to cover the cost.
- The AL will kill him in Bangladesh, including in a fake encounter. He will not be allowed to live peacefully anywhere as the AL have political connections and contacts everywhere in Bangladesh.

Refugee assessment

8. 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

9. 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.
10. The applicant provided documents in support of his identity which I accept and, on his evidence given in Bengali, which has been consistent on this matter, I accept the applicant’s identity as claimed, and find that he is a [age] year old Bangladeshi national from Faridpur District in Bangladesh. I am satisfied that Bangladesh is the receiving country for the purpose of this review.
11. The applicant’s claims have been broadly consistent since he arrived in Australia, namely that he was forced for years to pay monthly extortion money to the AL, and then suddenly became a wanted man to the AL, threatened with death and assaulted, after being forced into a BNP procession one day in November 2012. Nevertheless, there are areas of discrepancy in the applicant’s evidence that raise concern and doubt about significant and material aspects of the claims, as discussed below. In assessing the applicant’s evidence I have taken into account matters such as the difficulties of recall over time, the impact of interpretation, cross cultural communication issues and the challenges faced by those who may have experienced trauma, including arduous journey to Australia and stress accompanying the visa application and interview process.
12. I accept from country information before me that Bangladesh is historically prone to high levels of politically motivated violence, resulting from a long-entrenched rivalry between the two main political opposition parties, the AL and BNP.² I accept that the AL remains in power as the

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; DFAT, "DFAT Country Report Bangladesh 20 October 2014" 20 October 2014, CIS2F827D91369; Country of Origin Information Services Section (COISS), "Bangladesh: CI180727105903354 – Extortion – Political Parties –

ruling party in Bangladesh, since coming into government after winning the December 2008 and subsequent elections. It is clear from the reports that the violence is predominantly engaged in by and between the activist members and supporters of the political parties, and particularly their auxiliary student and youth wing activists. The politically motivated violence mainly manifests as inter-party clashes between the activists and supporters of the rival parties, clashes between rival factions internally within the parties and between party activists and law-enforcement. This violence is more prevalent at times of heightened political unrest, including during elections, strikes and blockades, demonstrations and sit-ins. There are reports of harm to civilians at such times, incidentally caught up in such street clashes and violent blockades.³ The information also indicated that targeted assaults against BNP figures were predominantly against party or auxiliary wing leaders or amongst campus student activists, and there were reports of attacks on homes or shops of opposition party supporters at the time of elections.⁴

AL Extortion

13. The applicant's SHEV interview evidence was that he had worked in the [work place] since January 2008; that it was only he and his boss working there but the AL only targeted him. He was harassed and extorted for money at work upon the AL coming into power in late 2008/early 2009, continuing until he left Bangladesh. His boss was not targeted as he was a local from that Thana/Union, unlike the applicant, whose village was five to seven km away. Despite claiming such extortion was common, the applicant's evidence of this was unpersuasive, amounting to claims that he saw similar extortion happening to other people in the area and his friends told him it also happened to them, however, his explanation for being unable to indicate the prevalence of this, because he just did not talk about it with people, was unconvincing and contrary to his claims that friends talked to him about it.
14. The interview evidence materially contrasted with the statement of claims attached to the SHEV application (SHEV statement), not only in that the SHEV statement indicated that the extortion payments only began much later after the AL came into power, after several months of demands to join the AL, contrary to his SHEV interview evidence that it happened as soon as the AL came into power in late 2008/early 2009; but more significantly the SHEV statement indicated that the applicant had been compelled to become an AL member and pay a monthly fee, in contrast to the repeated evidence at interview that the payment was because he continued to refuse to join the AL. Even if this contradiction may be an error of some misunderstanding that was overlooked in the corrections otherwise made to the SHEV application in the interview, I nevertheless also do not regard this claimed extortion as plausible when considering the country information, as discussed below.⁵

Businesses – Awami League – Bangladesh National Party – South Dhaka City Corporation – 2015 Elections – Sayeed Khokon – Haji Salim”, 29 August 2018, CR837DFFB303; Australia: Refugee Review Tribunal (RRT), “Country Advice Bangladesh, - BGD36477 - BNP - Security situation - Political activists - Kidnappings - Extortion - Returnees”, 28 April 2010

³ COISS, “Bangladesh: CI180727105903354 – Extortion – Political Parties – Businesses – Awami League – Bangladesh National Party – South Dhaka City Corporation – 2015 Elections – Sayeed Khokon – Haji Salim”, 29 August 2018, CR837DFFB30 (citing Odhikar)

⁴ Australia: RRT, “Country Advice Bangladesh, - BGD36477 - BNP - Security situation - Political activists - Kidnappings - Extortion - Returnees”, 28 April 2010

⁵ As above at footnote 2, including, The Daily Star (Bangladesh), “AL, BNP Prepare For Next Polls - Searching for new members”, 8 July 2017, CXBB8A1DA27544; Independent Bangladesh, “AL membership drive gains pace”, 25 October 2017, CXC90406620890; The Daily Sun, ‘Rajshahi AL to launch membership drive’, 2 November 2011, CX277017

15. The applicant offered no persuasive reason why the AL would target him as a forced recruit and then for extortion upon refusal, speculating that it was because he was a good person and hard-worker, or just for the money of refusing to support the AL. Although he claimed in the SHEV interview that his father was a BNP supporter in terms of voting and listening to some election meetings at election time, this support was not raised by the applicant as, or subject of any evidence regarding any statements made by the AL about this, as indicating any reason for AL interest in the applicant, other than, vaguely, asked if it was because of his father's BNP support, he said "maybe". I consider it raises some doubt about the credibility of this claimed BNP support by his father that it was not raised in the SHEV statement. I am willing to accept that the applicant's father was a BNP supporter. I find on his evidence that his father was a passive supporter who voted for BNP in elections and sometimes attended to hear an election meeting. There is no claim or evidence before me that when the applicant was in Bangladesh his father was ever harassed or threatened by the AL or anyone else on the basis of his passive BNP support. I am not satisfied that this passive BNP support was any matter of concern to the AL or evoked any adverse interest in the applicant's father or the applicant. I am not satisfied that the applicant was imputed with any political opinion on the basis of his father's political opinion in Bangladesh. The applicant was not a BNP member or supporter himself or involved in the BNP at all, stating he had no interest in or passion for politics. For similar reasons given by the delegate in her decision, I am not satisfied he had any profile of any interest to the AL.
16. I accept from the country information, including the RRT and COISS reports, that activists of the AL and BNP have been reported as engaging in criminal activities including extortion, particularly when their party is in power. The 2010 RRT report indicated that this was predominantly against rivals, and targets of financial opportunity including wealthy businessmen or their families; and more recently, in the COISS report and 2019 DFAT report, as the power (and impunity) of the AL has progressively increased, against businesses and business-owners including those BNP-affiliated. Odhikar is reported as observing (in the COISS report) that most of the (party wings') criminal activities and violence were linked to vested interest; and their clashes and domination of educational institutions and business institutions and work tenders.
17. Whilst I do not discount that incidents of criminal violence and extortion by party activists have occurred in Bangladesh, including possible incidents against ordinary citizens, I consider of some significance DFAT's 2014 report, issued when the AL government was then only recently in its second term in office, which assessed then that (opposition) party supporters or members were not at risk of arrest or living in fear of violence on a day-to day basis due to political affiliation, and moreover, raised no mention of any risk of extortion by political activists. Moreover, DFAT (2019) has reported that forced recruitment to political parties is considered to be unlikely and that it has not seen evidence of this.
18. I accept that media reporting in Bangladesh of anti-government criticism has become increasingly curtailed and some journalists feel, or are, pressured to self-censor criticism against a range of state and non-state parties, nevertheless, the country reports in the material before me are based upon a range of sources, not just news media, and including credible international government and human rights organisations. Whilst the media reports in the review material indicate that parties, including the AL, do go on recruitment drives they do not support the applicant's claims of force and extortion in this regard. Overall, although I do not discount that incidents of extortion by party activists have occurred in Bangladesh, including possible incidents against ordinary citizens, I am not satisfied that the country information supports that, upon the AL coming into government in early 2009, or thereafter, AL leaders or activist supporters engaged in common enterprise of continually extorting money from politically uninvolved ordinary people who merely declined to join the AL party, including in

the applicant's area. I particularly consider this claim to be implausible noting that the applicant was not a BNP supporter, and was not a business owner but, on his evidence, a lowly-paid workshop employee. I consider it implausible that he would be harassed and extorted to join, at work, but that the business itself or his boss was not; and I am not satisfied his boss's local status was protection or deterrence, or if so, only to him. I am not persuaded on all the evidence before me that the applicant was extorted by the AL, or any AL leader, members or activists as claimed.

19. It may be that the applicant was sometimes asked to join or support the AL, particularly around the time of the 2008 elections but I do not accept this was accompanied by threat or force, and I do not accept that he was constantly harassed with threats and extortion, after the election win, to join the AL.

BNP Rally - AL adverse interest

20. The applicant's claims are that after almost four years of paying monthly extortion to the AL, he suddenly incurred the wrath of the AL leader and was targeted for death threats, which caused him to flee Bangladesh for his life, after having been forced into the BNP rally, in which he was seen by [Mr A].
21. The applicant described in the SHEV interview that when the BNP rally passed his workshop, there were already about 200 to 400 people in the rally. He described that as the rally was progressing along, BNP President [Mr B] and his supporters were grabbing people from the shops along the way, making them join in and shutting the shops. He said [Mr B] and five or six others came into the shop and grabbed him and forcefully took him into the rally to join. He stated that the workshop was directly opposite the AL leader's office. [Mr A] was standing outside watching the rally and saw the applicant in it. The AL supporters came out and met the rally and violence ensued.
22. The applicant agreed he had seen the rally coming towards their workshop, but stated he had not run away because he did not think he would be grabbed to join in.
23. Noting the high prevalence for inter-party violence surrounding protest rallies in Bangladesh, and noting that their workshop was immediately opposite the local AL headquarters, I consider it extremely doubtful and improbable that, immediately upon realising that a large BNP rally was progressing towards them, that the applicant and or his boss would not have immediately closed the shop and barred the doors and or left the area. I consider it implausible in all the circumstances that the applicant would simply have just carried on working, whether or not he expected to be forced into the rally, which statement does not in any event sit compatibly with his evidence that he had seen people being forced to join it, and I do not find this credible.
24. I also share the delegate's concerns and which were put to the applicant that it would be very unlikely that [Mr A] would just happen to see the applicant in a large crowd of nearly 400 protestors. His explanation, that he was familiar to [Mr A] because he worked opposite him and regularly saw him, whilst explicable as a reason that the applicant might be recognisable, does not satisfy me that [Mr A] would notice the applicant in that large crowd. I consider the claims contrary and unpersuasive that [Mr A] would see him in the rally crowd because of being directly opposite the workshop and standing watching the procession, but yet would be unable to see that he was forcibly grabbed into it, as the applicant claimed was happening to others.

25. The applicant gave conflicting evidence of events after he fled the BNP rally, stating first that he went back to the workshop and worked for a little while and then went home; to then stating that he probably went back to the workshop but was not able to work because of the fighting so they just closed it and went home. He then later contradicted that, stating that he had not gone home that night of the rally, but instead went straight to hide at a friend's house, nervous because of the fight. He claimed that he remained living in hiding with this friend until he left Bangladesh, although when it was safe, went to visit his parents sometimes. These claims of having gone into hiding were not mentioned at all in the SHEV statement, prepared with the advice and assistance of his representative, which I consider surprising in all the circumstances, and an omission that raises some doubt that this occurred.
26. Also, the applicant's evidence was changeable regarding when the AL came looking for him and threatened his parents, and caused damage. Contrary to the written claim that it happened on [the third day in] November 2012 (two days after the rally, and the day after the general strike), the SHEV interview evidence was that it was the same night of the rally procession. Then, when pressed, he stated it was probably the same night as the rally or maybe the next day, the strike day. None of this is consistent with the written claims. After a break in the interview, the applicant corrected his evidence, claiming to realise his error from his SHEV statement, and said it was [the third day in] November that AL had attacked his home.
27. The applicant maintained precise calendar dates of these claimed events in both his Entry interview and SHEV statement. Yet, whilst I do not place great weight on inability to recall exact such dates, acknowledging scope for difficulty of recall of exact past dates, nevertheless I consider it to be considerably of more concern that the applicant was unable to recall the claimed timeframe in the context of its relational sequence. I consider this to be of concern noting that these were not everyday, insignificant occurrences but was an unusual sequence of significant events, of such import as to cause him to flee from Bangladesh, on his claims.
28. I do not draw adverse inference from the applicant only mentioned the claim of his being attacked and injured by the AL after he returned to work, having seen his SHEV statement in the interview break, as I note the delegate had not addressed this in her questioning at that point. But the evidence of the AL attack on him was not persuasive. His evidence was to the effect that, as the shutter was open, he saw the group of more than 10 AL men approaching with weapons, and could feel there would be a fight; he saw them attack and try to grab him but he ran and fled through the back door and they chased him for several minutes until he went down a small alley. I consider this description of seeing their approach and that he escaped through the back door to be incompatible with a claim that they were close enough to be able to hit him with a sharpened stick wounding his leg. I also consider it unlikely that having been wounded on his leg such that he now has a scar of that wound, more than 10 activists chasing him were unable to catch him or keep up their pursuit or see him go into an alleyway. Moreover, I consider the claims that he had immediately returned to work (directly opposite the local AL headquarters), the day after having been threatened to be killed and his house ransacked by the AL, and after having gone into hiding never to live at home again directly after a violent BNP anti-AL government rally in fear of the AL, to be incompatible and implausible if he genuinely held fear, even taking into account his need to support his family.
29. He then stated that it was only after this assault and [Mr A]'s renewed threat to kill him when he then tried to resolve the issue with him, that he permanently started staying at his friend's house, reiterated in submissions. However, I consider this was contrary to the evidence, repeated several times in the interview, that upon leaving the BNP rally the applicant had gone into hiding, living at his friend's house, staying there until he left Bangladesh.

30. Although arguing that the interpreter misinterpreted and simplified the description of the assault upon him, the applicant has not pointed to any particular words that were misinterpreted nor provided any further description of the claimed assault. Moreover, the delegate repeated back his description of the assault to him during questioning, and he responded to that description, and I am not persuaded that any issues of interpretation affected the evidence of this claim. I do not accept that the applicant was assaulted by any AL activists as claimed and I do not accept that he suffered any injury caused by AL activists as claimed. Whilst I accept that the applicant has a [scar], albeit that the scarred [limb] in the photographs is not obviously identifiable as the applicant's, I do not accept that it was caused in the manner claimed.
31. I have had regard to the applicant's submissions that the political party is strong in Bangladesh and it is very common for people to get caught up and killed in the political rivalry, and as such he fears being killed by the AL either directly or in a fake encounter. Nevertheless, I am not satisfied that the applicant's evidence before me is persuasive or credible. On the basis of the evidence before me, including having regard to the country information, including the nature of and prevalent occasions of political violence and those targeted, I do not accept any of the applicant's claims raised concerning his reasons for leaving Bangladesh or seeking protection in Australia.
32. I do not accept that the applicant was subjected to threats or force to join the AL or extorted for money by the AL for reason of political non-affiliation or not joining them. I do not accept that he ever joined the AL. I do not accept that he was forced to join or was perceived to have joined a BNP rally, or that he was ever targeted for, or subjected to, or the object of any threats or assault or property damage or searching or any other harm by any AL leaders, activists or supporters on the basis of any actual or imputed political opinion of being pro-BNP or anti-AL or for having refused to join the AL, or for any other reason. I do not accept that the applicant was of any adverse interest to any AL leaders, activists or supporters or any AL authorities when he left Bangladesh.
33. It follows that I do not accept that any AL persons have been searching for the applicant or asking his parents about him since he left Bangladesh. I do not accept that any AL people came and extorted any money from his parents or have caused any other problem or harm to them as claimed, before or after he left Bangladesh.
34. I do not accept any of the applicant's claims raised as a ground for protection in Australia and I do not accept that he faced any harm in Bangladesh on those claimed circumstances. I do not accept that he would be killed or searched for by any persons from the AL or otherwise face any harm in Bangladesh for those claimed reasons, and accordingly I am not satisfied that there is a real chance that the applicant would face any harm upon return to Bangladesh or in the reasonably foreseeable future on those grounds.
35. I have accepted that the applicant's father was a passive BNP supporter. I have not accepted that the applicant or his father had been or were of any adverse interest to any AL leaders or supporters because of any actual or imputed political opinion when the applicant left Bangladesh. I have not accepted that his parents have been subjected to any extortion or other problems from the AL since the applicant's departure, for any reason. I am not satisfied that the applicant was imputed with any political opinion on the basis of his father's passive political opinion in Bangladesh, and I am not satisfied that there is a real chance that he would be imputed with any political opinion on return to Bangladesh or in the reasonably foreseeable future on the basis of his father's political opinion, or that he would face any real chance of harm on this basis. The applicant's evidence was that he personally was not interested in

politics and I am not satisfied on any evidence before me that he ever voted in Bangladesh or that he would become politically interested or politically active upon return to Bangladesh. I find that this would not be from any fear of harm or consequence of such political opinion but that he does not hold any, and has no interest in politics.

36. As previously discussed, politically motivated violence as described earlier, is prevalent in Bangladesh, peaking at times of elections and heightened political unrest. However, DFAT (2019) reports that intra-party violence, particularly within the AL, is now far more common than inter-party violence, and although inter-party violence occurred during the December 2018 elections, the aftermath was relatively peaceful compared to the previous election. Overall, the evidence before me indicates and I am satisfied that for the foreseeable future it will remain the case that the civilians harmed in outbreaks of political violence will, overwhelmingly, continue to be the members and active supporters of Bangladesh's rival political parties (and the rival factions within those parties), particularly the members of the student wings of the main parties, or issues-based political protestors, who participate in demonstrations, strikes or blockades, or in clashes with each other and with the security forces in such incidents during times of heightened political unrest. I have not accepted that the AL engaged in forced recruitment when the applicant was in Bangladesh and I am not satisfied that he would be subjected to any or any attempted forced recruitment by the AL in the reasonably foreseeable future. I am not satisfied that as a politically uninvolved person the chance of the applicant being caught up in political violence, killed or otherwise harmed in any way is any more than remote and I am not satisfied that it rises to a real chance of any harm.
37. The delegate gave consideration to any chance of harm arising from the applicant's circumstances of having departed Bangladesh illegally without a valid travel document and that he would be returning as a failed asylum seeker. The applicant raised no claim for protection on these grounds. He has not made any claim in any of the material before me to fear harm or persecution in Bangladesh on any of these bases. Therefore I am not satisfied that the applicant has any fear of harm or persecution in Bangladesh on those grounds. I am satisfied that no claim arises merely on the basis of the background details in the SHEV application or statement or other evidence in the review material regarding the manner of his departure from Bangladesh. I do not consider this a claim raised or one that arises for assessment of a well-founded fear of persecution.
38. I am not satisfied that the applicant has a well-founded fear of persecution in Bangladesh.

Refugee: conclusion

39. 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

40. 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

41. 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.

42. As set out above, I have not accepted any of the applicant's claimed circumstances in Bangladesh that caused him to leave Bangladesh nor his claimed reasons for seeking protection in Australia. I do not accept that he faced harm of any kind there for the reasons claimed in his SHEV application - arising from threatening demands to join the AL or arising from participation in a BNP rally. I do not accept that there is a real risk that the applicant would face harm of any kind or any significant harm in the future on the basis of those claims.

43. I have otherwise found that there is not a real chance of the applicant being harmed in Bangladesh in the reasonably foreseeable future on the basis of any actual or imputed political opinion or being politically uninvolved. 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, and based on the same information, and relying on the reasons set out above, I am also satisfied that there is not a real risk of the applicant facing any form of significant harm in Bangladesh.

Complementary protection: conclusion

44. 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.