



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

BANGLADESH  
IAA reference: IAA19/07410

Date and time of decision: 28 November 2019 14:45:00  
S McNeill, Reviewer

**Decision**

---

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

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.*

## Background to the review

---

### Visa application

1. The referred applicant (the applicant) is a national of Bangladesh. On 12 April 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV application).
2. On 24 October 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

### Applicant's claims for protection

---

5. The applicant's claims can be summarised as follows:
  - He was born in [Village 1], Comilla District, Bangladesh in [year]. He is a Muslim of Bengali ethnicity.
  - In Bangladesh he owned a small [shop] and worked as a [Occupation 1] in a small [business].
  - His [relative] [Mr A] (Chairman) was [Position 1] of the Bangladesh National Party from 2001 until 2005 and then he was elected Chairman of the Union in 2005 and lost this position in 2007.
  - He was not involved with any political party but Chairman used to pressure him to join the BNP.
  - His nephew [Mr B] and the Chairman's son [Mr C] were also involved with the BNP. They took ransom money and donations for the BNP. Because of their involvement with the BNP, the Awami League (AL) thought he too was involved with the BNP.
  - His friends were mostly AL supporters. [Mr B] told him his AL friends could not come to his shop. At the end of 2006 or early 2007 [Mr B] slapped him.
  - The next day when his brother was looking after his shop he was with his AL friends at [place]. [Mr B] and his BNP friends came and started abusing his AL friends. The BNP supporters had guns and pulled a gun out to shoot him. They pushed him and he fell into a pond. When the others started to scream, people came out and the BNP supporters ran away.
  - He stayed at his friends place and when he returned home he did not leave the house for two to three days then went to Dhaka to avoid [Mr B]. He returned to run his shop after his family told him [Mr B] was no longer looking for him. [Mr B] came to his shop and threatened him on two occasions not to hang out with AL supporters.
  - Fearing the BNP he and his father lived in Dhaka during 2007. When he went to his village he did not leave his house for 15 to 20 days afraid of the BNP.

- In 2006 he was playing in an open field near [Mr B]’s house and [Mr B]’s mother abused him.
- Sometime after this incident he went to a fair with [Mr B] and his group who collected BNP donations from the stalls and threatened shopkeepers. He didn’t like it and left them. [Mr B] and the BNP supporters argued with AL supporters. [Mr B] told him the AL supporters had threatened to kill him and asked him why he did not help. They argued and [Mr B] left angry.
- At the end of 2006 AL supporters who thought he was involved with [Mr B] and the BNP attacked him and held him captive for one hour. He told them he was not involved with the BNP and they released him.
- [Mr B] accused him of holding a meeting with the AL. A few days later [Mr B], [Mr C] and other BNP supporters held him captive in the village school for five hours and beat him. They threatened to hand him to the police. When he went to the toilet he ran away.
- He met an AL leader and freedom fighter [Mr D] 800 metres away who kept him in his house. [Mr E] called him and told him the police had gone to his house and when they couldn’t find him they arrested his two friends [Mr F] and [Mr G]. After eight hours [Mr D] told him to leave.
- That night [Mr B] went to his house and tortured his mother, father and two brothers and stole gold and money. He went to his uncle’s house in Gazipur district but the Chairman told the police so he went to his friend’s house in Mirpur. He then moved to Dhaka where his father was living.
- In early 2007 he was traveling to Dhaka with some AL friends and the Rapid Action Battalion (RAB) arrested the five of them. His friend [Mr H]’s [cousin], [Mr I], was a Member of Parliament. Believing the RAB would kill them, [Mr H] asked an RAB policeman to contact [Mr I] to have them released. [Mr I] came to the camp and they were released. He returned to Dhaka.
- In 2007 he returned to his village at election time.
- In May or June 2007 the AL held an Iftar party in Gazipur and he went with his friends. After speeches he was called on the stage in front of thousands of people trying to portray him as an AL supporter.
- After the Iftar he was attacked at a bus station by the Chairman and BNP supporters who threatened to kill him. The caretaker government was now in power and the police no longer listened to the Chairman. The Chairman told him to leave the area.
- When [Mr D] heard about the incident he told [Mr J] a prominent district AL leader. [Mr J] told him to join the AL. He said he did not want to get involved in politics.
- In approximately 2008 the local youth BNP leader Alam was killed by AL supporters. The Chairman told him he would tell the police he had killed Alam. He went to his aunt’s house for a month and a half. The authorities did not question him about the murder.
- In February or March 2008 the AL campaigned for the election. He spoke out against the Chairman, his son, and the BNP supporters and their involvement in illegal activities. He believes this contributed to the Chairman losing his position as Chairman and [Position 1] of the BNP. Since then the Chairman wants to kill him.
- The AL also planned to kill the Chairman. His uncle told him he should leave the country. He found work in [Country 1] as a [Occupation 1] and left in 2010.

- He fears both the AL and BNP due to his political opinions and previous involvement with both parties. Because of him the Chairman lost his power and the BNP wants to harm him. [Mr C] is in gaol but could be released.
- He also fears the AL because of his association with the Chairman.
- His family told him in approximately 2015 the Division Police took his brother and asked for a ransom. He sent money to his family to pay the ransom. The police tortured his brother and then released him 20 to 30 hours later. The police took his brother because of his AL connection and the AL was trying to make his brother join them.
- In 2016 the AL attacked his father with a knife after his father tried to seek forgiveness from the AL because his brother was in a fight with the AL. The AL threatened to have his brother arrested. His father was hospitalised and needed surgery.

### **Refugee assessment**

---

6. 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**

7. 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.
8. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Bangladesh and that Bangladesh is the receiving country for the purpose of this review.
9. I have carefully considered the applicant’s claims for protection but overall I find the applicant to be lacking in credibility. The applicant has provided a shifting narrative of why he fled Bangladesh throughout the protection application process. The applicant arrived in Australia [in] March 2013. He participated in an arrival entry (entry) interview three weeks later on 5 April 2013.

10. The applicant stated from 2009 until 2010 he had a small [stall] in his village; they also grew [various crops and produce]. In 2010 he worked for eight months [as Occupation 1] for a small [company]. He provided one address in Bangladesh, that of his village. The applicant was initially asked by the Immigration Officer whether he or any of his family members have been associated or involved with any political group or organisation in Bangladesh. The applicant said a relative described as a member of his family dynasty was involved in politics with the BNP. Asked whether he or any members of his were involved in any activities or protest against the government, the applicant said 'no'. There were political groups in his area but he was not personally involved nor were any of his family members involved in politics.
11. Asked why he left Bangladesh, the applicant stated he left mainly for money to work and there was no security for anyone's life in Bangladesh. A member of his dynasty was involved in politics and this created problems for the family and the other party threatened the family that they should join their party.
12. Asked if there was any other reason, the applicant said that the main reason is for money and he could tell more but he did not have enough strength to tell her. He had a lot of hope that is why he left Bangladesh for money. He was earning in [Country 1] but it was not enough to help his family so he could not stay in [Country 1]. At the end of the interview asked what he thought would happen if he returned to Bangladesh, the applicant said he would have a financial problem because he borrowed money to come here. He preferred dying in Australia rather than returning to Bangladesh.
13. Whilst the applicant made reference to a relative being involved with the BNP and this caused problems for them and there was pressure to join the other political party, despite being asked a number of times whether anything specific happened to him the applicant did not articulate any instances of harm and his main reasons for leaving Bangladesh were for work and money. I note at the beginning of this interview the applicant was told he was expected to give true and correct answers to questions asked and that he should understand that if the information he gave at any future interviews was different from what he told now, this could raise doubts about the reliability of what he had said. The applicant stated 'yes' when asked if he understood both the interpreter and what was being said to him.
14. Information in the review material indicates that as a result of his answers given in his entry interview the applicant was screened out on 1 May 2013. On 31 May 2013 the applicant provided the following additional claims to a Departmental case manager:
  - In 2004, his [relative] beat him several times because he would not join a political party. He took a pistol and said he would kill him.
  - In 2005, BNP Chairman [Mr A] ([relative]) beat him. They tortured his family because they wouldn't join the political party.
  - In 2010, the Chairman was persisting in targeting him and his family so he escaped to [Country 1]
  - He used to work in [Country 1 as a Occupation 1] in a factory but they wouldn't pay him enough so he worked making [specified items]. He didn't have problems there but it was not enough money so he couldn't send any money home.
15. The applicant's SHEV application lodged on 12 April 2017 was prepared with the assistance of the Refugee Advice and Casework Service (RACS)' Legal Help for Refugees Clinic. The applicant's claims are outlined above. In his statement he claimed that he did not tell the Department everything about him and his family in his entry interview because he was afraid

that if he did, there may be repercussions on his family in Bangladesh. His employment history in his SHEV application indicates from 2006 until 2009 he had a small shop in his village where he sold goods. In 2009 he worked in Dhaka [as Occupation 1] for six to eight months.

16. I consider the applicant claims for protection contained within his written statement are far-fetched and somewhat outlandish. Despite saying the main reason for coming to Australia was for money, the applicant has now provided an elaborate account of him being threatened with death by his [relative] the Chairman and his nephew [Mr B], beaten, held captive, kidnapped, arrested by the RAB, dragged on stage at an AL meeting in front of thousands of bystanders and accused of murder and the end of the Chairman's political career. That all this has purportedly happened to someone who claimed not to have been politically active in Bangladesh is of great concern.
17. I note also in this statement the applicant failed to mention his additional claims given to his case manager of 31 May 2013, that in 2004 his [relative] beat him and took a pistol and said he would kill him and that the Chairman beat him in 2005 and tortured his family. Furthermore in 2010 because the Chairman persisted in targeting him and his family he escaped to [Country 1]. In his written claims by 2010 the Chairman has lost his position as Chairman of the Union and [Position 1] of the BNP and the AL wished to kill him, a complete turnaround of circumstances for the Chairman.
18. The applicant was interviewed on 12 September 2019 by the delegate in relation to his SHEV application. The oral evidence given at his interview differed substantially from his SHEV application. Notably whilst the applicant had claimed to fear harm from the BNP and his [relative] the Chairman, in his written claims, the applicant distanced himself from these prior claims. The delegate pointed out that in his SHEV application he had stated he experienced pressure to join the BNP (as also indicated to his case manager on 31 May 2013) and in response the applicant stated it was probably written the wrong way around, they supported the BNP and he was forced to join the AL. The delegate said there were many paragraphs in his claims there was pressure from family members to join the BNP. The applicant said they were a BNP family, he belonged to a BNP supporting family and his ancestors had always supported them. He was the kind of person who did not want to be fully involved in politics but wanted to do something good for the general public and he had a sort of pressure to be involved with the BNP. He had a well-known position in the area and he had to do something good for the people.
19. The delegate then referred the applicant to his claims given to his case manager on 31 May 2013 when he had said his [relative] beat him in 2004 and in 2005 he beat him and tortured his family because they would not join the political party but now he was telling him this was not the case. The applicant said it is true he was involved with the Chairman but in Bangladesh politics is used for business and he wanted to do something for society and the general people. He was linked with the BNP and his family was linked to the BNP from the start. He was a supporter of the BNP. There were a lot of members of political parties that wanted to use their political membership to earn money and to do business but he refused to do that.
20. Asked if he believed in what the BNP stood for, the applicant said 'of course' he trusted Zia Rahman who was their ex-president. Asked what the BNP stood for, what were its values, the applicant again stated he trusted Zia Rahman. His '[relative]', the Chairman, he was the head of the BNP in his area and he was dealing drugs and arms and was involved in crime and that is why he did not want to become a member. At the beginning he used to support them but then in 2004 and 2005 he slowly became aware of this. At his arrival interview he had said he had more to say but that he did not want to say it then and asked not to be questioned about it.

21. He had been tortured many times by the BNP but did not leave Bangladesh. He left Bangladesh after the AL came into power. The reason he left was because of his family's tradition of supporting the BNP. He had a lot of AL friends who wanted him to join the AL but he didn't want to join them and made excuses. He did not have a good rapport with the BNP either but that doesn't mean he hated the BNP. He just hated their bad deeds and that is why he avoided them but he always had good communication with everyone who supported the BNP and he kept in contact with them.
22. The delegate noted many years had passed since these things he had claimed had happened. The applicant stated they would of course kill him. His brother had been kidnapped, his father sent to hospital and his uncle stabbed. They had tortured his brother many times and his uncle had been arrested in the last election. Of the 800 or 1000 houses in his area, only his house had been surrounded by the AL terrorists, army and police.
23. Asked why he would be personally targeted given he was not even a member of the BNP and he hadn't been involved in any anti-government activities, the applicant said he used to always help people and encourage people to vote for the BNP. Noting he had previously said he was not political with either the BNP or AL and what he was saying now, that he encouraged people to vote for the BNP, sounded political. The applicant said he did do BNP but he did not hold a position or post that showed he supported the BNP.
24. The applicant then said the Chairman was in [Country 2]. The Chairman would be killed if he went back to Bangladesh and he had been given protection in [Country 2]. He thought he left Bangladesh in 2011 or 2012 and he was now a resident in [Country 2]. The applicant said he was in contact with the Chairman. The Chairman had returned to Bangladesh for the recent elections of December 2018 and had stayed there three days. The Chairman's house is 10 metres away from his house and when he was talking to his friend he spoke to the Chairman. They just spoke in general terms, how he was going and what he was doing.
25. Asked whether he had been involved in politics since leaving Bangladesh, the applicant said yes, even though he had left his country he did contact them by phone. He attended meetings in Australia. When the AL tortured people, burned people and killed people they would get together and express their protests. He attended BNP meetings in the [Suburb 1] area, in [Suburb 2]. He attended once every two to three months but he always communicated with them over the phone both in Australia and Bangladesh.
26. The applicant stated he had lost his brother [Mr K] in October 2011 in a road accident but he couldn't return to Bangladesh. His younger brother [Mr L] was taken by the police. [Mr C] had been in jail for seven years; he went back and forth. He gets accused of crimes, drugs, arms, terrorism and he got put in jail then released on bail and after a few days he would be back in jail. His nephew [Mr B] had been in [Country 3] for 10 to 12 years working.
27. The applicant stated his tea stall had been closed since 2006 over 12 years ago. (This period is inconsistent to previous evidence he had provided about working in his tea stall up until 2009 – SHEV application) His father was old and retired and his brothers [Mr M] and [Mr L] were farming, growing [various crops and produce]. Asked about his father being attacked by the AL and hospitalised, the applicant said it happened in 2016 maybe. Whenever the AL got a chance they harassed his family. His brother [Mr L] was having lunch and the AL came and started hitting him, saying they would take him to the police. His father had tried to say sorry but then the AL supporters started beating him and he was sent to hospital, his uncle was stabbed and hospitalised for many days.

28. Asked whether he feared the BNP, the applicant stated the BNP had no power in Bangladesh. The Chairman had a lot of problems because of him but he could not harm him because he was in [Country 2]. He did not fear the BNP now.
29. Asked whether he feared the AL, the applicant said 'of course.' His family had supported the BNP and their connections with the BNP had been for a very long time 30 to 35 years. He was afraid of the current Chairman who had tortured his family a couple of months ago and his uncle had been arrested recently because they supported the BNP.
30. The delegate noted his SHEV application he indicated he had lived in his village from birth until May 2010. The applicant said he had moved around for two years, he sometimes went home and sometimes to Dhaka, he had to go quietly. The longest he spent in his village was one month. He would go to his auntie's first and wait for a chance to go to his house. The AL came looking for him when he was in Dhaka but they couldn't find him.
31. I am not persuaded by the applicant's oral evidence from his SHEV interview. As already noted the applicant whilst claiming not to have supported any political party and had been pressured by his [relative], the Chairman to join the BNP, he has now presented himself as being a strong supporter of the BNP who actively encouraged people to vote for the BNP and who does not fear the BNP or the Chairman. The applicant's written claims were prepared in April 2017 but at his SHEV interview he said the Chairman went to [Country 2] in 2011 or 2012, this the applicant failed to mention entirely in his written claims. It does not make sense to me why the Chairman who purportedly has protection in [Country 2] would return to Bangladesh for a mere three days prior to a National election this particularly so when the applicant said the Chairman would be killed if he returned to Bangladesh. It does not make sense that the applicant would wish to talk pleasantries to the Chairman over the phone given the Chairman beat him and tortured his family (claims to case manager of 31 May 2013) and who attacked him with other BNP supporters, threatened to kill him, threatened to blame him for the murder of the BNP youth leader and alerted the police to his whereabouts (SHEV application).
32. The applicant has not provided an adequate explanation as to why he initially would claim to not support any political party (SHEV application) and but then change his evidence to state that he supported the BNP and encouraged people to vote for them (SHEV interview). I am also not convinced that since he arrived in Australia he has been actively involved in attending BNP meetings to protest against the AL. I do not accept this claim. I am also not satisfied his family members would continue to live in their village given the ongoing harm, harassment and torture they have apparently experienced since 2005.
33. The applicant provided evidence in the way of a letter of support dated [in] June 2013 and an English translation. The letter is titled 'Approved by the Govt. of the People's Republic of Bangladesh, Bandrampur Purbo Para Samaj Kolyan Parishad Titas Comilla'. The letter identifies the applicant and states he wasn't involved in any activities subversive to the country and the law and order. During the previous ruling government, he had to suffer police torture and harassment in many different ways because of speaking up against state led terrorism. The police treated his family harshly and threats were made to kill him several times and he had to leave the country to save his life. I consider the contents of this letter generalised, it does not provide any dates or contextual details to flesh out the applicant's claimed incidents of harm or threats of harm.
34. Also in the review material is a letter from the Principal of the Islamic school (madrassah) in his village. The delegate received an unofficial verbal translation of this letter which indicates it confirms the applicant's area of origin and that he was not involved in any political party but



that he was tortured many times by political activists. Noting the country information there is endemic corruption in Bangladesh and high levels of fraud in relation to documents and that document falsification is widespread,<sup>1</sup> and that I consider their contents to be lacking in probative value, I give these letters no weight in my assessment.

35. I do not consider the applicant is a witness of truth. Other than having a relative involved in BNP politics, I am of the view the applicant has fabricated his claims in their entirety and the main reason he came to Australia was the reason originally provided at his entry interview, to work and make some money. According to DFAT remittances from workers abroad are of great importance to the economy in Bangladesh.<sup>2</sup>
36. While he mentioned a relative being involved with the BNP at his entry interview the applicant said he personally was not involved with any political group. I acknowledge the entry interview is not intended to ascertain an applicant's claims for protection in full, there is however, an obligation on the applicant to provide true and correct answers. That he did not tell the Department everything that happened to him or his family because he was afraid there may be repercussions on his family in Bangladesh is not a satisfactory explanation. The applicant did not articulate in any way what these repercussions might entail or how the information he gave to the Australian authorities would become known in Bangladesh or possibly cause his family problems.
37. According to DFAT Bangladesh has long had a two-party system dominated by the AL or the BNP.<sup>3</sup> The relationship between the two parties is characterised by longstanding political and dynastic rivalry, which has increased over time.<sup>4</sup> The AL has been in power since 2008 and since then it has considerably restricted the activities of the opposition parties, particularly the BNP.<sup>5</sup> DFAT has not seen evidence of forced recruitment to political parties, and considers it unlikely to occur. Parties hold membership campaigns each year, through which parties recruit large numbers of members. According to the Asia Foundation, around 80 percent of Bangladeshis have a limited interest in politics, and those that do are not necessarily party members.<sup>6</sup>
38. Whilst Bangladesh is historically prone to high levels of politically motivated violence (PMV) ordinary Bangladeshis do not live in day to day fear of violence. PMV manifests in the form of violent clashes between supporters of different factions of the same party (intra-party violence), supporters of rival parties (inter-party violence), between party supporters and law enforcement agencies or party auxiliary organisations. PMV tends to peak during periods of heightened political unrest, including during elections, strikes and blockades. Intra-party violence had become more common than inter-party violence, particularly between AL factions and individuals.<sup>7</sup> The applicant does not fit this profile of someone likely to be involved in PMV.
39. I find that applicant is not interested in politics as he originally stated in his entry interview and that he was not personally involved in any political party nor was his immediate family as per his written claims. I am willing to accept he had a relative who was involved in the BNP and

---

<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Bangladesh", 22 August 2019, 20190822132438, 5.39-5.44; 'BGD103532.E Bangladesh Reports of fraudulent documents', 20 September 2010, CX316824; 'Freedom in the World 2019 - Bangladesh', Freedom House, 04 February 2019, 20190418140340.

<sup>2</sup> DFAT, "DFAT Country Information Report - Bangladesh", 22 August 2019, 20190822132438, 2.8.

<sup>3</sup> Ibid 3.61

<sup>4</sup> Ibid 3.62.

<sup>5</sup> Ibid 3.67.

<sup>6</sup> Ibid 3.65.

<sup>7</sup> Ibid 3.92 and 3.94.

that he may have experienced some familial pressure to join the BNP however taking into account there is no evidence of forced recruitment, I am not satisfied this involved any threats of harm or actual incidents of harm against the applicant including being taken captive, beaten up, tortured and threatened to be killed with a pistol. I find at the time the applicant departed Bangladesh he had no political profile and that he was of no interest to the any of his relatives including the Chairman, [Mr B], [Mr C] or other BNP supporters.

40. I also find that he was of no interest to the AL supporters because of his family's association with the BNP and I am not satisfied that he experienced any threats of harm or incidents of harm including being taken captive from AL supporters. I also do not accept he was arrested by the RAB or implicated in the murder of a BNP youth leader. I do not accept he spent periods of time hiding in Dhaka. I am more persuaded the applicant departed Bangladesh for economic reasons. I also do not accept that since his departure from Bangladesh, his brother, father and uncle or any of his relatives have been harmed by the AL including being arrested, beaten, stabbed or threatened with harm by the Bangladeshi authorities. I find that the applicant does not face a real chance of any harm on account of these claims or for any other reason on his return to Bangladesh now or in the reasonably foreseeable future.
41. Another matter considered by the delegate was whether the applicant feared harm on account of his financial problems or debts noting the applicant in his entry interview stated he had financial problems because he borrowed money to come to Australia. The applicant's SHEV application indicates he has been working consistently since June 2015 (except for a six month period in 2016) as a [Occupation 1]. The applicant did not raise any claim to fear harm on account of financial problems or for borrowing money in his SHEV application and this claim was not raised by the applicant at his SHEV interview. I am not satisfied the applicant has a genuine fear of harm on account of any financial problems or for having borrowed any money in the past to fund his trip to Australia on his return to Bangladesh now or in the reasonably foreseeable future.
42. Whilst the applicant did not expressly claim to fear harm as an asylum seeker or as a failed asylum seeker and this was not discussed at his SHEV interview, the matter was considered by the delegate. The applicant has resided in Australia for over six years and has sought asylum.
43. Bangladesh accepts both voluntary and involuntary returnees. The International Organisation for Migration's Assisted Voluntary Returns and Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Government of Bangladesh. DFAT has no evidence to suggest that recent returnees from likeminded countries have received adverse attention from authorities or others.<sup>8</sup>
44. Bangladesh has a very large diaspora; tens of thousands of Bangladeshis exit and enter the country each year. It is unlikely the authorities have the capacity to check on or monitor each of these people, and the vast majority will re-enter the country without incident unless they have a particular political profile, particularly with the Bangladesh National Party (BNP). The applicant does not have this profile. DFAT assesses that most returnees, including failed asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily.<sup>9</sup>
45. I am not satisfied that the applicant faces a real chance of any harm in Bangladesh as a returning asylum seeker or a returning failed asylum seeker. I am not satisfied the applicant

---

<sup>8</sup> Ibid 5.27.

<sup>9</sup> Ibid 5.30.

faces a real chance of any harm on his return to Bangladesh now or in the reasonably foreseeable future.

### **Refugee: conclusion**

46. 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**

---

47. 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**

48. 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.

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

### **Complementary protection: conclusion**

50. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

### **Decision**

---

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

## Applicable law

---

### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### 5L Membership of a particular social group other than family

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

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

#### 5LA Effective protection measures

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

...

#### 36 Protection visas – criteria provided for by this Act

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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