



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA20/08592

Date and time of decision: 20 August 2020 18:58:00
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 Bengali from Bangladesh. He arrived in Australia by boat [in] May 2013 and on 4 August 2017 he lodged an application for a subclass XE -790 Safe Haven Enterprise Visa (SHEV), claiming to fear harm in Bangladesh on grounds of religion, political opinion and personal revenge. After interviewing the applicant on 11 June 2020, a delegate of the Minister for Immigration (the delegate) did not accept that the applicant would face any harm in Bangladesh on the basis of his Muslim faith; and did not accept his claimed political profile of adverse concern to the Awami League or affiliated groups or individuals on grounds of Jamaat-e-Islami support, or that his brother had the high profile claimed or that they had faced any harm in Bangladesh on that basis; and did not accept his claims of a relationship with a Brahman Hindu girl and threats from her family over her suicide. The delegate refused to grant this visa on 16 July 2020, 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 provided his written submission to the IAA on 5 August 2020.
4. The applicant challenged the jurisdiction of the IAA to review the delegate's decision, in effect asserting that he was not a fast-track review applicant. He stated that he was not an unauthorised maritime arrival because he arrived in Australia [in] May 2013 (that is before 1 June 2013), in a boat that was already inside the maritime zone of Australian waters when it was intercepted by the Australian authorities. He stated they were intercepted just a few nautical miles from Christmas Island to which they were then transferred. His SHEV application records that he arrived at Christmas Island. He made reference to a "decision made by the Federal Court in 2018" as supporting this challenge but has not otherwise substantiated how any of his described circumstances disqualify him from being an unauthorised maritime arrival or a fast-track review applicant. From the applicant's evidence of his arrival at Christmas Island I am satisfied that the applicant entered Australia by sea at Christmas Island, defined under the Act to be an excised offshore place, and that his entry there was after the excision time for that place of 8 September 2001. I am not satisfied on any information before me that any of the issues decided upon in the case of *DBB16 v Minister for Immigration and Border Protection*¹ are applicable to the applicant. This matter was referred to the IAA on the basis that the applicant was an unauthorised maritime arrival and a fast track applicant, and who was not an excluded fast track review applicant. I am satisfied that the applicant is an unauthorised maritime arrival and a fast-track applicant and that the IAA has jurisdiction accordingly.
5. The applicant also asserted that he will be denied procedural fairness and natural justice or a fair decision by the IAA because the IAA will be "preoccupied" and influenced by the delegate's decision, as the IAA and the Department of Homes Affairs are "two sides of the same coin". The IAA is independent of the Department of Home Affairs. It conducts a review de novo on the merits, within the framework of the fast-track review process prescribed by the Act, based

¹ [2018] FCAFC 178

on the review material given by the Secretary and taking into consideration any submissions to the IAA or new information that has been found to satisfy s.473DD of the Act. The IAA is not bound by any of the delegate's reasoning or findings. I have conducted an impartial, careful and independent review in accordance with these requirements. The applicant's assertions are unfounded.

6. The applicant's submission otherwise addressed and raised argument with the delegate's decision and the assessment of and findings on his claims and I have had regard to the submissions in the review. In the course of addressing argument and submission, in a part which I take to be in response to the delegate's country information concerning human rights abuses and abusive legal process by the Bangladesh government and its ruling party members against main opposition party members, the applicant also made reference, with a short quotation, to a country information report, "*the latest US Report*", in the context of submission that "politically motivated victim" like him would not be able to access legal assistance. I consider the report reference and its quotation to be new information, with no "US Report" in the review material before me. This new information does not satisfy the requirements of the IAA "*Practice Direction for Applicants, Representatives, and Authorised Recipients*", which was notified to the applicant, as no copy of the report was provided or its source and date properly identified. Accordingly I have not accepted this new information. In any event there is a range country information in the review material before me and which addresses issues of human rights abuses and corruption and access to justice in Bangladesh and I would not be satisfied there were exceptional circumstances to justify consideration of the new information.²
7. The applicant invited the IAA to feel free to contact him if any further information was required. The review material for this matter is before me, including the evidence given by the applicant about his claims for protection. I am satisfied that the applicant has been provided full opportunity to raise all his information and evidence, any response in answer to the delegate's concerns and decision and address the dispositive questions in this review, including in provision of the submission to the IAA to which I have regard. I have decided not to invite or obtain further information or comment from the applicant.

Applicant's claims for protection

8. The applicant's claims in his SHEV application and statement attached to the application (SHEV statement) can be summarised as follows:
 - He grew up as a Sunni Muslim with his family in Munshiganj District, Dhaka Division of Bangladesh where he was born in [year]. The Bangladesh Government targets Muslims and people in Islamic dress and men with beards are assaulted or arrested. He had to hide his Muslim identity in Bangladesh by dressing differently.
 - His family were supporters of the Bangladesh Nationalist Party (BNP). He is of adverse interest to the Government and its ruling Awami League party (AL) for affiliation with the Jamaat-e-Islami party (JI). His brother, [Mr A], was an active member and local area Secretary of JI and organised JI meetings and rallies. The applicant attended many JI

² Including interalia: United Kingdom (UK) Home Office (UKHO), "Report of a Home Office Fact-Finding Mission - Bangladesh" (FFM Report), 18 September 2017, OG6E7028864; Bertelsmann Stiftung, "BTI 2016 -Bangladesh Country Report", 29 February 2016, CIS38A8012346; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; International Crisis Group (ICG), "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646

meetings with [Mr A]. [Mr A] told everyone to treat the applicant like his deputy. The applicant and his brother, [Mr B], are also JI supporters.

- After the AL came into power and began arresting and executing JI supporters, [Mr A] went into hiding. Due to [Mr A's] JI involvement, their father has been unable to return to Bangladesh from working in [Country 1], as he would be targeted by the Government. Since 2012 authorities and local Chhatra League members have been searching for [Mr A] at the family and relatives' homes, threatening to kill [Mr A] if he did not hand himself over and have beaten the applicant and abused his mother in this process. On one occasion they threatened to kill the applicant as well if he did not disclose [Mr A's] whereabouts. Afraid for his safety from this constant harassment, the applicant went to live with his aunt in another district before he was able to leave Bangladesh for [Country 2] [in] June 2012.
- In 2012, after he left Bangladesh, the authorities came looking for him and [Mr A] at their home and severely beat [Mr B]. In 2014 the Government burned down [Mr B's] shop and he now lives in hiding at home. The Chhatra League continues to harass his family and threaten to burn the house if they do not pay bribes.
- He will be arrested on arrival in Bangladesh. He will be subjected to serious harm, including death, by the authorities and by the AL because he is Muslim and because the Government believes he is involved in JI (for which his brother is very well-known). He will not be safe from them anywhere in Bangladesh.
- He will also face serious harm and possible death from the family of his deceased girlfriend, [Ms C], who hold him responsible for her suicide, and have been seeking revenge against him. [Ms C] was from a Hindu Brahman family and on this basis their relationship was forbidden. Their relationship was from 2005 to late-2011 when her family discovered it, at the time the Government began harassing his family, and they threatened to report him to the police over it. After he went to [Country 2] in mid-2012 her family arranged a marriage for her but she refused as she only wanted the applicant but her family refused to accept him. Sometime after he had arrived in Australia he discovered that [Ms C] had committed suicide. Her brother is an active member of the AL and the local area branch AL Secretary. [Ms C]'s family have been searching for the applicant and have threatened his family that they will kill him. He will not be protected by the authorities from [Ms C]'s family because of her family's AL connections and his JI involvement, and her brother would be able to locate him anywhere in Bangladesh because of his AL connections.

Refugee assessment

9. 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

10. 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.
11. The applicant has consistently maintained his claimed identity and origins as a Bengali of Muslim faith from Bangladesh, and I accept his evidence in this regard, including a copy of a (translated) Bangladeshi birth certificate. Accepting that discrepancies in the departmental records concerning name spelling and one given date of birth were by errors, including of transliteration, I accept the applicant's identity as set out by the delegate, and that the applicant is a [age] year old Bengali national and citizen from a village in [Neighbourhood 1] of Tongibari in Munshigonj District of Dhaka Province in Bangladesh, where he was born in [year] of Bangladeshi parents. I accept that Bangladesh is the receiving country for the purpose of this review. I accept that the applicant grew up with two older brothers, [Mr A] and [Mr B], and [number] sisters.
 12. The applicant's IAA submission criticised the delegate's reasoning and findings against his credibility, which were based, in part, on inconsistencies and contradictions in the applicant's evidence of his claims to fear harm in Bangladesh in the different accounts given by him from his Irregular Maritime Arrival and Induction Interview conducted in two parts on 4 June and 18 July 2013 (the Entry Interview), SHEV application and SHEV statement and to his SHEV interview. The applicant made a generalised submission about vulnerabilities, enumerated in the submission, that might be experienced by boat people and asylum-seekers in Australia and which he asserted were not considered. I take these submissions into account in assessing the evidence and information before me, as well as issues such as the difficulties of recall over time, the impact of interpretation and cross-cultural communication issues.
 13. The applicant submitted that the delegate had not put to him any matters of inconsistency in his SHEV application claims or adverse information, including from DFAT, either in writing or before the SHEV interview, for comment. Nevertheless, I note that the delegate did put to the applicant in the SHEV interview aspects of concern, including his inconsistent prior statements, and of DFAT's assessment of the risks in Bangladesh to ordinary JI members, to allow him opportunity to respond or comment. I have had regard to his responses given in the interview to those matters put (more fully discussed at the particular aspects of those claims below). The applicant was on notice in the SHEV interview and before the decision was made, and then by the refusal decision, of the delegate's concerns about the credibility of his claims and the sources of inconsistent evidence; and also, by the decision, of the country information relied upon by the delegate in her decision. I am satisfied that the applicant has had ample opportunity to address the dispositive issues in this review, including in the IAA submission before me.

14. I am mindful of the cautions to be considered in assessing evidence and any inconsistency from arrival or entry interviews and the obiter observations of the Court in *MZZJO v MIBP*³. Nevertheless, I note this Entry interview was not conducted immediately upon the applicant's arrival in Australia but in part at least a week after his reception here. Moreover, I note that the applicant gave contextually appropriate and sometimes detailed responses to personal background and family history questions, as well as when raising claims of fears from his brother's and his own claimed political involvement when asked his reasons for leaving Bangladesh, and which I note had some internal consistency within the narrative and claimed timeframes of events in the Entry interview. I note that he did not, in his SHEV statement, prepared with professional advice and assistance, expressly correct any aspects from this Entry interview as having been erroneous for any reason. I am not persuaded that the applicant's ability to present claims or evidence or to answer straightforward questions of family background and addresses, or when giving reasons he claimed caused him to leave Bangladesh, were detrimentally affected or impeded by fatigue or fear or miscommunication of any kind as explained in the SHEV interview, or any other vulnerability. I note that the Audio of this Entry interview at Part 1 was not available, however, by the detail in the recording of questions and answers, including details of additional comments in many sections on the digital paper record, contextual relevance and internal consistency, I am satisfied that care was taken to properly record Part 1 of the interview in writing. I am satisfied that it is appropriate to take the Entry interview into account.
15. The applicant submitted there had been "linguistic miscommunication" in the SHEV interview, asserting that the delegate's summation of his evidence was incorrect (citing a summation of his evidence concerning his and [Mr A's] claimed JI involvement and [Mr A's] disappearance, discussed in more detail below) due to communication interruption or misinterpretation by the interpreter and the communication difficulties inherent in a telephone interview without visual facial expression, and that he was disadvantaged by the delegate's "preoccupation about" him and by linguistic miscommunication. Having listened carefully to the SHEV interview, I am not satisfied that the applicant's evidence or his ability to present it, either at the cited section concerning his and [Mr A's] claimed JI involvement and [Mr A's] disappearance, or more generally in the interview, was affected or impeded as claimed or in any other manner. Even though it was a telephone interview, with the delegate, applicant and interpreter in different locations, there was clear audio, pauses for thought were clarified, the applicant confirmed that he understood the interpreter and moreover was instructed to alert the delegate if at any stage he did not understand the interpreter or had concerns of understanding. No such concerns were raised at any stage during the interview either by the applicant or interpreter, and none are apparent to me; and the few occasions that the interpreter sought to clarify a response with the applicant she indicated this to the delegate. Although the delegate on a couple of occasions interrupted long stretches of response to remind the applicant to allow the interpreter to translate, these were few and did not occur in this section of the evidence and a later interruption of the phone line was brief and the question then repeated. The applicant has not otherwise indicated what words or statements he did utter (either at this cited section of the interview or at any other, including other areas of evidence summarised by the delegate in the decision) that was mistranslated, or affected as claimed, nor has he otherwise provided a corrected translation of statements he made or intended to make. I am not satisfied that the applicant's SHEV interview evidence at this section or more generally in the rest of the interview was impeded, misinterpreted or detrimentally affected by linguistic miscommunication as claimed or in any way. I do not accept that the delegate was "preoccupied" with the applicant - her questioning of him in the interview and the information she put to him, including from prior inconsistent statements,

³ [2014] FCAFC 80

was fair and appropriate testing of his claims and putting to him her concerns - and I am not satisfied that the applicant or his opportunity to present his evidence was disadvantaged or impeded as claimed or in any way.

Religious Persecution

16. I accept the applicant's evidence that he is a Muslim of Sunni faith. Country information indicates that Bangladesh is a highly homogenous society with 98 per cent of the population ethnically and linguistically Bengali, and that about 89 per cent of the population is Muslim, almost entirely all of whom are Sunni.⁴ DFAT reports that Islam is the state religion under the Constitution, under which equal status and rights are also recognised for all religions, and discrimination or persecution on grounds of religion is prohibited. It observes that religion, and Islam in particular, is a central part of Bangladeshi culture and identity. In this context I consider the applicant's claims that in Bangladesh he had to hide the fact he was a Muslim, by dressing differently, as the Government targets perceived Muslims, and that bearded men or people in Islamic dress are arrested or assaulted because they are Muslim to be highly implausible and lacking in credibility. I note also that in his 2017 SHEV application photograph he does not sport a beard, despite freedom in Australia to dress or shave or not as he chooses and according to his faith, and I do not accept that the applicant ever desired to but was prevented from wearing a beard or otherwise dressing as a man of Muslim faith on grounds of religious persecution of Muslims in Bangladesh. The applicant's claims are not supported by the country information before me and I do not accept these claims. I do not accept that the applicant faced any harm in Bangladesh on the basis of being or being perceived to be a Muslim or that he had to hide his Muslim faith. I do not accept that the Bangladesh Government or any other state or non-state actors target people who are or who are perceived to be Muslim and I am not satisfied that the applicant would face any chance or a real chance of being targeted or discriminated against or prevented from practicing or adhering to his Muslim faith by any government authorities or any other persons or harmed in any way on the basis of his religion on return to Bangladesh or in the reasonably foreseeable future.

Relationship with a Brahman Hindu girl

17. The applicant claimed to fear harm from the family of his girlfriend over their relationship and her subsequent suicide. The applicant described in the SHEV interview that he met "that girl" as he repeatedly described her, who was a Brahman Hindu girl from the adjacent village, in his brother [Mr B's] [shop], where the applicant worked and where she used to come to buy [goods]. She approached him first and they fell in love. He stated they carried on a romantic relationship for six years, from 2005 to 2011, in secret, meeting in quiet places with small or no crowds or at the corner of the bush. They had romantic discussions about their love and discussed their religious and social differences and whether these could be accepted or overcome by their families. They were discovered when her aunt caught them talking behind her house one day in 2011, and her family then came and threatened his family that they will report the matter to the police. The applicant left Bangladesh after this. He maintained telephone contact with the girl when he was in [Country 2], but after leaving there to come to Australia he had no more contact, and only after his release from Christmas Island he discovered from his family over the phone that she had suicided because she was unwilling to enter into an arranged marriage organised by her family. At her cremation her brother screamed and cried aloud, "*the person who is responsible for my sister's death – we will kill*

⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; United Kingdom (UK) Home Office (UKHO), "Report of a Home Office Fact-Finding Mission - Bangladesh" (FFM Report), 18 September 2017, OG6E7028864; International Crisis Group (ICG), "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646

him". He claimed that the girls' family were all AL supporters and her brother a local AL branch Secretary, with influence over authorities.

18. Having considered the country information addressing traditional religious values in Bangladesh and the societal standing of and treatment of girls and women, I consider these claims to be a concoction.⁵ It is clear from the country information that long-standing traditional societal, cultural and religious values and gendered roles restrict the full and free participation of women in the workforce and community and the reports indicate that women face high rates of societal prejudice, harassment and gender-based violence. Family laws derive from religious tradition, often disadvantaging women compared to males and women accused of violating strict moral codes are more like to face extrajudicial punishment than are men. There is significant social stigma against single women, with the UKHO citing sources that marriage is seen as the main source of social acceptance and it is difficult for a single woman to move around. The UKHO FFM Report indicated that most marriages are arranged. Early or child marriage is widespread, particularly in rural areas, viewed as a means of relieving the burden on families, including financial burden, of keeping girls safe – the numbers differ with DFAT reports indicating 52 per cent of girls are married before 18, and the UKHO FFM Report citing UNICEF that between 2005 and 2013 29 per cent of girls were married by age of 15 and 65 per cent before 18. In this context I consider it highly implausible and difficult to believe that for six years the applicant carried on a romantic relationship with a Hindu girl in the adjoining village, meeting in various places including [Mr B's] shop, without ever coming to the attention of any friends, relatives or neighbours before 2011. (I also consider this incompatible with his claims that he would not be able to hide from her family anywhere in Bangladesh as it is such a small country and news spreads around and her family would be able to find out where he had gone). I also find it considerably doubtful that in that time she had not already been married or had a marriage arrangement made for her by her family, long before the claimed arrangement in 2012/2013.
19. I consider the applicant's description throughout the interview of the girl he claimed to be in love with for six years as "that girl" to be indicative more of a recounting of some tale not his own and I am not persuaded otherwise by his explanation that her name is engraved on his broken heart and that it breaks his heart to say her name. After having been challenged about that, he then used her name, [Ms C], in answering questions. I also consider it doubtful and implausible, if the applicant had had such a relationship, that he would not have known her father's proper name – saying he only knew him as "[Name 1]" – which when challenged that that was not a proper Hindu name he did not dissent and stated that he did not know her father's full name because they had not been interested in each other's family and he had never asked anything about her family. I am not satisfied that such disinterest or lack of knowledge is at all credibly compatible with his claimed love for and long-term relationship with [Ms C] and their discussions over six years of whether there would be family acceptance or how they could marry or be together from such different backgrounds, or with his claims that members of her family repeatedly came and contacted his family and made threats against him.
20. Noting citation in the UKHO FFM report that Muslims do not like to allow mixed-faith marriages, and the applicant's claims that he and his family were not only strict Muslims but that he, as a political ideology, supported the JI party because he loved the JI and he loved his religion, and noting the ideological mindset of the JI which is committed to establishing an

⁵ UKHO, FFM Report, 18 September 2017, OG6E7028864; DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169; DFAT, "DFAT Country Report Bangladesh 20 October 2014", 20 October 2014, CIS2F827D91369

Islamic state under sharia law and the removal of “un-Islamic” laws and practices and which rejects secularism,⁶ I consider there is substantial dissonance between those claims and claims on the other hand of being in a six year secret relationship with a Hindu girl from an AL family. The applicant explained that “love has no boundaries” and they fell in love despite their differences, however, whilst this may theoretically be so for many people born into a faith, I am not satisfied that such a lengthy and secret relationship with a non-Muslim from a family whose political ideology supports secularism is compatible with the claim of maintaining in the same period of time his own support, as a strict Muslim, of JI because of its religious code. I note DFAT’s report that many JI supporters strongly link their religious and political identities.

21. I also consider the claim that having discovered the secret relationship, [Ms C]’s family threatened to report it to the police to be highly implausible, noting there is no indication before me of any criminal offence committed by the relationship, also considering that in the country information interfaith marriage is legal in Bangladesh and, moreover that any social mores that may have been traversed in the traditional societal attitudes by their seeing each other unmarried would more likely attract discriminatory and negative approbation to [Ms C] and her family if publicly reported rather than to the applicant. I am not satisfied that the applicant being a claimed JI supporter would be any more reason to report this to police, given his claims the police and local AL were already aware of his and his brother’s JI support. Moreover there is no indication before me that, either in the several months the applicant remained in Bangladesh before departing to [Country 2] or afterwards, that any complaint or report was made to police against him. Noting that there is no indication before me that [Ms C]’s family invited the applicant’s family or any of their friends to her cremation I do not accept their claimed report of her brother’s dramatic vow of revenge over her body, which account moreover conflicted with his SHEV statement claim that it was at an announcement to a big crowd in a public meeting in the applicant’s village that [Ms C]’s brother stated he would kill the applicant when he found him. Overall, I do not consider that the applicant’s claims of his relationship with [Ms C], her suicide or any threats to him from her family are credible and I do not accept any of these claims. I do not accept that the applicant was in a relationship with [Ms C] or was threatened over it by her family or that [Ms C] or any other girl committed suicide because of being prevented to marry the applicant or that any of [Ms C]’s family or anyone else have threatened him with death or police charges or any other harm over a romantic relationship or suicide or for any other reason. I do not accept that the applicant faced or faces any such harm claimed or any other harm in Bangladesh if returned there, on this claimed basis.

Political involvement with JI

22. The applicant has consistently claimed since his Entry interview after arrival in Australia that he faced harm in Bangladesh from the AL because of his involvement in and perceived association to JI through his JI-active brother. The basic common narrative across the applicant’s accounts was that his older brother, [Mr A], was actively involved in the JI and had been for several years, and was the local village area Secretary for JI. The applicant was not officially in the JI but he followed his brother and supported JI and assisted his brother’s activities of organising rallies and meetings and gathering people to attend them. After the AL came into power in the 2008 elections the AL targeted the JI, bringing [Mr A] under threat and the adverse attention of AL and its student wing, Chhatra League with political violence and threats, and by association the applicant and their family members.

⁶ UKHO, FFM Report, 18 September 2017, OG6E7028864; DFAT, “DFAT Country Information Report Bangladesh”, 22 August 2019, 20190822132438; CMI and CPD) “Political Parties in Bangladesh”, 1 August 2014, CISA447F083208

23. The applicant's SHEV interview evidence generally followed these claims, describing that his Muslim family were very religious and [Mr A] had been educated in a madrassa after which [Mr A] became involved in JI, from approximately at least 2004. [Mr A] was the Secretary for JI in their local village from 2006 to 2008. In this role [Mr A] was the main person who used to organise rallies and connect people to join the rallies and demonstrations against the government. He stated that there were rallies and protests every month and [Mr A] used to attend every one. Other leaders and active workers were also involved but [Mr A] was the main one. The applicant did not join JI as a member or officially register with them but whatever [Mr A] did he followed and was with [Mr A] and helped him. The applicant stated he loved the JI party because they are Islamic and uphold religion and are honest and helped [Mr A] working for the JI from 2005 to 2008 and stopped his involvement after 2008, after the AL came to power. These dates were clarified with him and he reiterated their correctness. In its essential facts the delegate's decision summation of the applicant's SHEV interview evidence of his JI involvement, challenged by the applicant as described above, accords with this summation here. Having listened to the interview, and for reasons discussed above, I am satisfied that the applicant's interview evidence was not impeded or affected by mistranslation or other miscommunication issues.
24. Although it is not inherently implausible that the applicant may have had a brother who supported the JI party, yet in the significant aspects of the claimed AL interest in [Mr A] and their family and [Mr A's] fate, raising his claimed fear of harm, the applicant's shifting and contradictory claims and evidence cause me considerable concern about his veracity and the credibility of his claims. In contrast with his earlier claims in the Entry interview and SHEV statement that [Mr A] had gone into hiding, his SHEV interview evidence, repeated several times, was that in 2008 [Mr A] had "*gone missing*", "*has been missing for 12 years*", that he had "*disappeared*", and he believed it was because the AL were against the JI and attack the JI. When put to him that this conflicted with his Entry interview evidence given in June 2013 that [Mr A] had been in hiding for "*three to four months*" and that [Mr A's] address details were that he "*does not live anywhere specifically*" because he "*just comes and goes*", the applicant's explanation was that, what he had meant (by *missing*) was that after the AL came into power in 2008, [Mr A] "*went missing, but when he was missing he was in hiding*", and that whilst the family had not heard from him directly they had heard through others that [Mr A] was hiding somewhere. When pressed further on the stark differences in the stated time period of [Mr A's] claimed going missing (2008 or early 2013) he explained that he had been tired and exhausted from the boat journey to Australia and was afraid and so did not understand what he was saying and may not have articulated himself properly.
25. I consider it highly improbable that if indeed [Mr A] had been either disappeared by others or in hiding since 2008, that in June 2013 when answering basic straightforward questions about family addresses, that the applicant would be mistaken about the time period of such a significant event and state that [Mr A] had only been away for three or four months compared to his having been gone for several years since 2008, as now claimed, or that he would give the extra detail that [Mr A] comes and goes. Moreover, other details of the Entry interview evidence were more significantly at odds with his SHEV interview evidence about the time frame in which [Mr A] had purportedly gone – including the Entry interview evidence that in "2011" [Mr A] asked him to join the JI; and that from February 2012 to June 2012 the 'government party' was attacking and threatening them and that in March 2012 a group of them demanded his brother because his brother was doing JI - the applicant told them his brother was at home and that his brother then spoke to those people who threatened to kill him and the applicant. Whilst I acknowledge the vulnerabilities and unfamiliarity that can be experienced by boat arrivals in such interviews, nevertheless, for reasons described earlier, including that the applicant was being questioned by Australian authorities as to why he should

not be removed from Australia and to whom he had purportedly come to seek protection; that he gave details of claimed political activities and involvement which belies that he was afraid; and noting the detailed and contextually relevant responses he gave throughout the interview and that there is no demonstrable reticence or communication difficulty apparent from my review of the Entry interview records, I do not accept that any of his evidence in the Entry interview was impeded or detrimentally affected by exhaustion or fear or any inability to articulate what he intended to say or any other factor.

26. I do not consider that the applicant's SHEV interview descriptions of his brother going "missing" or having "disappeared" was simply infelicitous expression, wrong choice of word or a matter of semantics and that he really meant that [Mr A] was 'in hiding', as, relevantly, the delegate had earlier directly clarified with him, "*Did ([Mr A]) disappear or go into hiding?*", to which he replied, "*he was missing, disappeared by someone*". I do not accept that if [Mr A] was in hiding as he claimed he meant that that would have been the response.
27. I consider the material contradictions in the claimed time frame of the significant event of the his brother leaving, whether in enforced disappearance or for hiding amidst threats of violence, to be more indicative of fabrication and not compatible with a recount of genuine personal history, even accepting precise dates might be difficult of recall. Given the claimed reference event of the 2008 elections as stated in the SHEV interview, I am not satisfied that such a wide contrast in claimed time frames of his brother's 'leaving' being either 2008 or several years after that in about 2011 or 2012, or the time frame of his active involvement in the JI and the gulf between whether he went 'missing, being disappeared by others' or went into 'hiding' is explained by the applicant's given excuses. I have serious concern about the applicant's credibility and his claims of threat and attention by the AL for JI involvement or [Mr A's] leaving.
28. Other aspects that raise doubts concerning credibility of his and familial claimed JI involvement include that:
 - When he was challenged by the delegate about his Entry interview evidence of being asked by [Mr A] to join JI in 2011, the applicant's response was that that information was incorrect because after the AL won election in 2008 there was no JI in politics. I am not satisfied that this 2011 claim was any error of miscommunication as it was not an isolated example of claimed JI activity or presence of [Mr A] after 2008 in the Entry interview, and moreover the applicant's explanation of reason for its incorrectness does not accord with country information, which indicates ongoing political activity and involvement of the JI party after 2008, including protesting of current affairs, such as the war crimes trials and abolition of the caretaker government system and its formal partnership in the political 18-Party Alliance.⁷
 - He also claimed in the Entry interview that both his two brothers were involved in anti-government political protest events, describing that JI leader Delwar Hossain Saeedi had been arrested and was due to be hung to death. However, noting that the ICG reported that the war crimes tribunal under which Saeedi (or Sayadee) was arrested and prosecuted was not established until 2010 and his initial death sentence only delivered in February 2013, this further conflicts with his SHEV interview evidence of political activity ceasing and [Mr A's] disappearance in 2008 and further conflicts with his evidence that his brother [Mr B] had no involvement at all in JI and never joined with [Mr A] going to political events.⁸ I

⁷ UKHO, "Country Policy and Information Note Bangladesh: Opposition to the government", 18 January 2018, OG9EF767910; CHR Michelsen Institute (CMI) and Centre for Policy Dialogue (CPD), "Political Parties in Bangladesh", 1 August 2014, CISA447F083208

⁸ ICG, "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646

treat those claims of protest attendance as not pursued for his SHEV protection claims and do not accept them.

- I consider the applicant's insistence of his commitment to and love for JI was because it was a religious party and they were honest and not corrupt to be no more than a superficial statement of JI's public image, and his vague assertions of following his brother around and making tea for leaders at meetings to be unpersuasive.⁹ His SHEV interview evidence about JI's recent status did not support his claim to be a dedicated JI supporter or demonstrate any ongoing genuine commitment or interest in the party, noting that his statements that the JI was banned on 5 May 2013 and that the "their name no longer exists, there is no more politics", do not accord with country information, which indicates that it was not until August 2013 (which I note was after the applicant's arrival in Australia and release from detention and not before [his] May 2013 departure from [Country 2]) that the JI's registration with the Electoral Commission was declared illegal by the High Court of Bangladesh; and moreover the effect of the ruling has not been to cease the JI party at all but rather prevented it fielding candidates in the 2014 and 2018 elections.¹⁰ Whilst the party's size has been significantly reduced in recent years, DFAT reported in 2019 that the JI party remains well organised and influential in Bangladesh and JI members contested seats in the 2018 elections as independents or under the banner of Jatiya Oikya Front.
- The applicant claimed that because of the threats of harm and harassment from the AL he lived in hiding away from his home area, with his sister in Gadipur and his aunt in Tongi District, for five to six months before his departure from Bangladesh to [Country 2]. Yet when giving his basic straightforward account of his address history details, in both his Entry interview and for his SHEV application, divorced from recounting the narrative of his claims, his address histories do not reflect this claim. Instead, despite detailing all the addresses he had briefly lived at in [Country 2] and listing that he had previously lived for work purposes in [District 1] in Bangladesh, with similar address locations recorded in his Entry interview (although the Entry interview record of his [Country 2] addresses was summarised as "many different addresses but the last was in [location]"), both his SHEV application and Entry interview otherwise recorded that for at least the year until his departure from Bangladesh in June 2012 he remained living in his home area in Bangladesh. Put to him in the SHEV interview that despite stating many different addresses lived at in [Country 2] in his Entry interview yet there was no indication of living elsewhere in hiding before he departed Bangladesh, the applicant had no response other than to say that JI supporters are under threat from the government in Bangladesh. Given the care to mention and or detail other addresses lived at, even for short periods, in those records, I am not satisfied that the applicant would not also have listed those claimed relatives' addresses in his address history details if indeed he had been living in hiding as claimed.

29. On the country information before me,¹¹ there has long been a history of politically motivated violence in Bangladesh, it predominantly manifests as inter-party clashes between rival

⁹ Institute of Peace and Conflict Studies (IPCS), "Jamaat-e-Islami in Bangladesh: Where To From Here?", 22 April 2014, CX1B9ECAB10073

¹⁰ UKHO, "Country Policy and Information Note Bangladesh: Opposition to the government", 18 January 2018, OG9EF767910; CMI and CPD, "Political Parties in Bangladesh", 1 August 2014, CISA447F083208; DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; Freedom House, "Freedom in the World 2019 - Bangladesh", 4 February 2019, 20190418140340

¹¹ Including: UKHO, "Country Policy and Information Note Bangladesh: Opposition to the government", 18 January 2018, OG9EF767910; UKHO, FFM Report, 18 September 2017, OG6E7028864; DFAT, "DFAT Country Report Bangladesh" 20 October 2014, CIS2F827D91369; DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169; DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; DFAT, "Bangladesh - Country

political parties (or their own internal rival factions) or between parties and law enforcement at periods of heightened unrest including during elections, strikes, protests and blockades, predominantly involving the student wing activists. The AL party won the 2008 elections and remain in power in government after re-elections in 2014 and 2018. Its pro-longed incumbency in government, particularly after 2014, has led to increasing suppression of political opposition and since that time the country information began to report more impunity of AL activists for acts of politically motivated violence or extortion in areas of vested interest, particularly in educational campuses. However, I am not satisfied that the country information supports the applicant's claims of harm to his family and himself at the hands of the AL or Chhatra League, such as being threatened or verbally abused or beaten in the street or demanded for money, noting the most contemporaneous report in the review material to the time frame claimed, namely DFAT in 2014. DFAT's assessment was that supporters or members of opposition parties in Bangladesh were not at risk of being arrested or of living in fear of violence on a day-to-day basis due to political affiliations, and that there was a higher risk of arrest for opposition party leaders or high profile members engaged in political protests and that the risk of being subjected to violence pertained to those engaged in hartals, strikes and violent protests, yet there is no indication before me that [Mr A] or the applicant or any other relative was arrested at or for participation in any such event. Even if [Mr A] had been a high profile member or leader of JI or had 'disappeared' before any arrest (which I do not accept in any event) I am not satisfied that the country evidence supports the ongoing harassment of family members including the applicant by AL or Chhatra League or any authorities searching for [Mr A] as claimed. I am not satisfied that the country information before me overcomes my concerns about the applicant's credibility or bolsters the applicant's contradictory and unpersuasive evidence.

30. The applicant submitted the delegate had not asked him to provide any documentary evidence of his JI claims. He has provided none. However, the applicant was previously notified of his obligation to provide all evidence and information in support of his protection claims, including in the 26 May 2020 invitation to attend the SHEV interview and was reminded of this by the delegate at the interview. Indeed he was asked in the SHEV interview if had any other evidence or documents that he wanted to give the Department and said that he did not have any.
31. Overall, I do not consider that the applicant has given a credible account of his circumstances in Bangladesh or his reasons for leaving. I am not satisfied that his evidence is a genuine account of personal or family experience and I am not satisfied that his claims that he or any family members faced harm or threats of harm in Bangladesh from AL or Chhatra League members or police or any other AL or government authorities because of JI involvement are credible. I do not accept that [Mr A] or the applicant or any of their family were or are supporters of the JI in Bangladesh, or affiliated with JI in any way. I do not accept that [Mr A] was a prominent member of the JI or a local area branch Secretary or party activist or that [Mr A] or the applicant or any family members attended any political or anti-government demonstrations. I do not accept that [Mr A] either went missing or went into hiding at any stage and I do not accept that any AL or Chhatra League members or supporters, or any

Information Request CI161130110919945 - Political Violence", 6 February 2017, CXC9040661299; ICG, "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646; CMI and CPD "Political Parties in Bangladesh", 1 August 2014, CISA447F083208; Bertelsmann Stiftung, "BTI 2016 -Bangladesh Country Report", 29 February 2016, CIS38A8012346; Ali Riaz, "Bangladesh's authoritarian shift", East Asia Forum, 18 January 2020, 20200120091844; Freedom House, "Freedom in the World 2019 - Bangladesh", 4 February 2019, 20190418140340

government officials or the police ever had any adverse interest in or concern about [Mr A] or the applicant or any of their family members on account of any JI support or activities, or have been searching for [Mr A] or the applicant or have threatened or abused or harmed or extorted the applicant or any family members in any way as claimed. I also do not accept that [Mr B's] shop was burned down for any reason of family affiliation to the JI or that he was beaten and paralysed or that the applicant's family have been extorted for bribes on threats of burning their home for any such reasons as claimed or any others. I do not accept that the applicant went to live in hiding with any relatives as claimed before leaving Bangladesh or that since the 2008 AL election his father is prevented from his annual return to Bangladesh from [Country 1] where he has been working since 1997 for fear of consequences of imputed political opinion for JI affiliation.

32. I accept that the applicant went to [Country 2] in June 2012 where he lived and worked, and that he may have used the assistance of an agent to arrange this, as claimed, noting that labour migration is reportedly an important and viable livelihood option of many Bangladeshis, with significant numbers going abroad for employment, which also brings with it irregular migration and recruitment practices and trafficking of people overseas for labour exploitation and some violations of migrant' rights, despite awareness campaigns run by IOM for safe migration.¹² I do not accept that the applicant went to [Country 2] to escape harm from the AL or any authorities or any other persons as a JI supporter or for any other reason claimed but rather for employment reasons, and whilst I am willing to accept that he may have, as part of the arrangement with the agent who arranged his travel and reception into [Country 2], done so on a false passport that was later taken off him by the trafficking agent meeting him in [Country 2], I do not accept that this was because he feared police scrutiny of his JI affiliation if he applied for required police clearance for his own passport but was rather the commercial arrangement made by the agent traffickers.
33. In accordance with my findings and reasons above I do not accept that the applicant or any of his family members were supporters or members of the JI party or nay of its auxiliary wings in Bangladesh or were imputed to be such or were of any adverse interest to concern to the AL or Chhatra League or any authorities on that basis and I do not accept that the applicant faced any harm in Bangladesh as claimed. Accordingly I do not accept that the applicant would face any harm in Bangladesh from those claimed circumstances if returned there, including being arrested on arrival or after return home or killed or otherwise harmed in any way by any authorities or AL-affiliated persons or any others. I am satisfied that there is no real chance of the applicant facing any such harm whether he returned to his home village, where I am satisfied he would return to, or to any other part of Bangladesh he might choose to live in. Contrary to his submission he was asked by the delegate in the SHEV interview why he could not live anywhere else in Bangladesh. I am satisfied he has had opportunity to comment on the issue of relocation, including in submission to the IAA. Given I do not accept he was or would be of any concern to any authorities or AL people as claimed I do not accept that the applicant could not return to his home or that he would be searched for and located by the AL or authorities anywhere in Bangladesh.
34. The applicant's evidence of BNP support by his family was ambivalent and unconvincing and I do not accept that he or any of his family were or were imputed to be BNP members or supporters or activists, or BNP auxiliary wing members, or faced any harm in Bangladesh on that basis.

¹² International Organization for Migration (IOM), "Bangladesh", 1 August 2014, CIS29397; DFAT, "DFAT Country Report Bangladesh 20 October 2014" 20 October 2014, CIS2F827D91369

35. As discussed earlier, the country information before me¹³ indicates that the AL remains in government in Bangladesh and since 2014 has increasingly repressed political opposition and expression of dissent, and that both law-enforcement agencies and AL activists have perpetrated various forms of harassment and intimidation, including arbitrary arrests and politically motivated legal proceedings and politically motivated violence or human rights abuses against actual or perceived opponents. Corruption is widespread, and endemic in the judicial system, police and public services and access to justice for criminally accused can be affected accordingly, and although legal aid is available its resources are stretched and disparate with restricted eligibility and some lack of awareness for access. The country information indicates that overwhelmingly, politically-motivated violence or law-enforcement action including arrests have predominantly been against political opposition party leaders and activists and high-profile members, with risk of adverse attention from authorities or AL activists increasing for those active party members who engage in political activities and demonstrations, and actively oppose the government. Both DFAT and UKHO indicate that politically motivated violence occurs predominantly during heightened periods of unrest, particularly national elections and strikes.
36. Whilst there are reports of acts of violence, intimidation and election fraud reported as perpetrated by AL members, candidates or their affiliates towards opposition party supporters, including in the December 2018 elections, nevertheless overall the information indicates that the December 2018 election was relatively peaceful in comparison to previous election cycles in Bangladesh and DFAT reported that it was not aware of any arrests, harassment or other discrimination against JI-member candidates in the 2018 elections.¹⁴ DFAT reports that the AL maintains strong disciplinary policies to deal with rogue candidates, and has used these policies on occasion to expel such candidates from the party.
37. Significantly both DFAT and UKHO have reported that inter-party violence has declined since 2015, with most political violence since then involving rival factions within the AL party.¹⁵ Overall, in proportion to the size of the major parties, the UKHO assesses that the number of people affected by political violence remains low, and the information in Odhikar indicates that it is considerably declining overall. The UKHO assessment in 2018 that in general, the evidence does not indicate that there is a real risk of state or non-state persecution or serious harm for ordinary party members or supporters and that dependent upon circumstances and profile, opposition party leaders and activists may face harassment or arbitrary arrest and detention, remains consistent with DFAT's current assessment in 2019.
38. For reasons discussed above, I do not accept that the applicant was a supporter of the JI party, or the BNP, or was politically active in Bangladesh or was imputed to have any opposition political opinion or opposition party affiliation. There is no indication before me and I find no support in his evidence that the applicant has become politically engaged or interested in

¹³ Including: UKHO, "Country Policy and Information Note Bangladesh: Opposition to the government", 18 January 2018, OG9EF767910; UKHO, FFM Report, 18 September 2017, OG6E7028864; DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; DFAT, "Bangladesh - Country Information Request CI161130110919945 - Political Violence", 6 February 2017, CXC9040661299; ICG, "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646; CMI and CPD "Political Parties in Bangladesh", 1 August 2014, CISA447F083208; Bertelsmann Stiftung, "BTI 2016 -Bangladesh Country Report", 29 February 2016, CIS38A8012346; Ali Riaz, "Bangladesh's authoritarian shift", East Asia Forum, 18 January 2020, 20200120091844; Freedom House, "Freedom in the World 2019 - Bangladesh", 4 February 2019, 20190418140340; Odhikar, "Annual Human Rights Report 2019 Bangladesh", 8 February 2020, 20200218104232

¹⁴ DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438; UKHO, "Country Policy and Information Note Bangladesh: Opposition to the government", 18 January 2018, OG9EF767910; Odhikar, "Annual Human Rights Report 2019 Bangladesh", 8 February 2020, 20200218104232

¹⁵ See also Odhikar, "Annual Human Rights Report 2019 Bangladesh", 8 February 2020, 20200218104232

politics or in any Bangladeshi political parties or figures since being in [Country 2] or Australia and I am not satisfied that he would become so interested or engaged on return to Bangladesh. I am willing to accept that the applicant does not support the AL. Even if he were to have a preference for a JI or BNP or similar candidate in the future in Bangladesh, and vote accordingly in any future elections, I am not satisfied that upon return to Bangladesh or in the reasonably foreseeable future there is a real chance that the applicant would become a political activist for or a member or active supporter of the BNP or JI or any other opposition political parties in Bangladesh, or participate in anti-government political activities in Bangladesh or demonstrations, hartals or strikes, and I find that this would be from lack of genuine engagement or interest in such political activity rather than from any fear of consequences.

39. I consider the chance of the applicant coming to the attention of any AL members, activists or authorities, or of being imputed to be a BNP or JI or other opposition party supporter or of having political involvement in any opposition party because of any such voting preference to be very remote. The evidence indicates that for the foreseeable future it will remain the case that the civilians coming to adverse attention of the AL members or its affiliates or harmed in outbreaks of political violence or targeted for arrest or law enforcement action will, overwhelmingly, continue to be the members and active supporters of Bangladesh's rival political parties (and the rival factions within those parties) who participate in clashes with each other and with the security forces in incidents of politically motivated violence during times of heightened political unrest such as elections, demonstrations, strikes and blockades and those participating in issues protests against the government. I am not satisfied that upon return to Bangladesh or in the reasonably foreseeable future the applicant would face a real chance of being arrested or charged or killed or harassed or otherwise subjected to any other form of harm in Bangladesh by the police, or any AL government authorities or AL or Chhatra League members, supporters or activists or affiliates or anyone else on the basis of any real or imputed political opinion or for exercising his right to vote for a candidate including an opposition party candidate in any elections.
40. DFAT reports that political patronage and social, workplace and political connections are a part of Bangladeshi politics and being a member of a political party or its auxiliary organisations may assist in gaining employment, although this is unlikely to be the sole determinant. As I find the applicant was not a political party member or a member of any auxiliary wing and would not become one on return to Bangladesh I accept that the applicant might encounter some challenge in initially finding formal employment. However, I note that he had lengthy, independent employment as a [Occupation 1] and [Occupation 2] in Bangladesh, including after the AL had come to power, without being a political party member. He has further experience in these skills in [Country 2]. He has close family and relatives living in Bangladesh and I am not satisfied that there is a real chance that he would not be able to re-establish social networks and connections and find similar employment or any informal employment on return or in the reasonably foreseeable future. I am not satisfied that the applicant would face a real chance of harm in Bangladesh on the basis of not being a member of a political party or a political party auxiliary organisation.
41. Although not expressly claimed, the delegate gave consideration to any harm to the applicant as a failed asylum seeker or for having departed illegally. The country information indicates that Bangladesh accepts both voluntary and involuntary returnees, after police checks of identity and Bangladeshi citizenship confirm that travel documents for authorised return may

issue.¹⁶ Although DFAT reported that authorities might take an interest in people with particular political profiles, especially with the BNP, and high-profile individuals who have engaged in political activities outside Bangladesh, or people convicted of war-crimes in absentia, I am not satisfied the applicant is such a person. Absent such a profile, DFAT has consistently reported there is no evidence to suggest that returnees have received adverse attention from authorities or others, and assesses that most returnees, including failed asylum seekers are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily, and there is no indication in the review material of any mistreatment of returnee asylum seekers. I am not satisfied that the applicant would be returning to Bangladesh with any profile of adverse concern or interest to the Bangladeshi authorities, AL or anyone else, and I am not satisfied that the applicant would face a real chance of any harm in Bangladesh upon return or in the reasonably foreseeable future on the basis of having made a failed application for asylum in Australia.

42. On the applicant's evidence he departed Bangladesh on a false passport, which DFAT has reported may amount to a punishable offence under the *Emigration Ordinance Act (1982)* (EO Act).¹⁷ There is no indication in any country information before me that the authorities in Bangladesh enforce the EO Act against returnees to Bangladesh, with DFAT reporting in 2014 that there are no known reports of any incidence of any such enforcement, and no indication in the more recent reports of any change to that position.¹⁸ I am not satisfied that the applicant would face a real chance of any harm in Bangladesh on the basis of having departed illegally.
43. On the totality of the evidence before me, I am not satisfied that on return to Bangladesh or in the reasonably foreseeable future, the applicant faces a real chance of being arrested or charged or killed or harassed or otherwise subjected to any other form of harm in Bangladesh, by act or omission, by the police or any AL government authorities or AL or Chhatra League members, supporters or activists or affiliates or anyone else on any basis of his religion or any actual or imputed political opinion as a voter or non-member of any political party or auxiliary organisation or as a failed asylum seeker from Australia who departed Bangladesh illegally, or any combination of those grounds. The applicant does not have a well-founded fear of persecution within the meaning of s.5(J)(1) of the Act.

Refugee: conclusion

44. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

45. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a

¹⁶ DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 0190822132438; DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169; DFAT, "DFAT Country Report Bangladesh" 20 October 2014, CIS2F827D91369; IOM, "Bangladesh", 1 August 2014, CIS29397

¹⁷ DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 0190822132438;

¹⁸ DFAT, "DFAT Country Report Bangladesh" 20 October 2014, CIS2F827D91369; DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 0190822132438; DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169; see also IOM, "Bangladesh", 1 August 2014, CIS29397

necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

46. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
47. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
48. I have found above that the applicant would not face a real chance of harm on return to Bangladesh or in the reasonably foreseeable future on any basis of his religion or any actual or imputed political opinion as a voter or non-member of any political party or auxiliary organisation or as a failed asylum seeker from Australia who departed Bangladesh illegally, or any combination of those grounds. Noting that the Full Federal Court¹⁹ 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 on any of those grounds, considered separately or together.

Complementary protection: conclusion

49. 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.

¹⁹ *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.