



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

---

**Decision and Reasons**

**Referred application**

---

BANGLADESH  
IAA reference: IAA16/01512

Date and time of decision: 13 February 2017 16:05:00  
Susannah McNeill, Reviewer

**Decision**

---

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473ED(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. [In] October 2015 he lodged an application for a Safe Haven Enterprise visa (the application). The applicant fears harm because his family supported the Bangladeshi National Party (BNP) and he is an apostate. He was born a Muslim and has converted to Buddhism.
2. [In] November 2016 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the applicant a protection visa. The delegate accepted the applicant's family were BNP supporters and that he had left Islam and converted to Buddhism. The delegate found that the applicant did not face a real chance of being persecuted on these bases.

### Information before the IAA

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

### Applicant's claims for protection

---

5. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
  - The applicant is a citizen of Bangladesh born in [year].
  - His village is [name]. His parents were originally from [Country 1] and [details deleted].
  - The applicant's father was a BNP member. His village was a BNP supporting village. The applicant was a BNP supporter though not technically a member but he was known to be from a BNP family.
  - The applicant's father and his [relatives] were killed by AL supporters. He thinks it was because they were members/supporters of the BNP.
  - After his father died around 6 or 7 years ago, [an official] of the village believed it was no longer safe for the applicant so he sent him to [Country 2]. The [official] of the village was killed not long after.
  - In 2014 the applicant became involved with his current partner [an overseas] born Australian woman who is a Buddhist. The applicant became attracted to Buddhism and has converted from Islam to Buddhism.
  - The applicant fears harm from the AL who is now in power because he and his family are known as a BNP family.
  - He also fears harm because he has converted from Islam to Buddhism. The government will not protect him because he is a BNP supporter.

## Factual findings

---

6. 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.

### BNP supporter

7. The applicant in his entry interview [in] September 2012 said he had his own voter ID card. He left Bangladesh because of the two parties, the AL and the BNP, and he joined neither of these parties. If he joined them, they would make him do bad things; he decided he would not do this or get involved with death so left the country. His father and [relatives] were assaulted and killed and other people from his village were also killed. The AL was responsible and this happened after the election passed. Nobody threatened him but after the death of his father and [relative] he left out of fear. When asked if his family had ever been associated or involved in any political group or organisation, he responded they were not joined with anyone, he never joined with anyone. Asked about armed groups operating in his area, he responded the BNP and AL all carried weapons. The two political groups operating in his area were the BNP and AL. He could not return because he would be killed; there are two groups and if you don't belong to one, you will be killed.
8. The applicant lodged an initial statement of claims dated [in] July 2013. In this he claimed that the father and his [relatives] were killed by AL because they were members and/or supporters of the BNP. After the incident, the local BNP [official] [sent] him and his [child] to [Country 2]. The [official] was killed not long after their departure. In his statement of claims [in] October 2015 the applicant continued to rely on his 2013 statement of claims. His father was a member of the BNP; his whole village was associated with and came under the care of the BNP. He was not an actual member of the BNP. He supported and undertook activities in support of the BNP as did most people in his village. For this reason they were known as a BNP family. After his father's death 6 or 7 years ago, [an official] of the village sent him to [Country 2] believing it was no longer safe for him to stay. The applicant included a copy of his mother's voter ID card with his application.
9. The applicant had his protection visa (PV) interview [in] January 2016. He stated that his family were only active during election times and his parents would go and cast their vote. They didn't do anything else but just supported the BNP. If one parent in the house supported the BNP then the children also supported the BNP. His mother was old now and was not actively supporting the BNP, only at election time when she cast her vote. He himself had not provided active support to any political party; his family was not powerful just known in the local village that they were BNP supporters. They would not do anything to kill someone else. He had never voted. The old supporters in his village were still supporting the BNP. He explained that in his village there were two different groups, one known as the refugee group of which they were part of (his parents having come from [Country 1]) and the other group were AL supporters. After he left Bangladesh the [official] was killed. His father and his [siblings], his [relatives] were killed after the AL came into power. They were killed [when] he had been working in the fields. Someone came to the give him the bad news and he went to collect the body. His father was killed immediately after the election, approximately one month. This would have been early 2009. The [official] understood that the AL would kill others who supported the BNP. The applicant explained that in Bangladesh when there was a power change and one party gained the power then slowly the torture against other party members begins after three to four months when they have had time to organise.

10. The applicant has a limited education. He stated in his entry interview, application and confirmed in his PV interview he had only [number] years of primary education. After listening to the recordings of the entry interview and PV interview, the entry interview officer and the delegate both appeared frustrated initially interviewing the applicant; however, once it became clear the applicant was not intentionally being difficult, that it was his limited intellectual ability to understand their questions, they adopted a more patient approach to their questioning style providing explanation when required. The applicant at all times was forthcoming with information. He was hesitant to provide an incorrect answer when giving dates and was advised an approximation would suffice. Based on my own observations I find the applicant to be generally a credible witness.
11. I accept the applicant was not a member of any political party. I accept the applicant may have supported the BNP in a limited fashion by virtue of his parents' support for the BNP. He stated he did not vote. I do not accept that his father was a member of the BNP; in his entry interview he said that no one was a member of any political party. I accept the applicant may have embellished this claim however I still find him overall to be credible. I am willing to accept that his father and mother did support the BNP in that they may have voted for them. The applicant provided a copy of his mother's voter registration card. As he confirmed his family were not powerful, his parents were refugees from [Country 1]; they had to farm other people's land to make money to survive. The applicant expressed particularly strongly in his entry interview that he did not want to belong to one of the parties because he did not want to be forced to commit some violent act. At the village level both AL and BNP are constantly battling to recruit new members and the social organisation is such that 'you either belong to BNP or Amami League – there is no other way to get things done.'<sup>1</sup>
12. I accept as plausible the applicant's father and [relatives] were killed following the election in 2008 as BNP supporters. I also find it plausible that the [official] of the applicant's village was killed not long after he left for Bangladesh. This is supported by country information before the delegate that violence has become embedded in the political fabric of society.<sup>2</sup> Violence and criminality have been trademarks of political incumbents in Bangladesh.<sup>3</sup> Political violence is a major destabilising factor in Bangladesh and there has been a rise in political violence since 2008 and remains a problem in Bangladesh and it is not only members that are targeted but also civilians.<sup>4</sup> After the AL came into power in 2009, 251 people were killed in acts of political violence in 2009.<sup>5</sup> Between January 2009 and December 2014 approximately 1471 people have been killed and 91, 856 people have been injured in political violence.<sup>6,7</sup> The applicant's father was killed in approximately January/February of 2009. I agree with the delegate that activists and leaders of the ruling party attack opposition supporters with a degree of impunity.<sup>8</sup>

---

<sup>1</sup> Joe Devine "Governance, democracy and the politics of wellbeing", Economic and Social Research Council, WeD Working Paper, 01 September 2007, CIS1ACBC92986, p 18.

<sup>2</sup> Ibid p 24-25.

<sup>3</sup> International Crisis Group (Crisis Group), "Bangladesh: Back to the Future", Crisis Group Asia Report N°226, 01 June 2012, CIS23333, p 8.

<sup>4</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report Bangladesh", 5 July 2016, CIS38A80121206, [5.59-5.60] p 15.

<sup>5</sup> Odhikar, "Annual Human Rights Report 2014", 17 August 2015, CISEC96CF14151 p 113

<sup>6</sup> Ibid p 12.

<sup>7</sup> Ibid p 6.

<sup>8</sup> Odhikar, "Bangladesh: Human Rights Report 2015", 16 November 2016, CISEC96CF15107, p 17.

## Conversion from Islam to Buddhism

13. The applicant in his entry interview [in] September 2012 confirmed his religion as Islam. He stated he did not want to join a political party because he would be made to do bad things, he did not want to do this or get involved in bad death.
14. In his statement of claims [in] October 2015 the applicant claimed he had left Islam and has become a Buddhist in Australia and he feared persecution because of this. Approximately 18 months ago (April 2014) he had met his current partner, [an overseas] born Australian and Buddhist. He spent most of his time at his partner's house despite living separately. He became attracted to Buddhism after watching his partner's involvement with the religion, noticing the requirements of Buddhism were more relaxed. They only needed to pray twice a day and Buddhists also had more freedom than there was in Islam. His friends had noticed he no longer went to mosque, questioned his lack of attendance and prayer and his not fasting during Ramadan. They disapproved of his disinterest in Islam and the fact he had a Buddhist partner. He felt he couldn't reveal to his flat mates that he was now Buddhist; they would make him move out. If his family in Bangladesh learned of his conversion he would be disowned. Without family support he would not be able to live in Bangladesh. Conversion from Islam in Bangladesh was almost unheard of and was forbidden.
15. Included with the applicant's application were photos of the applicant. These included photos of him praying at a Buddhist temple alone and with his partner, a photo with Buddhist monks and one with the congregation. Also included are photos of the applicant and his partner on their engagement, with her family members and their engagement party. Also was a photo of a Christmas party celebration with various people. The applicant's representative had also provided a submission to the Department dated [in] January 2016.
16. The applicant in his PV interview confirmed he was now living with his partner and had been doing so for the last three or four months in her house. His [Muslim] flatmates had not approved of his relationship with a Buddhist so he had moved out. They were a couple like a man and wife and her full family lived there, her parents, [sibling] and [number] children from a previous relationship. He declared Buddhists were good people, they actually took care of people, provided good advice and there were fewer restrictions in their religion, one could do anything. He had been to the Buddhist temple many times but you could pray either at home or in the temple. When he left Bangladesh he was a practising Muslim but when he met his partner he was thinking about leaving Islam. Asked why he made such a big change he replied Muslims were not equal, and they killed each other. Muslims prayed five times a day but they killed people. He had got the chance to learn about another religion, Buddhists were good people and they took care of each other whereas Muslims were jealous. Initially he had not had the understanding to convert and he had only gone to the temple as an outing with his partner but then he had started questioning things. His partner had taught him about her God, Buddha and he was attracted to the freedoms of Buddhism. Asked which of the two main types of Buddhism his partner followed, he responded he did not know he would ask her. He had not investigated other religions, this was the only one he had considered and he had found everything good in their everyday life. Buddhists loved each other, unlike Muslims they didn't kill; there were more freedoms and fewer restrictions. If he returned to Bangladesh he would have to practice Buddhism he couldn't change it anymore. In Bangladesh, it didn't matter anymore if he was AL or BNP as he was a practising Buddhist and Muslims would kill him.
17. The applicant's migration agent confirmed that the applicant had a limited education and therefore had a limited understanding of things. He had not researched Buddhism as an educated person might do but had been drawn to it initially because he fell in love. He was

disillusioned with Islam and on his return to Bangladesh would not be able to hide this. In response to the delegate's point that there was a Buddhist community in Bangladesh, she noted the applicant's situation was different, those in Bangladesh were born Buddhist and belonged to an ethnic minority and most were AL supporters. He would not be welcome. Tension between the Muslim majority and Buddhist minority and these tensions were rising. A newcomer would be treated with suspicion.

18. I accept that the applicant has left Islam and converted to Buddhism. The applicant was consistent in his PV interview with his statement of claims. His testimony was natural, uncontrived and unrehearsed. He did not embellish his knowledge of Buddhism nor its precepts. Although at times his answers were repetitive and simplistic they reflected his limited intellect and individual understanding of Buddhism and what it personally meant to him. It is apparent from his entry interview that he did not feel comfortable with the killings and violence undertaken by the political parties in Bangladesh and that he would be forced to be involved in this type of behaviour in seeking their protection. I can see from the photos that he has provided that he has been accepted by the other worshippers at the Buddhist temple he attends with his partner and he has also been accepted by her family who are of the Buddhist faith. I am satisfied on the evidence the applicant's conversion to Buddhism is genuine and not for the purpose of strengthening his claims to be a refugee.

### **Refugee assessment**

---

19. 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**

20. 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.
21. I am satisfied on his return to Bangladesh there is a real chance that the applicant would be persecuted because he has left Islam, is an apostate and has converted to Buddhism.

22. The total population of Bangladesh is 160 million and Buddhists make up less than one percent.<sup>9</sup> There are an estimated one million Buddhists concentrated in the south east Chittagong region of Bangladesh. The majority belong to the indigenous groups of the CHT (Chittagong Hill Tracts). A small number of Buddhists also live in Dhaka.<sup>10</sup> DFAT assesses that indigenous people in the CHT region face low levels of official discrimination due to the lack of legal recognition of land claims under Bangladeshi law.<sup>11</sup> Buddhists have been subjected to infrequent acts of societal violence because of their perceived affiliations with the AL.<sup>12</sup> DFAT assesses that Buddhists face a low risk of societal violence on a day-to-day basis. Incidents of religious and political violence against the Buddhist community are infrequent and generally take place in the context of other events, such as wider protests.<sup>13</sup> Country information available from other sources demonstrates that violence attacks on Buddhists is happening other than in the context of wider protests. This is particularly so with the rise in Islamic extremism in Bangladesh.
23. The 2012 attack on Buddhist temples and monasteries in the Cox's bazaar against Buddhist by BNP and Jamat Islami (JI) members during Islamic protests resulted in the burning down of temples and approximately 50 houses.<sup>14</sup> As many as 25, 000 people participated in the violence against the small Buddhist community.<sup>15</sup> According to one report, this event followed the posting of a photo on Facebook by a young Bengali Buddhist deemed offensive. Muslim rioters torched and vandalised 19 Buddhist temples. The area is in South Eastern Bangladesh and borders Myanmar. Following the incident many Buddhists began migrating to Myanmar feeling their lives were under threat in Bangladesh. Several hundred Buddhist families crossed over.<sup>16</sup> Furthermore there is religious tension along the border as a result of the treatment and attacks on Muslim Rohingyas by Buddhist majority Myanmar resulting in Rohingyas crossing over into Bangladesh.<sup>17</sup> Whilst I accept the government of Bangladesh did move to stop the rioters in 2012, those responsible for the riots have not been brought to justice. Those who experienced the acts of violence remain frustrated by the inadequate reactions of the police and judiciary; this has created a climate of impunity.<sup>18</sup> A government committee was established to investigate the incident but still four years later has not reported its finding.<sup>19</sup>
24. Odhikar, in its Annual Human Rights Report for 2014, noted attacks on religious minorities after elections have become a common phenomenon and the government and local administration are apathetic in their approach in providing security and safety to these vulnerable communities. 'The practice of attacking socially, economically and politically vulnerable groups belonging to Hindu, Christian or other religious and cultural minority communities by the local thugs associated with the ruling party, opposition and other power elites, during the pre and post-election period are extremely worrying.'<sup>20</sup> This was also

<sup>9</sup> US Department of State, "2015 Report on International Religious Freedom - Bangladesh", 10 August 2016, OGD95BE926656.

<sup>10</sup> DFAT, "DFAT Country Report Bangladesh 20 October 2014", 20 October 2014, CIS2F827D91369 [3.27] p 12.

<sup>11</sup> Ibid [3.5] p 9.

<sup>12</sup> DFAT, "DFAT Bangladesh Country Information Report", 5 July 2016, CIS38A80121206, Ibid [3.28]

<sup>13</sup> Ibid [3.29] p 12.

<sup>14</sup> Ibid [3.28] p 12.

<sup>15</sup> "To Counter ISIS, Bangladesh Needs to Solve Its Homegrown Violence ", The Diplomat, 16 March 2016, CX6A26A6E13258.

<sup>16</sup> "Buddhists from Bangladesh resettle in Myanmar, Rohingya Muslims cry foul", Christian Science Monitor, The, 24 May 2013, CX307832.

<sup>17</sup> Ibid

<sup>18</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), "Preliminary findings of Country Visit to Bangladesh by Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief", 9 September 2015, CXBD6A0DE14663.

<sup>19</sup> DFAT, "DFAT Bangladesh Country Information Report", 5 July 2016, CIS38A80121206, [3.28] p 12.

<sup>20</sup> "Annual Human Rights Report 2014", Odhikar, 17 August 2015, CISEC96CF14151, [104] p 39.

confirmed by DFAT. Hindus, Buddhists and Christians were targeted by the Islamist BNP and JI protestors leading up to the and following the 2014 elections due to their perceived association with the AL.<sup>21</sup> In 2014 the High Court, in the aftermath of the 2014 election, held that law enforcement agencies had 'seriously failed' to protect members of vulnerable groups.<sup>22</sup>

25. Odhikar reported in 2015 of frequent attacks against Buddhists by criminals led by Cox's Bazaar unit AL activists.<sup>23</sup> It also reported incidents of land grabbing, intimidation, extortion and various kinds of illegal activities, including attacks on places of worship belonging to religious minority citizens, continued under political shelter.<sup>24</sup> In May 2016 it was reported that a Buddhist monk was hacked to death in the district of Bandarban in south eastern Bangladesh. Bandarban is largely Buddhist and home to indigenous peoples who adopted the religion centuries ago. The article states that the killing comes as suspected Islamists have been blamed or claimed responsibility in the murder of dozens of minorities.<sup>25</sup> According to DFAT, ISIL claimed responsibility for the monk's murder.<sup>26</sup> The US Department of State Report on International Religious Freedoms – Bangladesh 2015 reported a string of knife, gun and bomb attacks by ISIL on religious minorities killing five and injuring scores more. There were also other attacks resulting in injuries against members of minority religious groups and looting of these groups's religious sites and homes.<sup>27</sup> In the CHT tensions over issues not originally religious in nature, particularly land ownership, sometimes continued to acquire religious overtones due to strains between members of the majority Muslims community and Buddhist, Hindu or Christian members of tribal groups.<sup>28</sup>
26. As noted the delegate was unable to find any specific references of conversion from Islam to Buddhism in Bangladesh. Country information before the delegate indicates that religious conversions are generally rare and if they occur they mostly take place in the context of interreligious marriage. Conversions outside of interreligious marriages have occurred, in particular from Buddhism to Christianity or from various religions to Islam. Occasionally Muslims have converted to Christianity or Baha'ism. Converts to another religion face social ostracism, some had to go into hiding or have concealed their new faith for fear of social ostracism.<sup>29</sup> There are reports of Muslim converts to Christianity being attacked by Muslim mobs and threats that they would be chased out of the village for being apostates.<sup>30</sup>
27. Overall there has been an increase in general violence in Bangladesh and the worsening of the security situation has been brought about by high levels of politically motivated violence and a significant increase in Islamic militancy.<sup>31</sup> While the number of militant attacks has been relatively low (45 between the end of September 2015 and end of February 2016) the style has changed and there are suggestions of increased organisation and capability by the Islamic militants.<sup>32</sup> There has been an increase of attacks on and arrests of pro-secular or anti-Islamist

---

<sup>21</sup> DFAT, "DFAT Country Report Bangladesh", 20 October 2014, CIS2F827D91369, [3.40] p 13.

<sup>22</sup> DFAT, "DFAT Bangladesh Country Information Report", 5 July 2016, CIS38A80121206, [3.24] p 11.

<sup>23</sup> "Human Rights Monitoring Report: August 1 – 31, 2015", Odhikar, 1 September 2015, CISEC96CF14297 [28] p 11

<sup>24</sup> Ibid [28] p 10.

<sup>25</sup> "Elderly Buddhist monk is hacked to death and left in a pool of blood in a temple in Bangladesh in 'the latest of a series of murders by Islamic extremists", Daily Mail (Australia), 14 May 2016, CX6A26A6E13252.

<sup>26</sup> DFAT, "DFAT Bangladesh Country Information Report", 5 July 2016, CIS38A80121206, [3.28] p 12.

<sup>27</sup> US Department of State, "2015 Report on International Religious Freedom - Bangladesh", 10 August 2016, OGD95BE926656.

<sup>28</sup> Ibid.

<sup>29</sup> United Nations, "Report of the Special Rapporteur on freedom of religion or belief on his mission to Bangladesh", 22 January 2016, CIS38A8012756, [57]-[58] p 12.

<sup>30</sup> Raymond Ibrahim, "Bangladesh: Married Couple Beat for Converting to Christianity", 7 April 2015, CISEC96CF15213.

<sup>31</sup> DFAT, "DFAT Bangladesh Country Information Report", 5 July 2016, CIS38A80121206, [2.27] p 8

<sup>32</sup> Ibid [2.30]-[2.31] p 8.



bloggers or anyone who questions the role of Islam in the state with the increase in Islamist militant violence. Many writers, bloggers and publishers have gone into hiding because of the absence or inadequacy of state protection.<sup>33</sup> In the current climate in Bangladesh, an apostate like the applicant may be viewed as someone challenging the role of Islam in Bangladesh. DFAT assesses that these developments have heightened the risk of sectarian and generalised violence against members of religious minority groups and others perceived to threaten conservative Islamist interests.<sup>34</sup>

28. In the context of Bangladesh's predominantly Muslim society, I consider the applicant will be viewed as both an apostate and a convert to a religious minority. He is an ethnic Bengali and the majority of Buddhists are from indigenous groups associated with the AL. I accept on the evidence that the applicant, on his return to Bangladesh will no longer attend his local Mosque and pray five times a day, take part in Friday prayers, observe Ramadan or celebrate Eid. The applicant's evidence, which I accept is that his roommates noticed he was no longer attending mosque or fast during Ramadan in Australia, they disapproved of his disinterest in Islam and that he had a Buddhist partner. I also accept that he will pursue his Buddhist faith in Bangladesh and that his behaviour will not go unnoticed in any Muslim community. As the applicant declared at his PV interview, if he goes back to Bangladesh he will have to practice Buddhism. If he prays at a Buddhist temple as he has habitually been doing in Australia for the past couple of years, his presence would also be met with suspicion. I am satisfied that with the applicant's particular situation there is a small but nonetheless real chance of him experiencing social ostracism, harassment, discrimination and acts of violence by Muslim and Buddhist communities and even Islamic extremist groups, when considered cumulatively, amount to serious harm. I am satisfied on the evidence that the real chance of harm relates to all areas of Bangladesh.
29. I am satisfied that the harm is for the essential and significant reason of the applicant's religion and involves systematic and persecutory conduct and amounts to persecution.
30. I am also satisfied that in accordance with s.5J(3)(a) the applicant cannot be required to modify his behaviour to avoid persecution altering his religious beliefs I am also satisfied that effective protection measures are not available. Those who have perpetrated crimes against Buddhists in the past have not been brought to justice. DFAT indicates political manipulation and corruption operate to constrain the rule of law in Bangladesh.<sup>35</sup> Although the Bangladeshi police and other security forces have responded to recent militant attacks by providing additional protection to religious minorities, credible sources have questioned the effectiveness of these measures, noting that most of the perpetrators remain at large and highlighting dangers associated with the Government's continued denial of ISIL involvement.<sup>36</sup> Political and bureaucratic interference is a significant impediment to police efficiency. BNP and AL Governments have both used the police to undermine opposition forces, and many politicians have used the police to advance their personal interests; the lower ranks are often poorly paid, trained and equipped.<sup>37</sup> While nominally independent, in practice the court system is hindered by corruption and institutional weaknesses, including a substantial backlog.<sup>38</sup> Considering this information as a whole, I am not satisfied that the Bangladesh state able, in accordance with s.5LA, to offer protection against the persecution.

---

<sup>33</sup> Ibid [3.39-3.41] p 13.

<sup>34</sup> Ibid [2.32] p 8.

<sup>35</sup> Ibid [5.1] p 21.

<sup>36</sup> Ibid [5.3] p 21.

<sup>37</sup> Ibid [5.4] p 21.

<sup>38</sup> Ibid [5.9] p 21.

**Refugee: conclusion**

31. The applicant meets the requirements of the definition of refugee in s.5H(1).

**Decision**

---

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*

## Applicable law

---

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

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

...

***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.

#### **91W Evidence of identity and bogus documents**

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
  - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
  - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
  - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
    - (i) refuses or fails to comply with the request; or
    - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
  - (b) either:
    - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

**91WA Providing bogus documents or destroying identity documents**

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
  - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
    - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
  - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
  - (b) either:
    - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
    - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...