



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA17/01782

Date and time of decision: 8 June 2017 17:49:00
Susannah McNeill, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant), a national of Bangladesh and member of the Bangladesh National Party (BNP), fears harm from two business competitors both Awami League (AL) leaders in his local area. [In] July 2016 the applicant lodged an application for a Temporary Protection visa (protection visa).
2. [In] January 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the protection visa. The delegate accepted the applicant was a low level BNP supporter and that his business had been targeted and extorted by AL supporters but that he could take reasonable steps so as to avoid harm by not going into direct business with the AL leaders.

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. On 24 February 2017 the IAA received a submission from the applicant's representative along with a statutory declaration from the applicant. The submission makes argument in response to the delegate's findings and refers to evidence that was before the delegate. I do not consider this to be 'new information' within the meaning of s.473DC(1). The applicant's statutory declaration reiterates his claims; however, within this the applicant has presented what I consider new information. Although he claimed at his protection visa (PV) interview his wife was being pressured in relation to his return to Bangladesh he did not mention that they had threatened to kidnap his [child] if he did not return. Given this alleged threat happened approximately six months prior to his PV interview the applicant had the opportunity to provide this information either in his written statement of claims included with his PV application or at his interview in December 2016. The delegate asked the applicant at his PV interview if anything had happened since he had left in 2012, and he did not refer to the now claimed threat of kidnapping. I am not satisfied there are exceptional circumstances for considering this new information.
5. On 6 March 2017 the IAA received further documentation from the applicant including a medical certificate from his treating doctor in Australia, a copy of his Bangladeshi birth certificate, a "Citizen and Character Certificate" from [Location 1] [in] February 2017 and a copy of his Bangladeshi identity card. The applicant had provided a copy of his Bangladeshi identity card along with an English translation with his PV application. I do not consider this to be new information.
6. The applicant provided a birth certificate issued [in] November 2012, at his PV interview. The birth certificate he has now provided with his submission is a new document issued [in] June 2016. The applicant's name, date of birth, place of birth and parent's details are the same. One document has a personal identity number and the newer document has a birth registration number; these numbers differ. There is no explanation from the applicant why he is providing the second document, or why it is only being provided now despite it predating his PV interview by six months. I am not satisfied there are exceptional circumstances for considering this new information.

7. The “Citizenship and Character Certificate” from [Location 1], Jessore is dated [in] February 2017 and signed by [the office bearer]. This is new information. The applicant has provided no explanation or reasons why it should be considered. The applicant provided a “Citizenship and Character Certificate” from 2012 signed by [another office bearer], [Location 1], Jessore with his PV application. I am not satisfied there are exceptional circumstances for considering this new information.
8. The letter from a doctor dated [in] February 2017 confirms the applicant had [surgery] in 2013, that he has chronic pain [which] is aggravated on standing and that he is unable to do any work that involves prolonged standing. This letter post-dates the delegate’s decision and is new information. The applicant’s representative has stated this letter should be taken into account when assessing the applicant’s need to resume work as a business person if he returns to Bangladesh because his medical condition will prevent him from undertaking any physical work. The applicant advised in his statement of claims that he [injured himself] in July 2013 and this impacted on his ability to work. This was discussed at this PV interview and the delegate invited the applicant to provide a letter from a doctor referring how it impacted on his life. The applicant was clearly on notice to provide documentation prior to the delegate making his decision. I am not satisfied there are exceptional circumstances for considering this new information.

Applicant’s claims for protection

9. The applicant’s claims can be summarised as follows:
 - He was born in [year] in [Jessore] district, Bangladesh
 - In 2008 he started a [business]. By 2011 his business was expanding and he needed to set up a proper workshop. He obtained his Citizenship and Character certificate to obtain the proper licences for his business.
 - His workshop produced high quality [goods]. He charged less than his competitors. Two of his main competitors were not happy with his success. One was [Official 1] of the AL of his local area (A). The second was [Official 2] of the AL in his local area (K). They had a lot of political influence.
 - He was a member of the BNP party. He attended meetings, joined BNP processions and tried to motivate others to join the BNP. His father had been a member of the BNP and he started to help his father around 2008 with his activities. The local people knew he and his father were BNP members.
 - K and A visited his shop wanting him to join the AL. They also wanted him to join in their illegal activities but he refused.
 - K and A were angry he was producing high quality goods and charging less. They asked him to charge the same or to not take orders from people. He could not charge the same amount as he would not get orders. Due to their power and influence, people would buy from them rather than him if he charged the same. They said they would kill him if he did not stop.
 - His customers stopped paying him because they had been threatened by K and A. They told his customers not to pay him and they did not pay him. He could not pay the people who supplied him with material for his business. He owed a lot of money and his suppliers began demanding money from him.
 - K and A came to his workshop and borrowed machines which they did not return.

- In early May 2012 K and A demanded [amount] lakhs taka from him. He paid [amount] lakhs [amount] taka only. A week later they took his machines and everything from his shop. They threatened his life and said they would kill him.
- He notified the police but the police did nothing, as K and A were friendly with the police. He also contacted the Chairman of his locality (a member of the AL) but he said he couldn't help him against K and A. The local authorities cannot help him.
- His creditors were asking him for money. He went into hiding in May 2012. He was in hiding for about one month before he left Bangladesh moving from place to place. He did not tell his family afraid that K and A would threaten or hurt them.
- In June 2012 he left Bangladesh. He cannot relocate to another part of Bangladesh as K and A would find him.
- K and A still want to kill him. They want him to support the illegal things they are doing.
- In July 2013 he [injured himself] which means he cannot move well and would not be able to escape if in danger. He is no longer fit for regular work and it will impact on his ability to find work in Bangladesh.
- His wife is currently living with her father. When she returns to his father house, K and A ask her about him stating that she should bring him back to Bangladesh.

Factual findings

10. 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.

Member of the BNP

11. The applicant claimed to be a member of the BNP and that he attended meetings, joined in processions organised by the BNP and tried to motivate other people to join the BNP. His father was also a member of the BNP and he began helping his father with his activities in 2008. He was not very active because his business was busy; however, in Bangladesh it is necessary to be associated with a political party and political support is needed for business. It was known in his area he and his father were BNP members.
12. At his PV interview the applicant said to do business in Bangladesh one needed to be with a political party and he was acquainted with the BNP. He "used to do" the BNP and supported the BNP. He wasn't sure of its full name but thought it was the "Jatiya" party, the English word being nationalist. His main focus was his business. His father's involvement in politics was to a minimum extent. His [brother] was involved only a little bit. Asked if he was a member of the party, he replied he was sort of but nothing big, he only had a small responsibility from the party. Asked if he was a formal member, whether he had registered to become a member of the party; the applicant again did not respond directly to the question. Because his business was good there, poor people, his clients and a good number of other people used to listen to him. He had the responsibility from the party to convince people to join the BNP and keep them convinced. Asked again whether he was a registered member, he said "yes" but did not have his membership card. He knew the colours and symbol of the BNP.
13. Asked about ideologies and principals that made him want to be part of the BNP as opposed to the AL, he stated he honestly didn't understand politics much, he was just following the BNP because of his father and he needed to follow a party for his business. He clarified it was not

really because of his business, he had to support a party and rely on a party and he chose the BNP. He preferred the BNP because it did less crime, terrorism and killing. He didn't undertake many activities for the party because of his business. Sometimes they would come and say they needed him. Asked to give examples, he could only say that the chairman might ask him to check out some road works with them. They wanted him to be more involved or "perhaps they loved him."

14. He said he participated in a BNP election but couldn't remember when. He had last voted for the MP election in 2010 and the election for the level of tana and the chairman for the upazila. Asked whether aside from voting he did anything, he responded "no". He had not been involved in any demonstrations or strikes. The delegate put to the applicant his understanding of what the applicant was describing was a "very very low level involvement in politics". The applicant agreed his involvement was low level.
15. I note the applicant, in his "arrival entry" interview [in] October 2012, told the officer he supported the BNP during the elections but he was never involved nor was he a party member. He also only stated that it was only him who supported the BNP and made no reference to other family members.
16. I am satisfied the applicant was no more than a very low level supporter of the BNP and not a member as claimed. I consider the applicant in his statement of claims embellished his status and association with the BNP. He confirmed at his PV interview that he did not take part in demonstrations and strikes. He confirmed that he was too busy with his business to take note of the BNP's ideologies. He was not able to describe any actual BNP policies/ideologies beyond describing the party's colours and symbol. The evidence he gave on activities the BNP leadership called on him to do I consider vague and inconsequential. He stated that he voted at elections. Although he eventually replied that he was registered as a member he did not have a membership card; I do not accept this claim. I am willing to accept his father may also have supported the BNP but I am not satisfied his father had an active role within the party. I am satisfied that it may have been known in his village that he and his father's political allegiances lay with the BNP but I am not satisfied that people in their local area knew they were BNP members as claimed.

Extortion against his business

17. The applicant claimed he ran a successful [business] from 2008 until May 2012. Two business competitors who held leadership positions within the local AL party, K, [Official 2] of the AL, and A, [Official 1] of the AL in his area, were not happy with his success. Initially they visited his workshop wanting him to join the AL. They also wanted him to join their illegal activities and threaten others, collect money by force, steal and sell [vehicles] and collect donations by force from other parties. He refused to join them. They then told him to sell his goods at the same price but he wouldn't. However they threatened to kill him if he didn't. They threatened his customers not to pay him so they did not. He could not pay his suppliers. They borrowed his machinery and wouldn't give it back. They demanded [amount] lakhs taka; he could only pay [amount] lakhs and [amount] taka. The following week they looted his workshop. He notified the police but they did not do anything as they were friendly with K and A.
18. At his PV interview he explained his business was a workshop for making [various items], he employed other people. For big orders he might employ 10 people but for smaller orders he only needed four or five people. He had [various] machines; to get his supplies he would buy from the tana level at Jessore. He couldn't remember the brand names of his machines as they were different companies. He had no documentation related to his business. Because it was at a

village level he didn't pay any taxes. At the time he only had one document, a license, but he wasn't sure where it was now. He asked the delegate for examples of documentation he wished him to provide; the delegate indicated registration, a license, invoices from suppliers or to show he paid employees. The applicant said he had documents in Bangladesh but hadn't brought anything with him. He described his business as being much bigger than the office where the interview was being conducted. He used to buy [materials] and make [items]. The property where the business was being run was owned by him and he had the paperwork in his name, but again he hadn't realised he would be asked for it. Asked if there was anything stopping his family from providing it, the applicant responded "no". The delegate invited the applicant to provide this document to support his claim. Since the business had been taken over the property had been left as it was, no one was using the land and he couldn't sell it from Australia. If he returned to Bangladesh he didn't think there would be a problem selling the land but the two AL leaders would try and harm him.

19. He confirmed he feared K and A both AL party leaders. Before they had been politically weak but now they were strong. He confirmed they demanded money from him and took his machinery and tried to kill him. They also wanted him to help with their activities demanding money from people or hijacking [vehicles]. The delegate asked the applicant to explain what he meant when he said they had tried to kill him. The applicant responded it was because his business was doing better than theirs. The first jealousy or vindictiveness came from the business actually and then the political issue. They put these two things together and tried to harm him. When he refused to help them hijack [vehicles] and do other bad things they said they would then kill him. The delegate clarified that they had threatened to kill him to which the applicant responded "yes". The applicant then claimed one of them told his mother that he was not listening to them and fearing for his life she encouraged him to leave. Again the delegate asked him if he had ever suffered any physical harm or mistreatment, to this he said "no".
20. The delegate asked the applicant to what extent he thought that being a low level supporter of the BNP was a factor in K and A targeting him. The applicant responded he was a local leader running a good business, people listened to his words and they wanted him to join them, the problem was he didn't intend to join them. Asked why they were so intent on him joining them, he said actually they hadn't thought he would. There would then be acquisitions against him, cases against him, he would go to jail and they would procure his business and that was the conspiracy. He notified the police but they would not help him. He didn't have a problem with other people just these two leaders and they had many followers.
21. The delegate put to the applicant that it seemed they primarily wanted to take over his business and he confirmed it was their first objective. The applicant then appeared to contradict this evidence himself a number of times. The delegate pointed out that his business hadn't been running for the last four half years, they had essentially achieved their goal as he was no longer a competitor. The applicant said the main thing was the politics; they wanted him to join them. They were trying to take him to a higher position in politics. The delegate queried why they would pursue him still to join their party given his low level involvement in politics. The applicant responded that he thought their main intention was to engage him to do bad activities. The applicant has not provided any clear or consistent evidence in relation to the reasons he claims he was targeted. He initially claimed they wanted his business, then the focus changed to them wanting him for political reasons and then, finally, he said they wanted him to assist with their criminal activities.
22. The applicant said in his statement of claims he contacted the Chairman of his locality for help. He could not help him against K and A. The Chairman was also a member of the AL, although he later said he was a member of Jamaat-e-Islami. At his PV interview the applicant's Citizen and

Character Certificate signed and stamped by [the other office bearer] was discussed. The certificate attests to the applicant's character but does not mention the applicant seeking assistance.

23. In his entry interview the applicant was asked by the interviewing officer to "very briefly" explain his reasons for leaving Bangladesh. He said he was working in his shop; he was taken and tortured by AL people because he had a good business and didn't like him to be successful. They would demand bribes and when he couldn't pay them, they beat him up. This happened in approximately April 2012. In his listed employment history from 2008 until June 2012 he claimed to have worked for himself as [Occupation 1] making [items]. The claims at this interview that he was beaten up and tortured are inconsistent with his statement of claims that he was only threatened to be killed. Again he clearly stated "no" at his PV interview he was not actually harmed or mistreated. I am not satisfied the applicant was tortured by AL people because of his successful business or that he was beaten up when he did not pay any bribes they demanded. This was not in his written statement of claims and he made no mention of this occurrence at his PV interview. Lastly, as noted, the applicant said he was not physically harmed or mistreated by anyone.
24. I consider the applicant has been consistent in so far as he has claimed to have run a [business]. I am not satisfied the AL leaders K and A demanded [amount] lakhs taka from him and that he paid them [amount] lakhs [amount] taka. I do not accept that he would have had this amount given he claimed to owe so much money to creditors (See below). I am not satisfied that AL leader K and A targeted him for any reason including because he was a local leader or member of the BNP and that people would listen to his words. I have accepted the applicant was a low level supporter of the BNP. I do not accept that they sought to make him a member of the AL. I am also not satisfied that K and A would go to so much trouble to recruit him to undertake their dirty work. As noted by the delegate Bangladesh is densely populated, there would be many others who they could recruit or would willingly undertake such work. Furthermore, the applicant was uncertain as to what was their primary motivation in targeting him; his business, his position within the BNP or that they would have "one extra member" to aid them in their criminal enterprises. Their first objective was to destroy his business, and then on the other hand they wanted to him to join their party because of his profile, his reputation as a local leader who could convince others to join the BNP. However, he then said they also wanted him to join their illegal activities and act as a thug.
25. I am not persuaded that his business was as successful or as large as the applicant made out. The applicant, claiming he had a business license, has not provided evidence of this despite the delegate inviting him so. I note the applicant said in his statement of claims he obtained the "Citizenship and Character Certificate" (a copy of which he included with his PV application) needed to obtain the proper licenses for his business; he has not provided evidence of the licenses. The applicant to date has provided no evidence of his business even the paperwork of the land he owned on which the business was run and now lies dormant. I find it somewhat surprising that he could not remember the brands of his machines used for his business, which were supposedly borrowed and not returned or carried off. I consider the applicant has inflated his business success to make him appear of more interest to the AL leaders.
26. I accept the applicant was self-employed and worked as [Occupation 1]. I do not accept that he was targeted by two AL leaders, this, like his claimed influential role within the BNP, I too find he has embellished. The applicant established his business in 2008 the same year the AL was voted into power. The applicant left in June 2012. Based on his owned evidence in over three and a half years the AL was in power the applicant was not physically harmed or mistreated by AL leaders or cadres, despite the claimed threats. I am also not satisfied that two AL leaders

threatened to kill him because his business was more successful than theirs. I consider a key reason he left Bangladesh was because of money he owed to his suppliers (discussed below).

Money demands from creditors/suppliers

27. The applicant claimed the two AL competitors threatened his customers not to pay him but to give them the money instead. As his customers were not paying him, he could not pay the people who supplied him with materials for his business. His suppliers were “good people” but it got to the stage that he owed them a lot of money and suppliers began demanding their money, but he could not pay them.
28. At his PV interview the applicant said the inventory he took from his suppliers he still owed them money. He didn’t know how much he owed as he hadn’t calculated it. He estimated it would be about [amount] taka. Asked how much he could sell his land for the business was on, he responded [amount] taka. Asked how he acquired the debt and how would his suppliers allow it, he said he was buying goods from one person and selling them to another. Asked why the suppliers would continue to give him goods without payment as normally a supplier would stop doing so, the applicant said he owed debts to different people. Someone would get [amount] taka and the other [amount] taka; he would get loans from other people etc. and that his how business in Bangladesh worked, debts to other and loans from others.
29. Since he left Bangladesh and the business was no longer running he had had no contact with his creditors. The problem was that K and A had gone to people and told them to give them the money they owed him. He owed money to two to three people he had been collecting goods from. The delegate noted in his entry interview he spent [amount] [Country 1 currency] to get to Australia, the equivalent of [amount] taka and that he could have used this money to pay his suppliers. The applicant said that at the time he did not have the cash and when he went to [Country 1] his brother helped him in this regard. The delegate noted that earlier the applicant had said he owed about [amount] taka and his land was worth the same amount, and asked whether there was anything stopping him from selling the land and paying his suppliers. The applicant said he could do this but the problem was the two people who ruined his business were not letting him go home.
30. At his entry interview the applicant said he left his country because he was threatened by people in his village who he borrowed money from after losing money/equipment by harassment from the AL. They had made threats to him and that was another reason why he left Bangladesh. Asked his reason for coming to Australia he claimed not to have been paid regularly in [Country 1] so he “decided to come to Australia and work and make money to pay back the people” he owed money in Bangladesh. Asked his reasons for not returning to Bangladesh, the applicant said he would be caught and beaten up by the people he owned money to; he was afraid of them and what they would do. He also feared the AL as they had damaged his “stuff” and beat him up before.
31. Although the purpose of an entry interview is not the opportunity for an applicant to put their claims for protection in full; it is the occasion to highlight their key fears. Having listened to the entry interview I am satisfied that a core reason the applicant left Bangladesh was that he feared the people he owed money to, suppliers. In his statement of claims the applicant stated he was afraid his wife may be harmed by K and A. His wife now lived in her father’s house because she is afraid. Sometimes she returns to his father’s home and when she does K and A ask her when he is returning. Two months ago his father had a [health episode] and when his wife went to visit K and A went to his father’s house and asked his wife about him. They said bad words to her and that she should bring him back to Bangladesh.

32. At his PV interview the applicant described his family situation. Originally his wife and child had lived with his parents but they put pressure on her so she went to live with her parent and they were supporting her. Asked why his parents weren't supporting her he responded she could not stay there because of the pressure he had, his parents didn't do much and for food she is with her parents.
33. The applicant when asked if anything significant had happened since he departed in 2012 he responded the new thing is they were pressuring his wife for him to go back, she was in fear and couldn't live in their house and lived with her father. They were also pressuring his father telling him his son sent money and they were asking him for their money back. Asked who, he said K and A were asking for the money he sent to his father regularly. He did not give them money though, telling them he doesn't get money from his son. They then say to bring him back to Bangladesh as they want him.
34. The applicant had one [sibling] working in [Country 1] and [one brother] was farming their land and had a [small business]. Nothing had happened to his brother over the past four years as it was he they were interested in and his brother was farming most of the time.
35. I am not satisfied the applicant's wife or father or any of his family members have been threatened since his departure from Bangladesh by K and A. I have not accepted that the applicant was ever of interest to A and K or that they threatened to kill him. I also find it rather implausible too that on one hand they would demand money from his father but when he said he didn't receive money from his son abroad they would simply say "then bring him back to this country we want him".

Inability to work

36. The applicant claimed in July 2013 he [injured himself] and was not able to move well. He can no longer walk more than 10 minutes without pain. Although there is some improvement to his injury in the long term, his doctors and physiotherapists have advised him that it will take a long time. He is no longer fit for work; medical staff have advised him he should not lift even five kilograms. He is worried about his ability to find work. He also fears he will be in more danger because he is not able to move fast and could not escape if he was in danger.
37. At his PV interview the delegate asked the applicant if his claim that he [injured himself] in 2013 was in anyway related to his claims. The applicant responded that he could not work for more than 10 to 15 minutes. He could now not run if he was chased and before he was able to do so. Asked if he had any medical documents to support the claim, the applicant advised he did but had not brought anything in that day. The delegate noted [that this] was not an uncommon injury and invited the applicant to provide documentation from a medical professional to how it impacted on his ability to work. The delegate said he noticed the applicant had no difficulties waiting or walking around the waiting room and asked whether [he] had improved since then. He responded that at the beginning he couldn't move but it was better now but if he walked around a bit he got pain. The delegate asked whether there was anything stopping him from doing the same business as his brother had been doing for the past five years and if so why would anyone take an interest in him. The applicant only responded he was the one they were interested in.
38. The delegate asked the applicant whether there was anything stopping him from moving to Dhaka where he could live and work in anonymity. The applicant said Bangladesh was a small country and even in Dhaka they might know where he was as he would be contacting his family. The delegate put to the applicant that given Dhaka was a densely populated city, he had

difficulty accepting if he moved to Dhaka anyone would know where he was if he didn't want them to. The applicant said sooner or later they would find him and they would kill him. He also didn't have qualifications to find gainful employment even in an unskilled role. Even if he could find work they would find him living there and attack him.

39. The applicant did not provide any supporting documents prior to the delegate making his decision. The applicant has been consistent in this claim that he [injured himself] and I accept he [injured himself] in 2013 and that it is slowly improving. I am not satisfied that the applicant is of interest to the two AL leaders as claimed therefore I do not consider there will be a need for him to run away or escape quickly to avoid harm. I understand that he may have difficult working for long periods of time and that he may need to take a regular breaks; however this will not prevent him from working. I consider that despite his claim to be unskilled he has had his own business as [Occupation 1] from between 2008 and 2012. Despite his significant debts to various people he claimed it was a success. At times he has employed up to 10 people. If the applicant were to re-establish his business he could again employ others to undertake tasks requiring heavy lifting. The applicant also has family land which produces vegetables and crops that his brother has been able to sell at market.

Refugee assessment

40. 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

41. 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.

42. I have not accepted that that the applicant was a member of the BNP only that he supported the BNP and voted for them. He did not otherwise participate in protests, demonstration or rallies for the BNP. I have not accepted that two business competitors who held leadership roles in the local AL sought to harm him either because they wished to harm his business, or because he refused join the AL or undertake criminal activities for them. Country information before the

delegate indicates that it is BNP activists or leaders who are targeted by the AL government.¹ DFAT assesses that under the current AL Government BNP leaders and JI members are subjected to a high level of official discrimination during periods of heightened political tension, particularly national elections. JCD and ICS members are subjected to a moderate level of harassment from members of the Chattra League. BNP supporters or members in rural areas are subjected to a low level of violence associated with AL extortion.² Most inter-party violence (AL versus BNP) occurs during periods of heightened political unrest, particularly during national elections and hartals (strikes).³ DFAT assesses that AL, BNP and Jamaat members are subjected to a low level of inter-party violence but notes that, despite the increase in inter-party violence since 2013, the number of casualties remains relatively low in proportion to the size of these parties. Members of the AL's student and labour wings are subjected to a moderate level of intra-party violence, while members of the BNP and Jamaat student and labour wings face a low risk of intra-party violence.⁴ The applicant was a very low level supporter and has not claimed to have taken part in rallies, demonstrations or meetings during election time in the past and I am satisfied on his return that he will not do so. The applicant only claimed to have voted in previous election and there is no evidence before me to indicate he has been politically active in Australia. As a low level BNP supporter I am not satisfied there is a real chance that the applicant will suffer serious harm on his return to Bangladesh.

43. According to DFAT, AL members and activists have also reportedly extorted BNP business owners in rural areas, threatening them with violence if they fail to comply with demands for money.⁵ I have not accepted that in the past he was the subject of extortion attempts in the form of demands for bribes (as per his entry interview) or monetary demands from the AL leaders K and A. While I cannot rule out that the applicant may in the future be the victim of extortion attempts, given his past history, and his status as very low level supporter of the BNP; I am not satisfied that there is no real chance that he will experience such harm in the future.
44. Furthermore, even if the applicant were to be subject to such demands/threats, I am not satisfied, on the country information, that the risk of such extends to all areas of the receiving country given it is reported as occurring in rural areas. If he were to relocate to Dhaka or another city and establish a business, I am not satisfied there is real chance he would be subject to such demands or threats of violence.
45. I accept that the applicant may owe money to his suppliers/creditors; however, he has not faced harm from them in the past for his failure to repay them. I am therefore not satisfied there is a real chance of him being subject to serious harm by his suppliers/creditors on this basis.
46. I accept that the applicant [injured himself] in 2013. The incident occurred whilst the applicant was in Australia. I do not accept that this will give rise to any real chance of harm on return to Bangladesh.

Refugee: conclusion

47. 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).

¹ "Bangladesh: Human Rights Report 2015", Odhikar, 16 November 2016, CISEC96CF15107, p 13.

² DFAT, "Country Information Report Bangladesh", 5 July 2016, CIS38A80121206, 3.57.

³ Ibid 3.58.

⁴ Ibid 2.62.

⁵ Ibid 3.55.

Complementary protection assessment

48. A criterion for a protection visa is that the applicant is a non citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

49. 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.

50. I have concluded that the applicant does not face a real chance of serious harm as a result of his support and association to the BNP, and given real chance and real risk involve the same standard, I am not satisfied he face as a real risk of harm on these bases.

51. I accept that the applicant may return to his village and re-establish his business as a [Occupation 1]. I have not accepted the applicant in the past was subject to such extortion and threats of violence, and although I cannot rule out that he may face extortion and intimidation in the future, I do not consider that there is a real risk the applicant would face such conduct in the future.

52. I am satisfied the applicant's suppliers and creditors have not harmed him in the past. I am not satisfied that that there is a real risk of significant harm in Bangladesh because he owes money to his suppliers/creditors.

53. I accept that the applicant [injured himself] in 2013. The incident occurred whilst the applicant was in Australia. I am satisfied the applicant will not be prevented from working in the future. I am not satisfied that as a result of his [injury] the applicant will suffer significant harm on return.

54. I am satisfied there is not real risk of the applicant suffering significant harm in his home area. However; even if the applicant did face a real risk of significant harm in his local area, s.36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm.

55. The country information above indicates the threats of violence from extortion occur in rural areas, I am not satisfied the applicant is at risk of extortion in Dhaka or other urban areas in Bangladesh. I have not accepted that he was threatened by K and A in the past and that he is of any interest to A and K. Nor do I accept that would they try to find the applicant if he were to relocate to Dhaka and that his [injury] would put him at any risk given they have no interest in him. I also do not accept that he would be prevented from working in Dhaka because of his [injury]. Based on the country information noted above I am also satisfied that as a very low

level BNP supporter there is no real risk of significant harm were he to relocate to Dhaka. I am satisfied that the applicant does not face a real risk of significant harm in urban areas of the country including Dhaka on these bases.

56. In considering whether it would be reasonable for him to relocate to an urban areas such as Dhaka, I note the applicant in the past was able to establish a [business] and employ other workers, he successfully found work in [Country 1] despite claims he was not being paid, and he has access to capital if he were to sell his former business premises. I understand that his [injury] may cause him some discomfort; however, on the evidence I am not satisfied that his injury prevents him from working. I am satisfied in an urban setting such as Dhaka or Chittagong there would not be a real risk that he would suffer significant harm because of this injury.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.

...