



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA17/02415

Date and time of decision: 9 November 2017 11:47:00

Karen Dix, 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) claims to be a stateless Hindu who was born in Jessore district, Bangladesh. [In] May 2016 he lodged an application for a safe haven enterprise visa (SHEV) claiming to fear harm due to his statelessness and his religion. [In] April 2017 a delegate of the Minister of Immigration and Border Protection (the delegate) refused the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. [In] May 2017 the IAA received a submission from the applicant's representative which refutes a number of the delegate's findings. These matters may be regarded as argument rather than information.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant is a Hindu who was born in [Jessore] district in Bangladesh and lived in Bangladesh until his departure in February 2013. His parents are deceased. He does not know his brother's whereabouts. His wife and children are living in [another country] with his wife's parents.
 - The applicant claims to be stateless as he and his brother applied for a national identity card but were refused.
 - The applicant's father had his own land and supported the family by growing [crops]. After his parents' [death], the applicant's [brother] took care of the applicant who helped him around the home and on the farm for approximately seven years. The applicant married in 2002 and his wife came to live with the applicant and his brother. In 2003 the applicant commenced work [in Occupation 1] which he continued to do for ten years to support his family.
 - The applicant's family was one of only several Hindu families in his [village] and they practised their Hindu religion at home. After the 2008 elections the Muslim community began targeting Hindus, going to the homes of Hindu people and destroying their houses, forcing them off their land and harassing them.
 - In 2011 a group of Muslims visited the applicant's house. They beat and threatened them, damaged the house and cut the crops on the land, taking all the [crops] they were growing at the time. When the applicant and his brother went to the police they were told that they had been instructed not to record any complaints against Muslims.
 - The Muslims after learning the applicant and his brother had gone to the police returned in 2012 and destroyed the house completely, taking their belongings and crops. Following this incident the family moved to his father in law's house where they lived for [a number of] months. The applicant returned to the farm but his brother did not and stayed with the applicant's in laws. However one day he disappeared and was not seen again.

- Approximately [a number of] days after the applicant returned to the farm [Muslims] wearing masks appeared at the home at night. One of the men held a [gun] to the applicant's head and made repeated threats that if the applicant did not leave they would kill his family. The applicant recognised one of the voices as being a local terrorist who had previously threatened the applicant at [various locations].
- The applicant does not know what happened to his [brother] as he had not heard from him. His brother's brother-in-law who lived in Chittagong told him that some money had been put away in case the applicant had to run away and this money was used to arrange the applicant's travel to Australia.
- The house and farm have been taken away from the applicant and his brother who he has not seen again. He fears that he will be killed due to his religion and due to his statelessness as he cannot prove he was born in Bangladesh and the police will not help someone who has no identification documents and is Hindu. The applicant although born in Bangladesh also does not have the rights of a Bangladeshi citizen due to being considered stateless.

Factual findings

Identity

5. The applicant has consistently claimed to have been born in [Jessore] district and lived in Bangladesh until 2013. He provided a Bangladeshi driver's licence as evidence of his identity which states his year of birth is [date] and copies of the birth certificates of his children. He also provided copies of documents obtained in Australia including a driver's licence, and a card issued by the Department of Immigration and Border Protection (the Department) which states his year of birth is [a different date]. [In] March 2017 the applicant confirmed the approximate year of birth ascribed to him by the Department ([date]) during the first arrival interview was incorrect and the delegate also noted that the Bangladeshi driver's licence indicated the applicant's year of birth was [a different date] which was confirmed by the interviewer during the second arrival interview. He also confirmed that the spelling of his name was incorrect. On the evidence before me I accept that his name is as claimed on the driver's licence and his year of birth is [the date listed on the driver's licence].

Nationality and receiving country - Statelessness

6. The applicant claims to be of Bengali ethnicity and to have lived all his life in Jessore district in Bangladesh. He claims to be stateless as he and his brother were not issued with national identity cards (NIC) in 2000 when they applied for them. However he has consistently claimed that his parents were both Bangladeshi citizens and provided an original Bangladeshi drivers licence issued in 2004 and copies of the birth certificates of his children which were issued in 2005 and 2013.
7. The Bangladeshi Citizenship Act stipulates that anyone who was born in territories now comprised in Bangladesh or whose father or grandfather was born in these territories and who was a permanent resident in these territories on the 25th March 1971, and continues to be resident, is deemed to be a Bangladeshi citizen.¹ The applicant at interview confirmed that both parents were Bangladeshi citizens who resided in Bangladesh until their deaths. The delegate also put to the applicant that the birth certificates of his children identified the

¹ UK Home Office, "Country of Origin Information Report Bangladesh April 2003", 01 April 2003, OGC2996EC29, 5.4

applicant and his wife as Bangladeshi citizens, and given that his parents were Bangladeshi citizens the applicant was also a Bangladeshi citizen although he did not have a NIC. The delegate also cited country information indicating that a significant number of Bangladeshi citizens do not have NICs.

8. The applicant stated at the SHEV interview that he obtained his driver's licence at the police station where he underwent a test and his brother spoke on his behalf but he did not present any identity documents. He also stated that when he was in Bangladesh there was no system for obtaining any sort of identity document so he was not sure if he was a citizen of Bangladesh or not. Although country information indicates that the Bangladesh Election Commission announced in April 1999 that it would issue identity cards to all voters which would also have to be produced to obtain passports, travel documents, driving licences and for buying or selling land,² legislation was only passed in 2010, requiring all citizens aged eighteen years or older to register their identity with the Bangladesh Election Commission and obtain a NIC.³
9. I agree with the delegate's finding that the applicant is a Bangladeshi citizen. The evidence before me indicates the applicant is a Bangladeshi citizen by descent arising from his father's Bangladeshi citizenship and the documents provided by the applicant indicate he is recognised as a Bangladeshi national despite not holding a NIC. Additionally there is no evidence to indicate the applicant has been refused the issue of identity documentation since 2000 as he was issued with a drivers licence in 2004 and his children were also issued with birth certificates. As indicated above, despite compulsory registration being introduced in 2010 a significant number of Bangladeshi citizens still do not possess NICs. I am satisfied that the applicant is a Bangladeshi citizen and his receiving country is Bangladesh.

Hindu

10. The applicant has consistently claimed to be an adherent of the Hindu religion since his arrival in Australia in March 2013. Country information before the delegate indicates that Hindus form 9.5% of Bangladesh's population.⁴ On the evidence before me I accept the applicant is a Hindu.
11. In his visa application the applicant stated that after the 2008 elections Hindus began to be targeted by the Muslim majority. This involved destroying their houses, forcing them off their land and abusing, harassing, threatening and beating them. The applicant claims that there were only a few Hindu families in his village and in 2011 Muslims came to his house, beat them and threatened them, damaged the house and cut the [crops] they were growing at the time. After this they lived in constant fear and although he and his brother went to the police, the police told them they were instructed not to record any complaints against Muslims. In 2012 the Muslims returned after they found out the applicant and his brother had gone to the police. They completely destroyed the house, taking their belongings and crops. The applicant, his family and brother moved to his wife's parents' house where the applicant stayed for [a number of] months before returning to the farm. Approximately [a number of] days after the applicant's return masked Muslims came to the house and held a [gun] to the applicant's head threatening that if he did not leave they would kill his family. The applicant recognised the voice of one of the masked people as the same person who had threatened the applicant previously at [various locations]. The applicant's brother who remained at the applicant's in

² *ibid*, 5.11

³ Department of Foreign Affairs and Trade (DFAT), "Bangladesh Country Information Report July 2016", 5 July 2016, CIS38A80121206, 5.25-5.27

⁴ *Ibid*, 2.6

laws' house disappeared after the applicant returned to the farm and has not been heard from since. The applicant was fearful after receiving the threats and concerned about his brother.

12. The UK Home office in 2013 indicated that Hindus as well as other minority groups experienced harassment and sometimes violence from the Muslim population, and there were scattered attacks most of which consisted of arson and looting of religious sites and homes. The government and many civil society leaders stated that violence against members of minority religious groups normally had political or economic dimensions, and could not be attributed solely to religious belief or affiliation. Land rights for Hindus was also reported to remain tenuous due to the slow implementation of the repealed 2001 Vested Property Act stipulating that land remaining under government control seized under the Vested Property Act should be returned to its original owners and the 2011 Vested Properties Return Act which allowed Hindus to lodge claims to reclaim land seized from them by the government or individuals under the Vested Property Act provided the original owners or their heirs remained resident citizens.⁵
13. The evidence indicates that Hindus as well as other minority groups experienced harassment and occasional scattered attacks in the form of looting and land had been confiscated previously. I note that although large tracts of land (2.6 million acres) were taken from mainly Hindus under the Vested Property Act the applicant's father retained his land and following his father's death, the applicant's brother took over the farm and the applicant assisted his brother in working the farm for 7 years before he commenced work [in Occupation 1] in 2003. I also note that the applicant continued to work [in Occupation 1] until his departure from Bangladesh. He also listed his home village as his residential address until his departure in both his visa application and at the entry interview despite claiming in his statement of claims and at the SHEV interview that he lived with his wife's family for approximately 5 months prior to his departure, in a village which he said was approximately [a distance] from his home village.
14. The applicant's account of events during the SHEV interview was also confusing and conflicted with his statement of claims which was prepared with the assistance of a registered migration agent, who was present at the interview and indicated that the statement which had been prepared with the assistance of an interpreter provided by the applicant, was read back to the applicant. These inconsistencies in the applicant's evidence particularly in relation to key aspects of his claims raise concerns regarding the credibility of his claims.
 - The applicant initially stated during the SHEV interview that the first attack on the family home occurred [a period of time] before he left the country in February 2013 and the person responsible was a local thug who was associated with some sort of political party. When the delegate stated that this conflicted with his written statement that the first incident occurred in 2011, the applicant indicated the incident took place at night and he was not sure whether it was in 2011, 2012 or 2013 because they destroyed the family home. The applicant then agreed there was an incident in 2011 and this was the first time they attacked the house. At another point of the interview the applicant stated the family home was attacked on three occasions (in contrast to the application where he only mentioned two occasions in 2011 and 2012) and the second incident occurred most probably in [2011]. He gave no details of the second or third incident or of which occasion the house was allegedly destroyed and they were forced to leave the area.
 - The applicant also raised a new claim stating there had been previous minor incidents where Muslims had come and taken their crops. He was approximately [age] years old

⁵ UK Home Office, "Operational Guidance Note Bangladesh", 16 September 2013, OGC0D145418, 3.12

when this first happened (2007-2008). The applicant then added that they threatened him on these occasions saying 'your brother has left the country now we need you to leave the country'. The manner of the threats regarding his brother is also inconsistent with the applicant's previous claims to have lived with his brother on the farm until 2012.

- The applicant when describing the 2011 incident stated that masked Muslims came to the house, destroyed some of the family furniture, hit the applicant, ransacked the property and demanded that he leave the country. The applicant initially stated he did not recognise the attackers, but subsequently stated that he believed the attackers were people from a local thug's group or party who had previously threatened him a couple of times. He claimed that they threatened him saying that the applicant's brother had left the country so the applicant now also needed to leave the country. When the delegate pointed out that according to his visa application his brother was present at the time of the incident and not outside Bangladesh, the applicant responded that his brother had left the home village and was at his brother's parent in laws' house at the time of the 2011 incident. The applicant sent a message after the incident and his brother accompanied him to the police station to lodge a complaint which was not accepted.
- In his visa application the applicant stated that his brother disappeared from the house of applicant's parent in laws after the applicant returned to the farm in 2012. However when questioned about his brother's whereabouts at the beginning of the interview he stated that his brother and brother's wife and children used to live with his brother's parent in laws but since his arrival in Australia the applicant has been unable to contact his brother on the mobile and he does not have the contact details of his sister in law so he is unsure of his brother's current whereabouts.
- The applicant also stated that after the attacks on his home he was hit and threatened with a [gun] on the road while going home. When the delegate indicated that this incident was not mentioned in his statement of claims and appeared to conflict with his claim to have moved to his parent in laws' house after Muslims destroyed his house in 2012, the applicant responded that he returned to the family house to observe if there had been any improvement in the situation, but he was unable to return to the family home and the farm was taken over. When the delegate further pointed out this conflicted with his visa application where he claimed a [gun] was held to his head after he returned to the farm, the applicant stated that they held a [gun] to his head twice – once on the road when they hit him and once in his family home where they just threatened him. The applicant claimed that the last incident at the family home occurred [a number of] months prior to his departure from Bangladesh and he lived with his parent in laws during that time but secretly visited the family home to see if he could live there.

15. After consideration of the applicant's accounts I am not satisfied that the applicant's family house was specifically targeted as claimed, that the applicant was forced to leave the area and lived with his parents in law or that he was threatened with a [gun]. I agree with the delegate that it is implausible the applicant would be unable to recall when the attacks on the family home occurred particularly when he claims the house was destroyed and they were forced to live with his parent in laws. The applicant's account of his brother's whereabouts over the course of the claimed events has also changed and was also inconsistent with the applicant's claim that his brother had gone missing. From applicant's account at interview his brother was not living on the farm in 2007-2008 when they allegedly began to experience issues which contradicts his claims that he and his brother resided at the farm until 2012. I also note that the applicant at the entry interview provided his brother's contact details as an emergency

contact and indicated that he was living in the home village. I also consider it implausible that the applicant would have continued working [as Occupation 1] in the same area and travelled [a considerable distance] to work on a daily basis until his departure if he had received threats previously.

16. There were significant inconsistencies in the applicant's account of events at the SHEV interview including the introduction of, and the significant shift in claims when the delegate identified internal inconsistencies in the applicant's evidence. Given the significant internal inconsistencies in the applicant's evidence regarding the claimed harm and threats which were alleged to have occurred, the implausibility of some key aspects of his narrative, the escalation of his claims during the SHEV interview which created further inconsistencies, and in particular the evolving and markedly different timeframes of when they allegedly occurred, differing accounts of the incidents including the number of incidents and his failure to raise some of these incidents in the statement of claims, I am not satisfied with the overall credibility of his claim to have been threatened, attacked and the family land being taken from him and his brother. Nor am I satisfied that his brother is missing as claimed. I am not satisfied that the applicant was threatened, or that the family home was attacked and destroyed, or that the family land has been taken over as claimed.

Refugee assessment

17. 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

18. 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.
19. The applicant claims that although he was born in Bangladesh he does not have the rights of a Bangladeshi citizen as he is considered stateless. He fears being killed as he cannot prove he was born in Bangladesh and the police will not help him as he has no identification documents.

20. I have found that the applicant is a Bangladeshi citizen and not stateless as claimed. I have also found that although he does not have a NIC, the applicant has not been refused the issue of identity documentation as he was issued with a Bangladeshi driver's licence which he stated at interview was issued by the local police in 2004 and his children were issued with birth certificates in 2005 and 2013 which also confirm the applicant is recognised as a Bangladeshi citizen. Country information also confirms that significant numbers of Bangladeshi citizens do not have NICs despite registration with the Bangladeshi Election commission to obtain a NIC becoming compulsory in 2010. I am satisfied that the applicant despite not holding a NIC is a Bangladeshi citizen and that there is not a real chance that he will be harmed in relation to these claims.
21. The applicant claims to fear being killed by the local Muslims who have acquired all the family property, including one particular local person with unidentified political links. Given I do not accept that the family land was taken or that he was subject to threats by local Muslims, I am not satisfied that the applicant would be targeted on return for this reason. However I have considered whether the applicant would otherwise be at risk of harm as a Hindu.
22. DFAT indicated in 2016 there are an estimated 15 million Hindus living in Bangladesh, making the Hindu community Bangladesh's largest religious minority group. Hindus are not physically distinguishable from the majority Muslim population and the vast majority are ethnically Bengali and speak the Bengali language. I note that the applicant identifies as ethnically Bengali and is fluent in the Bengali language. Hindus are reported to have made a significant contribution to Bangladeshi public life, including in politics, academia and the arts. While they have traditionally supported the Awami League (AL) and left-leaning parties, all major political parties have fielded Hindu candidates and the current AL Cabinet has four Hindu members. There are reportedly no legal or other restrictions preventing Hindus from freely practising their faith or participating in broader society.⁶ Religious studies are compulsory and part of the curriculum in all government schools and students attend classes in which their own religious beliefs are taught. Whereas most aspects of the law in Bangladesh are secular, personal status issues – such as marriage, family life, divorce, custody of children, maintenance and inheritance – remain governed by religious laws. Depending on the religious backgrounds of the concerned individuals, provisions of Islamic law, Hindu law or Canon law apply.⁷
23. According to the US Department of State, minority communities reported many land ownership disputes that disproportionately displaced minorities, especially in areas near new roads or industrial development zones, where land prices had recently increased. They also claimed that local police, civil authorities, and political leaders were sometimes involved or shielded politically influential land grabbers from prosecution.⁸ Hindus are reported to have suffered disproportionately from land appropriation, which has been linked to physical attacks on Hindu communities, although DFAT indicates these attacks are also a product of Hindus' perceived support for the AL and resentment over the testimony of Hindu witnesses who have appeared in International Crimes Tribunal (ICT) proceedings. DFAT also assessed that Hindus are subjected to moderate levels of societal violence, especially during periods of heightened political tension such as national elections, and refers to the attacks on Hindus in the lead up to and following the 2014 elections which destroyed hundreds of Hindu homes and businesses, with this violence being most prevalent in northwest Bangladesh, including in Jessore, the

⁶ DFAT, "Bangladesh Country Information Report", 5 July 2016, CIS38A80121206, 3.20-3.22

⁷ US Department of State, "2014 Report on International Religious Freedom – Bangladesh", 14 October 2015, OGD95BE925956; US Department of State, "Bangladesh - Country Reports on Human Rights Practices 2015", 13 April 2016, OGD95BE926166

⁸ US Department of State, "Bangladesh - Country Reports on Human Rights Practices 2015", 13 April 2016, OGD95BE926166

applicant's home district. In the aftermath of the 2014 elections, the High Court held that law enforcement agencies had 'seriously failed' to protect members of vulnerable groups, including Hindus. The government responded by providing assistance to victims and helping communities restore religious and private property damaged in the violence.⁹

24. I accept that Islam is the dominant religion and there has been societal discrimination and violence against Hindus in the past usually in relation to land disputes and at times of political unrest. Despite this the applicant and his family remained in the area, where the applicant undertook his education and obtained long term employment as [Occupation 1], his father and subsequently his brother ran the family farm, and the applicant was able to practise his religion without hindrance. I am satisfied that the applicant and his family despite being a minority in his village were integrated into the community and were not denied access to basic services or the right to earn a livelihood.
25. Country information indicates that Hindus are subjected to moderate levels of societal violence, especially during periods of heightened political tension and as indicated by DFAT in the period immediately prior to and following the January 2014 election the violence primarily was in the form of vandalism of Hindu-owned homes and businesses.¹⁰ This violence followed a previous spike in February 2013 after the conviction of the Vice President of Jamaat-e-Islami (JI), by the ICT for crimes against humanity – including charges of arson, looting, forced conversion and forced emigration of Hindu communities. Following his conviction Hindu homes, businesses and places of worship were targeted.¹¹
26. There is evidence of further outbreaks of violence during 2016 including in late October 2016 in eastern Bangladesh after pictures were posted on social media which allegedly insulted Islam and resulted in the vandalism of 15 temples and attacks on 50 houses in the district of Brahmanbaria. In May 2016 supporters of a defeated candidate in a local election vandalised more than a 100 Hindu houses, and attacked 30 people. There were also reports of similar attacks in other districts including Jessore. Overall in 2016 Ain O Salisk Kendra (ASK) reported that 7 Hindus and 2 Christians from different parts of the country were killed and 194 houses and shops, and 197 temples and idols were vandalised.¹²
27. I accept that there have been outbursts of violence against Hindus which DFAT indicated increased particularly during periods of heightened political tension such as elections, including in Jessore, however there is no evidence to indicate that these attacks were condoned by the Bangladeshi government which in 2014 provided assistance to victims and helped communities restore religious and private property. I also note that the Hindu community is generally able to practise their faith without interference and do not live in fear of societal violence on a day-to-day basis, although it is acknowledged, inadequate protection has been provided to the Hindu community by the security forces on some occasions. Although there have been some attacks in Jessore the information indicates these attacks occurred during elections.
28. The applicant was not politically aligned with any particular party prior to his departure and has not engaged in any political activities. He indicated at interview that he has never voted in any elections in Bangladesh; nor was he harmed or threatened due to the perception that he was a political supporter of any particular party despite being a Hindu. Nor did the applicant indicate any intention at the protection interview to take up political activity with any party on

⁹ DFAT, "Bangladesh Country Information Report", 5 July 2016, CIS38A80121206, 3.22 and 3.26

¹⁰ *ibid*, 2.6

¹¹ Minority Rights Group International, "Under threat: The challenges facing religious minorities in Bangladesh", 17 November 2016, CIS38A80122747

¹² Ain O Salisk Kendra (ASK), "Human Rights Situation in Bangladesh 2016", 28 March 2017, CISED50AD3723, pp.7-8

return or vote in future elections. Given this and his lack of political involvement I am not satisfied that the applicant would be imputed with a political opinion on return simply for being a Hindu.

29. DFAT in its latest report has commented on the recent increase in Islamist militancy including the re-emergence of Jamatu'ul Mujahideen Bangladesh (JMB), a proscribed militant group, and the emergence of new groups such as the Ansarullah Bangla Team (ABT) which claimed responsibility for the murder of secular bloggers and publishers in 2015, while the Islamic State of Iraq and the Levant (ISIL) has laid claim to a series of attacks against religious minorities, security forces and foreigners occurring from late 2015 into 2016.¹³ DFAT refers to attacks on Hindu community members and Hindu religious sites as well as the July 2016 attack on Holey Artisan Bakery in Dhaka which was frequented by foreigners¹⁴ and assesses that these developments have heightened the risk of sectarian violence against members of religious minority groups and others perceived to threaten conservative Islamist interests.¹⁵
30. The applicant, apart from being a Hindu, does not have a profile which is likely to bring him to the attention of extremists. Although there have been recent extremist attacks on Hindus including one on a Hindu priest in Jhenaidah district which is in Khulna division, these attacks have been small scale isolated attacks targeting individuals. There is no evidence before me to suggest that there have been targeted attacks of Hindus in Jessore by extremists or that there is a real chance the applicant would be targeted in Jessore because of his religion. I am not satisfied the attacks are indicative of a real chance of any harm to a Hindu living in Jessore. I am not satisfied that the applicant faces a real chance of persecution by local Muslims, or local political parties or from Islamic extremists due to his Hindu religion.
31. The delegate considered whether the applicant would face a real chance of harm as a returning asylum seeker although the applicant did not claim to fear harm for this reason. According to DFAT Bangladesh accepts both voluntary and involuntary returnees, and the International Organisation for Migration's (IOM) Assisted Voluntary Returns and Repatriation (AVRR) program provides assistance to Bangladeshi returnees in cooperation with the returning country and the Government of Bangladesh. DFAT assesses that most returnees, including asylum seekers, are not subjected to adverse attention regardless of whether they have returned voluntarily or involuntarily and may take an interest in high-profile individuals who have engaged in political activities outside Bangladesh, including people convicted of war crimes in absentia.¹⁶
32. I am not satisfied that the applicant would be targeted on return as a returning asylum seeker. The applicant has not been involved in any political activities in Bangladesh or in Australia, and there is no evidence of any involvement in criminal activity in Bangladesh. I am not satisfied that the applicant faces a real chance of any harm by the government authorities or others as a returning asylum seeker.

Refugee: conclusion

33. 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).

¹³ DFAT, "Bangladesh Country Information Report", 5 July 2016, CIS38A80121206, 2.27 and 2.30

¹⁴ Ibid, 3.25 and 2.31

¹⁵ Ibid, 2.32

¹⁶ DFAT, "Country Information Report Bangladesh", 5 July 2016, CIS38A80121206, 5.21-5.22

Complementary protection assessment

34. 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

35. 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.

36. Country information indicates that although there is little evidence of any official policy of harassment or discrimination on the basis of religion there is societal discrimination and violence against religious minorities, including Hindus usually in relation to land disputes and at times of political unrest.¹⁷ The applicant continued to reside in the same area of Bangladesh until his departure where his father and brother operated the family farm, he was able to undertake education, and obtained sustainable long term employment as [Occupation 1] which he undertook until his departure, he practised his religion without hindrance, and was integrated into the community. Although there is evidence of societal discrimination, the applicant is a Bangladeshi citizen who has the rights of a Bangladeshi citizen. On the evidence before me, I am not satisfied the applicant faces a real risk of significant harm as a Hindu.

37. I have found that the applicant does not face a real chance of persecution on return to Bangladesh due to his Hindu religion or as a returning asylum seeker. In *MIAC v SZQRB* (2013) 210 FCR 505, the Full Federal Court held that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear'. I have not accepted his other claims of being stateless or of having been targeted by Muslims. For the reasons stated above I am not satisfied the applicant faces a real risk of significant harm.

Complementary protection: conclusion

38. 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).

¹⁷ DFAT, "Country Information Report Bangladesh", 5 July 2016, CIS38A80121206,; US Department of State, "2014 Report on International Religious Freedom – Bangladesh", 14 October 2015, OGD95BE925956

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.