



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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BANGLADESH

IAA reference: IAA17/02852

Date and time of decision: 31 January 2018 16:52:00

Matthew Tubridy, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Bangladesh. [In] March 2016 he lodged an application for a Safe Have Enterprise visa (SHEV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] June 2017, and the Department of Immigration and Border Protection (the Department) referred the matter to the IAA [in] June 2017.

### 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. On 17 July 2017 the applicant provided a submission to the IAA and insofar as this engages in argument with the delegate's decision based on information which was before the delegate I have had regard to it.
4. Additionally, the applicant submits in his IAA submission that he can confirm that he supports the Bangladesh National Party (BNP) and he also provides details of how his interest in the BNP developed from a young age, and involved his joining the BNP at the age of [age] via the payment of a fee, and his subsequent activities and experiences as a BNP member, and his claimed fears in this regard. Although the applicant has never before provided details of this kind about how he joined the BNP, the applicant had, in the claims of section of his March 2016 SHEV application's Part C (the SHEV Part C claims), claimed that he had been involved with BNP politics and to have feared harm in this regard. However, at his March 2017 SHEV interview (which amounted to the most recent articulation of his claims prior to the delegate's decision) the applicant said that he had no political affiliations and when asked if he had been a member of the BNP he said that he had not and that his only involvement with the BNP was that he had been targeted for extortion by hoodlums working for the BNP. The applicant had thus plainly confirmed that he did not support the BNP, was not a member of the BNP, and he plainly sought to resile from and disown the SHEV Part C claim that he was involved with BNP politics. Given this, the applicant's July 2017 IAA submission claim that he confirms that he is a supporter of the BNP, and the information which he has provided about his becoming a member of the BNP, is all new information.
5. The applicant has submitted that he was afraid to add more details about his involvement with the BNP at his 'second interview' (his SHEV interview) because he thought the 'case officer' (the delegate) might ask why he did not mention this information during the 'first interview' (the Departmental entry interview which was conducted with the applicant when he first arrived in Australia), and he did want to be found to be inconsistent. It is true that the applicant had said nothing about being a member of the BNP at his entry interview and that he had instead said that he was a member of the Awami League and that he had been harassed by the BNP. Even so, the applicant's explanation that he did not provide more details about his BNP involvement at the SHEV interview for fear of being inconsistent is not persuasive given that, as noted above, prior to the SHEV interview the applicant had already in his SHEV Part C claims submitted that he had been involved with BNP politics. In claiming, at the SHEV interview, that he was not a BNP member, and in saying this by claiming that he had no political affiliations whatsoever, the applicant did not appear to be making such a claim for fear

of being perceived to be inconsistent with his entry interview claim to have been a member of the Awami League.

6. Given all of this, the applicant has not satisfied me that this new information (regarding his support for and membership of the BNP, and of his having fears in this regard) amounts to credible personal information. The applicant has not satisfied that s.473DD(b)(ii) is met. Given that the applicant had ample opportunity to settle on a claim to have been a member of the BNP, and to have provided additional detail about this, the applicant has not satisfied me that he could not have provided this information to the delegate before she made her decision. The applicant has not satisfied that s.473DD(b)(i) is met. Further, given that I am not satisfied of the credibility of this information or that it could not have been provided to the delegate before she made her decision, and given that I can identify no exceptional circumstances of any other kind associated with this information, I am not satisfied that there are exceptional circumstances of any kind to justify considering this new information.

### **Applicant's claims for protection**

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7. The applicant's claims can be summarised as follows:
  - He is a national of Bangladesh, a Sunni Muslim and an ethnic Bengali, who originates from the Belabo area in the Narsingdi District of Bangladesh's Dhaka Division.
  - He has never been affiliated with any political party although his father and brother were both members of the Awami League. In around 2006 the applicant established a [business] in [Town 1] (in [an] area of Narsingdi District) which was under the control of the Bangladesh National Party (BNP) and he was frequently targeted for extortion by hoodlums working with the BNP. As a consequence of these ongoing demands, and the threats and attacks associated with these demands, he departed Bangladesh for [Country 1] in 2010.
  - Recently his brother has withdrawn from the Awami League and as a consequence of this his brother has been subjected to extortion demands from the Awami League who operate in, and control, the area in which the applicant's family reside (the Belabo area of Narsingdi District). His brother had refused to sell family land holdings to pay the extortion demands and as a consequence he was framed for a crime by the Awami league and is now in jail.
  - The applicant fears that if he returns to Bangladesh he will be subjected to extortion demands, and to threats of violence and other kinds of harm, from Bangladesh's various political parties and the hoodlums and informers who work for them. He fears, in particular, an informer named [Mr A]. He claims that anyone who wants to run a business and who is not affiliated with the incumbent (ruling) party will have 150 kinds of trouble. He fears that because he will be returning to Bangladesh from a western country he will be even more at risk of being killed and targeted for extortion than was previously the case.

### **Refugee assessment**

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8. 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**

9. 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.
10. The applicant claims to be a national of Bangladesh and this is not in dispute and I accept that the applicant is a national of Bangladesh and I find that Bangladesh is the applicant's receiving country for the purpose of this review. Since arriving in Australia the applicant has consistently claimed to be a Sunni Muslim and an ethnic Bengali, who originates from the Belabo area in the Narsingdi District of Bangladesh's Dhaka Division, and I accept that this is the case.
11. The applicant arrived in Australia [in] November 2012. [In] December 2012 he participated in a Departmental entry interview (the entry interview) of which there is an audio recording. He was told that he was expected to give true and correct answers and he agreed to do this and confirmed that he understood the Bengali interpreter. He stated that he departed Bangladesh in 2010 by flying to [Country 1] on his own passport [on a temporary visa] which later expired, after which he was in [Country 1] illegally. He said that his passport expired while he was in [Country 1] and so he threw it away. Asked for the main reason why he had departed Bangladesh for [Country 1] he said that he went to [Country 1] to save his life. Later in the interview he was asked to expand on this by stating in just two or three sentences why he departed Bangladesh for [Country 1]. He said that when he was doing his [business] in the [Town 1] area some workers of a particular party asked him to join their party and to support their party. He said that he was attacked and that there had been an incident in which a car had pulled in front of his bike. The interviewer requested that the applicant return to the matter of the demand that he join a political party and whether he had joined. The applicant said he had not joined because he was busy with his business. Asked what happened when he did not join he replied that these men were also demanding money. Asked for the name of the party these men belonged to he said they belonged to the BNP. Asked what the letters BNP meant he said that the BNP were led by Khaleda Zia. Asked again what the letters BNP stood for the applicant could not provide an answer. Asked if the BNP were the ruling party or the opposition he said that they were the opposition. Asked if he himself was a member of any political party he said he was a member of the Awami League party. Asked if any of his family were members of the Awami League he said that his father and his [brother] were. Asked if this was the governing party he said they were the current ruling party. Asked if there were any political groups or armed groups operating in his home area he said that the Awami

League were there, and before the BNP used to rule there, and that the BNP were still there. It was confirmed with the applicant that he was claiming that he was a member of the Awami League and not the BNP. Asked what he thought would happen if he went to Bangladesh he said he would die because of the threats made against him.

12. In March 2016 the applicant lodged his SHEV application and provided, in response to the SHEV application form's Part C questions 89 to 96 (the SHEV Part C claims), information about why he feared returning to Bangladesh. He submitted that in Bangladesh he was involved with BNP politics and that he had been the victim of political harassment. He received death threats from local Awami League workers/supporters who tried to destroy all opposition party leaders, active workers and supporters. The Awami League tried to kill him several times. They once beat him mercilessly when he was on his way home from a party meeting and another time they attacked a peaceful party rally. He and his family went to the local police station to lodge a general diary complaint against the Awami League workers but the police officer refused to take the complaint and said they cannot take any complaint against governing party workers/supporters. Elsewhere in the SHEV application he indicated that the agent (the person organising his travel) in [Country 1] took his passport and never returned it to him.
13. The applicant was interviewed by the delegate about his SHEV application [in] March 2017 (the SHEV interview). The applicant was asked if there was anything in his application which he wished to add or change. The applicant said that he did and he provided an undated written statement (the SHEV statement). In the SHEV statement the applicant submitted that he and his family were not involved in politics. His father and brother are active in agriculture and the applicant worked with them and farming and cultivation was their main work and source of income. Sometimes due to heavy rains and floods they could not grow their crop properly and this caused them to always live below the poverty line. He would also work as a [Occupation 1]. They did not have enough to eat and people always tried to take advantage of them because of their poverty. Political leaders from different parties – such as the Awami League, the BNP, and Jamaat e-Islami (Jamaat) – tried to involve him in politics and crime but he refused these offers. Once a BNP leader tried to kill him as he had declined to join their party. He was always pressured and threatened by all the parties to join them and they offered him a handsome amount because he was poor. Before the 2008 election all the parties wanted him to join them and they started to disturb the applicant and his family. They threatened his father when he went for prayers and sometimes the applicant's siblings also. For no reason they forcibly made him attend meetings or fight other groups. Political cadres sometimes snatched money from him and took him from his workplace when he was working as a [Occupation 1]. One day they brutally beat his [brother] when he was on his way back from the market because he would not join them, and the applicant his brother and their father were beaten when they protested against this attack. The police would not hear their complaints about any of these matters. As they had refused to join any party it became a matter of prestige for the political parties and they increased their pressure on the applicant and his family. For safety, his father sent his brother to Dhaka and the applicant was sent to [another area]. Finally, the applicant went to [Country 1]. However, in [Country 1] his visa was not renewed and he became illegal, and so he departed for Australia.
14. At the SHEV interview, after taking receipt of the SHEV statement, the delegate proceeded to question the applicant about his identity documentation. It was put to the applicant that in his SHEV application he had claimed that the agent in [Country 1] took his passport from him and never returned it, whereas at his entry interview he had stated that his passport had expired while he was in [Country 1] and so he threw it away. In response the applicant said that in [Country 1] he got an agent to extend his visa but the applicant must have lost the passport because he never gave it back. The delegate apparently accepted this (though it is not clear

why) as the delegate went on to find that the applicant had provided a reasonable explanation for the disposal of his passport. The applicant, however, never provided any explanation for why he had previously stated at the entry interview that he had himself thrown his passport away if, in fact, it was the case that as he now claims he gave this document to an agent who never returned it to him. Given this, I am not persuaded of the credibility of the applicant's current claim about what became of his passport. Following the discussion of what had become of the applicant's passport the delegate asked the applicant if he had ever possessed a Bangladesh national identity card. He said that he no longer had this document because it had been with the passport and so this document had been lost also. Given that I am not persuaded of the credibility of the applicant's current claim about what became of his passport I am not persuaded that the applicant has lost his national identity card in the same circumstances.

15. Following this the delegate asked the applicant about his family particulars and then his employment history, with the applicant stating that he had initially worked on a farm. The recording of the first part of the interview then ends. The second part of the interview recording resumes with the delegate prompting the applicant to continue with his answer, recounting that he had just said that he worked on a farm, and that he should continue to explain what kind of work he did on the farm. He said he cultivated rice and vegetables but the work was seasonal and did not cover the whole year and so he went to Dhaka to learn [Occupation 1] and after that he worked as a [Occupation 1]. The applicant said that he had then established himself in his business as a [Occupation 1] when subversive elements came to him and asked for money, demanding [amount] then [amount of money], once a month sometimes once a week. Asked who these people were the applicant said that they when he did not pay he was targeted by the BNP. The applicant said that he used a motorcycle to drive home and one day the BNP targeted him by trying to squeeze him between two trucks which took position in front and to the rear of him, but he escaped by running into the fields along the road. He was also beaten up and the machines that he used at his [business] were taken away for extortion. Asked who specifically was targeting him he said these were strong-arm hoodlums affiliated with political parties, and that the BNP controlled the area in which his business was located. Asked how much they extorted from him he said around [amount of money] and when he did not pay he got beaten and threatened.
16. The delegate asked the applicant to explain how this extortion had begun. The applicant said that he was called to an deserted area and told that the bigwigs had demanded that he pay [an amount of money] and he said that when he refused to pay he was roughed up and beaten. After this higher-up persons came and said he would have to pay a bigger amount or he would be killed. Asked when this had occurred he said he did not remember the exact date but it was one year after he started his [business] (which according to his SHEV application was in 2006). He said the demand went up to [amount of money] but that he only paid [a small amount of money]. Asked what the response was, the applicant said that a routine developed where a lookout man would come to see if he was in the shop and then another man would come and ask him for money. The delegate asked if there was a response when he only paid [a small amount] and not the whole [amount]. The applicant said that the men had said he should be ready because more would be asked of him, and that he had to pay [amounts of money] like this at different intervals (sometimes monthly sometimes fortnightly) over the next five years. He estimated that they came, on average, around every twenty days. He said that they had wanted a whole lot of money before Eid but he did not pay that money and when he was at his village for Eid they cut their way into his store and stole all his machines. He said that he was able to purchase new machines but that they continued to come and extort money from him. He said that because he was not paying he was beaten up and his father was also assaulted and roughed up. He said that he then closed down his business and went off to [Country 1]. He

had been told if he did not keep paying money he would be killed. Asked if this was the main reason why he departed [Country 1] he said that it was.

17. The delegate put it to the applicant that in his entry interview he had stated that he supported the Awami League (as noted above, the applicant had stated that he and his father and [brother] had been 'members' of the Awami League). In response, the applicant said that he himself did not support any party but his father and his brother were active members of the Awami League. It was put to the applicant that in his SHEV application (the SHEV Part C claims) he had said that he was a member of the BNP (the applicant had said that he was 'involved with' BNP politics). In response the applicant said that, no, it was the BNP who had been extorting money from him. The delegate then read the applicant's SHEV Part C claims to him including his statements that he was involved with BNP politics, was the victim of political harassment, and had received death threats from local Awami League workers/supporters. The applicant said that he was not politically inclined and had never been involved in any political party and that he had a business and paid money to whichever party came and demanded it. He said that the Awami League is still threatening his family. He said that his family was concerned with political things but that he was concerned with the business. He said that his brother had been severely beaten up, and that his brother had been an Awami League member who withdrew from the Awami League because of the Awami League's anti-social behaviours (harassing people) and that for two months his brother did not go to any political activities but then they (the Awami League) came over and beat him up and said that his brother had to give [money] to pacify them, and that he should sell some family land to raise this money. He said that this has been done in the past year and that, because his brother refused to sell the land or otherwise pay the demand, his brother has been framed and put in jail because he had not paid the money.
18. The delegate put it to the applicant that he had claimed (in his SHEV Part C claims) that he believed that he would be harmed by the Awami League government. The applicant said that this was true. The delegate asked the applicant to explain this statement. He said that the people who had been extorting him in Bangladesh had connections in [Country 1] and that when his visa was not extended these extortionists contacted people in [Country 1] to say that the applicant's visa was no longer valid and so he should be harassed, and the police should be informed so he would be put in jail, because he had not paid the extortionists money. He said that his father has been beaten up and his shop has been stolen. He said that his father had told him to go somewhere to save his life. Asked if he had anything else to say about the Awami League the applicant said that the standard practice was that a whole lot of hoodlums would come and ask for money and that if you did not pay you would be beaten and be threatened with being killed. Asked to confirm who had been extorting money from him in Bangladesh the applicant said that it was generally the people who were in power. He said that in the area where his business was under BNP control and BNP extorted money while the village where he lived was under the Awami League and they extorted him and wanted [money] and framed his brother. Asked when the matter had occurred with his brother he said that this occurred two months ago, just recently. The delegate asked the applicant if he had himself ever been asked for money by the Awami League. He said he had not. Asked if he had any issues with the Awami League he said that he had not had any issues personally but his family was having issues with them now. He said that people who want to run a business and who are not affiliated with the incumbent party will have 150 kinds of trouble. The delegate asked the applicant if he was saying that he was not a member of any party. He said that he had been asked to join political parties but he had refused because he was busy with his business and did not want to be used as cannon fodder in political violence and this had made him a target. Asked if he was asked by a specific party to join them, he said that he was in a BNP area and it was the BNP who asked him to join. Asked if he had ever been to any meetings

or demonstrations he said he had not and had had no involvement with the BNP or the Awami League.

19. The delegate asked the applicant if, beyond what he had already spoken about, there was any other reason why he could not go back to Bangladesh. He said that he was not safe at all because they were all being extorted for money and whatever land you have you have to sell and give them the money and that in the area where his business was established in Bangladesh they had said that if you come anywhere near this place we will kill you and that in his village he was beaten up because he did not pay the money and his father and brothers are being beaten up regularly because his brother wanted to withdraw from the political establishment. The applicant said that if he returned to Bangladesh he was sure to be killed because he would be returning from a western country and because of that there would more extortion for money. The delegate asked the applicant to specify who it was he feared. The applicant said that there was one person, [Mr A], who he feared the most and that this man was the informer who had beaten up the applicant a couple of times. The delegate then said she was looking over the SHEV statement which the applicant had given her and asked if there was anything in the statement which he wanted to tell her about. The applicant asked if he could first have a Bengali interpretation of his SHEV statement (which was printed in English) read back to him by the interpreter, and this was agreed to and the interpreter rendered the statement into Bengali for him. The applicant then said that he did not have anything to add. The delegate asked if he was sure he did not want to say anything more and the applicant said that he had nothing more to say.
20. Since arriving in Australia the applicant has consistently claimed to fear harm as a consequence of threats from political parties or persons associated with political parties. However, as is plain from the above, the applicant's claims about the manner in which he, and other members of his family, have been threatened in Bangladesh, and his accounts of the political affiliations of the persons who have targeted him and his family, and his accounts of his and his family's own political affiliations, have proven inconsistent. At the entry interview the applicant claimed that he and father and brother had all been members of the Awami League and that members of the BNP opposition party had come to his shop and asked him to join the BNP and had then tried to force him to join the BNP, and that they had also demanded money from him. In his SHEV Part C claims he said nothing about being extorted and he claimed that he was involved in the BNP and that the Awami League had been harassing him and had physically assaulted him and tried to kill him. In his SHEV statement he claimed that he and his family were poor and impoverished and that neither he, nor any members of his family, had any political affiliations and that they were all being targeted by all the political parties (the Awami League, the BNP and Jamaat) who were demanding that they join them, and he was forced to engage in political activities, and that his brother was beaten when he would not join and that the applicant and his father were also beaten when they protested this. At his SHEV interview the applicant said that he had no political affiliations but that his family had been involved in politics and that his brother had withdrawn from Awami League membership and for this reason had been assaulted and targeted for extortion by the Awami League who framed his brother and had him imprisoned, while the applicant had departed Bangladesh because the BNP had controlled the area in which his [business] was located and had been targeting him for extortion (extracting regular payments of significant sums of money) and threatening and attacking him, and stealing his [equipment], when he failed to pay.
21. In his submission to the IAA the applicant has argued that it is not wise to judge the evidence he provided at his 'second interview' (his SHEV interview) with the evidence he provided at his 'first interview' (the entry interview) because before his first interview he had had to run for his life and had had to travel through the rough sea. It is true that the applicant had made a sea

crossing from Indonesia to Christmas Island to reach Australia. However, the entry interview was conducted over two weeks after the applicant's arrival in Australia and during that interview the applicant gave no indication that he was not fit to be interviewed. Further, and more significantly, the credibility of the applicant's claims to protection are seriously undermined not only by the manner in which much of his SHEV interview evidence has proved inconsistent with his entry interview evidence, but in which much of his SHEV interview evidence has proven inconsistent with the applicant's SHEV Part C claims and his SHEV statement also. While I accept that the applicant, as per his current claims, has no political affiliations I do not accept that the applicant was ever threatened, targeted for extortion, or harmed in any way, in Bangladesh whether by a [Mr A], the BNP, or any other political party, or informants or hoodlums acting for the BNP or any other party, or any other actor. Nor do I accept that such matters led to his being targeted by the authorities in [Country 1] at the behest of the applicant's Bangladeshi extortionists. I do not accept that any members of the applicant's family have ever been involved in, or members or supporters of, any political parties in Bangladesh or that the applicant's brother has been jailed or that the applicant's brother or any other member of the applicant's family has ever suffered extortion demands or threats or harm of any kind from the Awami League or any other actor in Bangladesh. I accept that the applicant is a trained [Occupation 1] and that he established and operated a [business] in the [Town 1] area of Narsingdi District, and I also accept that the applicant's family had land holdings and a farm, but I do not accept that the applicant or his family were impoverished or that they could be described as poor.

22. The applicant claims to fear that if he returns to Bangladesh he will be subjected to extortion demands, and to threats of violence and other kinds of harm, from Bangladesh's various political parties and the hoodlums and informers who work for them. He fears, in particular, an informer named [Mr A]. He claims that in Bangladesh anyone who wants to run a business and who is not affiliated with the incumbent (ruling) party will have 150 kinds of trouble. He fears that because he will be returning from a western country he will be even more at risk of being killed and/or targeted for extortion than was previously the case.
23. DFAT advises that in recent years Awami League members and activists have reportedly extorted BNP business owners in rural areas, threatening them with violence if they fail to comply with demands for money.<sup>1</sup> The applicant, however, has no political affiliations of this kind. More generally, DFAT has observed that Bangladesh does see a high prevalence of general violence, criminality and clientism, resulting in many Bangladeshis being subjected to demands for informal payment for services and various forms of casual violence on a routine basis. The situation is reported to be particularly bad in certain parts of southeast Bangladesh where outlawed left-wing extremist groups such as Gono Mukti Fouz and the Purbo Bangla Communist Party have engaged in murder and extortion.<sup>2</sup> The applicant, however, originates from and would be returning to the Narsingdi District in Bangladesh's central Dhaka Division to which he could return via Dhaka's international airport. Members of some minority communities are reported to be particularly vulnerable to extortion<sup>3</sup> but the applicant is not a member of any such community and is, like the vast majority of Bangladesh's population, a Sunni Muslim and an ethnic Bengali. Although, as noted above, many Bangladeshis do experience crime and extortion demands, the evidence before does not indicate that the

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<sup>1</sup> DFAT, "DFAT Country Information Report: Bangladesh", 5 July 2016, CIS38A80121206; DFAT, "DFAT Country Report: Bangladesh", 20 October 2014, CIS2F827D91369.

<sup>2</sup> DFAT, "DFAT Country Information Report: Bangladesh", 5 July 2016, CIS38A80121206.

<sup>3</sup> DFAT, "DFAT Country Information Report: Bangladesh", 5 July 2016, CIS38A80121206; Odhikar, "Six-months human rights monitoring report January-June 2015", 1 July 2015, CISEC96CF12886; DFAT, "DFAT Country Report: Bangladesh", 20 October 2014, CIS2F827D91369; Odhikar, "Bangladesh Human Rights Report 2013", 15 April 2014, CIS28167; UK Home Office, "Country of Origin Information Report - Bangladesh", 20 August 2010, CIS1734.

situation in Bangladesh is such that, generally speaking, a person such as the applicant who is not affiliated to the ruling party, and who is without any political affiliations, would face a real chance of suffering extortion, or harm of any other kind in the course of running a business or more generally. Bangladesh has seen some Islamist militant groups adopt an anti-Western dimension<sup>4</sup> in recent years but available reporting does not indicate that this has expressed itself in terms of attacks upon Bangladeshi Muslims, like the applicant, because they have returned from western countries, nor does the available reporting indicate that such returnees are targeted for extortion on the basis of perceived wealth or for any other reason by criminals and/or political groups and/or any other actors. The applicant departed Bangladesh legally and DFAT reports that most returnees, including asylum seekers, are not subjected to adverse attention upon return by the Bangladesh authorities, regardless of whether they have returned voluntarily or involuntarily. Authorities may take an interest in high-profile individuals who have engaged in political activities outside Bangladesh, including people convicted of war crimes in absentia,<sup>5</sup> but the applicant is not a person of this kind.

24. I do not accept that either the applicant or his family have suffered from extortion or harassment from the BNP or the Awami League, or from hoodlums or informers working with such parties, or from any other actors. I do not accept that the applicant and/or his family have suffered from an ongoing situation of extortion and harassment, and on the evidence before me and given his situation as an ethnic Bengali Sunni Muslim who has no political affiliations and who would be returning from a western country as a failed asylum seeker to the Narsingdi District where he may again seek to operate a business, the possibility that the applicant would face extortion, or harm of any kind, is remote. The applicant has argued that the available reporting does not give a proper indication of the risks he would face upon return as many political incidents at the local level are not reported. While I accept that not every incident of harm which occurs in Bangladesh is reported, and while attacks upon journalists and restrictions upon the media have occurred in Bangladesh, it is more broadly the case that Bangladesh's media environment remains relatively lively, and that independent media and human rights monitors report abuses perpetrated by a range of actors, including the ruling party, when they are known to have occurred.<sup>6</sup> Given this, and given that the country information assessment above is also informed by DFAT's on-the-ground knowledge and discussions with government, non-government, community and international sources in Bangladesh, I am satisfied of the reliability of the conclusions reached above as to the situation in Bangladesh. Given this, and considering the circumstances of the applicant in their totality, I am not satisfied that the applicant would face a real chance of harm of any kind if he returned to Bangladesh for reason of being a businessman who is not affiliated with the incumbent (ruling) party, and/or who has no political affiliations of any kind, and/or because he would be returning from a western country as a failed asylum seeker, and/or for any other reason. I am therefore not satisfied that the applicant would face a real chance of serious harm if he were to return to Bangladesh.

### **Refugee: conclusion**

25. 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).

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<sup>4</sup> DFAT, "DFAT Country Information Report: Bangladesh", 5 July 2016, CIS38A80121206.

<sup>5</sup> DFAT, "DFAT Country Information Report: Bangladesh", 5 July 2016, CIS38A80121206.

<sup>6</sup> Freedom House, "Freedom in the World 2015 - Bangladesh", 31 March 2015, NG5A1E6BC132; DFAT, "DFAT Country Information Report: Bangladesh", 5 July 2016, CIS38A80121206; Odhikar, "Six-months human rights monitoring report January-June 2015", 1 July 2015, CISEC96CF12886; Odhikar, "Bangladesh Human Rights Report 2013", 15 April 2014, CIS28167.

## **Complementary protection assessment**

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26. 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**

27. 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.

28. For the reasons given above, I am not satisfied that the applicant would face a real chance of experiencing harm of any kind if he were to return to Bangladesh. I am therefore not satisfied that the applicant would face a real risk of experiencing harm of any kind if he were to return to Bangladesh. I am therefore not satisfied that the applicant would face a real risk of experiencing any significant harm kind if he were to return to Bangladesh.

### **Complementary protection: conclusion**

29. 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**

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

## Applicable law

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### ***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.