



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA17/03365

Date and time of decision: 14 December 2017 14:53:00

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 Bangladeshi citizen from Jessore district. [In] May 2016 he lodged an application for a safe haven enterprise visa (SHEV) claiming that he feared being killed by members of Awami League (AL) due to his support of the Bangladesh National Party (BNP) and in revenge for beatings he inflicted between 2001 and 2006. He also fears harm from the police as there are outstanding criminal cases against him.
2. [In] August 2017 a delegate of the Minister of Immigration and Border Protection (the delegate) refused the visa.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 24 August 2017 the IAA received a submission from the applicant. The submission reiterates some of the claims made during the SHEV interview regarding his uncle's BNP political involvement, the assistance of a former BNP member of parliament who was killed and the applicant fleeing to Chittagong. This information was before the delegate and I have considered it.
5. The applicant in the submission also provided details regarding the circumstances of the death of his uncle in 2013 after the applicant's arrival in Australia. The applicant provided a copy of his uncle's death certificate to the delegate and claimed he was killed due to his BNP associations. However the detailed circumstances of his uncle's death, including the claimed destruction of the applicant's family home during the incident and the refusal of the police to accept the filing of a case were not before the delegate and are new information. The copy of a certificate together with an English translation from [a public authority] in [County 1], Jessore district dated [in] 2013 confirming the attendance of the fire service at the house and the destruction of the house, which was submitted [in] August 2017, was also not before the delegate and is new information.
6. I am not satisfied that the information regarding his uncle's death, the destruction of the applicant's family home and the refusal of the police to accept the filing of a case or the certificate from the fire service could not have been provided to the delegate prior to a decision. The Fire Service and Civil Defence Station certificate was issued in [2013] and pertains to an incident predating the delegate's decision. The described incidents all occurred well before the delegate's decision and the applicant had provided a copy of his uncle's death certificate with his visa application. The applicant was also given ample opportunity to present his claims at the SHEV interview held in May 2017, indicated that he had presented all of his claims for protection and responded to concerns and questions raised by the delegate. Additionally the applicant gave an oral submission at the end of the interview and was advised that if he wished to make a written submission he could provide further comments within 7 days following the interview. Although it is personal information, the delay in providing this information also raises significant doubts about its reliability. The applicant has not provided any explanation as to why the material should now be considered and it's not apparent to me that there are any exceptional circumstances to justify considering the information. The applicant has not satisfied me that the information could not have been provided to the

Minister prior to a decision or that it is credible personal information which may have affected the consideration of the applicant's claims. I am not satisfied that s.473DD(b) is met. I am also not satisfied that there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:

- The applicant is a Sunni Muslim of Bengali ethnicity and a citizen of Bangladesh who was born in [Village 1], Jessore district in Bangladesh. The applicant's parents, wife and child and [siblings] continue to reside in [Village 1].
- The applicant's uncle was an influential BNP party leader in the area while the BNP were in power between 2001 and 2006. His uncle encouraged the applicant to become involved in BNP and the applicant has supported the BNP since 2000. The applicant's uncle ordered the applicant to beat his political opponents and he followed his uncle's orders.
- In 2008 the AL was elected to power in Bangladesh. Three cases were lodged against the applicant in 2010 due to his involvement in political activities during 2010 – one for fighting which arose from an altercation between AL supporters from another village and BNP supporters from his village including the applicant, the second for the murder of his friend during a strike supporting the introduction of a caretaker government and the third for vandalism during a strike protesting the arrest of a Jamaat-e-Islami (JI) leader in [2010].
- In [2010] the police visited the applicant's parents, telling them that unless the applicant voluntarily presented himself at the police station he would be killed. A former BNP member of parliament (MP) who had a good relationship with the applicant's uncle spoke to the police and the applicant received some protection through this and remained in the area. However the former MP was killed [in] 2011 and after his death the applicant went into hiding in the same town. He stayed with some relatives in a neighbouring district but the police continued to visit the applicant's home. He therefore travelled to Chittagong where he worked before he came to Australia.
- After the applicant's arrival in Australia his uncle was murdered because he was a major political leader. The applicant fears that the government will take revenge on him because of his involvement in beatings which took place between 2001 and 2006. His political opponents will beat him up and if he does not give enough money to the police they will also beat him up. If he is found guilty of murder he will be hanged. The applicant claims that he will be picked up at the airport on return to Bangladesh.

Factual findings

Identity

8. The applicant has consistently claimed to be a Bangladeshi citizen who was born in [Village 1], [County 1] in Jessore district and lived in Bangladesh until November 2012. He provided copies of English translations of a Bangladeshi birth certificate, his marriage certificate, a school

certificate and a citizenship certificate to the delegate as evidence of his identity and nationality. I accept that his identity is as claimed and that he is a Bangladeshi national.

Political affiliation with the Bangladesh Nationalist Party (BNP)

9. The applicant in the statutory declaration lodged with his visa application claims that he has been a BNP supporter since 2000. While the BNP were in power from 2001 to 2006 his uncle was an influential party leader who encouraged the applicant to be involved in BNP activities. He stated that he followed his uncle's orders including beating his uncle's political opponents. When asked about his BNP involvement at the SHEV interview he stated that he was not a formally registered member but a supporter who was an activist as he followed and assisted one of his uncles who was in a leadership role. He stated that his uncle was a local BNP [official] who contested for a post as [another position] but did not win. The applicant stated that whenever a procession, rally or demonstration was organised he would follow his uncle and support him. When the local area command announced there was a rally or procession being held the applicant would let people know in his village and he together with [a number of] people would go to the meeting which normally occurred in [a public] place. The applicant also would assist in organising refreshments for these gatherings. As the applicant was not a registered BNP member he did not attend the BNP members' meetings at the BNP office, only the rallies and processions.
10. The applicant claims to have three outstanding police cases against him arising from his political activities. The first case arose from a marital dispute between an AL supporter from another village who had divorced his wife originating from the applicant's village. The former wife asked for the help of the applicant's uncle who requested the applicant and a number of other villagers to escort the former husband to their village to resolve the dispute. When the former husband refused the matter erupted into an altercation between people from the applicant's village who were BNP supporters and people from the other village who were AL supporters. [A number of] people were initially charged with fighting but later charges were withdrawn for [several] people with final charges being against only [a number of] people including the applicant.
11. The other charges for murder and destroying a car were connected to strikes the applicant attended in 2010. The applicant claimed to have attended a local strike in [2010] protesting against the arrest of Delwar Hossain Sayeedi one of the national leaders of Jamaat-e-Islami (JI), which became violent and the applicant was charged with destroying a car after being photographed with others in the act. The other protest he claims to have attended demanded that a caretaker government be installed and was one of many strikes throughout Bangladesh. During the local protest his friend was killed and he along with [a number of] other protestors were accused of murder. The applicant provided an affidavit from his father dated [in] April 2013 and a statement from his lawyer in Bangladesh also dated [in] April 2013 which both state there are outstanding criminal cases against the applicant due to him being a serious political activist/political leader and [organiser] of the BNP.
12. The applicant at the entry interview [in] January 2013 stated that he left Bangladesh because it is a poor country and as a poor family it is very difficult to survive and to provide for his siblings' educational expenses or to obtain better treatment if any of the family became sick. He stated that by staying in Australia and working he would be able to solve these problems by sending money and there were no other reasons for him leaving Bangladesh. During the SHEV interview when the delegate read the reasons the applicant had given at the entry interview for leaving Bangladesh which did not mention any issues of a political nature, the applicant responded that the day before or the day of the entry interview he received a phone call from

home telling him about a big incident at his place where his parents were beaten, his uncle was killed and huge things happened. The news from home devastated him and when he attended the entry interview he did not know anything about the system, what to do and not do and how to say no to the interviewer. He attended the interview with all of this news in him and told whatever he told out of fear. The delegate also referred to the applicant's negative responses to questions regarding his and his family's involvement in political groups and involvement in activities or protests against the government. The applicant responded that he was fearful that if he said what had happened at home the Australian government would take it as a negative thing, which could cause more trouble, so he tried to minimise his political involvement.

13. There are significant discrepancies between the entry interview during which the applicant did not declare any political involvement by either himself or his family and the statutory declaration including during the SHEV interview. The applicant's explanation for failing to mention any political involvement not only of himself but also of his family members' is questionable particularly given the applicant was aware that the entry interview was an opportunity to provide information about his circumstances and he undertook to provide truthful responses to the questions.
14. The applicant's explanation given at the SHEV interview for not mentioning his political involvement at the entry interview also differs to his explanation in the statutory declaration. In the statutory declaration he stated that just before his entry interview he spoke to his [sister] who told him that AL members came looking for his uncle who was not home and they beat his father so severely that now he can no longer do anything including not talk. However the applicant at the SHEV interview stated that he received news that both his parents were beaten and his uncle was killed. The applicant's claim to have received news of his uncle's death [in] January 2013 (when the entry interview was held) is also contradictory to information on the uncle's death certificate provided by the applicant which was issued by the hospital [in] February 2013, and states his uncle was attacked at his residence and died [in] February 2013 in hospital, which was over a month after the entry interview was held. Given the serious inconsistencies I do not accept the applicant's explanation for not raising these claims during the entry interview. Nor am I persuaded by the applicant's reasons for not mentioning his uncle's alleged involvement with the BNP and in political protests. The delay in putting forward these claims which were vital to his case for protection raises significant concerns regarding their credibility of which various aspects are addressed below.
15. The applicant's claims regarding his uncle's BNP role differ over time. In the statutory declaration he was an influential BNP leader during the time the BNP was in power; in the IAA submission he was [a senior official] of the [local] BNP office; but at the SHEV interview he indicated that his uncle was [another official] at the council level and he contested for the role of [another position] but did not win. He also stated that his uncle was a leader in an area which was a bit bigger than a village but smaller than a district. While I have serious concerns over the veracity of some aspects of his claims, which were not raised at the entry interview including his uncle's involvement and leadership role in the BNP, I am prepared to accept that the applicant's uncle may have been involved in the BNP at a local level, while the BNP were in power. However the applicant's account at the SHEV interview indicates his uncle was unsuccessful in securing a prominent leadership role [in] the local area. I am not satisfied on the evidence that his uncle was a prominent or influential leader in his area and even if he had some minor role in the BNP there is no credible evidence before me to indicate that any influence arising from this role extended beyond the period when the BNP were in power.

16. I accept that the applicant may have supported the BNP while the BNP were in power, including attending processions and rallies with others from his village and assisting in the provision of refreshments. However I do not accept the claims in his father's affidavit that the applicant was a political leader and [organiser] in the BNP or in the lawyer's statement that the applicant was a serious political activist which are inconsistent with the applicant's claims at interview to have been a supporter but not a BNP member. Nor do I accept the claim in the statutory declaration that the applicant under his uncle's direction beat up his uncle's political opponents which was not raised by the applicant at the SHEV interview. I also note that the applicant at the SHEV interview did not indicate that he held any strong personal political affiliation with the BNP ideology, other than his interest in the BNP which was prompted by his uncle's BNP interest and his attendance at a number of BNP gatherings or rallies. Given that I do not accept his uncle was a powerful local leader, I am satisfied that the applicant apart from attending some processions or rallies during the time the BNP was in power (until October 2006), was not a BNP activist, was not involved in beating up his uncle's political opponents and was not otherwise involved in BNP party matters although he was a BNP supporter in his village.
17. The applicant claims to have been involved in three incidents in 2010 which resulted in him being charged with a number of offences including murder. In his statutory declaration he stated that in 2010 the BNP called for strikes demanding that a caretaker government be installed. Thousands of people attended the strikes which were held throughout Bangladesh and erupted in fighting and cars being blown up. BNP leaders and most of those who led the strikes were arrested. The applicant attended a strike in [County 1] during which [a weapon was used] by AL killing one of the applicant's friends who was a BNP supporter. The local AL MP gave money to his friend's parents and made them file a case. [A number of] people including the applicant were accused of killing his friend. Although almost all of those accused are no longer charged with murder the applicant and about [a number of] others remain accused.
18. I do not accept that the applicant attended a protest or national strike demanding a caretaker government be installed in 2010. Country information indicates that the parliamentary term in Bangladesh is five years. The caretaker government was in power prior to the national elections held at the end of 2008 and was dissolved after the AL was elected to power. At the time the applicant claims to have attended this protest/national strike the AL government had been in power for less than 2 years, and given the lack of independent evidence before the delegate indicating that the BNP had instigated a national strike at this time calling for a caretaker government,¹ I consider it implausible that national BNP national strikes/protests were held in 2010 for this reason or that the applicant attended any such rally in support of a caretaker government being installed.
19. The applicant also claims that in [2010] there were nationwide protests about the arrest of Delwar Hossain Sayeedi one of the national leaders of Jamaat-e-Islami (JI). He claimed that there was vandalism during these [strikes]. During the strike in his area [a number to number of] people including him were charged with destruction of a car. In [2010] after his parents were told that the applicant should go to the police station voluntarily otherwise he would be killed, a former Member of Parliament (MP) who a good relationship with his uncle had called the police and offered his protection, which the applicant obtained. During the SHEV interview the applicant stated that there were national strikes and a shutdown called after the arrest of

¹ UK Home Office, "Bangladesh August 2010", 20 August 2010, 1734, pp.20-23, 61-62; Department of Foreign Affairs and Trade (DFAT), "Country Report Bangladesh 20 October 2014", 20 October 2014, CIS2F827D91369, 2.18; Odhikar International Federation for Human Rights, "Bangladesh Human Rights Report 2013", 15 April 2013, CIS28167

the JI leader. He claimed the atmosphere was tense and there was a lot of fighting with sticks and cars were destroyed. The applicant claimed to have been involved in the fighting and in destroying a car. When questioned further about the demonstration during the SHEV interview the applicant stated that thousands of people were on the street protesting when a car drove into the area where it was not supposed to be. When they saw the car they told the occupant to stop and a few of the demonstrators had enthusiasm and banged the car. Journalists took pictures of them and the police identified the applicant from the picture and came to his house the following day. The applicant fled to the next village and stayed away to avoid the police. His uncle used his influence to subdue the matter with the police.

20. I accept that a number of JI leaders were arrested in 2010 including Delwar Hossain Sayeedi for suspected involvement in war crimes. However given the absence of any credible evidence of other political involvement after 2006 I consider it implausible that after a period of over 4 years the applicant would begin participating in protests of a political nature. I also consider the applicant's claim to have been photographed while hitting a vehicle, to have been visited by the police [at a later time] and the intercession whether by the uncle or the former MP (which is also inconsistent) to be implausible particularly given the BNP were no longer in power and their lack of influence as a result. I accept that there is violence during protests or during periods of heightened political tension. However I do not accept that the applicant was politically active in [2010] or that he attended a protest at that time which turned violent or was charged with destroying a car as a result. His claim to continue to have outstanding charges against him is also inconsistent with his claim that his uncle and/or the former BNP MP interceded with the police to ensure no further action was taken against him.
21. There are also other inconsistencies regarding the applicant's claims in the aftermath of the protests he claims to have attended. The applicant stated at the SHEV interview that following the protest where his friend was killed and the applicant was accused of murder, the former BNP MP could not protect him and distanced himself from the matter. Nor could his uncle help as he was also accused. The police came every day to his house looking for him, they threatened his parents and he went into hiding. The local AL was also looking for them, his uncle was also in hiding and the applicant decided to go to Chittagong. While the applicant was in Chittagong the former MP was killed. This is significantly different to the applicant's account in the statutory declaration which stated that following a visit by the police to his parents in [2010] the former BNP MP interceded with the police on his behalf and obtained the applicant protection so he did not need to move to another part of Bangladesh. This protection continued until the former MP was killed in [2011]. After the death of the former MP and a visit to his family home by the police his uncle told the applicant to go into hiding. He hid in a different part of the same town and only returned home every [number of] days and sometimes at night and also stayed with relatives in a neighbouring district before he went to Chittagong and worked there.
22. During the SHEV interview the delegate raised the inconsistency between the account at the SHEV interview where he claimed the former MP could not assist him and his statutory declaration which indicated he had protection until [2011] when the former MP was killed. The applicant responded that although the MP could protect him from small incidents he could not protect him from a murder charge or influence the judiciary. The former MP could only slow down the police action and this continued until the former MP's death. I am not persuaded by the applicant's explanation which is internally inconsistent with his accounts. The explanation indicates that the former MP used his influence to stave off the murder charge against the applicant which is inconsistent with his earlier claim during the SHEV interview that the former MP distanced himself from the applicant and the murder matter. His explanation also indicates that the applicant continued to reside in his home area until the former MP's death in [2011]

which is not consistent with his claims that the police visited his house daily and the local AL were looking for him so he travelled to Chittagong. I also note that the applicant at the entry interview and in his visa application stated that he lived in his home village until his departure from Bangladesh and not in Chittagong as claimed in his statutory declaration.

23. The applicant at the SHEV interview stated that the former MP's name was [a certain name]. However in the IAA submission he claims that the former BNP MP who was killed was [a different name]. Given the alleged protection provided to the applicant from this person I consider it significant that the applicant was unable to correctly recall this person's name at the SHEV interview, which raises further doubts about the applicant's accounts.
24. The altercation in 2010 between BNP supporters and people from another village who were AL supporters was included in the statutory declaration but was not mentioned at the SHEV interview by the applicant. The applicant in the statutory declaration claims that [a number of] people were initially charged with fighting but later charges were withdrawn for [several] people with final charges being against only [a number of] people including the applicant. I accept that there may have been a marital dispute between the families of the two villages and that this may have developed into a wider altercation. However his claim to still have outstanding charges against him is inconsistent with his claim regarding the claimed influence of his uncle and the former local MP to be able to resolve these matters with the police. Given that I do not accept the applicant was a BNP activist and my concerns regarding his other claims I am not satisfied that the dispute became a fight between AL and BNP supporters. Nor do I accept that the applicant even if charged initially continues to have outstanding charges against him for fighting.
25. The applicant provided an affidavit from his father dated April 2013 and a statement from his solicitor which both state there are criminal cases against the applicant due to his leadership in the BNP and political activities but do not identify the nature of these cases. The statement by the lawyer indicates that the applicant is wanted by the police at any time and may be apprehended by the police when he is available. I also note that the information in these documents is not reflected in the citizenship certificate issued [in] January 2013 approximately two to three years after the claimed criminal cases were said to have been brought against him which states the applicant has not been 'involved in any activity subversive of the state'. As previously indicated I do not accept that the applicant was a political leader or member of the BNP or that he was involved in any activities beyond 2006. I am also not satisfied that the applicant was involved in any political protests or strikes in 2010 which resulted in applicant being charged with murder, destruction of a car or political fighting.
26. The applicant claims that his uncle was killed after the applicant's departure from Bangladesh. He provided a death certificate issued [in] February 2013 which states his uncle was attacked by miscreants in his residence and admitted to hospital seriously injured before he died at the hospital. The applicant claimed in his statutory declaration that he was killed because he was a major political leader and surmises that either the police or the political opposition killed him. The applicant in his statutory declaration also claims that he learned just prior to his entry interview that his father was badly beaten after AL came looking for the applicant's uncle who was not home. However this is inconsistent with the applicant's claims at the SHEV interview to have received news that his uncle was killed and both his parents were beaten just prior to the entry interview. Given my other credibility concerns and the inconsistencies in the evidence before me I am not satisfied that the applicant's father was attacked as claimed or that his uncle died from injuries arising from an attack by AL or the police.

27. After consideration of the applicant's account I accept that the applicant was a BNP supporter who attended an occasional rally or procession during the period the BNP were in power. However given the other significant inconsistencies in aspects of the applicant's evidence particularly in the timing of the rallies which is inconsistent with country information before me, the varying accounts of aspects of his claims and the implausibility of some key aspects of his narrative, I am not satisfied with the overall credibility of his claim of his uncle's leadership role in the BNP, his own BNP involvement in beating up his uncle's political opponents, his participation in BNP rallies/national strikes in 2010, his claim to have outstanding criminal charges or to have gone into hiding to evade police, that the police or AL members were looking for him, that his family members were visited and harmed by AL members after his departure from Bangladesh in 2012 or that his uncle was killed due to his political affiliations.

Refugee assessment

28. 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

29. 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.
30. The applicant fears that the government will take revenge on him because of his involvement in beatings which took place between 2001 and 2006. His political opponents will beat him up and if he does not give enough money to the police they will also beat him up. If he is found guilty of murder he will be hanged. He may also be caught and killed by the police in 'cross fire'.
31. Country information indicates that there is a long standing rivalry between AL and BNP and both parties when in power have used parliament, the executive and the judiciary to undermine their political opponents. Most politically motivated violence occurs between political parties during times of political unrest particularly during national elections and hartals (strikes), with BNP leaders subjected to a high level of official discrimination during periods of heightened political tension, particularly national elections; and BNP supporters or

members in rural areas are subjected to a low level of violence associated with AL extortion. High levels of political violence continued throughout 2016 and the early months of 2017, however the majority of the political violence involved intra-AL party clashes. AL-BNP inter-party violence is reported to have declined since the hartals of early 2014. DFAT assesses that AL, BNP and Jamaat-e-Islami (JI) members are subjected to a low level of inter-party violence but notes that AL activists or Bangladeshi authorities are much more likely to pursue and harm prominent opposition leaders or opposition student and youth members rather than mere supporters or party function attendees.² The AL has used its power to suppress the BNP opposition particularly during election periods and during hartals. However the prominent opposition leaders and members are often the targets. The applicant had some interest in the BNP and together with other people in his village attended some rallies but was otherwise not an active BNP supporter in his village after 2006. Apart from his claimed involvement in beating up political opponents between 2001 and 2006 and attendance at BNP political protests in 2010, neither of which I have accepted, he has not indicated any strong ideological affiliation with their policies or ideals. Although I accept that the applicant's uncle may have supported the BNP, there is no evidence of his active or recent involvement in the BNP or in politics. Given the applicant's minimal involvement prior to his departure, his ability to reside in his village for a further six years after AL came to power prior to his departure without being harmed due to his previous BNP involvement or in revenge for any previous BNP activities, and his lengthy absence from his village, I am not satisfied there is a real chance of him suffering any harm on return to Bangladesh from AL or the police due to any of his past BNP involvement. The country information also does not indicate that relatives or associates of BNP members are targeted or harassed and I am also not satisfied that he would be targeted by AL due to any family associations with the BNP or in revenge for any activities he undertook between 2001 and 2006 on behalf of family members.

32. I accept that although the applicant was not a BNP member he is sympathetic to the BNP and may continue to support the BNP on return to Bangladesh. There is a low likelihood of supporters or party members being harmed whilst involved in political protests or strikes. The applicant has not indicated that he would engage in any BNP activities on his return to Bangladesh and on the evidence before the delegate, his uncle who he claims was involved in politics and who encouraged the applicant's interest is deceased and no other family members were or are actively involved in politics although they may support the BNP. Given this and the lack of credible evidence of any political involvement since 2006, I am not satisfied that the applicant would be politically active on return to Bangladesh, or that his involvement would extend beyond merely supporting the party. I am not satisfied he has a well-founded fear of any harm as a result of any past or future BNP support or due to his family's BNP support. I am not satisfied that the applicant faces a real chance of persecution by the AL or anyone else on return.
33. The delegate considered whether the applicant would face a real chance of harm as a returning asylum seeker who departed illegally although the applicant did not claim to fear harm for this reason. The applicant claims, and I accept, that he departed Bangladesh illegally. Although he did not claim to fear harm for this reason he claimed at the SHEV interview that he will be picked up at the airport on return to Bangladesh because of the outstanding charges against him and due to his previous BNP support.

² DFAT, "Country Information Report Bangladesh", 5 July 2016, CIS38A80121206, 3.53, 3.57-3.58, 3.62; International Crisis Group, "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646, pp. 1, 4; Odhikar, "Annual Human Rights Report 2016", 1 January 2017, CISED50AD44; Ain O Salish Kendra, "Human Rights Situation in Bangladesh 2016", 28 March 2017, CISED50AD3723; Odhikar, "Human Rights Monitoring Report: April 1 – 30, 2017", 1 May 2017, CISED50AD4210; DFAT, "Bangladesh - Country Information Request CI161130110919945 - Political Violence", 6 February 2017, CXC9040661299

34. Country information indicates that the Emigration Ordinance Act (1982) makes it an offence to depart from Bangladesh other than in accordance with the procedures laid down in the Act; however DFAT advises that it is not aware of these penalties being enforced³ and there is no information before me to indicate otherwise. I am not satisfied that there is a real chance of the applicant facing any penalties including detention and/or imprisonment as a result of his illegal departure.
35. 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.⁴
36. I am not satisfied that the applicant would be targeted on return as a returning asylum seeker or because he has outstanding criminal charges or due to his BNP support. The applicant has not been involved in any political activities in Bangladesh since 2006 which were of a minor nature; has had no involvement in political activities in Australia, and there is no credible evidence of any involvement in criminal activity or that he has outstanding criminal charges 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 who is supportive of the BNP.

Refugee: conclusion

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

Complementary protection assessment

38. 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

39. 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.

³ DFAT, "Country Information Report Bangladesh", 5 July 2016, CIS38A80121206, 5.20

⁴ DFAT, "Country Information Report Bangladesh", 5 July 2016, CIS38A80121206, 5.21-5.22

40. I have found that the applicant does not face a real chance of harm on return to Bangladesh due to his political affiliations with the BNP, his uncle's BNP support, or as a returning asylum seeker who departed illegally. 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'. Therefore for the reasons stated above I am not satisfied the applicant faces a real risk of significant harm.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.