



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA17/03595

Date and time of decision: 4 July 2018 17:24:00

M Tubridy, 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 national of Bangladesh. On 24 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 on 8 September 2017, and the Department of Immigration and Border Protection (the Department) referred the matter to the IAA on 14 September 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 18 February 2018 the applicant's representative provided a submission to the IAA. Insofar as this submission engages in argument with the delegate's decision on the basis of information which was before the delegate I have had regard to it. Additionally, the submission to the IAA provides information sourced from a number of country information reports which were not before the delegate and which therefore amount to new information. Pursuant to s.473DD(b) the IAA must not consider any new information unless the applicant satisfies the IAA that the new information either could not have been provided to the delegate before the delegate made the decision or, alternatively, that the new information is credible personal information which, had it been known, may have affected the consideration of the applicant's claims. Further, pursuant to s.473DD(a) the IAA must not consider any new information unless it is satisfied that there are exceptional circumstances to justify considering such information. The submission to the IAA has provided no reasons to satisfy the IAA as to how this new information meets either of the alternative s.473DD(b) requirements. I note that all of the new information was published before the date of the delegate's decision and I can see no reason why this information could not have been provided to the delegate before she made her decision. The applicant has not satisfied me that this new information could not have been provided to the delegate before she made the decision. All of the new information is country information of a general kind rather than being information from or about the applicant or any persons personally involved in the events which the applicant claims have affected him. The applicant has not satisfied me that this new information amounts to personal information. The applicant has therefore not satisfied me that s.473DD(b) is met with regard to this new information. Moreover, having considered the content of the new country information it is not apparent that this new country information itself is substantively different from the country information which was before the delegate. Given this, and given that I can identify nothing else about this new information, or the circumstances in which it has been provided, which would amount to exceptional circumstances, I am not satisfied that there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant claims to fear that if he returns to Bangladesh he will be targeted and killed by the Awami League and/or arrested and imprisoned by the Bangladesh police

under false charges as a consequence of his close association with his brother who was an [official] of the Bangladesh National Party (BNP).

Refugee assessment

5. 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

6. 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.
7. The applicant claims to be a national of Bangladesh and this is not in dispute. I accept that the applicant is a national of Bangladesh and I find that Bangladesh is the applicant’s receiving country.
8. As noted above the applicant lodged his SHEV application on 24 March 2016. In his application he indicated that his only previous international travel had involved his going to [Country 1] in July 2007 where he worked until August 2009, after which time he returned to Bangladesh and thereafter resided with his family (his father and his brothers) and worked on the family farm and its trading business in [Village 1], a small village in the Mirpur Upazila of Kustiya (or Kushtia) District until around October 2012 when he fled to Dhaka and then to Australia. His problems began because his [brother], Mr MdZ, was always interested in politics and was an active member of the BNP who took part in all the protests, rallies, agitations and meetings. The BNP’s political rivalry with the Awami league is immense and was more intense in neighbouring villages such that in which the applicant resided. This has been so from 2007 and has only grown since. The Awami League have filed “2-3” false police complaints against his brother and have destroyed their [trees] as well. The false police complaints have implicated his brother in “the murder and assault of police”. Following this incident Mr MdZ fled to Dhaka and has been in hiding since that time. The applicant’s family sent his brother some money somehow without getting noticed. Mr MdZ has a good network and political connections and so he is fulfilling his ambitions in Dhaka. Mr MdZ’s party is not the ruling party but Mr MdZ believes the scenario will change and he will then come out of

his hiding. The applicant has no interest in politics and cannot stand violence. The Awami League have “threatened and tortured him several times”. The applicant feared for his life all the time and so he decided to escape from Bangladesh as the Awami league will find him if he is in the country. He does not have any political or other intelligence that would allow him to live his life in hiding nor does he have the financial strength to keep moving all the time. The police have registered a false case against him even when he was not in the country and have come to his home several times and threatened him verbally and abused him. They have repeatedly threatened that they will get him if they do not find his brother, Mr MdZ. He (the applicant) is extremely worried that they will make him a scapegoat and trap him in some false case and imprison him. It is also highly likely that he could be a targeted and killed. In around October 2012 he fled to Dhaka late in the night hoping no one would notice him. He was in constant fear and this was when a friend of his suggested that he should go to Australia. He remained in Dhaka for about a month seeking guidance on how to reach Australia. His SHEV application indicates that he departed Bangladesh [in] November 2012 by air on his own passport. After arriving in [Country 1] his valid passport was taken from him by “the agent”. An agent then helped him to transit to Indonesia and then Australia by boat.

9. The written claims referred to “attached copies of police reports which confirm the cases being registered against [his] brother”, Mr MdZ. Attached to the SHEV application were a number of Bengali language documents unaccompanied by any translations.
10. On 15 February 2017 the applicant’s representative provided a submission in support of the applicant’s SHEV application. This broadly re-articulated the written claims which the applicant had provided in his SHEV application. It made submissions as to the relevant law, and provided a number of country information sources in support of the applicant’s SHEV application.
11. On 7 June 2017 the delegate interviewed the applicant (the SHEV interview). The applicant indicated that he would be providing translations, once these were available, of his Bengali documents and that he was mentioned in one of these documents and that his brother was also mentioned. The delegate asked what these documents were and if they were warrants and the applicant said that they were. The delegate asked the applicant to explain what information these documents contained. In response the applicant said that the prime accused was his brother but he (the applicant) had also been wrapped up in this and that there was one document which showed his own name and another which showed his brother’s name. When the delegate asked the applicant about the whereabouts of his brothers the applicant indicated that his [brother] for whom a warrant had been issued (that is, Mr MdZ) had gone to [Country 2] and that Mr MdZ had done this after spending some time in Dhaka and that Mr MdZ had departed Bangladesh at about the same time that the applicant had also departed (that is, on or around [date] November 2012). The applicant said that he had lost contact with Mr MdZ following Mr MdZ’s arrival in [Country 2]. I note, however, that the applicant’s March 2016 SHEV application and its written claims give no indication that Mr MdZ had departed Bangladesh for [Country 2] around November 2012 and that, on the contrary, the March 2016 SHEV application indicates that Mr MdZ is in Bangladesh and the written claims submitted that Mr MdZ “is fulfilling his ambitions from Dhaka”. I consider that this seriously undermines the applicant’s claim that Mr MdZ has departed Bangladesh and that he and Mr MdZ fell out of contact following Mr MdZ’s arrival in [Country 2]. I do not accept that Mr MdZ has departed Bangladesh nor do I accept that the applicant and Mr MdZ are out of contact.
12. At the SHEV interview the applicant said that his brother had been a BNP official at the “thana” level, and had been [position] of [a certain] group and that this was quite a

prominent position and that whenever there were processions or meetings he would organise these (a “thana” is a subdistrict administered unit matching, and sometimes also referred to as, the local “police station” area).¹ The delegate asked why the Awami League and the police were interested in his brother. The applicant said that [in] October 2006 there had been a political scuffle and a few people had died and those cases were put in his brother’s name because he was the organisational leader of that particular program. The delegate noted that the applicant’s written claims stated that the problems had begun in 2007. The applicant said that the first incident happened in 2006 and then continued through 2007. The applicant said that after this ([October] 2006) incident his brother was in hiding and that because the Awami League could not get hold of his brother they came after him (the applicant) because he had been in his brother’s company all the time. The applicant said that he (the applicant) was not a member of a political party himself but that after his brother fled to Dhaka he was targeted because he had always been with his brother, and had always been driving his brother to various political events like meetings and processions, and even though he (the applicant) never attended these events himself he was otherwise always in his brother’s company.

13. The applicant’s claim to have become the focus of the adverse attention of the Awami League from October 2006 after his brother, Mr MdZ, went into hiding seems doubtful. The applicant’s SHEV application gives no indication that he was in hiding from the Awami League from October 2006. The applicant’s SHEV application does indicate that in July 2007 he went to [Country 1] but the SHEV application does not give any indication that he undertook this travel for any reason other than employment. Moreover, and although the applicant has sought to present the Awami League’s influence over the Bangladesh police as being continuous from 2006 this was not so. In Bangladesh it has typically been the case that the ruling party, rather than the Awami League alone, has been able to act with a greater degree of impunity against its opponents, and sometimes with the complicity of the Bangladesh police, when they have been in government. In October 2006 the BNP had just completed its term in office and it exerted far greater influence over the police at that time than the Awami League. This changed in early 2007 when the BNP appointed caretaker government was replaced (following allegations of its being partisan to the BNP) by a new caretaker administration which, backed by the Bangladesh military, postponed the scheduled elections and extended its rule with a view to curbing political corruption in Bangladesh. This involved the arrest of large numbers of both BNP and Awami League members, including the respective leaders of both parties, and both the BNP and Awami League found themselves marginalised. Yet it was during this period – during which the Awami League exerted very little influence over the police and during which its activists were constrained by the caretaker government’s corruption crackdown – that the applicant departed Bangladesh for [Country 1]. The BNP and the Awami League only regained their former freedom of action the following year in the lead up to the national election of December 2008. That election was provided a landslide win to the Awami League and it was from January 2009 that the Awami League, as the ruling party, exerted significant influence over the police, with reports beginning to appear of the lodging of thousands of politically motivated cases against BNP supporters, and of many arrests, along with allegations that the police were engaging in partisan behaviour in favour of the Awami League.² Yet it was in August 2009, at the time the Awami league was in the ascendancy, that the applicant returned to Bangladesh and,

¹ UK Home Office, "Country of Origin Information Report, Bangladesh", 20 August 2010, CIS1734.

² UK Home Office, "Country of Origin Information Report, Bangladesh", 20 August 2010, CIS1734; International Crisis Group, "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646; Jalil, M.A. M.K. Rahman, "Human Rights Violation and Political Persecution in Bangladesh: The Current Scenery", Asian Culture and History, Vol. 3, No. 1, January 2011.

according to the applicant's SHEV application, he thereafter resided until October 2012, not in hiding, but with his family where he worked on his family's farm and in their trading business. All of this seriously undermines the applicant's claim to have been of adverse interest to the Awami League from October 2006.

14. At the SHEV interview the delegate asked the applicant when it was that he first had an encounter with the Bangladesh police. The applicant said that this happened two months prior to his departure for Australia (that is, on or around [date] September 2012) and that the police had come to his home and threatened and abused him, and had said that he (the applicant) and his family had just two weeks to give up his Mr MdZ or one of them would be shot by the police in an "encounter killing" (a term used in Bangladesh to refer to instances in which Bangladesh police claim to have killed a suspect in an exchange of fire or in self-defence but which are often suspected to have been instances of extra judicial killing).³ The applicant said that after this he then went into hiding and departed for Australia but the police continued to harass his father and his other brothers to give up the whereabouts of both Mr MdZ and the applicant. His father and his other brothers were threatened even though his father and other brothers have had no involvement in politics. Following this, the Awami League also began to come to the family home to threaten his family and the Awami League said that they would kill both Mr MdZ and the applicant when they caught them. The delegate asked the applicant if he ever personally had a face-to-face encounter with the Awami League and the applicant said that he had not but that after he fled to Dhaka the Awami League came to the applicant's family home several times and made threats against the applicant's family and said they must divulge the whereabouts of Mr MdZ and the applicant. The applicant said that the police and the Awami League were working in cahoots.
15. The delegate then asked the applicant how it could be that, if these matters had begun in 2006 (that is, if the Awami League had been targeting him since Mr MdZ went into hiding), that he had never had a face-to-face encounter with the Awami League at any time and that he had only had an encounter with the police in 2012. The applicant said that before 2012 it was mainly Mr MdZ who was hassled and that he was not hassled very much, and it only became a problem later. He said that at his interview in [Australia] (presumably a reference to his Departmental entry interview of 20 February 2013) he had had a fever and he could not remember exactly what he had said. I have not found this explanation persuasive. The problem which was being put to the applicant was not the fact that he was saying something different to what he had said at his February 2013 entry interview in [Australia]. The problem being put to him was that earlier at the SHEV interview he had said that Mr MdZ had gone into hiding after an event which had occurred in October 2006 and that from this time the adverse attention of the Awami League had fallen on himself (the applicant) because he had been so much in Mr MdZ's company. Even allowing for the fact that the applicant was in [Country 1] between July 2007 and August 2009, and that as noted above the Awami League's influence over the police was only in the ascendancy from 2009, it does not seem plausible that the applicant could have avoided local members of the Awami League over such a long period if they were intent on seeking him out (and as noted above his SHEV application, and the fact that he claims to have had an encounter with police at his family home on or around [date] September 2012, suggests that he was living at home and could easily have been found during these years). Once the delegate's question had made plain to the applicant the implausibility of this he then, unconvincingly, sought to alter his evidence

³ Ain O Salisk Kendra, "Human Rights Situation in Bangladesh 2016", 28 March 2017, CISED50AD3723; Odhikar, "Human Rights Monitoring Report: April 1-30, 2017", 1 May 2017, CISED50AD4210; UK Home Office, "Country of Origin Information Report, Bangladesh", 20 August 2010, CIS1734; "Law enforcers killing people extra judicially: Noted citizens", Prothom Alo, 23 June 2016; Anbarasan, E. "'Enforced disappearances' haunt Bangladesh", BBC News, 21 April 2012.

by submitting that in the period after October 2006 it was mainly Mr MdZ who was being harassed while the applicant and the rest of the family were bothered very little. This was squarely at odds with what the applicant had said earlier in the SHEV interview when he had plainly stated that after the incident of [October] 2006 his brother had gone into hiding such that the adverse attention of the Awami League fell upon the applicant. Alternatively, the applicant's altered version of these events, in which Mr MdZ had remained in the local area where he was no more than "hassled" by the Awami league and never arrested by the police, undermines his claim that Mr MdZ was wanted by police in the aftermath of a [October] 2006 incident in which people had died. Taken together, all of this seriously undermines the credibility of the applicant's claim that Mr MdZ is wanted by the police, and the Awami League, because of Mr MdZ's alleged involvement in the incident of [October] 2006.

16. The delegate then put it to the applicant that in his SHEV written claims he had submitted that members of the Awami League had "threatened and tortured him several times", but now at the SHEV interview he was saying that he had personally never had any face-to-face encounters with the Awami League. The applicant insisted that he had in fact said that the Awami League had threatened him. The delegate underlined that he had also said that he was "tortured". The applicant then said that yes, he had had an encounter of this kind, but he has forgotten about this. The delegate asked the applicant what had occurred. The applicant said that there was one time when the Awami League came to his home and had said that if he did not give up Mr MdZ's whereabouts they were going to finish him (the applicant) off as revenge. The delegate asked when this happened and what was done to him. He said that it was in late 2012 and that the Awami League had said that if Mr MdZ's whereabouts were not given his own whereabouts would be looked after, meaning that he would not be seen again, and that he was abused with bad language and slapped around and threatened with death. It was put to the applicant that he had said he was threatened and tortured a few times (that is, on more than one occasion). The applicant said that he may have said this in his first interview (meaning his entry interview) but it was just the one time. He then said that he now remembered that there had been a second incident some two weeks later when the Awami League told him that his time was up to tell them the whereabouts of Mr MdZ and that they were more abusive than before because they threatened him and showed him some arms and said that this was his last warning. I have not found the applicant's evidence about these matters, or his explanations for his inconsistent evidence, convincing. Again, the problem in this regard arises not from anything the applicant said at his entry interview but rather from the manner in which his SHEV interview evidence has proven inconsistent with his SHEV application's written claims. Given the unconvincing nature of his SHEV interview accounts of his two encounters with the Awami League, and the manner in which he has proved to be an inconsistent source of evidence more broadly, I am not persuaded that the applicant did genuinely forget and then remember actual events of this kind as a consequence of stress or trauma. I consider that these inconsistencies, and the other inconsistencies in the applicant's evidence which have already been highlighted above, seriously undermine the credibility of the applicant's claim that he and his brother, Mr MdZ, have been of adverse interest to the Awami League and the Bangladesh police.
17. At the SHEV interview the delegate asked the applicant if he could be specific about what the charges were which had been brought against him and his brother, Mr MdZ. The applicant said that his brother had been charged with murder and with beating up the police. He said that in the first incident (that of [October] 2006) some Awami League supporters really had been killed when these person had attacked a BNP Minister of Parliament (MP) at a meeting at the BNP party office and the MP's security guards had opened fire. He said that his brother, Mr MdZ, was not responsible for this but because Mr MdZ was the local BNP organisational secretary and because Mr MdZ had been there with the MP at the time Mr

MdZ had been falsely accused of being responsible. The applicant said that the other charge of his brother attacking police was totally false because his brother was not there. The delegate asked the applicant to be specific about what the warrant for him (the applicant) concerned. The applicant said that the case against him was for beating up police but this was totally false as he was not in the country at the time.

18. On 12 July 2017 the applicant's representative provided the Department with three files which were presented as being First Information Reports (FIRs). The translations were unaccompanied by the relating original documents but I consider that these are the translations which the applicant had promised he would provide to the delegate for the Bengali language documents attached to his SHEV application and which are referred to in his written claims as "police reports" and were referred to at the SHEV interview by the delegate as "warrants". The translations provide details which are broadly consistent with the summary which the applicant provided of these documents at the SHEV interview. The file labelled "FIR 2" includes a document which presents as being an FIR which was submitted at [a] Police Station [in] October 2006 (the translation has this as 2016 but all other lodgement dates in this document refer to the document being lodged in 2006 and so I consider that the "2016" was a typographical error on the part of the translator) relating to an incident which occurred just a kilometre from the police station [in] October 2006 in which 53 persons are named and accused of having assembled with dangerous weapons "hence serious injury and murder". The thirteenth accused person is named as, Mr Z son of Mr K of [Village 1], apparently a reference to the applicant's brother, Mr MdZ. The "FIR 2" file also includes a document which presents as being addressed to [a] Police Station in regard to the FIR of [October] 2006 and this relates that the [October] 2006 incident involved a meeting held under the leadership of [an official] of Kushtia Constituency No.2 in front of the BNP party office, and that 5/6 thousand people gathered with arms and due to the offensive language against the party violence started in which one Awami League supporter was injured and died by gun fire. Fifty-four persons are named among the accused with the thirteenth person being Mr Z son of Mr K of [Village 1], an apparent reference to the applicant's brother, Mr MdZ.
19. The file labelled "FIR 3" includes a document which presents as being an FIR which was lodged [in] November 2012 at [a] Police Station which refers to an incident which has taken place just a kilometre away from the police station in which persons intended to restrain the duty of police and for the purpose of killing used local arms and damaged shops. Reference is then made to an FIR lodged with [a] Police Station stating inter alia that based on [the] Police Station's general diary entry of [date] November 2012 "while I have been performing our Emergency Kilo Duty No. 1 in front of the area of Mojompur Esab Counter at about 15.30 hours, we have got information that intend to create atrocity a group of activists of BNP-Zamat with fire arms assembled on the area of N.S Road, Shapla Chattar to whole area pf Bok Chattar". The "informant along with other companion forces (these being 11 persons of whom at least six have been listed as holding police ranks) and other personnel rushed to the place of occurrence at about 14.10 and sighted the accused along with some other 300/400 unnamed accused activists of Bangladesh Jamate Islam and Bangladesh Chatra Shibir being led by Upazilla Chairman Mosharaf Hossain and President Abdul Wahed". The assembled activists were armed and were told to leave but the accused persons unlawfully attacked "the forces" seriously injuring several of them such that one of them has died. "The informant along with other personnel [was] able to arrest them but some miscreant persons able to escaped" [sic]. Those who were arrested then provided information about the identities of some of the persons who had escaped. Sixty-two persons are then named in this regard with the forty-third named person appearing to be the applicant's brother, Mr Z son of Mr K of [Village 1]. The file labelled "FIR 1" presents as a [March] 2013 report addressed to the

[Police] Station's Officer-In-Charge and refers to an incident which is almost identical to that described in the "FIR 3" file except for the date and time of the event, and some other minor details, and the fact that some sixty-two wanted persons are named with the applicant being the fourth named person.

20. However, given the ease with which official documents with false information can be fraudulently obtained in Bangladesh,⁴ and given the extent to which the applicant has proven to be an unreliable source of evidence more broadly, I do not consider that these purported FIRs which have been provided by the applicant carry sufficient weight to overcome the manner in which the credibility of the applicant's claims have been seriously undermined by his inconsistent and unconvincing evidence with regard to such matters as when it was, following the incident of [October] 2006, that the applicant's brother, Mr MdZ, went into hiding and fled to Dhaka, or whether Mr MdZ remained in [Village 1] following [October] 2006 and was merely "hassled" rather than sought out for arrest, and whether or not the applicant was in hiding or a person of interest to the Awami League following either [October] 2006 or from [September] 2012, and by the manner in which the applicant returned to Bangladesh in August 2009, and by the applicant's evidence as to whether he ever had a face-to-face encounter with the Awami League, and whether or not Mr MdZ is or is not in Bangladesh (and as noted above I do not accept that Mr MdZ is outside of Bangladesh nor do I accept that Mr MdZ and the applicant are out of contact). Given that [date] October 2006 was a day of heightened political unrest owing to the manner in which this was the day upon which the electoral term of the then BNP government came to an end,⁵ I accept that there was an outbreak of violence at this time in Kushtia at a meeting at which the BNP's [official] was present, and at which an Awami League activist was killed. However, I am not persuaded that the applicant's brother, Mr MdZ, was ever accused of being responsible for, or that he was even in the vicinity of, this event. Moreover, given my overall doubts as to the applicant's credibility, and given that I do not accept that Mr MdZ is outside of Bangladesh or that the applicant is out of contact with Mr MdZ, I consider that if Mr MdZ had been an [official] of the BNP (who according to the applicant's written claims has "greater political ambitions" and is "fulfilling his ambitions in Dhaka") that the applicant would have been able to obtain, and would have provided to the delegate, documentary evidence from the BNP of Mr MdZ's BNP involvement. That he has not provided any evidence of this kind raises serious doubts about the applicant's claim that Mr MdZ has been a member and supporter of the BNP.
21. Given all of this, I do not accept that the applicant's brother, Mr MdZ, has ever been a member or supporter of the BNP. I do not accept that Mr MdZ attended the [October] 2006 Kushtia BNP meeting at which an Awami League activist was killed. I do not accept that Mr MdZ was ever accused of having any involvement in this incident by the Awami League or the Bangladesh police or anyone else. I do not accept that Mr MdZ or the applicant, or their family members, have ever been harassed or threatened or targeted or tortured or assaulted or that they have had their [crop] trees destroyed, or that the applicant and Mr MdZ have had false cases brought against them (as per the purported FIRs above), or that they have ever been of any interest whatsoever to the Awami League or the Bangladesh police. I am therefore not satisfied that the applicant would face a real chance of harm of any kind, if he were to return to Bangladesh, for reason of his association with his brother, Mr MdZ, and/or for reason of Mr MdZ's involvement in the BNP and the bringing of false cases by the Awami League and the Bangladesh police against Mr MdZ and the applicant.

⁴ UK Home Office, "Country of Origin Information Report, Bangladesh", 20 August 2010, CIS1734; Canadian Immigration and Refugee Board, "Bangladesh: Reports of fraudulent documents (2011-2015)", 20 August 2015, BGD105263.E.

⁵ UK Home Office, "Country of Origin Information Report, Bangladesh", 20 August 2010, CIS1734.

22. Although the applicant did not raise any such claim the delegate considered that a claim to fear harm upon return to Bangladesh as a failed asylum seeker was implicit in the applicant's claims. The delegate provided no explanation as why she considered this to be implicit within the applicant's claims, and I am not persuaded that this was the case. Nevertheless, for the sake of completeness I have also considered this matter.
23. DFAT advises that Bangladesh accepts both voluntary and involuntary returnees, and that recent returnees from the United Kingdom have not been subjected to any adverse attention by the authorities or others. DFAT assesses that most returnees, including asylum seekers, are not subjected to adverse attention 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,⁶ but the applicant is not a person of this kind nor does any of the other evidence before me indicate that the applicant would face a real chance of harm of any kind for reason of being a failed asylum seeker (that is, for having sought asylum in Australia) if he were to return to Bangladesh. I am therefore not satisfied that the applicant would face a real chance of harm of any kind for reason of being a failed asylum seeker (that is, for having sought asylum in Australia) if he were to return to Bangladesh.
24. Considering the circumstances of the applicant in their totality, and on the evidence before me, I am not satisfied that the applicant would face a real chance of experiencing harm of any kind for any reason from any actor if he were to return to Bangladesh. 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).

Complementary protection assessment

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.

⁶ DFAT, "DFAT Country Information Report: Bangladesh", 5 July 2016.

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 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

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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.