



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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BANGLADESH

IAA reference: IAA18/04988

Date and time of decision: 5 December 2018 19:45:00

N Micallef, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Bangladesh. He arrived in Australia [in] January 2013 as an unauthorised maritime arrival. On 5 October 2016 he lodged an application for a sub-class XE-790 Safe Haven Enterprise Visa (SHEV application) claiming that he will be harmed in Bangladesh by ruling Awami League party (AL) authorities, members or supporters on the basis of his political support of the Bangladesh Nationalist Party (BNP).
2. On 15 May 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate did not accept that the applicant or his family were members or supporters of the BNP or had been targeted for harm on that basis in Bangladesh, and was not satisfied that the applicant had a profile that would indicate he would face a real chance of serious harm or a real risk of significant harm in Bangladesh.

### 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) (the review material).
4. On 7 June 2018 the IAA received written submissions from the applicant's representative at [Company 1]. The submissions raise argument about the delegate's findings against the general credibility of the applicant's evidence and claims and the assessment of the risk of harm he faces in Bangladesh. To the extent that it repeats or reiterates information already given or addresses the delegate's findings, or makes submissions on the risk of harm from violence arising from country information in the review material, I consider that to be argument and not new information, and I have had regard to the submissions in the review.
5. The submission also forwarded a copy letter claiming to be from the President of the BNP in "[District 1]", Bangladesh. It appears to be dated, by signature, [in] March 2016. It is certified as a true copy of the original by the applicant's migration agent dated 28 May 2018. The letter is new information that was not before the delegate prior to the s.65 decision. The letter purports to certify inter alia that the applicant was a local leader of the BNP and an anti-government supporter and that his late father had also been a local leader and BNP [senior office holder]. The letter effectively appears to assert that government supporters and party activists have lodged criminal cases against the applicant and that it is not safe for him in Bangladesh, and essentially supports his asylum application.
6. The applicant would have been aware, prior to the delegate's decision, of the need to provide all his evidence and information in support of his claims prior to that decision, having been notified by the Department from an early stage of his responsibility to do so, including in correspondence to him dated 9 May 2016 inviting him to apply for a protection visa, and in the 'Important information about your protection visa interview' document sent to him on 27 March 2018 and which document he acknowledged having read and understood. Moreover, the applicant had the benefit of professional migration advice and assistance from his migration agents throughout his SHEV application process, including in the preparation of his application and statement of claims, at the protection interview, and in post-interview submissions to the delegate. He was advised at the protection interview that there may not be a further opportunity after a decision was made to provide any further information

regarding his claims but that information provided before it was made would be considered. He was aware before and during the interview that credibility of his claim of being a BNP member was in issue, being a claim in conflict with his earlier evidence after arrival in Australia. The subject was canvassed in his interview and indeed a letter from the BNP in Australia was provided to the delegate. Aspects of the appearance of the letter raise some concern. The letter is written in English on a letter head that has not been translated. It has a disturbingly similar appearance to the layout and format of the BNP Australia letter, including the manner of describing and highlighting the applicant's identity. The letter does not substantiate what first-hand knowledge the author has of the asserted criminal cases and harms the author expresses the applicant faces in Bangladesh, and the claim regarding criminal cases is inconsistent, as no such claims were made by the applicant. It provides no dates for when the author knew the applicant, or when the applicant or his father became involved in the BNP as claimed and gives no contemporaneous record of the applicant's or his father's claimed membership of or role in the BNP. As further inconsistency, the applicant had not described his father as a 'BNP [senior office holder]'. The letter has the appearance of a generic letter of support unrelated to the applicant, and the factors I have noted raise concerns that it is capable of being believed; I do not consider it has any probative weight or value. Although it was claimed the applicant only received the letter in the mail after the delegate's decision to refuse the visa application, there was no explanation why this information was not sought or followed up prior to the decision, in the 18 months since his SHEV application was lodged, particularly given it was purportedly signed in 2016. There was no explanation of any circumstances why this information should now be considered. I am unable to discern any exceptional reasons why it should be considered. Having regard to the requirements and the objectives of the fast track review system, and considering all of the above, I am not satisfied that there exist any exceptional circumstances to justify considering the new information.

7. The applicant's representative's written submissions cited country information reports that were not before the delegate prior to the decision made on 15 May 2018, namely the Immigration and Refugee Board of Canada (August 2014) regarding roles and responsibilities of BNP executive committees and a news report on rising political tension ahead of elections, *The Diplomat* (March 2018). These are new information. There was no explanation of why this information was not or could not have been provided to the delegate prior to the decision, or any claim that they comprised credible personal information. Noting that these reports and articles predate the delegate's decision, and that the applicant's representative, who also represented him before the Department, including at the protection interview on 28 March 2018, had submitted comprehensive country information to the delegate on 18 April 2018, after the protection interview, I am not satisfied that this new information could not have been provided prior to the delegate's decision. Nor am I satisfied that the information referred to, being general country information, is credible personal information in the relevant sense, which, if known, may have affected the consideration of his claims. The applicant has not satisfied me as to either s.473DD(b)(i) or (ii).

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

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8. The applicant's claims, as set out in his SHEV application, and accompanying statement of 1 October 2016, (SHEV statement), can be summarised as follows:
  - He is a Bengali national of Bangladesh, from [Village 1] in [District 1] in the Dhaka Division of Bangladesh, where he was born in [year]. His wife and children still live in Bangladesh.

- He has long been a member of the Bangladesh Nationalist Party (BNP) and his father was a local leader in [District 1], involved in mediating political meetings and representing members of the community. The applicant and his father were well known in the community as BNP members. After his father died in about 2006 or 2007 he inherited the role of BNP local leader and remained doing this role until 2008, trying to help members of the community
  - Members of the Awami League (AL) constantly threatened and pressured him and his team to leave the BNP and join the AL. He did not participate in frequent fights between supporters of the AL and the BNP, but tried mediate between them to prevent it. His efforts to engage in dialogue with AL leaders to prevent fighting were not welcomed by the AL.
  - In late 2008 masked men, he believes from the AL, came to his house at night time with sticks and bats and smashed his belongings and set the house on fire. He escaped with his family through the back door. They went to live with his wife's family in another village but the AL continued to search for him. He decided it was safest for him to leave Bangladesh and went to [Country 1] in approximately late 2008/early 2009, travelling on a passport from the international airport in Bangladesh.
  - After his departure the AL found his family and beat his wife with [an item], causing her serious [Body Part 1] injuries. The AL members continue to look for the applicant and ask his wife where he is.
  - He claims to fear he will be seriously harmed in Bangladesh by the authorities and members of the AL, or criminal gangs who do their bidding, because of his support for the opposition BNP and he will be imputed as being opposed to the government. The AL are corrupt and have unlimited power and will threaten him wherever he goes in Bangladesh.
  - He claims that it is impossible to subsist given the current situation in Bangladesh and as a member of the BNP he will be denied the capacity to earn a livelihood or provide for his family and this will result in significant economic hardship.
9. In an earlier claim made to the Department on 3 June 2013, after having been notified that he had been screened out on 15 March 2013, the applicant had raised brief claims of BNP involvement, and that he had been attacked by the opposition party, that his house had burned down, and another BNP member was killed; and that he left Bangladesh because of threats to his life (the June 2013 claim).

## Factual findings

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10. The applicant claims to be a citizen of Bangladesh, having been born there in [year] in [Village 1] in the [District 1] of Dhaka Division. Although the delegate noted concerns reported by the UK Home Office and DFAT about the reliability of some documents from Bangladesh,<sup>1</sup> he accepted for the purposes of the assessment that the applicant's identity was as claimed. I place only limited weight on his documentary evidence provided, noting that a copy birth certificate and two citizenship and other identity certificates provided at the protection interview of 10 April 2018 contradict his evidence that he was born in and lived in [Village 1], but rather name [Village 2], albeit with the remaining area and identity details the same as claimed. The birth certificate is recorded as issued in June 2013, and the two citizenship

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<sup>1</sup> United Kingdom (UK) Home Office, "Bangladesh Country of Origin Information Report August 2010", 20 August 2010, 1734; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169

certificates on different dates in 2016, after the applicant's arrival in Australia. Although the citizenship certificates were purportedly signed by the Union Parishad Chairman, they name different people. I note that the review material also contains a copy birth certificate and nationality certificate provided to the Department earlier, in February 2013, naming birth in [Village 1], and which bear different birth registration numbers, registration book and dates of registration. I take into consideration the applicant's protection interview evidence, when discussing his and family addresses, that since he left Bangladesh his wife moved to her parents' home, which in earlier claims he described as being in a different village. One of the documents provided, a purported newspaper article, described his wife as being formerly of [Village 3] and presently of [Village 2]. After lodgement of the SHEV application in October 2016 he was notified he was required to provide proof of identity or nationality to the Department. The country information indicates that people can apply for birth certificates without any supporting documentation. I find that the birth registration and village name discrepancies are likely attributable to poor record-keeping, and the applicant's reliance upon his immediate family in Bangladesh to obtain documents, and provide their details, on his behalf, rather than any attempt by the applicant to mislead regarding his identity and origins. I accept the applicant's identity and nationality as claimed and find that Bangladesh is the receiving country for the purpose of the review. On the basis of his own evidence he has consistently given, I find that his family home village is [Village 1].

11. The applicant's claims, and details about his claims, have significantly changed over the course of his dealings with the Department, and the inconsistency and contradictions in his evidence raise substantial concerns about the the credibility of his claims. The applicant's evidence at his Irregular Maritime Arrival Entry Interview (Entry interview), conducted on 24 January 2013, was that he and his family had no political association or involvement or activities, and had no problems from any political groups. He expressed his reason for leaving Bangladesh for [Country 1] in 2008, and coming to Australia in 2013, was to find work, in order to provide food for his family, because there was no work and the government of Bangladesh was not good.
12. The applicant's representative made extensive submissions to the delegate after the protection interview conducted on 10 April 2018. The submissions address inconsistencies in the evidence, cite country information reports regarding the nature of political participation and involvement in Bangladesh to support the applicant's claimed BNP involvement, and further extract reports relating to numerous instances of harm to BNP members and supporters to demonstrate the plausibility of the applicant's claims consistent with the country background of high levels of politically motivated violence. The applicant's evidence at the protection visa interview was broadly consistent with his SHEV statement claims to the extent of maintaining a claim of BNP involvement and of having suffered harm and threats from the AL causing him to leave Bangladesh in fear. However, like the delegate, I have serious reservations about the credibility of the applicant's claims and his evidence regarding his involvement with the BNP in Bangladesh and the treatment that he claims to have experienced as a result. I consider the following matters in particular, raise significant concern:
  - The applicant's claims and evidence and submissions about the role that his father and, later he, worked in for the BNP was changeable. It varied from 'the BNP local leader' and the elected local Member for the ward, to being an executive committee member, or a work committee member, doing social work to help poor people or those with complaints, and to report this to the committee who may give cash or assistance to that person. The evidence was inconsistent and vague about whether his claimed role was part of the political party of the BNP, or working as a social

worker for some kind of aid or community group supported or endorsed by or with connections to the BNP. There was no evidence that he assisted only BNP members or supporters. The applicant stated that he only did social work and not any political work, which contradicts his claims that the role involved mediating political meetings and negotiating with AL leaders over party disputes. There were contradictory statements made that he was elected to the role, that he inherited it after his father died. His SHEV application claims that in doing this work as a BNP leader he was financially supported by the BNP were contradicted by his protection interview evidence that he only worked as a [Occupation 1], including offering his service with his [specified] vehicle, and that he had no other source of income than that. Whilst I have had regard to submissions that political participation might be encompassed by participation in or work for or on behalf of community groups under patronage of political parties or members as a means of promotion of a party, and country information that patronage and clientelism are strong features of political life, nevertheless I find the inconsistency and equivocation in the applicant's evidence raises considerable concern about his claims of being a BNP member, working as a BNP leader or being regarded in the community as a BNP leader or son of the local BNP leader.<sup>2</sup>

- His evidence of being harmed by the AL because of his BNP membership changed over the course of his claims. In the protection interview the applicant failed to mention at all the only event he had claimed in the SHEV statement of being personally attacked by the AL, namely the ransack and burning down of his house, claimed as the reason his family fled the house, and leading to him leaving Bangladesh. This despite the delegate asking the applicant numerous times, and in several ways, what had made him leave his home and whether any event had caused him to leave Bangladesh. Rather, the applicant first referred to ongoing threats and fear that he might be beaten by the AL, which in itself was inconsistent with his later evidence that he and others had been physically attacked by the AL whilst he was in a meeting after which he went into hiding at home. He stated that this incident was what made him decide to leave Bangladesh, in 2007. Only when asked if there had been other occasions, he added that he had been attacked several times, although he could not recall the occasions other than one in 1996 and one in 2007. He stated this was the only incident that occurred to make him leave, apart from threats to kill him. I do not accept the explanation in submissions that his evidence was that after the 2007 meeting attack made him decide to leave, "that there were then several more attacks" and this was not inconsistent with his written claims, and could be read as including further violent events in 2008. The interview records that his evidence was only that "several times they attacked us and me" but he could not recall dates and it was not expressed as occurring after the claimed 2007 meeting attack, as pressed. I do not consider this adequately answers the inconsistencies in this evidence. It is highly implausible that such an event as the family being chased from their burning home at night, would fail, or be forgotten, to be mentioned in the protection interview, had it in fact occurred. I do not accept that he simply glossed over this incident as one of the series of several attacks he described in the interview, given that this was the only single incident of physical harm he had claimed to suffer in his SHEV statement and is vastly different in kind to the attacks on general party

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<sup>2</sup> Taylor and Francis online, "Party politics under a non-party caretaker government in Bangladesh: the Fakhruddin interregnum ", 48, 29 January 2010, CISDCDCAAB1925; DEMOCRACY, GOVERNANCE AND WELLBEING Joe Devine: WeD, University of Bath, referred by applicant (CISNET reference: Wellbeing in Developing Countries, "Democracy, governance and wellbeing", 1 January 2016, CIS38A80122978)

meetings claimed in the protection interview. Nor do I accept that he thought it was sufficient to not mention it as it was in his written statement, particularly given the many questions asking whether any other incidents occurred. It is equally implausible that had the applicant been personally physically attacked several times by AL members at meetings that he would have neglected or forgotten to mention this to his migration agent to include in the SHEV statement, had it occurred, considering the purpose of the SHEV application statement, as noted in the form, was to set out his reasons for claiming protection and to provide in it all the details why he seeks protection. The fact that, according to post-interview submissions, the applicant had not been given a record or copy of the June 2013 claim he made to the Department that he was involved in the BNP and was attacked by the opposition party and his house burned down, suggests that the applicant had no reliance upon that claim as being before the Department for consideration when making his SHEV application, and I consider the claims and evidence of AL attacks upon the applicant to be inconsistent, vague and escalating.

- His evidence of the timing and circumstances of being forced to leave his home was inconsistent. The SHEV statement claimed that after the AL burned his house down in late 2008 he and his family left his home village for his in-law's village, and his family lived there and he was in hiding but came and went from there (as amended at the protection interview), whilst he made arrangements and then left Bangladesh about 2 months later in end 2008/early 2009. This contradicts the protection interview evidence that after the AL attack on him at a meeting, in apparently about 2007, he stayed in hiding at home and did not go out or leave, apart from short times away from the house but nearby; that if anyone came searching for him he or his wife would see them coming down the road and he would leave; and that he then went to live at his father-in-law's house, but just him alone, he did not take the family, and two weeks later he left from there for [Country 1] and did not return home. This all contradicts his Entry interview evidence that he had lived in his home village of [Village 1] from birth until he left for [Country 1] and had not lived anywhere else, and his evidence elsewhere in the protection interview that his family had gone into hiding at his inlaws'.
- He had claimed that he and his family fled his village for his inlaws' in late 2008, and continued to maintain in the protection interview that his wife and children still live with his wife's family and not in his family home. After inconsistent evidence was given about where his wife was claimed to have been attacked by the AL (addressed below), submissions seek to explain this by stating that her parents live within the same family village as the applicant's home, as evidenced by his statement that they live about five kilometres from his home. Such a claim is inconsistent with the SHEV statement that he and his family "left our village" for his in-laws and "moved to another village" and the AL found his family "at my in-laws' village". The SHEV application listed his birth place as [Village 1], of [Upazila 1] Police Station area, consistent with the details of his home village address he had given at Entry interview. The SHEV application in 2016 claimed that his wife and children currently live in [Upazila 2], which I note from the translated marriage certificate provided is the Police Station area for his wife's family home village of [Village 4], and from his Entry interview evidence as where he got married to his wife. However, in his Entry interview, four years after he had left Bangladesh, he stated that his wife and children were still living in his home village at home. Documents provided at the protection interview name a village not claimed by the applicant in any of his

evidence. I do not accept that the applicant's wife's family are from or currently live within the applicant's home village of [Village 1].

- Further, he consistently claimed, in the SHEV application and protection interview, that a brother lives in [Country 2], which I accept. However, his interview claim that his other brother's whereabouts are unknown and the family scattered because of the political problems and the applicant lost contact with him when he was in [Country 1], are contradicted by his SHEV application claim that his mother and brother also live in [Upazila 2], in Dhaka Division and that he speaks to them by phone one or twice a week.
  - I consider his evidence that he had obtained his passport a whole year before he left Bangladesh, and waited that long before leaving because it took longer to organise his work visa for [different] work in [Country 1], indicates that securing his working opportunity in [Country 1] was the pressing concern for the applicant, rather than was any need to flee Bangladesh for the safety of his life from threats from the AL. I note that he never registered or lodged any asylum claim with the UNHCR in [Country 1].
  - The applicant repeatedly stated in the protection interview that he came to Australia in order to save his life and that was the only reason that he came and claimed on the SHEV application that he came here to seek asylum. Such insistence of purpose, and the claims of harm and threats made, is completely at odds with his complete failure at the Entry interview to raise any claim or mention at all of any harm or threats to him or his family from any members or supporters of the AL or any other persons, or of any political involvement, even when he was specifically asked if any political groups had contacted or bothered him and when specifically asked about any political involvement. The only reason he gave for leaving Bangladesh was financial problems in supporting his family and that he had no work. Asked what he thought might happen to him if he returned to Bangladesh he expressed concern only about how he would survive without money or land. I find it very difficult to reconcile the claims of fear for his life raised by the applicant for protection with his unequivocal statements made at the Entry interview.
13. Regarding the contradictory Entry interview evidence, and his failure to mention the house fire attack in his protection interview, the applicant's explanation was that he was broken and depressed and traumatised, unable to relive or express those traumatic events, and had been scared and anxious at the Entry interview, having just arrived. There is no medical evidence before me that the applicant is or was suffering from any mental health issues or trauma including at the time of his Entry interview, or at the time of the protection interview, or that he saw any medical officer about such matters, that would explain his failure to advise the Department at the Entry interview that he feared return to Bangladesh because his life was threatened due to his involvement in opposition politics and he had suffered harm by the AL, or that would explain his failure to mention the house attack in the protection interview. The applicant exhibited no apparent distress or difficulty expressing himself in either interview, and further was able to describe the house attack claim to a Departmental officer in June 2013, and in his SHEV statement. I am not satisfied that any trauma or mental health issues explains the contradictory evidence.
14. The applicant has further submitted, effectively, that he had no legal advice, did not understand refugee matters or how the Entry interview would impact his protection claims and thought it was simply routine questioning and not understanding the gravity of the

question he gave a practical answer about work; and further, that inconsistent information given at first arrival should generally not be given undue weight in findings against credibility as, inter alia, asylum seekers interviewed at arrival are in a state of shock and anxiety. I note that the Entry interview was not at the applicant's immediate arrival but was held over three weeks later. He had arrived from [Country 1], where he had been living and working for about four years, long removed from the situation in Bangladesh he now claims to fear. He insists that the reason he came to Australia was to seek asylum to protect his life from the AL who will kill him. I accept that the applicant had not received any professional migration advice before the Entry interview and may have been stressed and anxious about his future, and I also take into consideration the limitations of the Entry interview for a complete exploration of all refugee claims, however, I note the opportunities given in it to outline, even if briefly, reasons for leaving or not returning to the country of nationality. Moreover, I note that at the beginning of the interview he was advised of the expectation that he would give true and correct answers to the questions asked, and he agreed that he would do so. I consider that if all he expected was a routine question session that he would have no reason to not give true and correct answers, particularly in answer to routine matters such as address history and employment history, but also in response to questions that specifically prompted and enquired about matters, including political activity, and reasons for fear, that he now claims give rise to threat or danger to him in Bangladesh. I do not accept the applicant's explanation for the inconsistent evidence from the Entry interview. I consider that it is appropriate to give that information weight.

15. Further inconsistency arose in his claims about the attack on his wife by the AL. The SHEV statement claimed that after he had left for [Country 1], the AL found his family at his in-law's village; his wife was severely beaten with a [an item]. In the protection interview this changed to that the attack on her was in 2015, which is two years after he left [Country 1] for Australia, and that it occurred at the applicant's home, in his home village, in the front yard of his house. I do not accept that this inconsistent evidence was attributable to any issues with the interpreter at the interview. I have listened to the protection visa interview and these questions and answers about when and where the claimed assault happened were directly and immediately translated. The exchange to seek clarification, between the applicant and interpreter, that the submissions criticise led to evidence that was unfair to place weight upon, was later, about her reasons for being at the house, and not the location of the assault, and in any event, whilst I acknowledge that the interpreter was replaced during the interview, as the applicant's representative was concerned at the level of clarification exchanges between the applicant and interpreter, I do not accept, in the absence of any explicit submission of corrected words that were incorrectly translated, that the interpreter's translation of what the applicant had said was incorrect as it is apparent that after some clarification the interpreter translated what the applicant had said there. Submissions to the IAA attempt to explain the inconsistencies by arguing that the location of the assault was not specified in the SHEV statement, however I find that a fair and logical reading of the SHEV statement convey a claim that the assault occurred at his in-laws' village and indeed the post-interview submissions to the delegate affirm instructions that the attack occurred at her parents' home. Moreover, and in any event, I find it quite implausible, even if the applicant had held any role as an executive committee member [position] helping poor people for the BNP as he claimed in the interview (and which I do not accept), that after an absence from Bangladesh of six years, and six years after the defeat of the BNP and the ongoing rule of the AL government, that any AL members would be so concerned at locating the applicant in 2015 that they would attack his wife with a [an item].
16. I have had regard to documents submitted in corroboration of the claimed assault by AL on his wife, namely a translation and scan copy of a purported newspaper article from

[Newspaper 1] entitled "[Title 1]", dated [in] February 2015; and a report from a [Dr A] of [District 1] General Hospital, dated [in] April 2015, certifying he treated the applicant's wife for a [Body Part 1] injury sustained [in] February 2015, with treatment from that date to [April] 2015. I place limited weight on these documents. The news article give identity and residential details of the wife, describes the applicant's active political participation and being a diehard BNP supporter, that he left due to pressure on him and his family, continuing pressure on his wife to give information about his whereabouts and that she and her relatives face threats of attack by local AL leaders; that any support asked for from law enforcement is refused without remedy. The article describes the applicant's father as a diehard BNP supporter and former Upazila member for the [Union] and his work for the BNP. The article report that as vengeance for not giving the location of the applicant his wife was hit on the [Body Part 1] with a [an item] and tortured, and admitted to the local hospital in [District 1]. The article also reports that the applicant's wife is a BNP activist and describes events that she participated in. The article specifies throughout that all this information has been reported to the "staff reporter" by the applicant's wife. I do not accept that this is a genuine newspaper report. Given the applicant's claim that his wife had suffered [Body Part 1 injury] in the assault, that took a long recovery, I consider it highly unlikely and quite implausible that immediately after her attack, whilst in hospital, she would have been well enough to have given any such report to a newspaper for publication the very next day, or to have been concerned to do so. That the article is conspicuous in covering the main claims made by the applicant for his protection causes me concern about its reliability as a news report and suggests concoction for that purpose. Its publication in a newspaper, as a report critical of AL behaviour, is implausible in the current era of repression of media freedom and restriction of criticism of authority.<sup>3</sup> It is inconsistent with the applicant's protection claims to the extent that he has raised no claim that his wife has or had any BNP involvement. I do not accept this document as reliably corroborative of the applicant's claims.

17. I also have concern about the doctor's report, noting that it is not a contemporaneous hospital record of daily treatment, but rather a certificate, to support that the applicant's wife suffered a [Body Part 1] injury. From a country that is 98 per cent linguistically Bengali<sup>4</sup> it was clearly written for an English reader, not for his wife's purposes. It has every appearance of being explicitly for the purpose of supporting the applicant's SHEV application. I have reservations that such a document would have been written by his wife's treating doctor in April 2015, immediately after her claimed treatment, and a full 18 months before the applicant applied for a protection visa, and 12 months before he was invited to do so by the Department. Moreover, if his wife had received this letter in April 2015 I am concerned that it was not referred to in or attached to the SHEV application of October 2016. I place no weight on the letter. Even if it is possible that his wife sustained a [Body Part 1] injury, I do not accept that it was due to her being attacked by AL members with a [an item], whilst searching for the applicant. Overall, I consider the applicant's evidence about the claimed assault of his wife to be inconsistent and implausible and together with the other problems of credibility in his evidence overall I do not accept that his wife was assaulted or threatened by AL members searching for the applicant or for any reason.
18. I have had regard to a letter of support provided to the delegate by the applicant from the Member Secretary of Bangladesh Jatiotabadi Dal (BNP) Australia, undated. The letter refers to the applicant as an opposition activist and refers to his participation in various anti-government political activities and to having suffered severe violent acts. However, the letter

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<sup>3</sup> Amnesty International, "Caught between fear and repression: Attacks on freedom of expression in Bangladesh", 3 May 2017, CISEDB50AD4045

<sup>4</sup> DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169

does not specify where or when such events occurred, does not indicate what knowledge the author has of those events, or of the applicant's involvement with the BNP in Bangladesh. I note the claimed political activities are inconsistent with the applicant's evidence that he was not involved in political activities. I do not give any weight to the letter as corroborative of the applicant's circumstances in Bangladesh.

19. I place little weight on an inability to recall exact dates after lapse of time and whether it was precisely the end of 2008 or beginning of 2009 that he left Bangladesh for [Country 1]. I accept his timeframe context of it being before the election, which he stated was at the beginning of 2009. I accept he left on a passport, with a working visa for [Country 1], from the international airport. However, overall, I consider the applicant's claims and evidence to be shifting and equivocal and I do not find his evidence credible. I do not accept that he had any involvement with the BNP in Bangladesh as a worker or member or leader or at all. I do not accept that his father was a BNP local leader or member or worker, or that his family were known to be BNP supporters or leaders. I do not accept that the applicant or any of his family were ever attacked or threatened by any AL members or supporters. I do not accept that any AL members or supporters have been or are searching for the applicant. Given the applicant's long absence from home I am willing to accept that his wife and children may currently spend time living with her parents and that his mother may spend time with different relatives, including his wife. However I consider this is more for financial and family support and I do not accept that it is due to any political problems claimed by the applicant. I do not accept that the applicant was of any adverse concern to the AL at the time of his departure from Bangladesh, or that he had a profile of support for the BNP or was imputed as being opposed to the Government.
20. The applicant claimed to have joined as a member of the BNP in Australia and has provided a letter from the Member Secretary, undated. The applicant's evidence, that he attended two or three meetings in approximately 2016 and spoke to them on the phone, explaining the constraints of distance, is inconsistent with the BNP Australia letter which asserts that the applicant has worked for them as an 'activist' and describes his participation in various anti-government rallies and demonstrations, without specifying when or where these occurred or the frequency or nature of this participation, and which moreover does not specify that he joined as a member or when he did so. I note that his descriptions of involvement appear to coincide with his receipt of an invitation to apply for a visa in May 2016 and his lodgement of the SHEV application in 2016. Whilst I accept that the applicant has had contact with the BNP Australia and may have attended about two of their meetings, I do not accept that he has joined as a member, and I am not satisfied that his attendance is indicative of any genuine commitment to the BNP or that he would engage in any sort of activities in support of the BNP or engaging in their political activities if he were to return to Bangladesh.

## **Refugee assessment**

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21. 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

22. 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.
23. The applicant stated that he would be known in Bangladesh as a BNP supporter because it is not possible to survive unless one chooses one side or the other and he would refuse to choose the AL and so would be identified. Submissions by the applicant's representative provide country information examples of harm to BNP members and supporters and argue that even low-level supporters and voters face persecution and human rights abuses and risk of harm from political violence. I do not accept that an IAA review decision from 2016 (referenced in submissions), on another person's unique, individual factors is binding or persuasive or an authoritative source of country information in this present review.
24. I accept from the country information<sup>5</sup>, that the AL is the ruling party in government in Bangladesh, that there can be a high risk of politically motivated arrest for senior or active party members and that there are continuing high levels of political violence, manifesting as clashes between activist supporters of opposition parties, opposing factions within a party or between party supporters and law enforcement, and particularly during times of heightened political unrest such as election periods, during hartals (strikes), blockades and demonstrations. However country reports indicate that most arrests, violence or human rights abuses, including enforced disappearance and extra-judicial killings, by ruling party officials or AL members and activists are predominantly against opposition party leaders, members or activists or auxiliary student and youth wing organisation members, and often in conjunction with such periods of heightened political unrest and political violence, or as part of security force responses to criminal or terrorist activity. Additionally, political violence and criminal activity perpetrated by AL activists or their affiliated organisations were mostly linked to their vested interest. Moreover, whilst considerable levels of political violence continued throughout 2016 and 2017, DFAT reports that the majority of the political violence

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<sup>5</sup> DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169; DFAT, "DFAT Bangladesh Country Information Report July 2016", 5 July 2016, CIS38A80121206; United States (US) Department of State, "Bangladesh – Country Reports on Human Rights Practices 2016 - Bangladesh", 3 March 2017, OGD95BE926872; UK Home Office, "Bangladesh Country of Origin Information Report August 2010", 20 August 2010, 1734; Human Rights Watch, "Bangladesh: End Crackdown on Opposition Supporters", 8 February 2018, (referred by applicant, cisnet reference CXBB8A1DA31352); Odhikar, "Annual Human Rights Report 2017", 12 January 2018, (referred by applicant, cisnet reference CIS7B8394170); Economic and Social Research Council, "Governance, Democracy and the Politics of Wellbeing", 1 September 2007 (referred by applicant <http://www.bath.ac.uk/soc-pol/welldev/research/workingpaperpdf/wed36.pdf>; cisnet reference CIS1ACBC921078)

in recent years has been clashes between competing AL party factions. AL-BNP inter-party violence is reported to have declined since 2015. I do not accept that the examples of victims of human right abuses cited in submissions relevantly reflect the applicant's own circumstances and profile. I have not accepted that the applicant was a member, worker, leader or activist supporter of the BNP in Bangladesh or that his father was. I have not accepted that the applicant was of any adverse interest to any Bangladesh government officials, or members or supporters of the AL before he left Bangladesh. I am not satisfied that there is a real chance that the applicant faces harm in Bangladesh, or that he would be arrested or detained or disappeared or killed or tortured, or threatened or harassed, or denied access to basic services or to capacity to earn a livelihood or subjected to or caused economic hardship such as would threaten his capacity to subsist.

25. I have accepted that the applicant has had a very limited involvement with, and attendance at meetings of, BNP Australia. Whilst DFAT reports that authorities may take an interest in high-profile individuals who have engaged in political activities outside of Bangladesh, I do not accept that the applicant is such a person. I consider it extremely remote that the applicant would be identified and harmed because of his extremely minimal involvement with the BNP Australia. I am willing to accept the applicant may prefer the BNP over the AL party and might in the future vote accordingly in an election in Bangladesh, but I am not satisfied that the applicant will otherwise have an active involvement with or support for the BNP or against the AL if he were to return to Bangladesh. I have had regard to the submissions concerning the influence at local level society that can sometimes be exerted by particular individual party activists or their criminal affiliates or maastaans, sometimes beyond central party control. Nevertheless, predominantly the country information indicates that whilst the two main parties of the AL and BNP predominate in Bangladesh, a variety of political parties continue to operate in Bangladesh, and does not support that citizens are made to openly choose support only of either BNP or AL in order to survive, or that there is a real chance of persecution for people who simply do not belong to the AL. DFAT reported in 2016 that a poll of Bangladeshis found that interest in politics was low and decreasing. I am not satisfied that the applicant faces a real chance of any harm in Bangladesh as a sympathiser or very low-level passive voter for the BNP, if he does so, or for any imputed political opinion if he does not join the AL party, from AL government authorities, members or supporters or any criminal affiliates associated with the ruling party.
26. DFAT assesses that the decreasing trend in inter-party political violence may shift in the lead up to the next national elections due in late 2018 or early 2019, if the BNP participates. Nevertheless, the country evidence discussed indicates that for the foreseeable future it will remain the case that the civilians harmed in such outbreaks of violence will, overwhelmingly, continue to be the members and active supporters of Bangladesh's rival political parties (and the rival factions within those parties) who participate in clashes with each other and the security forces in the incidents of politically motivated violence during times of heightened political unrest described above. I am not satisfied that the chance of the applicant being caught up in political violence, arrested or otherwise harmed is any more than remote.
27. The delegate considered a possible claim of harm as a returning failed asylum seeker from a western country. DFAT reports that generally the Bangladeshi authorities will conduct a community level police check of returnees in order to confirm their identity and Bangladeshi citizenship before authorising their return and issuing travel documents. The International Organization for Migration's Assisted Voluntary Returns and Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Bangladesh

government, and has not reported any mistreatment of returnee asylum seekers.<sup>6</sup> Bangladesh accepts both voluntary and involuntary returnees. DFAT reported in 2016 that returnees from the UK had not been subjected to any adverse attention from the authorities or others, and further reported in 2018 that it had no evidence to suggest that recent returnees from likeminded countries have received adverse attention from authorities or others. DFAT assesses that most returnees, including failed asylum seekers are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily. While DFAT informs that authorities might take an interest in high-profile individuals who have engaged in political activities outside Bangladesh, including people convicted of war-crimes in absentia, there is no credible evidence before me to support that the applicant has any criminal convictions from Bangladesh, and I am not satisfied that the applicant meets any of those profiles. I am not satisfied that the applicant faces a real chance of any harm in Bangladesh from government authorities or from any AL officials, members or supporters on the basis of having made a failed application for asylum in Australia, whether he were to return voluntarily or involuntarily.

28. I have considered the possible claim of economic disadvantage arising from the applicant's Entry interview evidence that he came to Australia because of financial stress and he needed to support his family, although he did not make claims for protection based on poverty or economic hardship in his SHEV application independent of such harm feared being caused by the AL because of his BNP involvement. I have not accepted that he would face harm because of any political opinion or any future sympathy or vote for the BNP. I am willing to accept that the applicant and his family might be poor. However, on his application claims the applicant has had employment in [Country 1] for several years as a [Occupation 2] and has had previous employment in Bangladesh with his [specified] vehicle. Moreover, I am not satisfied that any economic disadvantage that might be faced by the applicant in Bangladesh is serious harm directed at him for any of the reasons set out in s.5J(1) of the Act, rather than as a result of general economic conditions in Bangladesh,<sup>7</sup> and which I note DFAT reported in 2018 as improving, noting Bangladesh's sustained economic growth has enabled substantial progress in reducing extreme poverty.
29. The applicant does not have a well-founded fear of persecution within the meaning of s.5(J)(1) of the Act.

#### **Refugee: conclusion**

30. 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**

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31. 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.

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<sup>6</sup> International Organization for Migration, "Bangladesh", 1 August 2014, CIS29397; DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169

<sup>7</sup> as discussed for example in DFAT, "DFAT Country Information Report Bangladesh ", 5 July 2016, CIS38A80121206

## Real risk of significant harm

32. 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.
33. I accept that the applicant is poor and that he may experience financial disadvantage on return, but as I have said above he has employment skills and experience as a [Occupation 2] and in [Occupation 1]. I am not satisfied that the applicant faces a real risk of any form of significant harm as a result of his or his family's financial situation. I do not accept that the applicant faces the death penalty, being arbitrarily deprived of life or tortured as a result of his financial position. Nor do I accept that he would thereby be subjected to cruel, inhuman or degrading treatment or punishment, as defined.
34. I have found that there is not a real chance that the applicant would face harm upon return to Bangladesh if he were to be a low-level, passive supporter or voter of the BNP rather than the AL, or on the basis of having made an application for asylum in Australia. Noting that the Full Federal Court<sup>8</sup> has set out that the "real risk" test for complementary protection is the same standard as the "real chance" test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for those reasons.
35. The submissions claim the applicant is at risk of torture and being killed or other harm from sporadic and corrupt self-interest of local political leaders and their criminal affiliates. However, as I am not satisfied there is a real risk of the applicant being subjected to treatment that would amount to significant harm as defined in s.36(2A) of the Act, the applicant is not a person in respect of whom Australia owes protection obligations under s.36(2)(aa).
36. I am not satisfied that there is a real risk of the applicant suffering significant harm based on the combination of his profile and circumstances

## Complementary protection: conclusion

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

## Decision

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

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<sup>8</sup> *MIAC v SZQRB* [2013] 210 FCR 505

## Applicable law

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### ***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.