



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA18/05245

Date and time of decision: 24 September 2018 10:54:00
P Tyson, 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 a 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 9 September 2016 he lodged an application for a Safe Haven Enterprise Visa (protection visa). The application was refused by a delegate of the Minister for Immigration and Border Protection (the delegate) on 26 June 2018.
2. The delegate found the applicant largely not credible, rejecting his claims to have supported and been involved with the Bangladesh National Party (BNP) and been attacked by the opposing Awami League in Bangladesh, and to have been threatened due to political activities in Australia. The delegate concluded there is not a real chance or risk the applicant will be harmed as a result of the disclosure of his details on the website of the (then) Department of Immigration and Border Protection, now the Department of Home Affairs (Department) or as a returned failed asylum seeker. In respect of a claim that the applicant would be targeted for extortion due to his perceived wealth, the delegate found that any such harm would not fall within the legislative requirements of the refugee or complementary protection criteria.

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). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant's family are considered as strong BNP supporters in their locality. The applicant's father used to support the BNP and the applicant would support the BNP financially, in meetings and during elections. The applicant became the [role] of BNP [Branch 1] in 2005.
 - In the 2008 election the applicant supported BNP candidate K, actively seeking votes for K who was running against Awami League candidate [A]. He also provided financial support to organise meetings and print materials. The applicant occasionally went to a different constituency to engage in activities against Awami League candidate [B]. However, Awami League candidates [A] and [B] won the election.
 - The applicant faced intimidation from Awami League members and supporters. In early 2013 a gang of 10-15 Awami League supporters came to the applicant's [specified business] and attacked him and the shop, taking his goods and injuring him. At the protection visa interview the applicant said attacks on his shop happened 3-4 times, commencing in around 2008. He claimed he had made a complaint to police but they did not do anything and asked him for money.
 - The applicant departed Bangladesh in February 2013 and spent a number of months in [Country 1] before travelling to Australia. The applicant has been involved in political activities supporting the BNP while in Australia, attending programs and events. He protested against the visit of Awami League leader Sheikh Hasina to Australia. There were pictures in the media and Facebook and the news went all over Bangladesh and they came to know he is still working for and supporting the BNP against the Awami

League and so his problems have increased and his family are being threatened over the phone. The applicant has also been threatened by phone. There is an active Awami League group in [City 1] who the applicant fears would monitor the activities of BNP members in Australia and to the Awami League in Bangladesh.

- The applicant fears harm including torture, kidnap and killings by Awami League members and supporters. He holds an opinion supporting the Awami League and against the BNP and will be considered a financial contributor or supporter of the BNP. He fears the police will not protect him because the Awami League is in power and the police and RAB are powerless and support the Awami League.
- The applicant came to Australia as an unauthorised maritime arrival and would be considered as a person who has applied for a protection visa and given information against the Bangladeshi government. He would be returned as an involuntary returnee and would be perceived as a person who had provided information adverse to the Awami League government. He would also be perceived as a person with wealth due to his stay in Australia and criminal gangs and the Awami League would target him to extort money.

Factual findings

Identity and nationality

5. The applicant has provided consistent information regarding his nationality, has conducted interviews in the Bengali language and has submitted a Bangladeshi birth certificate and school records. There are minor discrepancies between the applicant's birth certificate and the details he has given the Department, in that the birth certificate indicates two names whereas he has only provided one, and the date of birth is different. However the birth certificate states that it was issued in 2016, and country information from the Department of Foreign Affairs and Trade (DFAT)¹ indicates that people can apply for birth certificates without any supporting documentation. I find that the discrepancies are likely attributable to poor record-keeping or the applicant being unaware of the official details used to register his birth rather than any attempt to mislead. I am satisfied that the applicant is who he claims to be and that he is a national of Bangladesh.

Involvement with the BNP

6. The applicant's representative has made extensive submissions both with the visa application and prior to a protection visa interview conducted on 24 May 2018. The submissions extract country information reports relating to numerous instances of harm to BNP members and supporters, demonstrating the plausibility of the applicant's claims in the context of the high level of political violence in Bangladesh. I also note that the applicant's evidence at the protection visa interview was generally consistent with the written claims made in his visa application and a statutory declaration submitted prior to the interview dated 21 May 2018. However, like the delegate, I nonetheless have numerous concerns with the credibility of the applicant's claims regarding his involvement with the BNP in Bangladesh and the treatment that he claims to have experienced as a result. The most significant of these are as follows:
 - The applicant's evidence at an arrival interview conducted in June 2013 omitted any mention of his claimed involvement with the BNP, or attacks he had suffered for that

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

reason. I have listened to a recording of this interview. Asked why he left Bangladesh, he referred to financial problems and the inability to work. He was specifically asked if he or any of his family members had been involved in a political group or organisation and said no. He was further asked whether he had been involved in any activities or protests against the government, and reiterated that he was not involved in politics. When these omissions were put to the applicant by the delegate, he reiterated that he had left Bangladesh because there was a risk and problems and that he, his father and friends were BNP supporters. It is difficult to reconcile the claims the applicant now makes with the unequivocal statements he gave at the arrival interview that he had no political activity and left Bangladesh because of his financial circumstances.

- The applicant has given inconsistent and shifting evidence regarding his work in Bangladesh, undermining his claims that he worked in a [specified business] where he was attacked by the Awami League. The applicant's evidence at the protection visa interview was initially that he had never done any kind of work other than work in a shop. In response to further questions he then said he had also helped his father on a farm. He said prior to 2004, when he claimed to have bought the [business], he did not work but helped the BNP, but then later indicated that he had also worked as [an occupation 1] for around a year in 2003. However, at a second arrival interview conducted in August 2013, the applicant indicated that he had worked at [an occupation 1] company located in [Town 1] (which the applicant clarified at the protection visa interview is in Dhaka) between 2009 and November 2012. At that interview, he made no mention of having owned or worked in a [specified business]. Further, in a handwritten statement² submitted to the Department in 2013 the applicant indicated that his occupation was a job in a workshop. When the information from the arrival interview and 2013 statement was put to the applicant by the delegate he reiterated his current claims. He also stated that he had worked in [Country 1] doing [occupation 1] and that [Town 1] was the place he had worked as [an occupation 1] in 2003. These responses do not address the inconsistency. Considering the information provided by the applicant at the arrival interview, the shifting nature of his responses to the delegate's questions which suggest to me that he was being evasive, and also the information he provided that he has worked in both [Country 1] and now Australia as [an occupation 1], in my view the evidence strongly suggests that the applicant was working as [an occupation 1] and not in a shop in the years prior to his departure from Bangladesh.
- The applicant has given varying information regarding the claimed attacks he experienced in Bangladesh. The only incident of being attacked by the Awami League specified in the applicant's written claims in the visa application and a statutory declaration submitted prior to the interview is one incident said to have occurred in early 2013. In contrast, at the protection visa interview the applicant claimed that he was attacked in his shop three to five times and that the first incident was around 2008, six months after he opened the shop (this was another point of inconsistency, as earlier in the interview he had said he opened the shop in 2004). The applicant's explanation for not referring to these earlier claimed incidents in his written statements was that he had previously mentioned the other incidents before and so did not think he had to mention it again, and that he had only been asked for one incident and so had given the 2013 one. I find this difficult to accept considering that the applicant was represented, his application prepared by a registered migration agent and he submitted a statutory

² I note that this information was not included in the material given by the Secretary to the IAA but was requested by the IAA. The information is referenced in the delegate's decision and was discussed at the protection visa interview and I am satisfied that it was before the delegate, is not new information and the applicant is aware of it.

declaration prior to the protection visa interview in order to provide more detailed information about his claims.

- A further explanation given by the applicant as to the omission of other incidents from his written claims was that he had already referred to the 2008 incident and to having been attacked a couple of times when he had written his claims on paper 'in the camp', which I take to be a reference to the handwritten statement provided in 2013. In that statement, the applicant referred to the Awami League having 'variously tortured and abused' him and specified one incident where he was beaten and his house ransacked, although he did not provide a date. He said that there were other incidents that the whole of Bangladesh came to know, although it is not clear if he is suggesting these were incidents involving him personally. While I accept the 2013 statement appears to suggest there was more than one incident, it raises further concerns, as there is no mention of the shop where the applicant claims to have worked and the applicant's current claims do not mention his house being ransacked.
- The applicant's knowledge of the BNP did not seem commensurate with his claimed length and level of involvement with the party. He claims he has been a member of the BNP since 2005. While I would not expect him to remember the precise amount he paid for membership when he joined the BNP, there is a vast discrepancy between the 500 thaka the applicant claims to have paid and the 5 thaka fee (as at 2010) indicated in the country information.³ The applicant's evidence was that when he was not working (which he claimed was between 2004-2008) he was engaged with political activities with the BNP. He would 'go here and there' for them, would sit at meetings or seminars if they called him and did party work. He said that he used to help in organising rallies and seminars, print and put up posters (his evidence did not suggest this was limited to the period 2004-2008). In his written claims he has indicated that during the 2008 election he was actively involved in supporting the BNP candidate and seeking votes for him, in addition to providing financial support to organise meetings and print materials. His statutory declaration suggests that he was involved in activities across two separate electoral constituencies. While the applicant's evidence at the protection visa interview suggested familiarity with the BNP leadership and local candidates, he did not appear to have any knowledge of the party's platforms or policies. Country information indicates that the BNP's Islamism and conservatism sets it apart from the secular, liberal Awami League.⁴ The applicant said he followed it because it was a good party. Asked several times about BNP's ideology, tenets and what it stands for, he said that BNP did not go for fights, harassments and other issues and is a good party, that it is just a party and he supports it, he follows it because he sees the goodness in it, and his friends and family follow it. Asked about the policies BNP took to the 2008 election, during which he claims to have been involved with local politicians, his answer was vague, stating they would work for the area, try to fix the river and the things happening around, whereas the country information indicates the BNP had a specific 'election manifesto' which included assistance to farmers, food security and employment measures, improvement of law enforcement agencies to combat terrorism, anti-corruption measures, and many other specific initiatives.⁵ The applicant claims a significant level of active involvement with the party in Bangladesh over an extended period of time. Even taking into account the applicant's limited education and that his involvement was at the local level, I do not consider it plausible that he would not have acquired a more specific understanding

³ Canada: Immigration and Refugee Board of Canada, "BGD103519.E Bangladesh Membership documents issued by the Bangladesh Nationalist Party (BNP) to its members", 26 August 2010, CX316829.

⁴ Bangladesh Nationalist Party, "Bangladesh Nationalist Party", 1 November 2012, CIS24493.

⁵ Bangladesh National Party, "Election Manifesto - 2008", 1 October 2016, CX6A26A6E12240.

of at least some of the party's principles and policies if he had the level and length of involvement he claims.

7. Regarding the evidence from the arrival interview discussed above, I note that the applicant said in the 2013 written claims that he could not explain everything at his interview because compared to others he had very little time, and he referred at the protection visa interview to having come by boat. The interview took place approximately two weeks after the applicant's boat journey. I have listened to the recordings of the arrival interviews and I do not accept that the way it was conducted limited the applicant's ability to provide information about his political activities in Bangladesh, noting that when asked about his reasons for leaving Bangladesh, he was asked a number of follow-up questions, and that he was expressly asked about political activity. The applicant was clearly told at the commencement of those interviews that it was his opportunity to provide any reasons that shouldn't be removed from Australia. He was informed that he was expected to give true and correct answers and that if information he gave at future interviews different, it could raise doubts about the reliability of what he had said. I do not accept that the information provided by the applicant at the arrival interviews is unreliable or did not reflect his true circumstances or reasons for leaving Bangladesh.
8. In accounting for some of the above matters, the applicant has pointed to difficulties with concentrating, his memory, catching the questions, and to things not getting into his head. I note that the applicant's statutory declaration refers to depression and stress related issues due to separation from his family and fear of returning to Bangladesh. In a post-interview statement, he has said that was tense and nervous during the interview and due to mental health issues and stress he made mistakes. The applicant has submitted to the delegate a report from a psychologist dated [in] May 2018, two days prior to the interview, which states that it appears the applicant is suffering from mixed anxiety, depression and [other symptoms], and that he is receiving [specified] therapy. The applicant claimed to have been seeing this psychologist for around three weeks, but to have been experiencing problems for some months prior to that. The psychologist's report gives no indication of how long he has been treating the applicant, makes no mention of any memory, concentration or comprehension difficulties and includes no assessment that the applicant's capacity to give evidence is impacted by the conditions described. I note that at the start of the interview the applicant was asked if there was anything that may affect the way he provided information at the interview, and he said there was not. I am not satisfied that the applicant's ability to give evidence has been compromised by any mental health condition, memory problems, difficulty concentrating or understanding, or that such matters explain the concerns in his evidence.
9. I have had regard to a letter of support the applicant has provided by the BNP in Australia dated [in] May 2018. This letter refers to the applicant having been engaged in political activities and suffered violent acts. However it does not indicate what knowledge the writer has of these events or the applicant's involvement with the party in Bangladesh and I give this element of the letter no weight.
10. In light of the concerns identified above, I do not find the applicant a credible witness. I do not accept that he had any involvement with the BNP in Bangladesh, that his family were known as BNP supporters or that he was ever attacked or extorted by members or supporters of the Awami League.

Involvement with BNP in Australia

11. The applicant also claims to have been involved with the BNP in Australia. In his statutory declaration he states that he became involved with the group after moving to [City 1], and has

attended programs and events including victory day celebration, the founder's birthday celebration and Tariq Rahman's birthday celebration. At the protection visa interview, he described attending a protest against the visit of Awami leader and Bangladeshi Prime Minister Sheikh Hasina in late March 2018 (it appears from other evidence he submitted that it may have been late April), and claimed that news of this went all over Bangladesh, that it was in the media and on Facebook, and that his family have been threatened, receiving phone calls referring to the applicant's activities. He also claimed that he had received threatening phone calls from unknown numbers. In his post-interview statement dated 7 June 2018, the applicant says that he fears Awami League members in [Australia] would have passed information about the BNP members and their activities to the Awami League in Bangladesh.

12. The applicant has submitted a letter from the BNP in Australia stating he has worked with them in Australia as an 'activist' and has participated in various antigovernment rallies and demonstrations. No information as to the frequency or nature of that participation is provided. The applicant has also submitted photographs said to show him at a BNP leader's birthday celebration in August 2016 and at an anti-government rally held over two days in April 2018, linked to Sheikh Hasina's visit to [Australia].
13. While I accept the applicant has attended these events I am not satisfied this is indicative of any genuine commitment to the BNP or that he would engage in any sort of activities in support of the BNP if he were to return to Bangladesh. I do not accept that the applicant had any involvement with the BNP in Bangladesh that might explain his interest in becoming involved in Australia. Although the applicant claimed at the interview that he became involved with the party in 2015 and was listed as a member in 2016, and has submitted photographs of an activity he claims was in August 2016, I note that the BNP support letter he has submitted indicates that he began working with the party in December 2016. The timing of his involvement in Australia appears to have coincided with the making of his visa application, noting that he received an invitation to apply for the visa in July 2016 and his application was then lodged in September 2016. He claims to have attended meetings and 'most of their events', but the only other specific BNP event he has referred to attending is the rally in April 2018 which he confirmed was the only time anything had been done publicly. The knowledge he demonstrated at the interview was not indicative of any substantive engagement with the party, whether in Bangladesh or Australia. I do not accept that the applicant has attended BNP activities in Australia with any frequency, or that he has any sort of real interest in or commitment to the BNP or to engaging in political activities.
14. I also find the applicant's claims that he and his family have received threats as a result of his activities to lack credibility. He has submitted no evidence to support his claim that the rally or other events he has attended were widely publicised in the news or social media. Even if it was, I consider it implausible that this would have attracted any adverse attention to the applicant given that he does not appear to have had any particular role in the rally beyond holding posters along with many others, and I do not accept the applicant had any prior engagement with the BNP in Bangladesh or any other sort of public or political profile that would lead to him being recognised or identified as a threat by Awami League members or state agents. Further, the applicant made no mention of the claimed threats prior to the interview, despite having submitted a statutory declaration declared only three days earlier. The applicant's explanation for the omission of the threats from the statutory declaration was that he wanted to see what happened and if the pressure was continuing, or if it was one off and not serious. He then said that he was only asked to provide some documents, was unaware he could give more information and was asked about mistakes and lies, and that he thought he could just provide the information at the interview. The applicant was represented by a registered migration agent and the statutory declaration provided additional information

about other matters. I do not find his explanation of the omission of these threats from the statutory declaration convincing. I do not accept that the applicant or his family were threatened.

Refugee assessment

15. 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

16. 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.

17. Submissions made by the applicant’s representatives to the Department with his application and prior to the interview argue that the applicant holds views antithetic to the government and there is a real chance he will be considered as an enemy of the Awami League government and targeted for sedition, that his persecutors perceive him as an active BNP member and potential future leader of the BNP and his activities in Bangladesh and Australia establish he has an adverse profile. It is said he fears harm both from Awami League activists and state agents and will be unable to relocate or obtain adequate protection from state authorities. It is claimed the applicant will continue to be involved with political activities if he returns to Bangladesh. The submissions provide extensive examples of harm to supporters and members of the BNP and worsening political violence in Bangladesh. The submissions also refer to human rights abuses in Bangladesh, suppression of political protest and opposition activities and killings, torture and other harm perpetuated by law enforcement agencies.

18. I do not accept the applicant has had any engagement with the BNP other than what appear to have been limited activities in Australia coinciding with his visa application. I accept on the information in the submissions and also that in the most recent DFAT report⁶ that the Awami League is in government in Bangladesh, that there are high and increasing levels of political

⁶ DFAT, “Country Information Report Bangladesh”, 2 February 2018.

violence, there can be a high risk of politically motivated arrest for senior or active party members, and authorities may take an interest in high-profile individuals who have engaged in political activities outside of Bangladesh. However, I do not accept the applicant is such a person, and I have not accepted his claims to have been threatened because of his activities. I consider it extremely remote that the applicant would be identified and harmed because of his limited involvement with the BNP in Australia. I am willing to accept the applicant may prefer the BNP over the Awami League and may vote accordingly in an election, but I am not satisfied that the applicant will otherwise have any involvement with or support for the party or against the Awami League when he returns to Bangladesh. I am not satisfied that the chance of the applicant being caught up in violence, arrested or otherwise harmed in connection with any real or perceived support for the BNP is any more than remote.

19. The applicant has claimed that he will face extortion and abduction from Awami League affiliated criminal members and general criminal gangs in Bangladesh because he will be perceived as wealthy given his long stay in Australia. Country information⁷ before me indicates that the Awami League conducts extortion and other criminal activities, including against persons affiliated with the BNP, and there is also evidence of other groups, including members of law enforcement agencies, carrying out extortion. For the reasons above, I do not accept the applicant would be targeted for extortion or abduction for any reasons connected to support of the BNP. While there is information in a UK Home Office⁸ report suggesting that in one particular area in Bangladesh police target extortion at persons perceived to have money due to having relatives overseas, I note that DFAT⁹ has indicated that it has no evidence to suggest that recent returnees from likeminded countries to Australia (which I take to include developed western countries) receive adverse attention from authorities or others. This suggests that there is no widespread occurrence of persons returning from abroad being extorted, abducted or otherwise harmed because of their perceived wealth. I find the chance of this occurring to the applicant to be speculative and remote.
20. The applicant has also said that he will be returned as an involuntary returnee and considered as a person who has applied for a protection visa and given information against the Bangladeshi Awami League government.
21. Information in the delegate's decision indicates that the applicant's personal details were included in information regarding persons in immigration detention accessible on the Department's website in February 2014. The information released included the applicant's name, date of birth, nationality, the reason that he was unlawful, boat arrival details and location and time of detention.¹⁰
22. There is no evidence before me that the Bangladeshi authorities or Awami League members have accessed this information, but even if that had occurred and it were inferred that the applicant had applied for asylum in Australia, the information did not disclose the nature of the applicant's claims or reasons for leaving Bangladesh. DFAT¹¹ states that Bangladesh accepts both voluntary and involuntary returnees, although may require a community level police check to verify their identity and citizenship. As stated above, while authorities may take an

⁷ Ibid; European Asylum Support Office, "Country of Origin Information Report - Bangladesh Country Overview", 20 December 2017, CISED50AD8029; Odhikar, "Annual Human Rights Report 2017", 12 January 2018, CIS7B8394170; UK Home Office, Report of a Home Office Fact-Finding Mission – Bangladesh", 18 September 2017, 4.6.1, OG6E7028864

⁸ UK Home Office, Report of a Home Office Fact-Finding Mission – Bangladesh", 18 September 2017, 4.6.1, OG6E7028864.

⁹ DFAT, "Country Information Report Bangladesh", 2 February 2018.

¹⁰ Office of the Australian Information Commissioner, "Department of Immigration and Border Protection Own motion investigation report ", 1 November 2014, CX1B9ECAB12592.

¹¹ DFAT, "Country Information Report Bangladesh", 2 February 2018; DFAT, Country Information Report Bangladesh, 5 July 2016, CIS38A80121206.

interest in high-profile individuals who have engaged in political activities outside of Bangladesh, DFAT has no evidence to suggest that returnees have received adverse attention from authorities or others. Given this information, I do not accept that Bangladeshi authorities, the Awami League or other groups or persons take an adverse interest in persons believed to have applied for asylum in countries such as Australia, whether returned voluntarily or involuntarily, including those who may have given information adverse to the government or Awami League. Nor am I satisfied that the fact of the applicant's information having been published in the data breach would otherwise lead to a risk of harm.

23. I note that the applicant departed Bangladesh lawfully on a passport. I do not accept the applicant has ever been a person of any adverse interest to Bangladeshi authorities or the Awami League. Considering the above country information I am not satisfied that the applicant would be considered of any interest because he has applied for asylum in Australia and would be perceived to have provided adverse information about the government or Awami League, his involuntary return (if that were to be the case), the data breach or any combination of those matters. I have found the chance of him being identified and harmed because of his limited involvement with the BNP in Australia or being harmed because he is perceived to be wealthy to be remote, and I am not satisfied the chance of him being harmed for any of these reasons rises to that of a real chance when they are considered cumulatively.
24. I note that while the applicant made claims of financial hardship in Bangladesh in his arrival interview, on my findings the applicant had employment as [an occupation 1] in Bangladesh for a number of years and will be returning there after having had similar employment in [Country 1] and Australia. I am not satisfied that the applicant's financial situation will amount or give rise to a real chance of serious harm.
25. Considering the applicant's circumstances as a whole, I find there is no real chance of him being seriously harmed in Bangladesh in the reasonably foreseeable future.

Refugee: conclusion

26. 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

27. 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

28. 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.

29. The applicant made claims of financial hardship, but as I have said above, he has a history of employment as [an occupation 1] both in Bangladesh and in [Country 1] and Australia. I am not satisfied there is a real risk of him suffering financial difficulties to an extent that could amount to significant harm as defined in ss.36(2A) and 5(1).

30. I have otherwise found there is not a real chance of the applicant being harmed in Bangladesh. The Federal Court has held that 'real risk' imposes the same standard as the 'real chance' test in the refugee criterion.¹² Relying on the findings set out above, I am similarly not satisfied there is a real risk of the applicant being harmed.

31. The submissions claim the applicant has a foreseeable real and personal risk of harm including torture and makes submissions that Australia has obligations to protect victims who will face immense hardship and discrimination, including where their country does not honour its human rights obligations or recognise international obligations. However, as I am not satisfied there is a real risk of the applicant being subject 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).

Complementary protection: conclusion

32. 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.

¹² *MIAC v SZQRB* (2013) 210 FCR 505.

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.

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36 Protection visas – criteria provided for by this Act

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- (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.

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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.