



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA18/05307

Date and time of decision: 4 September 2018 11:51:00
A Harrison, Reviewer

Decision

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

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

Background to the review

Visa application

1. On 25 November 2016, the referred applicant (the applicant) applied for a Safe Haven Enterprise (subclass 790) Visa (SHEV). He claimed to fear persecution from the Awami League (AL) government, AL supporters, and other political parties in opposition to the Bangladesh Nationalist Party (BNP) because he is a member and supporter of the BNP, and because of his previous political activities in support of the BNP.
2. On 10 July 2018, a delegate of the Minister for Home Affairs refused the applicant a SHEV because the delegate found he is not a person in respect of whom Australia has protection obligations.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the Migration Act 1958 (the Act).
4. On 2 August 2018, the IAA received a submission on behalf of the applicant. All of it addresses the delegate's decision and findings; it is not new information, and I have had regard to it.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is a Bengali from Comilla district, Bangladesh and he is a Sunni Muslim.
 - Between 2000 and 2011 he worked on the family farm in his home village.
 - Between 2004 and 2009 he worked at a [workplace]. His boss was actively involved in the BNP, and many BNP members came to the [workplace] to visit his boss and talk with him about the BNP party. While working at the [workplace] he was inspired by the BNP's political views and eventually became a member.
 - He attended BNP meetings, was involved in BNP activities, and participated in many BNP rallies. The AL regularly shut down their rallies and physically attacked them.
 - In one such BNP rally in around 2007 or 2008, he was physically assaulted when trying to run away from the AL supporters who were attacking them. His friend was severely beaten and significantly injured.
 - Following the rally, AL supporters frequently attended the [workplace]. The AL supporters would ask for the BNP senior officials, and threaten him and other workers at the [workplace] to give them details of, and tell them the whereabouts of, the senior BNP officials. However, the senior BNP officials had stopped attending the [workplace] by that time because they knew it was being targeted by the AL government.
 - On one occasion in 2009, the AL supporters came to the [workplace], and when they did not tell them the location of BNP senior officials they threatened them with severe

punishment unless the BNP senior officials were there the next time. After this he did not return to his job.

- However, AL supporters regularly visited his home and asked for him, and harassed his father and said he would be in trouble if he did not tell them where he was.
- In January 2011, he left Bangladesh illegally by boat and went to [Country 1] where he worked for about two years. In January 2013, he arrived in Australia by boat.
- If returned to Bangladesh he will be harmed by members of the ruling political party, the AL, because they know he is a member of the opposition, the BNP, and because of his previous political activities in support of the BNP. He cannot seek protection from the authorities who are the ruling party. The police in Bangladesh are very corrupt, and only follow the instructions of the ruling party.
- As a BNP supporter, he will never be safe in any part of Bangladesh. While his role within the BNP was low level, there is a larger power struggle in which non-leaders are also susceptible to attacks from other parties. Without political affiliation there is no way he can subsist in Bangladesh.

Factual findings

6. I accept the applicant is a Bengali from Comilla district, Bangladesh based on his identity documents. I accept the applicant is a Sunni Muslim. The applicant claimed to have lived and worked in [Country 1] for about two years before he arrived in Australia, and I accept this was the case. He said he was illegally in [Country 1] and applied for a visa for [Country 1] but it was refused. I am satisfied the applicant does not have a legally enforceable right to reside in [Country 1]. I am satisfied that Bangladesh is the applicant's receiving country for this purpose of this assessment.
7. I accept the applicant worked on the family farm from 2000 until 2011. And Although I have some doubts about the applicant's claim that during that period from 2004 to 2009 he also worked at a [workplace], I am willing to accept that he did. The applicant did not remember the names of any of his colleagues, other than the boss. The applicant described the [workplace] as a store in the marketplace adjacent to his village, but that his colleagues did not come from his village. He said that apart from the boss and himself, there were about six or seven other people working [there]. The applicant did not talk about what role he performed but listed that he worked as [an occupation], and said he does not know what any of his former colleagues are doing now, including his former boss, he does not have contact with them.
8. I am not satisfied the applicant became a BNP member while working at the [workplace] or at any other time, and that he attended BNP meetings and was involved in BNP activities. The applicant's verbal evidence at the SHEV interview did not support his written statement of claims in this regard. While the applicant's written statement is that once he became a BNP member, he began attending BNP meetings and being involved in the party's activities, he clearly stated in the SHEV interview that he was not a BNP member. He said the BNP told them that there were stages to membership. First, they had to become supporters and join BNP meetings and rallies, and gradually they would become indoctrinated, and gradually they would become members. He said before he could become a member, he had to leave because of the problems. He said he was an active supporter who was working his way up to BNP membership. He was shown a list with his name on it and he was listed as a BNP worker, not a member. However, the applicant did not convincingly describe any activities, meetings, rallies

or involvement he had with the BNP to support his claim that he was an active supporter at any level.

9. I do not accept the applicant attended a BNP rally in around 2007-2008, that supporters of the AL government came to the rally and tried to shut it down, and they began to physically attack the BNP members, but he managed to run away before he was too severely injured. I also do not accept a friend of his was attacked and injured at this rally by AL supporters. The applicant's verbal evidence did not support his written claim in this regard. To begin with, country information reports that the AL was not in government in 2007 or 2008, and neither was the BNP.¹ The delegate asked the applicant when the BNP was last in power in Bangladesh, and he said from 2001 to 2005, approximately. When asked what happened after 2005, the applicant said there was an interim government, and the AL got into power in 2009. While the applicant's answers are consistent with country information which records that the BNP was in power from October 2001 to October 2006, and that from 2007 to 2008 there was a caretaker government, the applicant's claims are not coherent.
10. The delegate asked the applicant to tell her about a meeting he had attended when a member of parliament was visiting. The applicant started to describe a meeting in [Region 1]. He said a member of parliament was there, his name was [Mr A]. The applicant did not state what parliament or level of government [Mr A] was a member of. The applicant said he did not actually make it to the meeting because he was attacked on his way. The delegate asked which political party was in power in Bangladesh at the time, and he answered the interim government. He said [Mr A] just came to [Region 1] to check on the leaders there, there was no other agenda he had just come to meet the people. The delegate put to the applicant that in his statement of claims he had said the AL was in government and opposed the BNP party and would regularly try to shut down their rallies, and he had said on one occasion in 2007-2008 he attended a BNP rally in [Region 1]. The delegate asked if this was the same meeting or rally he was talking about. The applicant said yes, the same meeting. He wanted to go to the meeting, he was on his way, but AL people stopped him about a mile away from where the meeting was to be held and attacked him. The meeting was to be held at a school. And he was on his way with all the big BNP leaders and members from his area, the ones he had met at the [workplace], and then suddenly they were attacked, and they did not know what was going on, and people ran everywhere, they were dispersed. The delegate asked about the friend whom he claimed was severely injured in the attack, and the applicant said he did not remember his name and he was not that close, but he was definitely injured, lots of people were.
11. There are significant differences between what the applicant claimed in writing and what he said in his SHEV interview. I consider these discrepancies, such as neither the AL or the BNP being in government at the time, the applicant not actually attending a rally but being on his way, the rally not actually being a rally but a meeting with no real agenda, to cast doubts over the credibility of the applicant's claim to have attended a BNP rally in 2007 or 2008 where he was physically assaulted, amongst other BNP members, including a friend. Given the opportunity to describe a meeting the applicant had attended when a member of parliament was visiting, and this was the only example he gave, I am not satisfied the applicant attended any BNP meetings with political leaders and members of parliament, and I am not satisfied the applicant attended any BNP rallies or was physically assaulted by AL supporters on his way to attend a BNP rally or meeting.
12. The applicant's verbal evidence did not convincingly support his claim to be inspired by the BNP to support them while he was working at the [workplace]. The applicant vaguely described

¹ UK Home Office, "Bangladesh August 2009", 11 August 2009, 1132.

discussions he had with BNP members and leaders while working at the [workplace]. When asked what it was about the BNP's political views and activities that inspired him, he said he was not sure what their ideals were but he was more inspired by the work that they did in the area. And when the chairman of the BNP party did something good, something benevolent, he was inspired. For instance, the development of roads, the construction of a school, things that benefit the people. He said his father was already a supporter of BNP so his family was loyal to them and he was inclined to be loyal to them as well, and he had this love for this party and so he used to talk to these leaders and that triggered an interest. When asked if his father had ever talked to him about the BNP, he said his father always advised him that if he did something good, then he had to do it with the BNP; the BNP is a good party. Based on the applicant's evidence, I am not satisfied his father was a BNP supporter in an active sense, or that his family were also loyal to the BNP.

13. The applicant said he never voted in Bangladesh. The reasons they applicant gave as to why he did not vote in any elections was variable. He said he was not of the age for voting, which was 18. The delegate said he was 18 in [a particular year]. Then he claimed not to have voted because he did not have a voter identification card. He said the year he left Bangladesh, he had gotten a voter identification card but he did not vote. When the delegate said she would check the country information, but she was pretty sure that voter identification cards were issued to people who were over 18, in particular during the 2008 parliamentary election. I note country information referred to the issuing of a new national identity card to 80 million registered voters in 2008.² The delegate put to the applicant her concern that the applicant had claimed to have mixed with and been interested in the BNP since he worked in the [workplace] in 2004, that he had interactions with BNP members and BNP senior leaders, and the only reason he had never voted was he did not have a voter identification card. The delegate said she thought that if the applicant did have all those interactions, connections and dealings with those BNP members and senior leaders they would have encouraged him or asked him to vote for the BNP. The applicant said, he had his voter identification card but for whatever reasons he did not vote. However, the reasons the applicant gave for not voting varied, and do not lend support to his claim to have been inspired by the BNP and an active BNP member or supporter.
14. While the applicant clearly stated in the SHEV interview that he was not a BNP member, his post SHEV interview submission stated he claimed to fear harm in Bangladesh as a member and supporter of the BNP, and his role was low level. The applicant's submission acknowledged the delegate's concerns in regards to the perceived inconsistencies in the level of participation he had with the BNP, which the delegate stated may lead her to believe he was not credible and was not linked to the BNP as claimed in writing and at interview. It was argued it may not be necessary to definitely establish whether the applicant was a member or a supporter, because based on his account of his participation, he would be considered to have had a low level of interaction with the BNP in either case. Further, it was argued it is not possible for an individual to exist in Bangladeshi society without being aligned to a political faction given that political affiliation is critical for survival, and the applicant's claims are supported by country information. However, the applicant claimed he was a member and in the interview he said he was actively involved and working his way towards membership. The applicant did not convincingly describe any personal level of involvement or experiences with the BNP, nor did he convincingly describe his interactions with BNP member or senior leaders while working at a [workplace]. I am satisfied the applicant embellished his claims for protection. I am not satisfied the applicant's boss at the [workplace] was actively involved in the BNP, or that the applicant became inspired by the BNP's political views and activities while working at the [workplace]. I am not satisfied the applicant was a member of the BNP, or that he was actively

² UK Home Office, "Bangladesh August 2009", 11 August 2009, 1132.

involved in BNP meetings and rallies, or associated with BNP members and senior leaders who frequented the [workplace] where he worked.

15. Given, I have not accepted the applicant went to a BNP rally in 2007 or 2008 in [Region 1] and was attacked by AL supporters, it follows that I do not accept the applicant's claims about what happened after the rally. Additionally, however, the applicant's claims in this regard are unlikely and implausible, and I do not accept them. The applicant claimed that following the rally, AL supporters frequently attended the [workplace] and would ask for the BNP senior officials. The AL believed that everyone who visited and worked at the [workplace] were BNP supporters, that BNP meetings were held there and BNP senior officials would plan rallies and prepare strategies for BNP activities. AL supporters threatened him and other workers at the [workplace], and accused them of knowing where the senior officials were and they must tell them. AL supporters destroyed property at the [workplace] and threatened to kill them if they did not provide them with details of the senior officials' whereabouts. The BNP senior officials had stopped attending the [workplace] by that time because they knew it was being targeted by the AL government. On one occasion in 2009, this was about the 5th or 6th time the AL supporters had visited, and they still did not tell them the location of BNP senior officials, they threatened them, saying words to the effect of "if your senior officials are not here next time, we will come for you" and "we know you know where they are, and where they are hiding. If you cannot tell us next time their location, you will face severe punishment". The applicant claimed that after this he did not return to his job. However, AL supporters who had recognised him from the BNP rallies and as a worker at the [workplace] would come to his house and ask for him. They knew his father and would harass him, asking for his whereabouts. AL supporters regularly visited his home and said his father would be in trouble if he did not tell them where he was.
16. I consider it highly unlikely that AL supporters would seek to track down senior BNP leaders around this time by threatening workers in a [workplace] in the manner described and threaten to kill the applicant and other workers, and destroy property at the [workplace], and then maintain an interest in harming the applicant because he might know where some senior BNP leaders are. I am not satisfied the applicant was targeted for any harm by AL supporters for information about senior BNP leaders while working at a [workplace] up until 2009 or afterwards, or that his father was harassed and threatened for information about the applicant's whereabouts by AL supporters.
17. During the SHEV interview the applicant said that from 2009 to 2011, until he departed Bangladesh for [Country 1], he lived at his uncle's in-laws place, which was about 45 minutes by bus away from his home village. He said in this period, he did not do anything, he used to just stay in the house and his father gave him some pocket money, and he used to stay and eat and just breathe. He said he had to hide for two years because if he had stayed he would be under attack again because his father was being mistreated by the AL people; they were putting his father under a lot of pressure as well. He said they knew his father was interested in the BNP and everyone knew his father. After 2009, the AL became even more powerful. Previously, the applicant had stated he lived in his home village from birth until he left Bangladesh and worked with his father on the family farm. The delegate put to the applicant that his father was not harmed and continues to live in the village, and queried why the AL would be so interested in him. The applicant referred to him not giving the AL the information they wanted and they were angry with him, and that they did not know where his uncle's in-laws lived and they did not know his uncle. The applicant claimed that his father still gets harassed and is under pressure from them. The applicant said his family, including his two brothers, who were under pressure once in a while have come to a compromise to be able to

live side by side peacefully, and they are withdrawing from the BNP, they do not attend rallies and meetings as frequently as they used to.

18. The delegate put to the applicant that when explaining why he could not live somewhere else in Bangladesh to avoid the AL supporters who he claimed wanted to harm him, that he had mentioned that in Bangladesh, even travelling from one village to another village there is no privacy, that everybody in Bangladesh knows each other, it is a small country, if he went back he could not live anywhere else in Bangladesh because they will find him. The applicant said yes, they are so powerful, somehow they will find him. The delegate said given they are so powerful how come they could not find him for the two years he lived with his uncle only 45 minutes away. The applicant responded that the AL supporters did not look for him all the time, but gradually they started to look for him. He said last year (2017) on 28 November, his uncle went to a [workplace] just five minutes away from his home, and the police abducted him from the road. Somebody took him and nobody knows where he is now. And then they said they wanted a bribe and then they would let him go, and if they did not pay the bribe, they would say they had been involved in arm trafficking and drugs. They had to bribe the police two lakhs taka to get his uncle free from the police. The applicant questioned how he could stay there safely. The applicant did not claim this incident involving his uncle was connected to him. However, I am not satisfied this event occurred given the inconsistency in the information the applicant gave about the abduction and not knowing where the uncle was now, but paying a bribe to the police for his release. Based on the applicant's own evidence, I am not satisfied the applicant was in hiding from AL supporters who wanted to harm him for two years before he left Bangladesh to go to [Country 1] in early 2011, or that his father or any other family members were harassed by AL supporters wanting to know where he was.
19. I do not accept the applicant left Bangladesh because he was a BNP member, or a low level but active supporter of the BNP while in Bangladesh, that he was physically assaulted by AL supporters in 2007 or 2008, and his life threatened by AL supporters because he did not give information about senior BNP leaders and their whereabouts, that he had to go into hiding for two years in Bangladesh to avoid harm, and his father and family continue to be harassed about his own whereabouts by AL supporters. I do not accept these claims because the applicant's evidence is implausible, incoherent and not credible. While the applicant gave different reasons as to why he left Bangladesh and could not return when he was interviewed by the department on 20 January 2013, this discrepancy is not the reason why I do not accept the applicant's SHEV claims for protection. However, the discrepancy in the reasons and claims the applicant has given helps to explain why his subsequent claims are not plausible, coherent and credible.
20. The applicant claimed that he was scared at the entry interview, and he did not know what answers he should give. He claimed he feared that revealing he was a BNP member would lead the immigration department to think he was a trouble maker. It was also argued the applicant did not have the benefit of legal advice when he gave his entry interview and he did not know its purpose.
21. In summary, in January 2013 the applicant said he left Bangladesh because they had financial problems, he was responsible for looking after his family, he went to [Country 1] to support his family, he was there illegally, and he heard that the Australian system was good, so he wanted to come to Australia. If he had to go back to Bangladesh, he would face the same situation, living in poverty. He would have to go back to working in the fields and his family would suffer. The applicant said he and his family were not politically involved or associated with any political group or organisation, and not members of a political party. The applicant said that he was told he would be returned to Bangladesh because his claims were not accepted. He was

given an opportunity to provide further information, which he did. I note the further information the applicant gave in May 2013 was not inconsistent with the applicant's SHEV claims.

22. I am satisfied that in January 2011, the applicant left Bangladesh illegally by boat and went to [Country 1] where he worked for about two years, and that in January 2013, he arrived in Australia by boat.
23. I find the applicant was not a BNP member or a low level but active supporter while living in Bangladesh, and he was not targeted for any harm by AL supporters because he did not give information to them about BNP senior leaders, and his family were not BNP supporters and harassed by AL supporters for information about his whereabouts.

Refugee assessment

24. 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

25. 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.
26. The current ruling party in Bangladesh is the AL, and it has been in office since January 2009. The BNP boycotted the last election held in 2014. The UK Home Office reports from its fact-finding mission to Bangladesh in May 2017, that violence was part of the political process in Bangladesh, particularly around election times.³

³ UK Home Office, "Report of a Home Office Fact-Finding Mission - Bangladesh", 18 September 2017, OG6E7028864.

27. DFAT reports that the security situation in Bangladesh is volatile and can deteriorate quickly with little warning. Security threats include politically-motivated violence, particularly ahead of the national elections in late 2018 or early 2019. DFAT assesses that under the current AL government, senior members of opposition political parties (particularly the BNP) face a high risk of politically motivated arrest, legal charges and travel bans. Active members of opposition political parties and auxiliary organisations who participate in demonstrations also face a high risk of arrest and physical violence, both from security forces and ruling party activists. DFAT assesses that this risk is elevated around times of heightened political tension, including elections. Ordinary members of opposition political parties and auxiliary organisations who do not engage in political activities and demonstrations face a low risk of arrest, although this may vary according to location and timing. DFAT also reports that international and local rights groups concur that enforced and involuntary disappearances occur frequently in Bangladesh, and particularly target individuals associated with opposition political parties.⁴
28. In the applicant's submission to the delegate, it was argued that country information supports that organised crime syndicates, generally regarded as 'mastaans' act with impunity to extort and demand loyalty along political party divisions. That mastaans acts as enforcers for the dominant political group and against whom state protection through police assistance is not available due to government control of law enforcement. That criminal elements benefit from political patronage and political power brokers benefit from the ability to call on gangs of thugs to intimidate anyone perceived as an opponent for political, or personal, reasons. While the applicant said his uncle was abducted in 2017 and his family paid a bribe to the police for his release, I did not accept this happened to the applicant's uncle.
29. While DFAT does not mention mastaans in its 2018 report, it does refer to reports of gunfire between security forces and criminal gangs or militants. DFAT reports that political and bureaucratic interference is a significant impediment to police efficiency. That both AL and BNP governments have used the police to undermine opposition forces, and many politicians have used the police to advance their personal interests. DFAT reports that human rights organisations have expressed concern over persistent use of excessive force by police, and the general culture of impunity surrounding police behaviour. DFAT states that corruption is pervasive at all levels of society and is particularly pervasive in the judicial system, police and public services.⁵
30. However, I have found the applicant was not a BNP member or a low level but active supporter of the BNP when he was in Bangladesh; he was not targeted for any harm by AL supporters because he did not give information to them about senior BNP leaders; and his family were not BNP supporters and harassed by AL supporters for information about his whereabouts. There is no evidence before me that the applicant has been engaged in political activities in support of the BNP or that he has joined the BNP since he left Bangladesh. I am not satisfied the applicant would become a BNP supporter or member and politically active on return to Bangladesh. Taking into account country information, I find there is not a real chance the applicant would be targeted for any harm by the AL, AL supporters, including 'mastaans', AL government authorities, or other political parties, for real or perceived membership of, and support for, the BNP, or for any other reason.

⁴ Department of Foreign Affairs and Trade (DFAT), "Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

⁵ DFAT, "Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

31. While the applicant did not make an explicit claim to face harm on return to Bangladesh as a failed asylum seeker who departed the country illegally, the delegate assessed an implied claim relating to being a failed asylum seeker, and accepted he departed illegally. I have also accepted the applicant departed Bangladesh illegally.
32. According to DFAT, the Bangladesh Emigration and Ordinance Act (1982) makes it an offence to depart from Bangladesh other than in accordance with the procedures laid down in the Act. Bangladeshis require a valid passport and visas (depending on the destination country) to depart from Bangladesh. DFAT does not report that returnees are penalised in any way in relation to an unlawful departure from Bangladesh.⁶ Given I accept the applicant departed Bangladesh illegally in 2011 when he travelled to [Country 1] via [another country], it is likely he would be considered as having departed Bangladesh other than in accordance with the procedures laid down in the Act.
33. However, DFAT's 2018 report states that Bangladesh accepts both voluntary and involuntary returnees. The International Organisation for Migration's Assisted Voluntary Returns Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Government of Bangladesh. DFAT reports it has 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 may 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 evidence before me that the applicant has any criminal convictions from Bangladesh, and I am not satisfied the applicant has engaged in political activities outside Bangladesh. There is no information in the 2018 DFAT report to indicate that Bangladeshi returnees are mistreated or imprisoned on return simply because they sought asylum in a foreign country. I find there is not a real chance the applicant will face any harm from the AL government, and its supporters, or Bangladeshi authorities because of his departure from Bangladesh in 2011 or as a returning failed asylum seeker.
34. I find the applicant does not have a well-founded fear of persecution in Bangladesh.

Refugee: conclusion

35. 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

36. 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

37. Under s.36(2A), a person will suffer 'significant harm' if:

⁶ DFAT, "Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

- 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.

38. I have concluded there is not a real chance the applicant will face any harm from the AL, AL supporters, including 'mastaans', AL government authorities, or other political parties, for real or perceived membership of, and support for, the BNP, or as a returning failed asylum seeker who left Bangladesh illegally, or for any other reason. I am similarly not satisfied that there is a real risk of any harm, including significant harm on these bases.

39. I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there is a real risk he will suffer significant harm.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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