

1303348 [2014] RRTA 31 (6 January 2014)

DECISION RECORD

RRT CASE NUMBER:	1303348
DIBP REFERENCE(S):	CLF2012/217023
COUNTRY OF REFERENCE:	Bangladesh
TRIBUNAL MEMBER:	Rowena Irish
DATE:	6 January 2014
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Bangladesh, applied to the Department of Immigration for the visa [in] October 2012 and the delegate refused to grant the visa [in] February 2013.

CLAIMS AND EVIDENCE

3. The applicant claims to fear returning to Bangladesh because he is a member and supporter of the Bangladesh Nationalist Party (BNP). He was [an officeholder] of Chatra Dol at [college] in [Dhaka]. He later worked in the election campaigns for [Mr A] and claims to have held various positions within the BNP. As a result of this he claims that he was threatened, abducted, harmed and subject to extortion.
4. The application form states that the applicant was born [in] Dhaka, Bangladesh. He can speak, read and write Bengali and English. He arrived in Australia [in] September 2012 on a Tourist visa. In Bangladesh he lived at the same address in [a suburb of] Dhaka for his whole life. He has travelled to many different countries including [various named countries] between 2001 and 2011. He has [many years] education with a [degree]. He was owner of a business from 2001 to [2012] and partner in another business from September 2010 to June 2011.
5. The applicant's representative provided a lengthy submission setting out relevant country information and legal arguments in relation to the applicant's claims. In support of his application the applicant provided the following documents:
 - Letter from [an officeholder from] BNP Australia dated [in] January 2012.
 - [Employee] ID Card.
 - Various photographs.
 - Letter from [Mr A], Dhaka City, BNP , undated.
 - Letter from [an officeholder from] Dhaka City, BNP undated.
6. The applicant was interviewed by the delegate [in] February 2013. The Tribunal has listened to a recording of that interview and refers to it, where relevant, below.
7. The applicant appeared before the Tribunal on 5 November 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

8. Following the hearing the Tribunal sent the applicant a letter pursuant to s.424A. On 20 November 2012 the Tribunal received a response to this attaching a statutory declaration from the applicant.

FINDINGS AND REASONS

9. The law upon which the findings and reasons below are based is set out in Attachment 1.
10. On the basis of the applicant's Bangladesh passport, which was presented at the hearing, the Tribunal finds that the applicant is a citizen of Bangladesh. There is nothing in the evidence before the Tribunal to suggest that the applicant has a right to enter and reside in any country other than Bangladesh. Therefore the Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act. As the Tribunal has found that the applicant is a national of Bangladesh, the Tribunal also finds that Bangladesh is the applicant's "receiving country" for the purposes of s.36(2)(aa).

Refugee criteria

11. The Tribunal has a number of concerns about the evidence of the applicant which lead it to find that he is not a credible witness. These concerns are discussed below.
12. **First**, the Tribunal is concerned about the delayed departure of the applicant after grant of his visa to Australia. The label in his passport states that his visa was granted [in] April 2012. However the applicant did not arrive in Australia until [a date in] September 2012. When it was discussed with the applicant at the hearing why he delayed his departure for nearly five months despite being in fear of his life, the applicant stated that he delayed his departure because his uncle told him to wait until his uncle had cleared the way for him at the airport. When the Tribunal asked why it was safe for him in September and not before he stated that he did not know but his understanding was that his uncle knew the people who worked there then. The Tribunal does not find it persuasive that the applicant's uncle would recommend that the applicant remain in Bangladesh where his life is in danger rather than depart to a safe country that he had a visa to enter. Furthermore, the Tribunal had earlier discussed with the applicant whether he had any difficulties when departing to go to Australia. He stated that he did not because he managed to escape their attention by coming from his place of hiding at night. He did not refer to his uncle organising his travel for him or the applicant having to delay his departure because of fears that he would be located at the airport. The Tribunal would have expected the applicant to have referred to this earlier had it been true.
13. **Second**, the applicant claims that he went into hiding from January 2011, was abducted in December 2011 but did not depart until September 2012. However the applicant's passport shows that he held a valid visa to [Country 1] which was granted [in] December 2011 and valid to [a date in] March 2012. The Tribunal considers that if the applicant had a genuine fear for his life he would have travelled to [Country 1] on the visa he was granted in December 2011 rather than remain in Bangladesh where his life was in danger while waiting for a visa to Australia. When this was discussed with the applicant at the hearing he claimed that the Awami League are so well organised they have people in [Country 1] as well so he would not be safe there. The Tribunal does not accept that the local Awami League members would seek to track down the applicant in [Country 1] or that they would be able to locate him in a country with a population of 1.27 billion people.¹ The Tribunal does not find it

¹ [information deleted]

credible that the applicant would not have travelled to [Country 1] despite having a visa because of this.

14. **Third**, the applicant claimed at the Tribunal hearing that he was attacked by [people] who tried to abduct him and cut him with a blade in January 2011. As a result of this he was in fear for his life and went into hiding. Then in December 2011, [people] imitating police officers took him one night and then released him. They beat him but he was not injured at this time. Between these two dates he was receiving many phone calls threatening to kill him. The Tribunal did not find these claims to be credible.
15. In his application form the applicant does not refer to any incidences of harm but states that he will provide a statutory declaration to follow. In the applicant's statutory declaration dated 30 October 2013 he refers to being intimidated and threatened by the Awami League but not to having been either injured or abducted. At the Departmental interview the applicant only referred to one occasion in December 2011 where he was abducted by [people] who cut him with a blade. He stated that prior to December 2011 his problems were smaller and the Awami League would just come and threaten him to stop his activities. The Tribunal finds it surprising that he did not refer to either the January 2011 or December 2011 incidents in his written claims. The Tribunal also finds it surprising that the applicant did not refer to the incident in January 2011, which caused him to go into hiding, at the Departmental interview. Furthermore, the applicant's inconsistent evidence in relation to whether he received the knife injury in January or December 2011 raises concerns for the Tribunal about whether this actually happened. When his statements at the Departmental interview and lack of reference to the January 2011 incident were put to the applicant in the s.424A letter he replied that he had mixed up his dates at the Tribunal hearing and that there were two separate incidents and he was harmed with a knife in December 2011 but just got the date wrong. He claimed that he had not referred to the January 2011 incident because "the seriousness of that incident was small" as he was not injured. The Tribunal does not accept this explanation. The applicant claimed at the Tribunal hearing that he went into hiding as a result of the incident in January 2011 and remained in hiding until he departed in September 2012. The Tribunal does not accept that a person would view an incident as minor and not serious if it caused them to go into hiding for 19 months. The applicant's inability to provide a consistent account of the incidents of harm he claims to have suffered and the escalating claims between his written claims (where no incidents of harm are referred to), the Departmental interview (where one incident is referred to) and the Tribunal hearing (where two incidents were referred to) leads the Tribunal to doubt that the claimed incidents occurred.
16. Furthermore, the Tribunal does not find it credible that the Awami League would have been threatening to kill the applicant for nearly a year after causing the applicant to go into hiding in January 2011 and yet when they finally catch him in December 2011 they let him go after only one night and without any serious harm.
17. **Fourth**, the applicant's claim to have been in hiding from January 2011 to September 2012 is not consistent with his circumstances during that period. In his application form the applicant stated that he was living at the same address until September 2012 and that he was working in his business until September 2012. Although the applicant claimed that this was not correct he stated that he was [working] for 3 or 4 days a week and in his [shop] but that his work in the [shop] was mainly by telephone. The Tribunal found the applicant's evidence that he was in hiding for such an extended period to be unpersuasive. The applicant was still attending [work] and attending the party office while in hiding. The various places that he claimed to

stay at were only 15-25km from his home. Therefore it appears to the Tribunal that he would have been easily located during this period if the Awami League had a genuine desire to locate him. When this was discussed with the applicant at the hearing he claimed that he took different ways to go to the office and party colleagues would go with him so he was protected. The Tribunal found this unpersuasive. It considers that he would have been easily located at his work place or the party office which he continued to attend regularly over the 19 month period he claims to have been in hiding. Together with the information in his application form, this leads the Tribunal to find that the applicant was not in hiding as he has claimed.

18. **Fifth**, the applicant claims to have been subject to extortion in Bangladesh since February 2011. He claims that he was contacted by telephone on numerous occasions asking for 5 lakhs taka. This extortion was not referred to in his written claims. The Tribunal found the claim unpersuasive as there did not appear to be any reason why they would start targeting him for money in February 2011. Furthermore, he claimed that they told him that he was doing good business so he had to give them money. If this was true then the Tribunal would have expected that they would continue to make such demands of his uncle who is now managing the shop on behalf of the applicant. The applicant claimed that they have not made such demands because they do not know that his uncle is managing the shop but the Tribunal does not find this plausible as it appears to the Tribunal that it would either be obvious from his uncle's presence in the business or information which is easily obtained about who was managing the business.
19. **Finally**, the applicant claims that the Awami League have been going to his sister's home asking about him, the most recent occasion being only three months ago. When asked how often they go there he stated that it was every 10-30 days. He stated that the Awami League do not know that he is in Australia. The Awami League have threatened to harm his sister and her family if they don't find the applicant. However, despite not finding the applicant, the Awami League have not taken any action against his sister. The Tribunal does not find it credible that the Awami League would continue coming to the house on such regular occasions when they were not getting any information from his sister. When this was discussed with the applicant at the hearing he claimed that they kept coming to the house anyway because they thought he would return since he had travelled regularly in the past and always returned. The Tribunal did not find this persuasive. The Awami League are currently in power and therefore it appears to the Tribunal that they would have access to immigration records and could track whether or not the applicant had returned to Bangladesh without seeking him out at an address where he has not lived since January 2011.
20. When considered cumulatively, these concerns lead the Tribunal to find that the applicant has not been truthful in his evidence to the Tribunal about the events in Bangladesh. The Tribunal does not accept that he has been abducted, threatened, harmed or subject to extortion in Bangladesh by the Awami League. The Tribunal does not accept that the applicant was forced to go into hiding as a result of threats from the Awami League. The Tribunal does not accept that he fled Bangladesh because of a fear of harm as a result of his political activities or opinions.
21. The Tribunal has considered the letters provided by [Mr A] and [a BNP officeholder in Dhaka]. Neither of these letters refer to the applicant having been harmed in Bangladesh, having been forced to go into hiding for 19 months or having been abducted. The Tribunal finds it very surprising that persons in the BNP who claim to have known the applicant in Bangladesh as a result of his political activities would not be aware of the incidents that the

applicant claims occurred and the effect that these incidents had on the applicant's life. The Tribunal also finds it surprising that the letters would not refer to the other positions that the applicant claims to have held in the party, or that he has been an active member of the party since 1993. Furthermore, as discussed with the applicant at the hearing, the information available to the Tribunal indicates that forged or fraudulently obtained documents are readily available in Bangladesh² which raises doubts in the Tribunal's mind about the genuineness of the documents. In light of the country information and the concerns of the Tribunal about the content of the letters, the Tribunal is not satisfied that the letters are genuine. Therefore it does not consider that they overcome the concerns of the Tribunal discussed above.

22. The applicant provided photographs of himself participating in claimed BNP activities in Bangladesh. The Tribunal found the applicant's evidence in relation to the origin of these photographs to be unpersuasive. He stated that his nephew sent him the photographs in response to the applicant's request. He initially stated that the photographs were from his camera at home. When the Tribunal asked who took the photographs he claimed that his friends took the photos even though he didn't ask them to. He stated that he is not in the habit of taking photographs himself of party events. If this was the case the Tribunal finds it surprising that he had his camera with him at the events. When the Tribunal asked whether it was the same person who took all the photos the applicant then changed his evidence and stated that photographs were not all from his camera but were collected by his nephew and sent to him. As discussed with the applicant at the hearing, the Tribunal finds it surprising that multiple people would take the applicant's camera from him and photograph the events depicted. In light of these concerns and the Tribunal's credibility concerns discussed above, the Tribunal places little weight on the photographs.
23. The Tribunal considers reliable evidence from various sources (including the media reports and references submitted by the applicant's representative in their lengthy submission) that political violence is a frequent occurrence in Bangladesh. The Awami League and the BNP have a long history of conflict.³ The alternating periods of rule have corresponded with massive demonstrations and strikes carried out by the opposition party.⁴ The current BNP-led opposition has intermittently boycotted the current parliament since its formation, and continues to organise hartals (mass protests) to oppose the Awami League government's initiatives.⁵ A number of reports refer to BNP supporters receiving adverse treatment from supporters of the Awami League, which took government following its victory at the 2008

² see Research Directorate, Immigration and Refugee Board of Canada, 'Bangladesh: reports of fraudulent documents', 20 September 2010, BGD103532.E; Research Directorate, Immigration and Refugee Board of Canada, 'Bangladesh: Prevalence of fraudulent, forged or fake documents and genuine documents obtained by fraudulent means ...', 8 August 2005, BGD100388.E; UK Home Office, *Country of Origin Information Report - Bangladesh*, 11 August 2009, paragraph 35.02; Australian Department of Foreign Affairs and Trade (DFAT) cable DA19732, dated 26 July 1988, CX2690

³ Amundsen, I 2012, *Parliament of Bangladesh: Boycotts, business, and change for the better*, Chr. Michelsen Institute, CMI Brief vol. 11 no. 2, March, p.1 at <http://www.cmi.no/publications/file/4423-parliament-of-bangladesh-boycotts-business.pdf> Accessed 5 July 2013; Freedom House 2013, *Freedom in the World 2013 – Bangladesh*, p.1 <http://www.freedomhouse.org/report/freedom-world/2013/bangladesh> Accessed 6 June 2013.

⁴ Freedom House 2013, *Freedom in the World 2013 – Bangladesh*, p.1 <http://www.freedomhouse.org/report/freedom-world/2013/bangladesh> Accessed 6 June 2013; Lansdorf, T (ed) 2012, 'Bangladesh', *Political Handbook of the World Online Edition*, CQ Press, Washington, pp.5-6 <http://library.cqpress.com/phw/document.php?id=phw2012_Bangladesh&type=toc&num=15 Accessed 5 July 2013.

⁵ Amundsen, I 2012, *Parliament of Bangladesh: Boycotts, business, and change for the better*, Chr. Michelsen Institute, CMI Brief vol. 11 no. 2, March, p.3 <http://www.cmi.no/publications/file/4423-parliament-of-bangladesh-boycotts-business.pdf> Accessed 5 July 2013; Freedom House 2013, *Freedom in the World 2013 – Bangladesh*, p.2 <http://www.freedomhouse.org/report/freedom-world/2013/bangladesh> Accessed 6 June 2013.

parliamentary election. Other reports refer to clashes between BNP and Awami League supporters. The Bangladeshi police force is highly politicised and is used by the government of the day as a tool against political opponents. Instances of BNP supporters receiving adverse treatment from security forces are reported, although BNP supporters have also attacked security forces, or received attention from them due to violence committed during demonstrations and *hartals* (strikes). The incumbent Awami League government has withdrawn “politically motivated” cases against their own supporters while leaving those against BNP politicians in place.⁶ Recent reports suggest that the violence has increased in the lead up to the planned election in January 2014.⁷ No reports were located which refer to the treatment of ‘non-active’ BNP supporters.

24. The applicant was able to provide some detail about the BNP’s policies, flag and local election results and candidates. Although the Tribunal considers that much of this information can be learnt, the Tribunal is willing to accept that the applicant is a supporter of the BNP. However the BNP is the main opposition party in Bangladesh. The Awami League and the BNP command the loyalty of the majority of voters and dominate politics in Bangladesh. Between 1991 and 2010 the two parties have contested four elections, alternately winning each one and ruling one after the other.⁸ In the 2008 Parliamentary election the BNP received a total of more than 1.3 million votes in the Dhaka constituents alone.⁹ The applicant’s representative has submitted that a person with no history of overt political activity may nevertheless be persecuted and have a political opinion imputed to them. While the Tribunal agrees that this may occur in certain circumstances, the independent country information referred to above suggests that BNP supporters who suffer harm are those who are active in the BNP and that there is more required than merely being a supporter of the BNP for there to be a real chance of harm. Although the Tribunal accepts that there is an imminent election and that there has been increasing political violence in Bangladesh as a result, in light of the large number of supporters of the BNP and the independent country information, the Tribunal is not satisfied that merely being a BNP supporter is sufficient for a finding that there is a real chance of the applicant being harmed in Bangladesh.
25. In light of the Tribunal’s adverse credibility finding discussed above and the Tribunal’s findings that the applicant was not harmed or persecuted in Bangladesh as he has claimed despite supporting the BNP for many years, the Tribunal finds that the applicant has exaggerated his role and prominence in the BNP. The Tribunal is not satisfied that he has

⁶ Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May; Human Rights Watch 2011, *World Report 2011 – Bangladesh*, 24 January; Freedom House 2011; ‘Bangladesh shuts down pro-opposition newspaper’ 2010, *Agence France-Presse*, 2 June; US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Bangladesh*, 8 April, Section 2.a.; ‘Conflicts upset grassroots’ 2010, *The Daily Star*, 19 December - at <http://www.thedailystar.net/newDesign/news-details.php?nid=166514>. Accessed 13 September 2011

⁷ “Bangladesh to hold election on January 5, opposition protests” *Reuters* 25 November 2013 - at <http://in.reuters.com/article/2013/11/25/bangladesh-election-idINDEE9AO0B820131125>. Accessed on 4 December 2013; “US concerned over political situation” *The Daily Star*, 21 November 2013 – at <http://www.thedailystar.net/beta2/news/us-concerned-over-bangladesh-polls/>. Accessed 4 December 2013.

⁸ Amundsen, I 2012, *Parliament of Bangladesh: Boycotts, business, and change for the better*, Chr. Michelsen Institute, CMI Brief vol. 11 no. 2, March, p.1 <<http://www.cmi.no/publications/file/4423-parliament-of-bangladesh-boycotts-business.pdf>> Accessed 5 July 2013; Uz Zaman, R 2012, ‘Bangladesh – Between Terrorism, Identity and Illiberal Democracy: The Unfolding of a Tragic Saga’, *Perceptions Journal of International Affairs*, vol. XVII, no. 3, Autumn, p.162 <http://sam.gov.tr/tr/wp-content/uploads/2012/09/Autumn_2012.pdf#page=153> Accessed 5 July 2013

⁹ See “National Election Result” *Election Commission Bangladesh* at <http://123.49.39.5/result/index.php?lang=en>. Accessed 4 December 2013.

been active in the BNP in Bangladesh as he claimed or would be active in expressing his political views if he returned to Bangladesh. The applicant may favour the policies of the BNP over those of the Awami League. However the Tribunal is not satisfied that he has been an active supporter of the BNP or that he might be perceived as such if he returns to Bangladesh.

26. The Tribunal has considered the activities of the applicant while in Australia. The applicant has provided a letter of support from [an officeholder in]BNP Australia dated [in] January 2013, which states that the applicant was a General Member of [a Dhaka suburban] branch and that he works for BNP Australia. No further detail is provided as to the role the applicant plays in BNP Australia or what activities he has participated in while in Australia. The applicant claims to have attended meetings in [Australia]. However when the Tribunal asked him whether he had received a notice about a meeting held the day before the hearing¹⁰ the applicant stated that he did not know about it because he was very sick and had his phone off. When asked what he was sick with he stated that he did not know what it was but he was weak and fell down. The Tribunal found his evidence in relation to this to be very vague and unpersuasive. While the Tribunal accepts that the applicant has been involved with the BNP Australia the evidence before it does not suggest that he has been active in the organisation. As discussed with the applicant at the hearing, section 91R(3) of the Act requires that the Minister (and therefore the Tribunal) disregards any conduct engaged in by the applicant in Australia unless:

(b) 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 within the meaning of the Refugees Convention as amended by the Refugees Protocol

27. In light of the Tribunal's significant credibility concerns discussed above, the Tribunal is not satisfied that the applicant participated in the BNP activities in Australia other than for the purposes of strengthening his claims to be a refugee. Therefore the Tribunal disregards this conduct in assessing the applicant's claims to be a refugee.
28. For the reasons given above, the Tribunal is not satisfied that there is a real chance that the applicant would be subject to serious harm on the basis of his political opinion or activities if he was to return to Bangladesh.
29. The applicant's representative has submitted that the applicant may be subject to persecution as a member of the particular social group of "businessmen having opposition political affiliation as a BNP member and supporter". In support of this claim they referred to one report from 2010 about the abduction of a businessman and political activist and newspaper reports in paragraphs 62 to 68 of the submission (which do not appear to relate to businessmen). The Tribunal is not satisfied that this alone suggests that the applicant would be targeted. Furthermore, in light of the Tribunal's findings that the applicant has not been targeted in the past despite operating his business since 2001 and that he has exaggerated his role and prominence in the BNP, the Tribunal is not satisfied that there is a real chance that the applicant would be harmed because he is a businessman who supports the BNP.
30. The applicant's representative also submitted that the applicant may be subject to persecution as a member of the particular social group of "member of a family unit of BNP members". The representative has not referred to any country information which suggests that family members of BNP members are targeted. Although the applicant did not himself claim to fear

¹⁰ Which an unrelated applicant active in BNP Australia had referred to.

returning to Bangladesh because of his brother, he did state that his [relative] was [a senior officeholder] of BNP within his college and was detained for one month in Bangladesh. He claims that as a result of this his [relative] fled Bangladesh. Therefore the Tribunal has considered whether there is a real chance that the applicant would be harmed because of his brother. In light of the Tribunal's credibility concerns in relation to the applicant, the Tribunal has significant doubts about the truth of this claim. However, even if the Tribunal is wrong and the applicant's brother (or any other family member) was prominent or active in the BNP there is no evidence to suggest that the applicant would be targeted as a result of this. The Tribunal has found that the applicant was not targeted in the past and his evidence suggests that the applicant's remaining [relatives] in Bangladesh have not had any difficulties. Therefore the Tribunal is not satisfied that there is a real chance of the applicant being harmed because of his [relative's] or family's political activities.

31. Finally, the applicant's representative submitted that the applicant would be subject to persecution as a member of the particular social group of "BNP supporters and members facing extortion and harm from the Awami League miscreants". The Tribunal has found that the applicant was not subject to extortion in Bangladesh in the past and there is no credible evidence before it to suggest that the applicant holds any position or is involved in activities within the BNP which would make him subject to extortion and harm in the future if he was to return to Bangladesh. Therefore the Tribunal finds that there is no real chance that the applicant would be subject to persecution as a member of the particular social group of "BNP supporters and members facing extortion and harm from the Awami League miscreants" (even if such a particular social group exists).
32. For the reasons given above, having considered the applicant's claims individually and cumulatively, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

Complementary protection criteria

33. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa).
34. For the reasons discussed above the Tribunal has found that the applicant is not a credible witness. It is not satisfied that the applicant has been attacked, mistreated, targeted, harmed or subject to extortion in Bangladesh. The Tribunal does not accept that he held the positions in the BNP that he has claimed or was involved in the political activities that he has claimed. The Tribunal does not consider the applicant credible with regard to his claimed experiences in Bangladesh and does not accept that he was harmed or threatened in the past for the reasons he has given. The Tribunal does not accept that he was forced to go into hiding or that he left Bangladesh for the reasons he claims. Although the Tribunal accepts that there is an imminent election and that there has been increasing political violence in Bangladesh as a result, in light of the large number of supporters of the BNP and the independent country information, the Tribunal is not satisfied that merely being a BNP supporter is sufficient for a finding that there is a real risk of the applicant being harmed in Bangladesh. The Tribunal has considered the applicant's political activities in Australia. Although it accepts that he has been active in the BNP Australia it considers that he was motivated by the desire to strengthen his protection visa application. The Tribunal does not consider that his activities in Australia reflect any commitment to continue any such activism once he returns to Bangladesh. Although the Tribunal accepts that the applicant is a supporter of the BNP, the

Tribunal is not satisfied that he has been an active supporter, or would increase his activities if he was to return to Bangladesh or that he might be perceived as an active supporter if he returns to Bangladesh. Therefore the Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that he will suffer significant harm as a result of his political opinions if he returns to Bangladesh.

35. For the reasons discussed above, the Tribunal has found that there is not a real chance that the applicant would be harmed as a businessman who supports the BNP or because of his family's support of the BNP. In *MIAC v SZQRB*, the Full Federal Court held that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition.¹¹ In accordance with Ministerial Direction No. 56, the Tribunal has had regard to policy guidelines prepared by the Department of Immigration – *PAM3 Refugee and humanitarian - Complementary Protection Guidelines*. However, to the extent that these conflict with the findings in *SZQRB* the Tribunal has relied on the relevant case law. The Tribunal accepts that the test for 'real chance' is the same as that for 'real risk'. Therefore, for the reasons discussed above the Tribunal is not satisfied that there is a real risk that the applicant will be harmed as a businessman who supports the BNP or because of his family's support of the BNP.
36. Having considered the applicant's claims individually and cumulatively, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
37. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

38. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Rowena Irish
Member

¹¹ *MIAC v SZQRB* (2013) 210 FCR 505 per Lander and Gordon JJ at [246], Besanko and Jagott JJ at [297], Flick J at [342].

ATTACHMENT 1 - RELEVANT LAW

1. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

Refugee criterion

2. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
3. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
4. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
5. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
6. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
7. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
8. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the

motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

9. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
10. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
11. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

12. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia 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 applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
13. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
14. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

15. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.