

REFUGEE APPEAL NO. 10/92

RE **MI**

AT AUCKLAND

Before:	R.P.G. Haines (Chairman)
	A.R. Mackey (Member)
	J.M. Priestley (Member)
	A.M. Rozdilsky (UNHCR)
Counsel for the Appellant:	Mr C.M. Treadwell
Appearing for the NZIS:	Mr P. Coates
Date of Hearing:	15 June 1992
Date of Decision:	22 July 1992

## DECISION

This is an appeal against the decision of the Refugee Status Section of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a national of Bangladesh.

## BACKGROUND

What follows has been taken from two items referred to in the course of the evidence. The first is an article by Baxter, Bangladesh: A Parliamentary Democracy, If They Can Keep It (1992) Current History 132. The second is from the United States Department of State Country Reports on Human Rights Practices for 1991 (February 1992) 1353.

Bangladesh became independent in 1971 and initially adopted a parliamentary system. But Parliament abruptly changed the constitution in 1975 and introduced a one-party presidential system. It also imposed restrictions on press freedom and civil rights. Three months later, after a bloody military coup in which the country's founding father, Sheikh Mujibur Rahman, was assassinated, Bangladesh brought in a multi-party presidential form of government and relaxed curbs on press and civil rights. In March 1982 Lieutenant General Hussain Muhammad Ershad staged a coup that removed the elected regime of President Abdus Sattar. Martial law was declared and many provisions of the 1972 Constitution were suspended, especially those relating to human rights. Political parties - including the Awami League and the Bangladesh Nationalist party (BNP), which were to be key in Ershad's eventual overthrow - were banned. The press was restricted, and arrests of dissidents were common. Trials were held in military courts, if they took place at all.

Following considerable pressure from both inside and outside the country to hold elections and to "democratize", Ershad authorized a resumption of political activity in January 1986. In May 1986 elections took place. The Awami League agreed to participate but the BNP refused to do so, maintaining that free and fair polling was not possible under the Ershad government. Amid widespread charges of vote-rigging, Ershad's Jatiya Party won a slim majority in the unicameral parliament, which was in fact an almost powerless body under the prevailing presidential system. The Awami League boycotted sessions of Parliament for a time while the members who attended passed an Act that legalized the steps taken during martial law. The Awami League also boycotted the presidential election in October 1986, which Ershad won easily. Martial law was lifted in November 1986 and Ershad became President under the Constitution as it then stood.

In November 1987 the Awami League and BNP joined together to launch a mass movement against Ershad which did not succeed in dislodging him but instead resulted in Parliament's

dismissal. In March 1988 a new election was held, which both the Awami League and the BNP boycotted. The result was an almost complete Parliamentary victory for the Jatiya Party.

For almost three years it appeared that the Ershad regime was safe, despite vocal opposition within the country and continued criticism from without. But in October 1990 the Awami League and BNP were once again temporarily united and there were mass protests and anti-government demonstrations. On 4 December 1990 Ershad announced his resignation.

Parliamentary elections were held on 28 February 1991. The BNP won 140 of the 300 seats. The Awami League and its allies won 99; the Jatiya Party 35; the Jamaat Party 18; and the remaining seats were scattered among smaller parties and independents. The BNP was short of a majority, but the Jamaat Party agreed to work with it in subsequent indirect elections for 30 women's seats. These yielded 28 additional seats for the BNP, which gave the party a clear majority in Parliament, while the Jamaat took the other two women's seats.

One major difference between the parties was that the Awami League called for the reintroduction of the parliamentary system while the BNP favoured a strong presidency (sometimes known as "Ershad's system without Ershad"). However, following the 1991 elections, the BNP abandoned its support for the presidential system and began favouring a parliamentary system. Two Bills to effect the move to a parliamentary form of government were introduced in the legislature, one by the BNP and the other by the Awami League. In an effort to encourage parliamentary unity, the government appointed a Select Committee, drawn from both parties and including other figures, to reconcile the bills. The Committee's constitution-amending legislation was passed by Parliament in August 1991 with the support of both the BNP and the Awami League and approved in a referendum the following month.

According to the Department of State Country Reports on Human Rights Practices for 1991 1353 the human rights situation in Bangladesh improved in 1991. The February 1991 elections and their aftermath "represented a significant improvement both in the ability of citizens to change their government through democratic processes and in freedom of the press".

These political developments must be kept in mind in order to provide a context for the appellant's narrative of his case.

## **THE APPELLANT'S CASE**

The appellant submitted a five-page typewritten statement in support of his refugee application dated 19 April 1990. He subsequently submitted a "Final Statement" dated 3 July 1991 just prior to the Refugee Status Section interview held on 11 July 1991. That statement is eleven pages in length and contains forty-two numbered paragraphs. Then on the day of the hearing of this appeal on 15 June 1992, the Authority received a third statement from the appellant dated 15 June 1992. It is fifteen pages in length and contains fifty-five paragraphs.

The appellant first entered New Zealand on 30 June 1989, ostensibly to attend a twelve month English language course. He remained in this country, however, for approximately five weeks only before returning to Bangladesh. He next arrived in New Zealand on 15 March 1990 and applied for refugee status on 19 April 1990. The ground of the application, as set out in the original statement, was fear of persecution on account of his political beliefs. As a member and activist in the BNP Party the appellant claimed to be in fear of the Jatiya Party.

Regrettably, there was an inordinate delay of just over twelve months before the appellant was interviewed by the Refugee Status Section. In that period, as we have pointed out, there were substantial changes to the political landscape in Bangladesh. In the result, the appellant was interviewed some four and a half months after the February 1991 elections brought the BNP to power. In his second statement the appellant raised a new ground in support of his application for refugee status, namely his claim to have converted from the Moslem faith to Christianity.

Little point would be served by our repeating the detail contained in the appellant's three statements. We intend to refer only to those passages which bear on the central issues of the appeal. The appellant claims:

1. Both the appellant's parents are still alive and live in Dhaka. His father is a wealthy businessman. The appellant has six brothers, all of whom live in Bangladesh. One is a university teacher, one a chemist, one a chartered accountant, one an airline pilot, one a sugar mill analytical chemist and the other is a schoolboy. The appellant's sister is at university studying political science.

The appellant's father was a strong supporter of the BNP.

2. In August 1979, while at college, the appellant joined the student wing of the BNP. He took an active part in the organization's activities.

3. In 1985 the appellant graduated from university with a Bachelor's degree in Commerce (with Honours).

4. At that time his father was a chief chemist in Bangladesh Chemical Industries Corporation and used his influence to secure a job for his son in the same organization as a trainee assistant/accountant.

5. The appellant continued to play an active part in politics and claims that through his activities and loyalty to the BNP he became known to members of both the Jatiya Party and the Awami League.

6. In November 1987 there was a stepped-up campaign against the Ershad Government which was followed by reprisals by members of the security force. The appellant says that on one occasion a childhood friend, then in the armed forces, informed him that his life was in danger. Forewarned, the appellant escaped arrest because his father bribed military officials before they could take action.

7. The appellant left Bangladesh Chemical Industries Corporation in November 1987 and returned to university in order to study for a Master's degree in Accounting. It was apparently a one and a half year course.

At university the appellant played a prominent role in politics and even generated jealousy from junior members of the BNP who did not agree with his rapid promotion. However, senior members of his party regarded him as a very valuable member.

8. The appellant claims that from time to time when political tensions were high his father sent him to Thailand until matters calmed down. The appellant said that his first trip to Thailand was in June 1989. The Authority notes that prior to that trip a place had been arranged for the appellant in the one-year English course held by Crown English Language Schools, Auckland. The documents show that the appellant was enrolled for a course commencing in June 1989 and ending in June 1990. The letter of acceptance from the Language School is dated 26 May 1989. On 24 June 1989 the appellant, having arrived in Bangkok, submitted a student visa application to the New Zealand Embassy. A student visa was issued on 29 June 1989. The appellant's visa application was supported by a sponsorship from his father dated 25 June 1989. The appellant told the Authority that all arrangements had been made by his father and that the appellant stayed the entire time in the hotel in Bangkok. He said that he knew nothing of the arrangements, had never applied to enrol at the Crown English Language School and knew nothing of the two character certificates submitted to the New Zealand Embassy with the visa application. He said that both character certificates were false.

9. As previously mentioned, the appellant arrived in New Zealand on 30 June 1989 but returned to Bangladesh at the end of July or the beginning of August 1989 after receiving a fax from his father that it was safe to return.

10. The appellant further claims that he made seven or eight trips to Thailand thereafter and an equal number of trips to Singapore. It is possible that the trips made to Singapore were in 1990.

11. In February 1990, at a time when the appellant had only made one trip to Singapore there was an assassination attempt on Khaleda Zia, the leader of the BNP (and now Prime Minister of Bangladesh). As a result, a few days later the BNP called for a general strike and the appellant went to his village area to generate support for the strike. He says that there was considerable hostility from the other two parties, namely the Jatiya Party and Awami League. A number of arrests were made by police. Two days later the Awami League called for a strike in opposition to the BNP strike. On that day, 28 February 1990, the appellant was approached by six or seven members of the Jatiya Party and asked why he did not leave the BNP. Suddenly they attacked him. The appellant ran to a canal and jumped in. The Jatiya Party members fired a pistol at him but missed. After three hours of swimming he found a fishing boat which provided assistance and he eventually was able to return to his university which is situated in Dhaka.

12. The appellant continued to play a full part in the ongoing political activities but approximately four days later the police called at his university hall specifically looking for him. The appellant returned to his family home in Dhaka. That night strangers called at the home and warned the appellant's father that the appellant should leave the BNP. The appellant hid in a safe. He was told that there were charges against him for burning government property, having illegal arms and making threats of violence.

13. On 5 March 1990 a group of Jatiya Party supporters again visited the house of the appellant's father and repeated their threats. They warned that if the appellant carried on with the BNP he would be killed. The appellant was told by his father that the men were armed. He had given them money and paid them off "in the meantime" but a long term solution would have to be found.

On the advice of his father the appellant made arrangements to leave Bangladesh permanently to save his life. He said that at the time he left he was important to the BNP because he was in control of 350 to 400 people in his village and 2,000 to 2,200 at his university. He was the person they looked up to and if he gave up his BNP activities then others would drop out as the appellant "was something of an inspiration to them". Because he had been warned about taking part in these activities he fears certain death if he returned to Bangladesh.

14. In his second statement, the appellant's prognosis for the survival of the BNP Government installed in 1991 was a poor one. He believed that an army coup in favour of the Awami League would occur before the end of 1991. He also believed that Prime Minister Zia would not have the power to change the Constitution, that many supporters of the BNP had deserted the party and it had "considerably lost its strength".

In the light of the developments we have referred to, the Authority finds that the appellant's assessment of the political situation in Bangladesh is out of touch with reality.

15. The appellant, as mentioned, arrived in New Zealand on 15 March 1990. The BNP won the elections on 28 February 1991. In the Authority's view, the developments in Bangladesh, being of a substantial nature, brought to an end whatever well-founded fear of persecution the appellant may have had. The fact of the matter is that his own party, following free and fair elections, now holds the reins of power in Bangladesh.

16. In the first week of June 1991, three months after the BNP came to power in Bangladesh and six weeks prior to the Refugee Status Section interview, the appellant attended for the first time the Milford Baptist Church. He says that on this first visit he became a convert to Christianity.

The appellant said that from March 1990 to April 1991 he attended the Church of Scientology in Queen Street but had become disenchanted with this organization as they talked only of the past, not about the future. It was then that he heard that the preacher at the Milford Baptist Church was "a man of God". The appellant says that he was baptized on 4 August 1991.

It is against this background that the appellant now advances a second ground in support of his refugee application, namely that as a person previously of the Moslem faith who has converted to Christianity, he faces persecution were he to be returned to Bangladesh.

Produced in evidence was an affidavit by Pastor Brian M. Winslade of the Baptist Church now living in Te Puke. He deposes that for a period of two and a half years commencing in 1989 he was engaged in Christian missionary work in Bangladesh and therefore has some knowledge and experience of the religious and political climate of Bangladesh. He mentions, inter alia that:

a) Bangladesh is approximately eighty-five per cent Moslem, twelve per cent Hindu, two per cent Buddhist, .5 per cent Animist and .5 Christian.

b) While official government policy is to support freedom of religion, there is considerable religious prejudice towards those who are of minority religious affiliation.

c) Bangladeshis who convert from Islam to Christianity are in a different position to those who were born as Christians. Converts undergo "immense persecution and pressure" both from within their own families and from the wider community. It is not uncommon for converts to be disowned and disenfranchised by their family and at other times physically beaten, drugged or poisoned. Some employers will dismiss a new convert and landlords have been known to evict them as tenants.

d) The government is apparently unwilling to exercise its power to protect converts to Christianity.

e) Pastor Winslade is himself personally aware of an incident which occurred in 1990. A small group of new converts, with whom his Mission had considerable involvement, were taken before a public meeting and severely beaten.

f) He confirms that the appellant is correct when he says:

"(a) His own family would inform on him.

(b) Because of his conversion he would not receive government protection against either:

i) Those who would seek to reconvert him to Islam.

ii) Those who would seek retribution for his past political activities. It is a sad fact, but Fundamentalist Islamic principles pervade all levels of the State administration. [The appellant's] conversion to Christianity would be very likely to outweigh [sic] past loyalties."

In addition, the appellant has produced in evidence a letter from his mother. The document is written in Bengali but we have been supplied with a translation prepared by the appellant himself. The letter is dated 28 June 1991 and states that the appellant's family (with the possible exception of his mother) have now rejected him. His mother advises him to renounce Christianity. The appellant's statement continues:

"As a converted Christian, life would be hell for me if I returned. I can have no contact with my family. They are certain to have reported this conversion to the local community leaders. In fact, it is part of Moslem faith that even a brother should report on a brother or a father if they have broken the religious rules. Conversion is the worst offence and may even cause the family members to kill me. In Moslem faith this can be seen as an act of faith. It is a responsibility to kill such a person to prevent them producing children who are also Christians. So my family would:

a) Not give me any support or aid.

b) Report me for my conversion.

c) May even try to take an act of vengeance against me themselves."

Addressing society at large, the appellant stated that:

"Moslem people believe that if they kill a converted person then this is a key to paradise for the next 7 generations. Conversion is a capital offence in Moslem religion. I would not be safe from any Moslem, whatever his station."

Additional material on the New Zealand Immigration Service file comprises:

1. A letter from a Mrs JB which is undated, but apparently received by the appellant's solicitors on 15 July 1991. It attests to the fact that Mrs JB met the appellant "five weeks ago" and that the appellant had attended Milford Baptist Church with her and her husband. She states:

"In the case of [the appellant], I understand he has come to a knowledge of the Christian faith, by seeking it out **over the last three years**, at a high cost to himself having been a Moslem. As a result, his faith is strong even though it is only five weeks since stating openly his desire to be a Christian ...."

[emphasis added]

From this letter the appellant's first attendance at the Milford Baptist Church would be approximately some time in the week commencing Sunday, 9 June 1991. The reference to seeking out Christian faith "over the last three years" is not supported by the appellant's own evidence.

2. Next there is a letter from Pastor Gordon Duncan of the Milford Baptist Church dated 12 July 1991. It states:

"About six weeks ago [the appellant] came to a Sunday morning service at Milford Baptist Church with one of our members Mrs JB. At the end of the service he asked to talk further about becoming a Christian. I talked with him about the implications of making a commitment to Christ. He was clear in his understanding of what this meant and made a personal response in faith to follow Christ. I have no doubt he was genuine in this decision. I understand that since then he has been attending Elim Church which is closer to where he lives."

Although there is some variation, the date of the appellant's attendance at the church is consistent with Mrs JB's account. It is to be noted that Pastor Duncan refers to only one meeting with the appellant.

3. Finally, there is a letter dated 18 July 1991 from Pastor Bruce Taylor of Auckland City Elim Church in which it is stated:

"[The appellant] has been attending Auckland City Elim Church for several weeks now and is fitting in well to our church family.

His commitment to Christ and conversion to Christianity appears to be very genuine and [the appellant] is growing well in his christian faith."

No further references or letters have been produced to confirm the appellant's claim that in the intervening twelve months since the tendering of these letters to the Refugee Status Section he has been attending the Elim Church on a regular weekly basis.

Mr Treadwell's submission was that the basis of the appellant's case is two-fold:

1. That as a former, active, high-ranking member of the Bangladesh National Party the appellant has a well-founded fear of persecution by opposition party members (the Jatiya Party and/or the Awami League), the BNP (effectively, at present, the State) being unable to protect him.

2. As a former Moslem, now converted to Christianity, he has a well-founded fear of persecution by the State and/or agents of the State, the State being unable and/or unwilling to protect him.

The appellant's own articulation of his case was somewhat more equivocal. According to the Chairman's note he stated:

"I prefer my political ground for refugee status as situation is still bad. I can't survive as Jatiya Party very powerful. Also religion ground is important too.

If I go home Jatiya and Awami will attack me because of support of BNP.

The religion ground is more a problem than political ground. I prefer my political ground."

We propose to examine each of the grounds advanced and in doing so will bear in mind Mr Treadwell's injunction that account should be taken of the effect of the appellant's religious conversion upon protection offered at the political level.

## **FEAR OF PERSECUTION BASED ON RELIGIOUS BELIEF**

In fairness to Mr Treadwell, it must be mentioned that in his opening submissions he acknowledged that the primary ground of the appeal is the religious ground. We believe that this concession was properly made.

In our view the principal issue is whether the appellant is to be believed in respect of his claim to have become a convert to Christianity.

The conclusion we have come to, having closely observed the demeanour of the appellant during the course of the hearing, is that he is not a credible witness. We have also taken into account the following:

1. Following the appellant's arrival in New Zealand on 15 March 1990, his first interest in Christianity began the following year in June 1991, at a time when radical political changes in Bangladesh had entirely removed whatever grounds he may have previously had to claim refugee status. The timing of his "conversion" is therefore fortuitous, to say the least. We have concluded that the "conversion" has been advanced as a device to shore up what would otherwise be a baseless case.
2. The three letters confirming the appellant's attendance at Milford Baptist Church and the Auckland City Elim Church are dated 15 July 1991, 12 July 1991 and 18 July 1991 respectively. The documents therefore relate to the appellant's activities in June 1991 and the first two weeks of July 1991. He has produced no further letters or testimonials as to his attendance at church in the intervening twelve months. This is surprising given his claim that he attends the Elim Church no less than three times each Sunday and a bible class each Wednesday. The appellant is an intelligent man and must know that his claim to be a convert to Christianity is the single most important feature of his case on appeal. His failure in these circumstances to obtain confirmation or corroboration of his church attendance is significant. Likewise, it is surprising indeed that no baptismal certificate has been produced confirming that he underwent such ceremony on 4 August 1991 as claimed.
3. Indeed, upon close examination the appellant's case is surprisingly deficient in corroboration overall. We accept that many refugees arrive in New Zealand without documentation and that it would be unreasonable, if not impossible, for them to obtain, post-arrival in New Zealand, documentation from their country of origin establishing or pertaining to their birth, educational qualifications and employment record. However, the appellant faces no such difficulty. Prior to his claimed conversion he had the support of a large and influential family and no reasonable excuse to explain his failure to obtain documents to support his claims.
4. In particular, he claims to have a university degree. A copy of that degree was not produced at the Refugee Status Section interview on 11 July 1991, nor at the appeal hearing. Nor was any other documentation produced to establish his claim to have attended a university and to having commenced post-graduate study for a Master's degree. Asked by the Authority whether he had any evidence of his qualification, the appellant said that he once had his degree certificate with him in New Zealand, but that when the points system was introduced he sent it in June 1991 to the British High Commission in Dhaka for attestation. He further claimed that he showed the

degree certificate to his then solicitor who, he claims, advised him that a translation would be required. The appellant told the solicitor that he (the appellant) would send the degree certificate back to Bangladesh for translation there, as there were no interpreters in New Zealand. He claims that his solicitor was happy with this proposed course of action and further, that the solicitor did not take a photocopy of the document for his file. We reject this explanation out of hand. It is simply not true that there are no competent Bengali interpreters in New Zealand, particularly during the period in question. Furthermore, the claim that the certificate had to be sent back to Bangladesh for attestation by the British High Commission is an absurd nonsense. Quite apart from the fact that the appellant has given two implausible, if not contradictory, accounts for the absence of the certificate from New Zealand (attestation/interpretation), we cannot accept that his then lawyer, a person of some experience in refugee matters, would have acquiesced in the appellant's absurd proposals particularly when the Refugee Status Section interview itself was scheduled for hearing on 11 July 1991. We also note that the points system came into effect from 18 November 1991 and if the appellant's claims are correct, it is remarkable that at a distance of at least twelve months (from June 1991), the appellant has not secured the return of the degree certificate, a copy, or some other confirmation of his attendance at university and graduation.

5. It is equally strange that the appellant has not been able to obtain a reference from his previous employer, Bangladesh Chemical Industries Corporation, notwithstanding his father's obvious ability to secure such document on his behalf.

6. In addition, the observation must be made that no evidence whatever has been produced to support the appellant's contention that he was an active, high-ranking member of the Bangladesh National Party. Since at least the date of the appellant's arrival in New Zealand in March 1990 he has had every opportunity to obtain documentation to support his case. Given that his application was originally based solely upon his political activities, it is remarkable indeed that he obtained no letters or references to support claims central to his (then) case. He now says that since his conversion he is unable to obtain such documentation. That, however, does not explain why, in the period exceeding twelve months following his arrival in New Zealand and prior to his conversion, the documentation was not sought or obtained.

7. The appellant told the Authority that he only discovered the consequences of renouncing his Islamic faith when he received his mother's letter dated 28 June 1991. We reject this evidence as implausible. Given the appellant's detailed account (see the third statement tendered at the appeal hearing) of the consequences of converting from Islam to Christianity and the claimed drastic nature of those consequences, we find it difficult to believe that a man of the appellant's intelligence would, at the time of his purported conversion, have been unaware of the feared consequences of that conversion, both in terms of Bangladesh society at large, and his own family circle in particular.

On these cumulative grounds, coupled with our own assessment of the appellant as a witness, we find that the appellant is not a credible witness and that his belated claim to having become a convert to Christianity is a ploy to bolster an application for refugee status which is otherwise without foundation. We do not accept that the appellant has converted to Christianity. At the most, he has gone through the motions of giving the appearance of "conversion" in order to provide a patina of plausibility to a meritless case.

It follows in the light of our findings on credibility that the appellant does not have a well-founded fear of persecution for reasons of religion.

However, even if our findings on credibility had been different, our conclusion would have been the same. The appellant's case is that a distinction must be drawn between "ordinary Christians" and "converts from Islam to Christianity". In Mr Treadwell's submissions, the former are tolerated, the latter are not. This was said to be an important distinction. Reliance was placed upon the affidavit from Pastor Winslade.



Mr Treadwell also drew our attention to the following passage from the Department of State Country Reports on Human Rights Practices for 1991 (February 1992) at 1360:

"Bangladesh, eighty-seven per cent of whose people are Moslems, has recognized Islam as its state religion since the passage in June 1988 of the Eighth Constitutional Amendment. This amendment also states that all other religions may be freely practiced. **Although conversion is possible, there is strong social resistance to conversion from Islam** ...

...

Government policy continues to permit various religions to establish places of worship, train clergy, travel for religious purposes, and maintain links with coreligionists abroad. Missionaries, including foreign clergy who serve expatriate congregations, are permitted, **but they may not proselytize Moslems** ....

...

In January, following the outbreak of hostilities in the Persian Gulf, there were reports of violence directed against Christians. There were sporadic incidents of communal strife, including attacks on churches and Christian institutions. Some Christian nongovernmental organizations (NGO's) were harassed by antiwar demonstrators. **The government acted quickly to restore order.**"

[emphasis added by the Authority]

Three points emerge from this report:

1. Conversion from Islam **is** possible, though there is strong social resistance to such conversion.
2. Christian proselytization of Moslems is forbidden.
3. In recent times the Government has acted quickly to restore order when violence against Christians has occurred.

Having carefully considered both Pastor Winslade's affidavit and the Department of State report, the conclusion we have reached is that even if the appellant is a genuine convert to Christianity, or is thought by other Moslems to have so converted, he will face discrimination in Bangladesh, but that that discrimination will not be of such a degree as to amount to persecution.

We were told by Mr Treadwell that the Elim Church can be described as Pentecostal or Evangelical and that it is part of its teaching that members have a duty to spread Christianity. Mr Treadwell further told us that Pastor Winslade was not counselling the appellant to avoid return to Bangladesh. On the contrary, Pastor Winslade believed that religious people should go out into the community to spread "the Word". What he was counselling the appellant to be aware of was the consequences of so doing, i.e. prejudice, hostility, retribution and physical harm. The appellant said that he, being aware of these possible consequences, did not resile from his duty to spread Christianity. But rather, he perceived his duty as being confined to non-Moslem countries.

Our assessment in the context of this alternative ground for our decision is that a real chance of persecution will only occur in the event of the appellant, upon return to Bangladesh, proclaiming his conversion and engaging in Evangelical or proselytizing activities. Were he to desist from such actions, he will face prejudice only. We do not consider that it would be unreasonable for him to accept a restraint against proselytizing activities as Article 18(3) of the International Covenant on Civil and Political Rights itself qualifies the "right" to freedom of religion:

"Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

In a predominantly Moslem country where the question of conversion from Islam to Christianity is an extremely sensitive topic, we do not consider it unreasonable for the Government to impose a prohibition on proselytizing activities by Christians. Such measures are justifiable on the grounds at least of public safety or order. We believe that this ruling is consistent in principle with our earlier decision in Refugee Appeal No. 21/92 Re MSI (1 May 1992) and the decision of the Immigration Appeal Tribunal in Atibo v Immigration Officer, London (Heathrow) Airport [1978] Imm AR 93.

Our further finding is that in the light of the prompt action taken by the Bangladesh Government at the time of the Gulf War, it cannot be said that the Government itself will engage in persecutory acts against the appellant, or knowingly tolerate such actions on the part of members of the community.

Our overall conclusion then is that the claim for refugee status on the grounds of the appellant's religious beliefs must fail.

In view of our finding that even if the appellant is **perceived** to be a convert to Christianity (even though not a genuine convert) there is no real chance of persecution upon his return to Bangladesh, we are not called upon to consider the difficult question whether contrived acts on the part of an applicant for refugee status, carried out in an absence of good faith as a means of generating or supporting an application for refugee status, can be relied upon. Three recent decisions addressing this issue in both the English and Australian contexts are R v Immigration Appeal Tribunal, Ex parte B [1989] Imm AR 166 (QBD); Somaghi v Minister for Immigration, Local Government and Ethnic Affairs (1991) 102 ALR 339; Heshmati v Minister for Immigration, Local Government and Ethnic Affairs (1991) 102 ALR 367.

In all three cases the issue was considered in the context of refugees "*sur place*". In R v Immigration Appeal Tribunal, Ex parte B [1989] Imm AR 166, 171 the Court observed that there must exist some principle whereby an immigrant cannot become entitled to political asylum merely by choosing so to conduct himself in the host country so as to create the very risk of persecution which then founds his claim to refugee status. It was recognized, however, that the precise limits of such a principle were not easily determined. Not all voluntary activities should be disqualified from consideration but bad faith and on occasions unreasonable conduct should. The issue had to be determined on a case by case basis. In the Somaghi and Heshmati decisions it was held by the Federal Court of Australia, on appeal, that actions taken outside the country of nationality, which were undertaken for the sole purpose of creating a pretext of invoking a claim to well-founded fear of persecution, should not be considered as supporting an application for refugee status. The fear of persecution, in such cases, will not be "well-founded".

These are difficult issues which we have not hitherto been called upon to decide. As we heard no argument from the parties and as we are able to dispose of the case without having to address these issues, they await to be determined on another occasion.

We turn now to the appellant's alternative ground, namely the fear of persecution based on his political opinion.

## **FEAR OF PERSECUTION BASED ON POLITICAL OPINION**

We address first the issue of credibility. We have already rejected the appellant as a credible witness. But whether or not the appellant's account is true, his claim to fear of persecution on political grounds can be shortly disposed of given that on any view of the facts, a person with his claimed degree of involvement in the BNP can no longer claim a bona fide fear of persecution in the light of the radical political developments which have occurred in Bangladesh since the resignation of Ershad.

The events of which the appellant speaks are now well in the past. The most serious incident occurred on 28 February 1990 and thereafter there was the visit a few days later by Jatiya Party

supporters to the home of the appellant's father. Almost two and a half years have elapsed since then and it is significant that in that time there has been no claim or evidence that Jatiya Party (or for that matter Awami League) supporters have called at the house of the appellant's father in search of the appellant.

Secondly, since the appellant's arrival in New Zealand, the political changes in Bangladesh have been very substantial. With the resignation of Ershad and the loss of office by the Jatiya Party in the February 1991 elections, the basis of the appellant's case evaporated, particularly as it is now his own party, the BNP, which is in office.

The appellant's own assessment of the political situation as given in his statement of July 1991 has proved to be without foundation, and indeed, we do not accept that his assessment was at the time in any event a reasonable one. There has been no army coup and Prime Minister Zia, in conjunction with the Awami League, has successfully amended the Constitution to create a parliamentary democracy. That change was approved by a referendum in September 1991. There is therefore broadly based support for the present constitutional arrangements and no evidence whatever has been produced that would suggest that the BNP is the debilitated party claimed by the appellant.

Our conclusion is that the appellant's claim to a fear of persecution on account of his political opinions is, objectively viewed, without foundation and it follows that there is no real chance of the feared persecution occurring.

As we are of the further view that the appellant's claimed or perceived religious conversion will not put him at risk upon return to Bangladesh, the feared loss of protection "at the political level" will have no significance. The reason is that the appellant does not have a well-founded fear of persecution on the grounds of his religious beliefs and therefore there will be no occasion for him to seek out protection at the political level.

## CONCLUSION

Our conclusion is that the appellant is not a person who has a well-founded fear of persecution for one of the five grounds recognized in the Refugee Convention. Refugee status is declined. The appeal is dismissed.

However, we do not wish to part from this case without drawing attention to a very important point raised by Mr Treadwell. He pointed out that following the interview by the Refugee Status Section on 11 July 1991, the two interviewing officers prepared a very full report some five pages in length containing twenty numbered paragraphs. Both interviewing officers signed the report on 22 July 1991. In it they reached the conclusion that the appellant be granted neither refugee status nor residence in New Zealand on humanitarian grounds. That conclusion was endorsed by a Supervising Immigration Officer on 30 September 1991.

It is established procedure that following an interview by the Refugee Status Section a report of the interview is first sent to the refugee applicant for comment prior to a decision being reached. This affords the applicant an opportunity to comment on, or correct the interview report or provide additional information. In this way it is intended that refugee applicants be afforded every opportunity to put their case.

In accordance with these procedures, by letter dated 24 July 1991 the Refugee Status Section sent to the appellant's solicitors a **part copy** of the interview report. They were sent only the first three and a half pages comprising paragraphs 1 to 16 (inclusive). Omitted from disclosure were the officers' assessment of the appellant's case and importantly, the fact that they had already reached a decision. Ten working days from 24 July 1991 were allowed for comment, correction or provision of additional information.

It so happened, that on 22 July 1991, the same day on which the Refugee Status Section officers signed their interview report, the appellant's solicitors wrote to those same two officers

enclosing further documentation comprising the letters from Mrs JB, the Milford Baptist Church and the Auckland City Elim Church together with the letter from the appellant's mother. The solicitor's letter then addressed further legal submissions in support of the claim for refugee status.

This letter crossed in the mail with the Refugee Status Section letter dated 24 July 1991.

Mr Treadwell expressed disquiet on two accounts:

1. The decision of the two interviewing officers to decline both refugee status and residence on humanitarian grounds was made on 22 July 1991, **before** submissions from the appellant's solicitors were invited, and **before** receipt of the further submissions which were in fact received within days of the officers' decline decision.

2. There is no evidence that the solicitor's letter of 22 July 1991 was ever considered by the interviewing officers.

If counsel's assessment of the sequence of events is correct, what has occurred is a regrettable lapse.

The opportunity to make representations must be a meaningful one. The rules of fairness are not complied with if a proffered opportunity to make representations is meaningless. The representations received ought to have been considered. In refugee cases only the highest standards of fairness will suffice: Benipal v Minister of Foreign Affairs (High Court Auckland, A No. 878/83, 29 November 1985, Chilwell J.); Secretary of State for the Home Department v Thirukumar [1989] Imm AR 402 (CA).