# The International Protection Appeals Tribunal

# International Protection Act 2015

Decision No: 1927991-IPAP-19

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| Appellant: | **XXX XXX** |
| Nationality: | **Bangladesh** |
| Language of Appellant: | **Bengali (Bangla)** |
| Solicitors for Appellant: | **XXX XXX XXX** |
| Tribunal Member: | Joanne Williams |
| Hearing Date: | **29th October 2019** |
| IPAP Number: | **1927991-IPAP-19** |
| Person ID: | **XXX** |

**Present at the Hearing**

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| Appellant | **XXX XXX** |
| Barrister | **XXX XXX** |
| Presenting Officer | **XXX XXX** |
| Interpreter | **XXX XXX** |

## 1. Introduction & Case History

1.1. This appeal relates only to subsidiary protection. The Appellant, Mr. XXX XXX, presents as a diabetic Bangladeshi Muslim, born on XX XXX 19XX (now 38 years of age). He claims that if he is returned to Bangladesh he will face serious harm in the form of torture, inhuman or degrading treatment because he has lost his home and land to climate change-induced flooding and would be unable to pay for medical treatment and medication. He says medical care will not be available to him free of charge, because of corruption.

***Procedural History***

1.2. The Appellant came to Ireland in April 2004 on a student visa, which was renewed from time to time until 2010. In January 2011, he was notified that the Minister for Justice intended to deport him, and a deportation order issued in respect of the Appellant in November 2012. He was directed to attend at the Garda National Immigration Bureau ('***GNIB***') on 20th November 2012 but he did not do so and was thereafter classed as an 'evader'. In March 2015, he applied for revocation of the deportation order, but the Department of Justice declined to consider his application as he had not presented to the GNIB.

1.3. On 17th February 2017, the Appellant was arrested in Cork. He applied for international protection, and had a preliminary interview in Cork pursuant to s. 13 of the *International Protection Act 2015* ('***the 2015 Act'***). Three days later, he attended at the International Protection Office ('***the IPO***') in Dublin to pursue his application, and on 1st March 2017 he had a further preliminary interview there.

1.4. On 8th March 2017, the deportation order made in respect of the Appellant in 2012 was revoked as he had applied for international protection. The

following day, he submitted a completed questionnaire to the IPO. A translation thereof was obtained some 15 months later, on 25th June 2018.

1.5. On 20th August 2018, the Appellant had a substantive interview at the IPO pursuant to s. 35 of the 2015 Act. He said he fears that, if he returns to Bangladesh, he and his mother and son will die because he will be unable to get a job and will be unable to pay for medical treatment. He said he does not fear persecution if he returns to Bangladesh; he does not fear being harmed; he does not fear the death penalty, torture, inhuman or degrading treatment or punishment; he does not fear indiscriminate violence; he does not have any enemies, and he does not fear any particular person or persons, or the authorities.

1.6. On 3rd September 2018, the Appellant's solicitors emailed the IPO noting that he did not have any legal advice prior to his s. 35 interview. The following day, they sought a copy of the notes of his interview, and indicated that they required additional time to submit an up-to-date medical report on his medical condition which, they said, had recently become much worse.

1.7. The IPO responded by email dated 5th September 2018 noting that they had not received the written consent of the Appellant to release information to his solicitors, so they were constrained by data protection legislation. The Appellant's written consent was furnished to the IPO on 23rd October 2018. By further letter dated 26th February 2019, his solicitors wrote, again, to the IPO, expressing their concern and noting that a copy of his file was awaited. A copy of the file was furnished to them two days later, though a copy of the interview notes was withheld; the IPO indicated that a copy would be furnished if a negative recommendation issued.

1.8. In April 2019, the Appellant's current solicitor set up practice under her own name and she furnished an authority to the IPO from the Appellant, consenting to the release of information to her. On 11th June 2019, she made

written submissions to the IPO with regard to the Appellant's subsidiary protection application, arguing that, if he is returned to Bangladesh, he will suffer serious harm and inhuman treatment because:

- He will be unable to afford or receive treatment for his disease;
- He has lost his home and land to flooding and will be unable to find work. He will be homeless and without income;
- Climate change is having a devastating effect on the lives of Bangladeshi people;
- Diabetes is a serious problem for poor individuals in Bangladesh, and there is a significant disparity in diabetes management from poor to wealthy households, and by reference to geographical location and educational attainment;
- His health will be very seriously compromised because of his homelessness, poverty and inability to obtain adequate healthcare.

1.9. By decision dated 27th May 2019, the IPO issued a recommendation pursuant to s. 39(3) (c) of the 2015 Act, namely that the Appellant should not be given a refugee declaration or a subsidiary protection declaration (hereafter ***'the s. 39 report***). The IPO accepted that he is a national of Bangladesh; that he is a 37-year old Muslim man; that he is divorced and has a son who resides with his mother; that he is diabetic; and that he is the sole income earner in his family. It was noted that his mother has been receiving treatment for her diabetes, and that the Appellant had received medical treatment in hospital in Bangladesh. By reference to country of origin information ('***COI'***), it was concluded that, although his personal and economic situation may be distressing, it does not give rise to a reasonable fear of persecution. The IPO concluded that his claim is based on exclusively economic considerations and that he is therefore an economic migrant and not a refugee. The IPO referred to COI on the availability of treatment for diabetics in Bangladesh, which, it found, does not support his claim that he would be unable to receive treatment. Finally, the IPO determined that, although there have been a

number of terrorist attacks in Bangladesh, the security forces have tackled the issue effectively and the level of violence there does not reach the threshold necessary for the grant of protection by reason of the risk posed by indiscriminate violence.

***The Appeal***

1.10. The Appellant received notice of the IPO's negative recommendations on 24th June 2019. On 11th July 2019, he submitted a Notice of Appeal to this Tribunal, in accordance with s. 41 of the 2015 Act, indicating that he wished to appeal against the refusal of subsidiary protection only. His grounds of appeal, in summary, are that the IPO failed to have sufficient regard for the risks that he faces by reason of his health problems and personal circumstances, and failed to sufficiently consider the COI he had submitted.

1.11. By letter dated 10th September 2019, the Tribunal issued directions to the Appellant's solicitors and to the Presenting Officer pursuant to s. 42(8) of the 2015 Act, for the purpose of the oral hearing. The parties were directed *inter alia* to ensure they were familiar with the judgments of the Court of Justice of the EU ('***CJEU'***) in *M'Bodj v. État Belge* (C-542/13), delivered on 18th December 2014, and *MP v. Secretary of State for the Home Department* (C-353/16), delivered on 24th April 2018, and the intervening judgment of the European Court of Human Rights ('***ECtHR'***) in *Paposhvili v. Belgium* (App. No. 41738/10), delivered on 13th December 2016. The parties were also directed to ensure that any additional COI, medical evidence or case-law that they wished to rely upon was submitted by email to the Tribunal in advance of the hearing. Finally, the Tribunal indicated that submissions would be heard at the start of the hearing as to whether it was necessary to hear evidence from the Appellant, given that the facts were essentially agreed.

1.12. The hearing took place on 29th October 2019. It was clarified at the start that the Appellant does not dispute the IPO's recommendation on refugee status; that he accepts he is not at risk of the death penalty, execution, or

indiscriminate violence; and that the net issue for the Tribunal is whether his case falls within Article 15(b) of *Council Directive 2004/83/EC of 29 April 2004* (hereafter '***the Qualification Directive***'), as transposed by the 2015 Act. It was agreed that evidence would be required on that issue only.

1.13. The Appellant gave evidence through a Bangla interpreter having sworn an oath on the Quran. He was the sole witness to give evidence.

1.14. Helpful, focussed submissions were made at the close of the evidence by the counsel for the Appellant and by the Presenting Officer. Counsel for the Appellant conceded that the difficulties which the Appellant faces by reason of his medical condition and economic circumstances might not alone give rise to an entitlement to subsidiary protection, but she urged the Tribunal to consider the cumulative effect of those difficulties upon the Appellant, compounded by the effects of climate change. In her submission, the cumulative effect of these factors could amount to inhuman or degrading treatment, and subsidiary protection should therefore be granted. Counsel addressed the judgments of the CJEU in *M.P.* and *M'Bodj* and she also relied on the judgment of the CJEU in *C.K. & Ors v. Republika Slovenija* (C-578/16 PPU), delivered on 16th February 2017. In her submission, the Appellant in the present case is in an analogous position to the applicants in *C.K*. Moreover, the effect of corruption in Bangladesh is such that the Appellant would be intentionally denied medical treatment in the sense envisaged in *M'Bodj*.

1.15. The Presenting Officer re-submitted the s. 39 report and the COI referenced therein which, he submitted, indicates that medical treatment is available free of charge. He argued that no objective evidence has been submitted showing that treatment is unavailable by reason of corruption. He also urged the Tribunal to consider whether or not the corruption outlined by the Appellant amount to an intentional denial of medical treatment in the sense envisaged by the CJEU in *M'Bodj*.

## 2. Case Facts & Documents

2.1. The Appellant gave the following account at his oral appeal hearing. He is from XXX, which is south of XXX. In the late 1990s, his mother was diagnosed with Type 1 Diabetes. She takes insulin three times a day. She also has kidney problems, and poor eyesight. At that time, the family was able to pay for her medication because they had land and grew crops.

2.2. In 2004, the Appellant came to Ireland on a student visa. He enrolled on an international business studies course, but he could not finish it because he had problems with the English language. In 2008, he diagnosed with Type 2 Diabetes and he has since been in receipt of free medication on the HSE's *Long Term Illness Scheme*. Arising from his diabetes, he does not have clear vision.

2.3. In 2010, the Appellant went home to Bangladesh for a visit. While he was there his sugar levels increased and he became ill, so he was hospitalised for two weeks in a local clinic. He also had blood tests at XXX, a private diabetes hospital. He was able to pay for his treatment because he had been working in Ireland. He had no difficulty in accessing treatment, though he had to wait in a queue. After he recovered, he was prevented from returning to Ireland by the ash cloud. He returned after four months. His attendance on his college course was 59%, so, in September 2010, the Department of Justice refused to renew his student visa. In January 2011, new rules came into place which saw many of his contemporaries being granted Stamp 4 permission to remain having been in Ireland for a long time. The Appellant missed out because his visa had expired by then.

2.4. The Appellant told the Tribunal that he has not been back to Bangladesh since 2010. His son was born since then, and the Appellant has never met him. The Appellant's wife ran off, and they are now divorced. While they were married, the Appellant sent money to his wife from Ireland for family

maintenance. She accumulated 2000 or 3000 euros in her account in Bangladesh. She did not return that money to him when they divorced.

2.5. In 2012 or 2013, the Appellant's home and land in XXX succumbed to the effects of climate change. They were located near a river which floods regularly, and they finally yielded to successive years of flooding. Flooding is a regular occurrence in Bangladesh as there is no dam on the river, and many other homes in the area have also been destroyed. Some of his neighbours have built temporary homes further away from the river; some are living by the side of the road, and others have moved to cities. The Appellant's mother now lives with the Appellant's paternal aunt and her daughter, in another part of XXX. She is paying rent to them. The Appellant's son was living with her for a time but he is now living in a *XXX*, i.e. an Islamic school. He is now nine or ten years of age.

2.6. The Appellant learned in 2013 that a deportation order had issued in respect of him. His former solicitors said they would bring an 'appeal' to the High Court on his behalf, but they did not do so. The Appellant remained in Ireland and worked illegally for a number of years. He continued to send money back to his mother and son, through a friend's Money Transfer account. His mother has no other source of income. She can survive on 300 euros a month, though she sometimes needs extra money for medication. From time to time the Appellant borrowed money from a friend in Limerick to send to her. He is in debt to his friend, which he is repaying little by little. He was out of work for two years but he was still able to send money back to Bangladesh as he had received a redundancy payment of €5000 or €6000 from the company he had been working for, which went out of business.

2.7. In 2017, the Appellant was arrested during a raid on his cousin's premises in Cork. The immigration officers who arrested him suggested that he apply for international protection, so he did. He was subsequently granted permission

to access the labour market and is now working legally. He continues to send money back to his mother.

2.8. At the time of the hearing, the Appellant's mother was in a private hospital in Bangladesh, because her leg was swollen and black. She was paying for her treatment there using the money that the Appellant sends to her. The Appellant said that, because she has money, she has never had any problems accessing medication, nor has she ever been refused medication. However, if she did not have the money that the Appellant sends to her, she would not be able to pay, and she would have no access to medication or medical care. Medical treatment and medication is not available for free in Bangladesh. There is no medical card system, like there is in Ireland. In addition to private hospitals there are government hospitals but treatment is not free there, either; diabetics have to pay for injections and for syringes. The basic rate per day is 2000 Takas, and each treatment or medication costs extra. (*Note: this is approximately €20 per day. €1 equates with 98 Taka - see EASO,* COI Report – Bangladesh: Country Overview, *2017, p. 23*). XXX, a private diabetes hospital in Bangladesh, says that it provides free medical care to diabetics, but this is only on paper. The hospital lies to attract foreign donations but in reality the hospital management use the donations for their own purposes. Corruption is everywhere in Bangladesh, from the President down, according to the Appellant.

2.9. The Appellant says that, if he goes back to Bangladesh, he will have no money. He will be unable to pay for his mother's treatment, or for his own medication. He has never gone without medication since being diagnosed but he thinks his kidneys and his heart would be affected. When asked what would happen if he went without medication, he replied "*Slowly, people die*". If he had money, he would have no problem accessing medication.

***Supporting Documentation:***

*Personal Documents*

2.10. The Appellant has submitted the following documents in support of his application for international protection:

- Two original Bangladeshi passports – one in-date and one out-of-date, bearing a variety of immigration stamps and visas;
- Original document entitled "Landless Certificate", issued on 1st March 2018;
- Original document entitled "Translated True Copy" in the nature of a divorce certificate, dated 5th March 2018, indicating that the Appellant's wife divorced him in XXX 20XX in XXX because his behaviour was not good and he left her in her father's residence for about 20 years, did not care for her, and did not provide maintenance for her;
- Letter from Dr. XXX XXX, XXX XXX XXX XXX, XXX, dated 11th May 2018, noting that the Appellant had diabetes mellitus, complicated by eye damage, and was taking medications (Diamicron and Glucophage) to control it. He is not insulin-dependent;
- Letter from Dr. XXX XXX of the same medical practice, dated 30th April 2019, confirming that the Appellant has attended there since June 2017; that he has Type 2 Diabetes complicated by retinopathy, and that his medications are as follows:
    - Diamicron MR 20 mg modified release tablets;
    - Glucophage 1000mg tablets
    - Contour next blood glucose test strips.

2.11. At the hearing, the Appellant produced his original HSE *Long Term Illness Scheme* prescription booklet, which contained several years' worth of prescriptions. It contains a prescription issued in 2018 for the medications outlined in the letter from Dr. XXX. The Appellant also showed the Tribunal Member a number of tablets that he had brought with him to the hearing, which, he said, he receives free of charge in Ireland.

2.12. The Appellant has also submitted a large volume of documents in relation to his life in Ireland between 2004 and 2017, including in relation to his registration as a student, his employment in a variety of different capacities (e.g. numerous P60s, Revenue correspondence, etc.), and character references from employers, potential employers, and friends.

2.13. At the oral hearing, the Appellant made reference to a medical certificate which he submitted to immigration officers in a Garda station in Limerick in 2010 after he returned from Bangladesh. That certificate is not among the papers provided to the Tribunal, but a letter is on file dated 12th August 2010 from XXX XXX XXX, addressed to "*The Immigration Office, Garda Siochana, Henry St, Limerick*", written in support of the Appellant's visa renewal application, which refers to an "attached" medical certificate relating to treatment received in Bangladesh upon his return there in January 2010. Curiously, that document seems to indicate that the Appellant returned to Bangladesh at that time for the purpose of obtaining medical treatment, but he insisted at the hearing that this was an error and that the need for medical treatment arose only after he had returned home for a visit.

*Country of Origin Information ('**COI**') and other Materials*

2.14. The Appellant has submitted the following COI on the climate change-related aspects of his claim:

- The Guardian, *While the world's attention is elsewhere, Bangladesh faces a humanitarian crisis*, 12 September 2017;
- DW, *The Floods are coming - climate refugees in Bangladesh*, 19 March 2019;
- European Parliament Briefing, *The Concept of 'Climate Refugee': Towards a possible definition,* February 2019;
- National Geographic, *Climate change creates a new migration crisis for Bangladesh*, January 2019.

2.15. The Appellant has submitted the following COI and materials on the medical care-related aspects of his claim:

- Lewis & Newell, *Patients' perspectives of care for type 2 diabetes in Bangladesh – a qualitative study,* BMC Public Health, 2014;
- Centre for Research and Information, *Healthcare services for All: the Bangladesh Story,* 2014 (based on a bulletin from the Bangladeshi government);
- Asian Development Bank, *Making health care affordable for the urban poor in Bangladesh*, undated;
- Islam et al., *Healthcare use and expenditure for diabetes in Bangladesh,* British Medical Journal Global Health, 2017;
- Rahman et al., *Awareness, treatment and control of diabetes in Bangladesh: A nationwide population-based survey,* PLOS ONE, 2015;
- Afroz et al., *Type 2 diabetes mellitus in Bangladesh: a prevalence based cost-of-illness study*, BMC Health Services Research, August 2019;
- World Health Organisation, *Diabetes factsheet,* October 2018.

2.16. The Appellant also submitted the UNHCR *Guidelines on International Protection – "Internal Flight or Relocation Alternative",* 2003, and the judgment of the CJEU in *C.K. & Ors v. Republika Slovenija* (C-578/16 PPU), delivered on 16th February 2017.

2.17. In its s. 39 report, the IPO referred to the UNHCR Handbook (paras. 62-64) and to the following COI:

- Human Rights Watch, *World Report 2018 – Bangladesh,* 18 January 2018;
- Amnesty International, *Amnesty International Report 2017/18 – Bangladesh,* 22 February 2018;
- Printout from website of Diabetic Association of Bangladesh, undated but accessed on 27th February 2019;

- US Department of State, *Country reports on human rights practices 2016 – Bangladesh,* 3 March 2017;
- US Department of State, *Country Reports on Terrorism 2017 – Bangladesh,* 19 September 2018.

2.18. The s. 39 report also refers to information provided by the Garda National Immigration Bureau ('***GNIB'***) dated 16th October 2010 with regard to the Appellant's immigration history. Save insofar as it is outlined in the s. 39 report, no underlying documentation has been provided to the Tribunal.

2.19. No additional documents were submitted by either party at the oral hearing, but counsel for the Appellant referred to two COI reports, as follows:-

- UK Home Office, *Country Policy and Information Note - Bangladesh: Medical and Healthcare Issues,* version 1.0, May 2019; and
- Transparency International, *Overview of corruption and anti-corruption in Bangladesh,* 15 February 2019.

2.20. On the day after the hearing, the Tribunal formally notified the parties – in accordance with s. 46(8) of the 2015 Act – that it intended to have regard to those two reports, and that the following additional reports had also come to its attention in the course of the appeal:

- Transparency International, *Bangladesh: Overview of corruption and anti-corruption with a focus on the health sector*, 31 March 2015;
- UK Home Office, *Country Policy and Information Note – Bangladesh: Background information, including actors of protection, and internal relocation,* January 2018;
- EASO, *COI Report – Bangladesh: Country Overview,* December 2017;
- CIA World Factbook, *Bangladesh*, updated 22nd October 2019.

2.21. All of the information and documentation provided has been fully considered.

## 3. Nationality

3.1. The Tribunal will now consider the facts in the claim along with the representations of the parties on these issues.

3.2. The Appellant claims to be a national of Bangladesh. He was granted a student visa on foot of a Bangladeshi passport, the original of which he has submitted. He speaks Bengali/Bangla, the official language of Bangladesh (see e.g. CIA World Factbook, *Bangladesh: People and Society - Languages,* last updated 22 October 2019). At the hearing, he spontaneously estimated the cost of hospital care in Takas, the currency of Bangladesh (EASO, *COI Report – Bangladesh: Country Overview*, 2017, p. 23). There is no reason to believe he holds any other nationality. In the circumstances, the Tribunal accepts on the balance of probabilities that he is a national of Bangladesh.

## 4. Assessment of Facts and Circumstances

4.1. In co-operation with the Appellant, the Tribunal has assessed all relevant elements of this application, in accordance with s. 28 of the 2015 Act. In that regard, the Tribunal has considered all of the Appellant's statements and all of the documents submitted by him and on his behalf.

***Agreed Facts***

4.2. Most of the facts asserted by the Appellant were agreed between the parties and accepted by the Tribunal for the purpose of the appeal. In particular, it is common case that the Appellant is a practising Muslim; that he is divorced; that his mother and son live in Bangladesh; that he is the sole income-earner of his family; and that he has Type 2 diabetes.

***Disputed Facts***

4.3. The asserted facts that were in dispute at the hearing were (i) that the Appellant lost his home and land to climate change-induced flooding and (ii) that he sends money home to his mother and son on a regular basis.

4.4. With regard to the effects of climate change on his home and land, this has consistently been an element of the Appellant's claim. At the oral hearing, he gave a brief but coherent account of how his land was repeatedly affected by flooding and finally became submerged in 2012 or 2013. His evidence in that regard is consistent with what is objectively known about the effect of climate change in Bangladesh over recent years (see e.g. DW, *The Floods are coming - climate refugees in Bangladesh,* 2019; National Geographic, *Climate change creates a new migration crisis for Bangladesh*, 2019; The Guardian, *While the world's attention is elsewhere, Bangladesh faces a humanitarian crisis*, 2017). EASO's *COI report – Bangladesh: Country Overview,* 2017, states at p. 19 that "*Bangladesh's geographical position makes it one of the most vulnerable countries in the world to climate change and natural disasters such as cyclones and floods*" and at p. 20 that "*the frequency and severity of natural disasters such as floods and cyclones are rapidly escalating, at least partly due to climate change*". In the circumstances, the Appellant's claim in this regard is coherent, plausible and consistent with COI.

4.5. The only documentary evidence submitted by the Appellant in relation to this element of his claim is a "landless certificate" from the Chairman of the *Panchkhola Union Parishad* in Madaripur, which says, referring to the Appellant, "*According to my Knowledge he has no land. He is a real landless man. He has no houses, no land, and has broken into all the rivers* [sic]." Evidently, the certificate is written in poor English. There is an opaque reference to a river, but it would be a considerable stretch to say that this supports his claim that he once had land and a house but that it has been lost to flooding, or more broadly to the effects of climate change, as is claimed. The Appellant was asked, under cross examination, if he had any further

documents to demonstrate that his house and land had been lost to flooding, and he said he did have such documents but that they are in Bangladesh. The Tribunal Member asked why he had not submitted those documents to date, and his response was that he had submitted the landless certificate after his solicitor asked him to do so.

4.6. The Appellant has not submitted any documentation evidencing his remittances to his mother in Bangladesh, either. He was asked, under cross-examination, if he could submit any such documentation, and he said he could get records from the computer in the Money Transfer office, but that those records would be in his friend's name, since he does not have an account of his own.

4.7. In the light of the documentary lacuna in this regard, the Tribunal has assessed these elements of the claim by reference to s. 28(7) of the 2015 Act. Looking first at sub-sections (a) and (b), it is clear that the Appellant has not gone to any great efforts to substantiate this element of his claim. However, the paucity of his efforts must be assessed in the light of his personal circumstances. He said on his IPO questionnaire that he had no formal education, though he said at his s. 35 interview that he completed intermediate education (Q23). He certainly did not present as an educated person. Equally, he did not present as a person with any great understanding of the importance of submitting documentary evidence. The Tribunal was struck that, although he has apparently been in Ireland for 15 years, he has very little English, and he required the assistance of the Bangla interpreter for virtually all of the hearing. He tried, from time to time, to speak a few words in English, but was neither confident nor comprehensible. His evidence is that he attempted to complete a course at XXX XXX XXX over a six-year period, without success, because of linguistic difficulties. He seemed to struggle to grasp the nuances of some questions asked of him (through the interpreter), which were largely straightforward. His responses were brief and simple, but he did not have the appearance of evasiveness; on the

contrary, he made numerous concessions which were detrimental to his appeal, and he made no attempt to conceal the fact that he evaded deportation and worked illegally in Ireland for five years. In the circumstances, the Tribunal is of the view that the paucity of his efforts to substantiate his claim are not so much of an indication of a lack of credibility as a lack of sophistication or education.

4.8. It has already been noted that the claim with regard to climate change-induced flooding is coherent, plausible and consistent with COI. The claim that he sends money back to Bangladesh is also both coherent and plausible, particularly considering that COI indicates that, "*about 28 million people (about 20 %) still live below the poverty line*" in Bangladesh, despite strong economic growth in recent years, and that, for the period between July 2016 to June 2017, remittances from Bangladeshis working in other countries amounted to USD 12,770 million (€10,600 million), according to the Bangladesh Bank (see EASO's *COI report – Bangladesh: Country Overview,* 2017, at p. 23). Accordingly, the provisions of s. 28(7) (c) are satisfied.

4.9. Looking next at s. 28(7) (d), the Tribunal notes that the Appellant found out in 2013 that a deportation order had issued against him, but he did not apply for protection until he was arrested in 2017. It is difficult to reach any conclusion but that he failed to apply for protection at the first possible opportunity. The Tribunal is minded to accept that he has provided a satisfactory explanation in this regard, however, having regard to his level of education and sophistication. He claims to have believed that an 'appeal' was being brought on his behalf before the High Court in respect of the deportation order. There is evidence on file that a revocation application was in fact made on his behalf, which lends credence to his asserted beliefs in this regard. In the circumstances, it is not as though he was completely inactive in terms of regularising his status during the period in question. Moreover, there is no evidence before the Tribunal that any attempts were made during that time to give effect to the deportation order, notwithstanding that he was

in contact with the authorities in the sense that he was in regular receipt of free medication and was enrolled on a HSE long term illness scheme, so it is plausible that he did not believe himself to be at any real risk of deportation until he was arrested, at which point he did apply for protection immediately. It is not to his credit that he failed to present at the GNIB when so directed, or that he essentially went 'underground' for a number of years, but the Tribunal is satisfied that he does not fall foul of s. 28(7) (d).

4.10. Finally, turning to s. 28(7) (e), the Tribunal is satisfied that the Appellant's general credibility has been established, having regard to the fact that, as previously noted, he made numerous concessions which were detrimental to his applications for refugee status and for subsidiary protection. There is no suggestion that he has misrepresented his position or that he has concocted or embellished his situation with a view to being granted international protection on a false basis.

4.11. In the circumstances, the Tribunal is satisfied that the Appellant's testimony that he lost his home and land to climate-change induced flooding, and that, over the past 15 years, he has regularly sent money to his family in Bangladesh, does not require confirmation within the meaning of s. 28(7), and the Tribunal therefore accepts those elements of his claim on the balance of probabilities.

4.12. Finally, the Tribunal notes that the Appellant has not submitted any documentation relating to his mother's illness. This is unfortunate, as this is a matter which, one imagines, is readily susceptible to documentary proof. The Tribunal is satisfied, however, that the Appellant has presented a consistent, coherent, and reasonably detailed account in this regard. His heightened emotional state at the oral hearing while speaking about his mother struck the Tribunal as genuine, spontaneous and unaffected. In the circumstances, the Tribunal is prepared to accept the credibility of his uncorroborated evidence with regard to his mother's illness.

***Conclusions on Credibility***

4.13. To summarise, based on its considerations and for the reasons set out above, the Tribunal accepts that all elements of the Appellant's claim are credible. It is accepted that he is a divorced Muslim from Bangladesh with Type 2 diabetes, and that his earnings in Ireland have been supporting him, his mother and his son for many years. It is also accepted that his mother has Type 1 diabetes, and that he has lost his home and land to flooding.

## 5. Analysis of Serious Harm

5.1. The Appellant has not appealed against the IPO's recommendation that he does not qualify as a refugee. The Tribunal will therefore treat him as "*a person who does not qualify as a refugee*" within the meaning of s. 2(1) of the 2015 Act, for the purpose of this decision.

5.2. Having determined in *Section 4* above which material facts of the Appellant's claim are accepted, the Tribunal will now analyse whether substantial grounds have been shown for believing that he faces a real risk of suffering serious harm if returned to his country of origin and who is unable or, owing to such risk, unwilling to avail himself of the protection of that country (see s. 2(1) of the 2015 Act, implementing Article 2 of the Qualification Directive [hereafter '***QD***']).

5.3. Implementing Article 15 QD, s. 2(1) of the 2015 Act defines *serious harm* as:

(a) *death penalty or execution,*

*(b) torture or inhuman or degrading treatment or punishment of a person in his or her country of origin, or*

*(c) a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict.*

5.4. As noted above, it is common case that the Appellant's appeal raises no issues under sub-headings (*a*) or (*c*), and that the only question before the Tribunal is whether substantial grounds have been shown for believing that he faces a real risk of serious harm in the form of (*b*) torture, inhuman or degrading treatment or punishment, if returned to Bangladesh.

***The Scope of Article 15(b) QD***

5.5. It is well established that Article 15(b) QD corresponds, in essence, with Article 3 of the European Convention on Human Rights ('***ECHR***'). However, the scope of protection offered by the two provisions is different. The Court of Justice of the EU ('***CJEU***') has made clear that not all persons whose removal from the State would breach Article 3 ECHR will be entitled to subsidiary protection under Article 15(b) QD.

5.6. The critical judgment in the context of the present case is *M'Bodj v. État Belge* (C-542/13), a judgment delivered on 18th December 2014. There, the Grand Chamber of the CJEU considered the situation of a Mauritian national, who was left with a severe visual impairment as a result of an assault upon him at the Red Cross centre for asylum seekers in Belgium, where he had been staying. He was granted indefinite leave to remain in Belgium as it was found that there was a risk of inhuman or degrading treatment in his country of origin as a result of his state of heath and the lack of appropriate treatment. He sought a declaration of subsidiary protection so that he would be entitled to the same social assistance as Member State nationals. The Belgian Court made a preliminary reference to the CJEU asking, in essence, if it was required to grant subsidiary protection to him.

5.7. The CJEU had regard to the list outlined in Article 6 QD of those deemed responsible for inflicting serious harm. (These are (a) the State; (b) parties of organisations controlling the State of a substantial part of the territory of the State; and (c) non-State actors, where state protection is not available; transposed verbatim by s. 30 of the 2015 Act.). The CJEU held that, in the

circumstances, for the purpose of Article 15(b) QD, "*harm must take the form of conduct on the part of a third party and that it cannot therefore simply be the result of general shortcomings in the health system of the country of origin*" (para. 35, the Tribunal's emphasis). It was held that:-

> "[…] *the risk of deterioration in the health of a third country national suffering from a serious illness as a result of the absence of appropriate treatment in his country of origin is not sufficient, unless that third country national is intentionally deprived of health care, to warrant that person being granted subsidiary protection*" (para. 36, emphasis added).

5.8. The Grand Chamber noted that, according to the case-law of the European Court of Human Rights ('***ECtHR***'), the removal of a foreign national suffering from a serious physical or mental illness to a country where the facilities for the treatment of the illness are inferior to those available in that State may raise an issue under Article 3 ECHR in very exceptional cases (para. 39). It found, however, that the fact that Article 3 ECHR precludes the person's removal "*does not mean the person should be granted … subsidiary protection*" (para. 40). In fact, the CJEU held that that Member States are *precluded* from granting subsidiary protection to such a third country national as this would be incompatible with the QD (para. 44).

5.9. The Grand Chamber reiterated these principles at para. 33 of its judgment in *Abdida* (C-562/13), delivered on the same day as *M'Bodj,* and went on to make findings on Member States' obligations under Directive 2008/115/EC (the *Return Directive*), by which Ireland is not bound.

5.10. The Grand Chamber of the CJEU expanded upon the *M'Bodj* principles in *MP v. Secretary of State for the Home Department* (C-353/16), delivered on 24th April 2018, which related to a Sri Lankan national and former member of the Tamil Tigers, who had been detained and tortured by the Sri Lankan authorities. He sought subsidiary protection in the UK which found that,

because of changed circumstances in Sri Lanka, he would not be at risk of such ill-treatment again in the future so he was not entitled to refugee status or subsidiary protection. The UK authorities found, however, that his return to Sri Lanka would be contrary to Article 3 ECHR because the evidence showed that he was suffering the psychological effects of the torture he had suffered, and that he would be unable to access appropriate care in Sri Lanka. He appealed against the refusal of subsidiary protection. The UK Supreme Court made a preliminary reference to the CJEU asking, essentially, whether the UK was required to grant him subsidiary protection.

5.11. The Grand Chamber made a number of sympathetic observations with regard to the situation of *MP,* but ultimately it circled back to the principles established in *M'Bodj*. It held that the question for the UK was whether, in the light of all current and relevant information, in particular reports by international organisations and non-government human rights organisations, *MP* was likely, if returned to his country of origin, to face a risk of being *intentionally deprived* of appropriate care for the physical and mental after-effects resulting from the torture he was subjected to by the authorities of that country. The CJEU suggested that this would be the case if it were apparent that the authorities had adopted a discriminatory policy as regards access to healthcare, thus making it more difficult for certain ethnic groups or individuals to obtain appropriate care for the physical and mental after-effects of the torture.

5.12. The Tribunal has been unable to source any information as to whether, after the issue was remitted to them, the UK authorities determined that *MP* would, in fact, be intentionally deprived of medical treatment if returned.

5.13. The Tribunal has carefully considered *M'Bodj* and *MP* and concludes that the CJEU has, in essence, ruled out naturally-occurring socio-economic deprivation as a basis for granting subsidiary protection. In the circumstances of the present case, the questions for this Tribunal appear to be as follows:-

(i) Is the Appellant suffering from a serious illness?

(ii) If so, is adequate medical treatment available to him in Bangladesh?

(iii) Is there a risk of his health deteriorating if he is unable to access adequate medical treatment?

(iv) If so, does the evidence show that he would be *intentionally deprived* of health care?

5.14. It seems to the Tribunal that if all questions are answered in the affirmative, then the Appellant may qualify for subsidiary protection. If the answer to questions (i), (ii) and (iii) is positive but the answer to question (iv) is negative, he will not qualify for subsidiary protection, but his removal to Bangladesh may still breach Article 3 ECHR. The question of whether, although excluded from subsidiary protection, his removal would nevertheless breach Article 3 ECHR is a matter for the Minister under s. 49 of the 2015 Act, not for this Tribunal. The Tribunal is aware that an initial decision has been made not to grant permission to remain to the Appellant but is unaware of what materials were considered and notes that the Appellant will be entitled to a review under s. 49(7) and, pursuant to s. 49(9), will be entitled to submit further information to that end.

***(i) Is he suffering from a serious illness?***

5.15. The Appellant has submitted documentary evidence showing that he suffers from Type 2 diabetes (mellitus). He has submitted several reports which support the proposition that this is a serious illness. A report published by Afroz et al. in BMC Health Services Research, *Type 2 diabetes mellitus in Bangladesh,* 2019 (hereafter ***'the 2019 BMC report***'), describes diabetes as *"one of the most prevalent non-communicable diseases globally"* and as *"a major public health issue in developing countries because of its chronic nature, rapidly increasing prevalence, related complications, and the requirement of long-term care."* A WHO factsheet issued in 2018 indicates that diabetes is a chronic disease, "*a major cause of blindness, kidney failure, heart attacks, stroke and lower limb amputation*", and the seventh leading cause of death in 2016. In addition, diabetic retinopathy is an important

cause of blindness, and occurs as a result of long-term accumulated damage to the small blood vessels in the retina. The factsheet distinguishes between Type 1 and Type 2 diabetes, the latter having symptoms similar to Type 1 but often less marked. In the circumstances, the Tribunal accepts that the Appellant suffers from a serious illness.

***(ii) Is adequate medical treatment available to him in Bangladesh?***

5.16. The Appellant's evidence was that adequate treatment is available for people living with diabetes in Bangladesh, but only in private hospitals, and it is not available free of charge. This is supported by the COI that he submitted. The 2019 BMC report, referenced above, refers to the "*lack of adequate services related to diabetes in public hospitals, particularly in peripheral areas*". Referring to the Diabetic Association of Bangladesh ('***BADAS'***), the report says that the "*majority of the people with diabetes are treated and managed by the hospitals under BADAS".* It says BADAS has 75 diabetic centre/hospitals which cover all 64 districts. Similar information is available in the more recent UK Home Office *Country Policy and Information Note: Bangladesh – Medical and Healthcare Issues,* May 2019 (hereafter '***the CPIN'***), at pp. 12-13.

5.17. As for the cost of healthcare and medication, the CPIN indicates at pp. 6-9 that public health expenditure in Bangladesh in 2015 was equivalent to 2.6% of GDP, compared to an average of 6.3% globally. Health expenditure per capita was at one of the lowest levels in the world. Medicines and treatment at public hospitals are mostly free for "poor" people but there is no fixed definition of who is "poor", and questions can be raised about who is considered poor and who is not. The government fixes the maximum retail prices of some essential drugs but all other drugs are priced by pharmaceutical companies, which inflate the profit margin and are subject to 15% VAT. According to the CPIN:

> "*Normally medicines are provided free of charge in public hospitals. However, these medications are not always available and patients buy*

*them out-of-pocket at pharmacies. 'The [cost] of medication accounts for about 70% of [patients'] out-of-pocket expenditure [on average]."*

5.18. Similar information is available in a 2015 article submitted by the Appellant, *Awareness, Treatment and Control of Diabetes in Bangladesh,* published by Rahman et al in the PLOS ONE journal, which states at p. 11 that *"Although public health services are subsidized by the government, they are also unable to provide affordance care for the poor population. This implies that subsidized programs may not be working properly among this sub-population*". A CRI report published in 2014, *Healthcare Services for All: The Bangladesh Story,* heralded the roll-out of a universal health insurance scheme, with the premiums of those living below the poverty line to be paid by the government, but there is no evidence that it has come to fruition.

5.19. With regard to the private sector, the CPIN distinguishes between private for-profit hospitals and complementary treatment provided by a large number of NGOs, including certain NGOs which run private not-for-profit hospitals. It would appear that the BADAS hospitals fall within the latter category: the BMC report refers to BADAS as a "*not-for-profit but mostly self-sustaining social welfare organisation*". Whilst BADAS hospitals may be not-for-profit, it does not follow that their services are provided for free; on the contrary, it seems from the CPIN at p. 7 that fees are payable in NGO-run not-for-profit hospitals, albeit at a lower rate than in private for-profit hospitals. This is consistent with the 2019 BMC report, which lists a series of out of pocket payments ('***OPP***') payable by diabetes patients attending BADAS hospitals, and it says that "*the health insurances support is literally non-exists in Bangladesh, thus all payments met by OPP [sic]*". It contains details of the direct and indirect costs paid by diabetes patients, including medication, hospitalisation, laboratory testing and out-patient expenses. It does not refer to any medication or treatment being available for free from BADAS hospitals. A variety of costs payable by diabetes patients was also outlined in an article published by Islam et al in the British Medical Journal Global Health

in 2017, *Healthcare use and expenditure for diabetes in Bangladesh* (hereafter '***the 2017 BMJ article'***), again with no indication of subsidisation or free treatment. On the contrary, it indicates at p. 7 that "*barriers to public health facilities force the poor to pay for healthcare out of pocket, often driving them further into poverty*."

5.20. The CPIN paints a somewhat more optimistic picture at pp. 12-13 relating to the services provided at BIRDEM and BIRDEM II, which are diabetes hospitals in Dhaka linked to BADAS. (Incidentally, the Appellant says he was tested there in 2010, when he fell ill during a return visit, and was required to pay for the tests). According to the CPIN, BIRDEM receives an annual grant for the government and, in exchange, provides 'certain' services free of charge. It offers free blood and diabetes tests in the outpatient department, though patients pay a small registration fee. On the recommendation of the social welfare department, diabetic patients are entitled to free medical consultations and poor patients may receive free medication. Free insulin injections and 30% of the beds are free for 'poor' patients and cases of 'academic interest', both categories receiving free medication, examinations and treatment.

5.21. To a large extent, the information outlined in the CPIN is consistent with the information provided on printout from the BADAS website relating to BIRDEM, which was referenced in the s. 39 report. However, the Tribunal notes that the printout boasts that "*The Clinical Services Division provides comprehensive diabetic care, to all the registered diabetic patients irrespective of economic and social status free of charge."* Having regard to the information that follows underneath that assertion, and by reference to the information provided in the CPIN, the Tribunal is satisfied that this is a misrepresentation or overstatement of the true position. It is clear that treatment is available free of charge only to some patients, and that the decision as to who is entitled to free treatment is made by the social welfare department, based on undefined parameters of who is or is not 'poor'.

5.22. Moreover, the Appellant's evidence was that, although BADAS has indicated that it is providing free medical treatment to diabetes patients, the reality is different, and the donations that it receives from foreign sources for the purpose of providing free treatment are siphoned off by hospital management for personal use. He has not submitted any evidence directly corroborating that assertion, but he submitted a Transparency International report, *Overview of corruption and anti-corruption in Bangladesh,* dated 15th February 2019, which indicates that the country is "*plagued with endemic corruption*" and that grand and petty forms of corruption occur across various sectors, including in healthcare. With specific regard to the healthcare sector, it states at p. 8:

> *"The healthcare sector is … rife with cases of grand and petty corruption. Healthcare seekers are known to pay bribes to obtain better services, access to ambulances and sometimes to avail the services. Private healthcare institutions employ unregistered doctors and doctors with fake qualifications or often fail to employ the legally required minimum number of doctors and support staff. Political influence and collusion in the selection of contractors for food supplies and purchase of unnecessary medical equipment, as well as selective training often depriving the most deserving candidates of training opportunities remain harsh realities (McDevitt 2015)."*

5.23. The underlying report, authored by Andy McDevitt for Transparency International, *Bangladesh: Overview of corruption and anti-corruption with a focus on the health sector*, 31 March 2015, provides an even more stark outline of the effect of corruption on the health sector:

> *"Despite recent gains in healthcare provision, the health sector also faces numerous corruption challenges. More than 40% of health service users report facing different kinds of corrupt practices. As well as bribery and unauthorised payments, irregularities include politically influenced recruitment, transfers and promotions of healthcare*

*professionals, irregularities in the procurement of drugs and equipment, unregistered and unqualified doctors operating in private healthcare facilities, and absenteeism".*

5.24. There is, therefore, substantial reason to believe that the Appellant's assertions with regard to the practical realities of free treatment are credible. It is clear, also, from the two Transparency International reports that the counter-corruptions efforts undertaken by the Bangladeshi State have, to date, been weak and ineffective and that a culture of non-compliance with a reasonably sound legal framework prevails. This is apparent, too, from Section 4 of the US Department of State's *Country report on human rights practices 2016 – Bangladesh,* 2017, referenced in the s. 39 report.

5.25. In sum, therefore, the COI and materials before the Tribunal supports the Appellant's contention that medical treatment is inadequate in public hospitals, and that medications are not always available for free in those hospitals. Bangladesh does not have a system of universal healthcare and the threshold at which State subsidies apply is unclear. Free medication and/or treatment may be available for 'poor' people, but the definition of who qualifies as a 'poor' person is undefined and, even if a 'poor' person qualifies for free treatment and/or medication, it might not be provided in the light of endemic corruption. Adequate treatment is available in private hospitals, and adequate medication is available in pharmacies, but these are guaranteed only if the patient can pay for them. In the circumstances, there is a reasonable likelihood that the Appellant would be required to pay for at least some, if not all, of the costs arising from his medical condition.

5.26. The Appellant says that, if he were required to pay for healthcare or medication in Bangladesh, he would not be able to do so. He says his family earned a living in the past from crops grown on their land, which has succumbed to flooding, and the credibility of that assertion has been accepted. He further says he would be unable to get a job if he returned to

Bangladesh. It is relevant in this regard that he appears to be poorly educated and essentially unskilled. However, the documentation submitted indicates that he worked steadily in a variety of different jobs since coming to Ireland, and that he was considered suitable to be employed in other capacities. Moreover, the economic situation in Bangladesh is not as poor as it was when he was there last. EASO's *COI Report – Bangladesh: Country Overview,* 2017, states at p. 23 that Bangladesh has achieved strong economic growth in recent years, and that the country has made substantial progress in reducing the poverty rate, though about 28 million people (about 20% of the population) still live below the poverty line. The 2019 Transparency International report referenced above states at p. 3:

> *"Rapid growth enabled Bangladesh to reach the lower middle-income country status in 2015. In 2018, the country fulfilled all three eligibility criteria for graduation from the UN's Least Developed Countries (LDC) list for the first time. […] Bangladesh has made incredible progress in terms of income growth and other aspects of human development. Per capita income in the country, for example, has risen from US$520 in 1990 to US$4,040 in 2017; GDP growth has remained above 5% per year for the past 10 years".*

5.27. Of further note, the most recent version of the CIA World Factbook on Bangladesh indicates that, in 2016 and 2017, the unemployment rate was estimated to be just 4.4%, though about 40% of the population was underemployed as many persons who were counted as employed work only a few hours a week and at low wages.

5.28. In the circumstances, it seems to the Tribunal to be unduly pessimistic to suggest that he would be unable to gain employment of any sort. He is a relatively young man and has a proven work record, notwithstanding his diabetes and vision problems. He must be considered to have a reasonable prospect of gaining employment. However, the US Department of State's 2016 *Country report,* published in 2017, indicates that minimum monthly

wages are set by the National Minimum Wage Board on a sector-by-sector basis and that higher-than-minimum wages were often available in the apparel sector, but that "*None of the set minimum wages provided a sufficient standard of living for urban dwellers. The minimum wage was not indexed to inflation (which averaged 7 to 8 percent annually), but the board occasionally made cost-of-living adjustments to wages in some sectors*." In the circumstances, it is reasonably likely the Appellant would not gain employment with a high level of remuneration.

5.29. The 2019 BMC report indicates that the costs of hospitalisation and insulin are the most costly elements of healthcare for diabetics in Bangladesh. The Appellant is not insulin-dependent and he has referenced just one instance of hospitalisation since being diagnosed with diabetes in 2008. He does, however, require two types of pill on a daily basis, on prescription, and he uses glucose strips to test his blood sugar. He would have to pay not only for those medications and supplies, but also for GP visits and incidental costs. The 2019 BMC report calculates that the average annual cost of diabetes care for persons with Type 2 diabetes mellitus was US$864.7 which is 52% of per capita GDP in Bangladesh and 9.8 times higher than the general health care cost. The 2017 BMJ article reached a similar conclusion, finding at p. 7 that "*Medical care in Bangladesh is very costly relative to an average person's mean family income, often difficult to access, and leaves a household vulnerable to the effects of catastrophic health expenses*". In the circumstances, assuming that he would only be in a position to obtain minimum-wage employment, if he were required to pay for the necessary medication and treatment, there is a reasonable likelihood that he would be unable to pay some or all of the associated costs, given that he is the sole breadwinner in his household and is responsible not only for his son but also for his mother, who is insulin-dependent and has recently required hospitalisation.

5.30. In summary, the Tribunal finds that there is a reasonable likelihood of the Appellant finding himself unable to pay for some or all of the healthcare that he requires if he is returned to Bangladesh.

***(iii) Is there a risk of his health deteriorating if he is unable to access adequate medical treatment?***

5.31. If the Appellant was unable to pay for some or all of the medical treatment he needs, what would happen to him? He says he does not know, because he has not gone without his medication, but he thinks his kidneys and his heart would be affected. He says his vision has already been affected, even though he is on medication. He has submitted a range of objective reports, which corroborate his testimony. The WHO factsheet states that diabetes can be treated and its consequences avoided or delayed with diet, physical activity, medication and regular screening and treatment for complications. However, it goes on to say that hypoglycaemia, or raised blood sugar, is a common effect of uncontrolled diabetes and "*over time leads to serious damage to many of the body's systems, especially the nerves and blood vessels*". The Appellant appears to require medication; it does not seem his diabetes can be controlled merely through diet and lifestyle. The Tribunal therefore finds that there is a real risk that, if he is returned to Bangladesh and does not have access to the necessary medication or treatment, he will be exposed to a serious and irreversible decline in his state of health, which would likely result in intense suffering. The decline might not occur rapidly but it seems inevitable over time.

5.32. The Tribunal notes that the Appellant has said his mother's health would also be seriously impacted if he were unable to pay for her medical treatment, and that she would likely suffer a slow death. The Tribunal does not have jurisdiction to grant subsidiary protection on the basis of sympathy and, in the absence of any evidence with regard to the potential effect upon him of his mother's deteriorating health, it does not seem to the Tribunal that this is a matter which can be given any weight in assessing whether the Appellant

would, himself, be at risk of serious harm for the purpose of Article 15(b) QD. The potential effect upon his mother of his removal from the State may, however, be considered by the Minister under s. 49(7), on humanitarian and compassionate grounds.

***(iv) Would he be 'intentionally deprived' of healthcare?***

5.33. Though compelling, the foregoing conclusions cannot avail the Appellant for the purpose of subsidiary protection unless it can be established that he would be *intentionally deprived* of the necessary medical care.

5.34. Counsel for the Appellant urged the Tribunal to accept that the Appellant would be *intentionally deprived* of medical care by reason of corruption in the medical system in Bangladesh.

5.35. As noted above, the evidence before the Tribunal indicates that corruption is endemic across Bangladesh, including in the health sector. There is substantial reason to believe that, even if the Appellant did, in theory, qualify for free medical care as a 'poor' person in Bangladesh, it might not be available to him in practice owing to corruption. However, the Tribunal is not persuaded that this means would be *intentionally deprived* of healthcare, within the meaning outlined by the CJEU in *M'Bodj* and *MP.* The examples given at para. 57 of the *MP* judgment suggest that the intentional deprivation of healthcare must arise from deliberate policies on the part of state or non-state actors, i.e. specifically directed victimisation. That is clear, also, from the Opinion of Advocate General Bot in the *MP* case (see, in particular, paras. 30-32). There is no evidence that the siphoning off of donations, the cooking of the books, or the demanding of bribes, is a deliberate policy geared towards intentionally depriving diabetes patients, or any class of them, of healthcare. Rather, the lack of access to medical treatment is an incidental side effect of pervasive, widespread, unchecked greed in Bangladesh. In the circumstances, the Tribunal finds itself compelled by the restrictive

interpretation adopted by the CJEU in *M'Bodj* to conclude that the Appellant is not at risk of serious harm if returned to Bangladesh.

***The judgment in C.K.***

5.36. Counsel for the Appellant submitted that he is in an analogous position to the applicant in *C.K. & Ors v. Republika Slovenija* (C-578/16 PPU), delivered on 16th February 2017. The Tribunal has carefully considered that judgment, and finds it must reject that submission. *C.K.* concerned the transfer of a Syrian woman from Slovenia to Croatia under the Dublin III Regulation. The woman had recently given birth and was suffering from post-natal depression and periodic suicidal tendencies. The CJEU found that she could not be transferred to Croatia if the transfer would give rise to a breach of Article 4 of the Charter of Fundamental Rights of the EU (in essence, the same as Article 3 ECHR). The CJEU held that the suffering which flows from naturally occurring illness, whether physical or mental, may be covered by Article 3 ECHR if the suffering is, or risks being, exacerbated by treatment for which the authorities can be responsible, whether flowing from conditions of detention, expulsion or other measures (para. 68) and that these points of principle were also relevant in the context of the Dublin system (para. 69). In the view of the Tribunal, the findings of the CJEU in that regard relate *only* to specific situation of inter-EU transfers under the Dublin III Regulation, where both the transferring State and the receiving State are obliged to achieve certain minimum standards under the Common European Asylum System. It does not extend to extra-EU removals, such as the present case.

***Cumulative Effect***

5.37. Counsel for the Appellant argued that, even if the *M'Bodj* threshold were not met, the Tribunal should take effect of the cumulative impact on the Appellant of the lack of free medical care, coupled with his own indigence and the effects of climate change, and that these factors, taken together, could amount to serious harm within the meaning of Article 15(b). It seems to the Tribunal, however, that the cumulative effect of those factors is a

matter to be assessed when the Minister is considering whether or not the deportation of the Appellant would give rise to a breach of Article 3 ECHR. There can be no doubt that climate change is having a drastic effect on the lives of many people, and that Bangladesh is being particularly badly hit owing to its low-lying geography. However, as is clear from the European Parliament ('***EP***') report submitted by the Appellant, there is a lacuna in the legal protections available to persons who are suffering from the effects of climate change (often described as 'climate refugees'). So far, the EU has not recognised climate refugees formally. The EP report says, at p. 6, that *"it is not possible to interpret existing legislation as incorporating 'climate refugees' within the protection regime".* That report indicates, at p. 5, that there may be compassionate and humanitarian reasons not to return them. However, this Tribunal does not have discretion to grant subsidiary protection on humanitarian or compassionate grounds; that is a matter for the Minister.

5.38. The EP report is not a legally binding document, of course, but it seems to the Tribunal that it is an accurate representation of the current legal situation. Applying the reasoning espoused by the CJEU in *M'Bodj,* the effects of climate change cannot amount to 'serious harm' for the purpose of Article 15(b) QD because – like illness – climate change is a naturally occurring phenomenon as distinct from an act of harm at the hands of one of the actors outlined in Article 6 QD, transposed by s. 30 of the 2015 Act. There is little doubt that human activity is influencing climate change, but there is considerable debate about the extent to which it is a natural, cyclic phenomenon and the extent to which it is anthropogenic. Few argue that human activity is the *sole* cause, though some say it is the primary cause. Insofar as the evidence suggests that human activity is at fault; that would appear to be through gross recklessness rather than through any deliberate or intentional act by State or non-state actors. Accordingly, the effects of climate change – however inhuman or degrading – cannot amount to serious harm for the purpose of Article 15(b) QD.

5.39. Even if the Tribunal is wrong in its interpretation of Article 15(b) QD, regard would have to be had to recital 26 QD and the *Elgafaji* line of caselaw. Recital 26 indicates that "*risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm*". The word 'normally' in that recital was seized upon by the CJEU in *Elgafaji* to carve out an entitlement to protection in "*an exceptional situation […] characterised by such a high degree of risk that substantial grounds would be shown for believing that that person would be subject individually to the risk in question*" (para. 37). That principle was established in the context of Article 15(c) but it seems to the Tribunal that it applies with equal measure when assessing what might amount to serious harm for the purpose of Article 15(b). The Appellant in the present case has not established that he would find himself in an exceptional situation by reason of climate change-induced flooding if he was returned to Bangladesh. His home may have succumbed to flooding, but so too did many other people's homes. Some of his neighbours rebuilt further away from the river, and others moved away, while his mother moved in with relatives elsewhere in XXX and his son is now living in a *madrassa*. The Appellant is not in the same position as a person who might classically be described as a 'climate refugee', i.e. a forcibly-displaced migrant. He is not in Ireland as a result of climate change; he voluntarily left his home in Bangladesh. He came here and stayed here for economic, educational and health reasons.

5.40. In the light of the foregoing, the Tribunal finds that substantial grounds have not been shown for believing that the Appellant would face a real risk of torture, inhuman or degrading treatment in Bangladesh.

## 6. Conclusion on Qualification for Subsidiary Protection

6.1. For the reasons given, the Tribunal finds that the Appellant is not entitled to subsidiary protection. Therefore, the Tribunal affirms the recommendation made by the International Protection Officer pursuant to s. 39(3) (c) of the 2015 Act, that the Appellant should not be given a subsidiary protection declaration.

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Joanne Williams

**Member of the International Protection Appeals Tribunal**

day of 2019