



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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Bangladesh  
IAA reference: IAA16/00588

Date and time of decision: 14 October 2016 14:28:00  
Fraser Syme, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (“the applicant”) claims to be a supporter of the Bangladesh National Party (“BNP”), from Bangladesh. [In] November 2015 he lodged an application for a temporary protection visa (“TPV”). A delegate of the Minister of Immigration, (“the delegate”) refused to grant the applicant a TPV [in] August 2016.
2. The delegate did not accept as credible the applicant’s claims he was a leader of the BNP or that he was attacked by supporters of the Awami League (“AL”). The delegate was not satisfied the applicant faced a real chance of serious or significant harm, if he returned to Bangladesh.

### Information before the IAA

3. I have had regard to the review material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. [In] August 2016, I received a submission from the Asylum Seeker Resource Centre (“ASRC”), attaching a letter from the applicant to the IAA [in] August 2016 (“the IAA letter”). The ASRC advise they are not acting for the applicant and the applicant has not notified the IAA that ASRC are authorised to represent him, but applicant acknowledges in the IAA letter the ARSC assisted him to write it. From those circumstances, I the infer applicant instructed ASRC to provide the IAA letter to me.
5. The content of the IAA letter is in part the applicant’s response to the delegate’s decision and in part repeats claims he made before the delegate. The applicant submits he does not know if there was any error by the interpreter during the TPV interview, but impliedly in the IAA letter he is suggesting that is the case and that is a reason the delegate found him not to be a credible witness He makes particular reference to the interpretation of his position with the BNP. He claims he has consistently described his position using the Bengali term ‘*shovapoti*’ of the “*Jeuba dal*” (youth wing).<sup>1</sup> He does not know the English term for that position. I note he made the same claim regarding not knowing the English term for *shovapoti* during the TPV interview. I do not consider these parts of the IAA letter are new information, and I have had regard to those parts.
6. The IAA letter in part is the applicant providing what he describes as ‘further particulars’ regarding issues raised in the delegate’s decision as to his role with the BNP and his knowledge about the BNP. He submits those further particulars are not new information. I do not agree. The further particulars are information that was not before the delegate. I consider the further particulars are new information. I can only have regard to new information to the extent it complies with the requirements of s.473DD and the restrictions that section places on my considering new information. Contrary to Practice Direction 1 dated May 2016 (“the Practice Direction”) made by the President under s.473FB, the applicant has not provided a statement addressing the requirements of s.473DD(b). Even if I had the benefit of that statement, I must still first consider whether or not there are exceptional reasons justifying that I should have regard to the new information. There is no explanation before me as to why the new information could not have been provided to the delegate or why the new information is

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<sup>1</sup> The review material includes a country information report from the Department country of origin information services section stating *Juba* or *Joba Dal* is the youth party or youth wing. I am willing to accept *Jeuba Dal* to be another variant spelling. see: BGD CI151212134502544

credible personal information that had it been known by the delegate, would have affected consideration of the applicant's claims. In the current circumstances, I am not satisfied there are exceptional reasons that justify my considering to the new information.

7. The applicant further states in the IAA letter because of possible interpreting errors, or because my consideration of his claims may involve an assessment of his credibility, I will fall into error if I do not give him an opportunity to present his claims in person and that I should therefore invite him to attend a hearing. I do not agree to the applicant's request to invite him to a hearing. There are several reasons for that. Firstly, the IAA does not conduct hearings. Secondly, and importantly, I have listened to the TPV interview. The delegate often clarified with the applicant whether the delegate had understood the applicant's evidence correctly, thus reducing the opportunity for any interpreting error to go uncorrected by the applicant. I note too on some occasions, the applicant sought to address the delegate in English and she encouraged him to provide his evidence in Bengali through the interpreter. That suggests to me the applicant has some English language ability which again would reduce the opportunity for interpreting errors. Thirdly, other than the title of his claimed position with the BNP (which is not new information and I have had regard to), the applicant did not identify any specific interpreting errors or how any such error materially affected his opportunity to discuss his claims with the delegate. Fourthly, regardless of any credibility findings made by the delegate, I am making my own assessment of the evidence in the review material. Finally, I am conducting a fast-track review. My discretion to use my power under s.473DC(3) to receive new information orally from the applicant at an interview is for instances where I consider it to be relevant to do so, I do not have a duty to give the applicant an interview just because he requests it. Further, I consider the proper exercise of my discretion to use my power in s.473DC is subject to the restrictions in s.473DD. For those reasons, I consider it would be an improper use of my discretion to give an interview to the applicant in the way the applicant has requested, which is essentially a request he have a second opportunity to put forward all his claims orally. On the evidence before me, it is not apparent to me that any material interpreting error occurred during the TPV interview and I consider the applicant had an adequate opportunity to discuss his claims during the TPV interview.

### **Applicant's claims for protection**

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8. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
  - He joined the BNP as a schoolboy and later became a local leader.
  - Supporters of the AL beat him and attacked him with knives, he had to be hospitalised.
  - He then arranged to leave Bangladesh, first to [country 1] and later to Australia.
  - He will not be protected by the police, because they are part of the AL led government and he cannot relocate to another part of Bangladesh because he was a popular leader in the BNP and the AL led government will be able to find him anywhere.
9. He fears if he returns to Bangladesh, he will be harmed by supporters of AL and/or the Bangladesh authorities, particularly the undercover CID, because he was a popular leader of the BNP.

## Refugee assessment

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10. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### Well-founded fear of persecution

11. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

### Role with BNP

12. The applicant has consistently claimed he joined the BNP as a schoolboy, for which he received a small payment and was a local leader with the BNP. However, his evidence about what position he held has been inconsistent. In his entry interview, he said he was elected as local president. In the TPV application forms, he claimed to be the general secretary of the BNP since 2001. In a statutory declaration accompanying his TPV application dated December 2015 (“the TPV statement”), he claimed he joined the BNP when in year 10 and two years later was appointed general secretary of the BNP youth wing. With his TPV application, he provided a letter dated [date] May 2012 purportedly from Mr I, the local president of the BNP, stating the applicant was the local general secretary (sic) of the BNP (“the BNP letter”). At the TPV interview, the applicant stated he was appointed the local general secretary of the BNP about two years after joining. The delegate put to the applicant at the TPV interview he previously claimed to be the local BNP president, not the general secretary. It was at this point the applicant claimed not to know the English term for the Bengali term *shovapoti*.<sup>2</sup> In the IAA letter, he repeats he does not know the English term for *shovapoti*, but he is told by the interpreter who assisted him in writing the IAA letter that the correct term is president. He has always stated he was the *shovapoti* of the youth wing. I agree at the entry interview, the applicant used the term, *shovapoti*.<sup>3</sup> But in the entry interview he also said he was elected as president and he used the English word ‘president’.<sup>4</sup> Also earlier in the TPV interview, I was able to clearly discern the applicant referred to his position using the English term general

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<sup>2</sup> 1:53.01 on PV interview recording 2 of 2

<sup>3</sup> 0:15:55 arrival interview recording

<sup>4</sup> 0:16.45 arrival interview recording

secretary.<sup>5</sup> While I note the entry interview was conducted shortly after the applicant arrived in Australia, he was not represented and the purpose of the entry interview is not to assess the applicant's claims for protection, I still place some weight on the evidence he provided at the entry interview.

13. I am not persuaded by the applicant's claim the inconsistency in whether he was the president or the general secretary/secretary general is a result interpreting errors and of his not knowing the English term for *shovapoti*. The applicant has variously used the English terms president and general secretary to describe his position. I note too the TPV statement is endorsed that it was interpreted to him prior to his signing it wherein his position is described as general secretary. I further note the BNP letter purports to be from the local president, about the applicant's position as the local general secretary. From that I conclude there are two distinct local positions of president and general secretary and that therefore this is not a situation where president and general secretary are alternate English terms for the same position. I consider the applicant providing inconsistent evidence as to his position with the BNP strongly undermines the credibility of his claims. If the applicant genuinely had such a position with the BNP, I expect it is reasonable for him to accurately and consistently identify the title of that position, particularly where as in the circumstances of the applicant, he claims to have held such as position for many years.
14. As well as his position, the applicant has also provided inconsistent evidence regarding whether he was elected to his position with the BNP or was appointed. He has further provided inconsistent evidence as to whether he was in the BNP or the BNP youth wing. The delegate quoted country information that the BNP and BNP youth wings are distinct organisations. I consider these to be further inconsistencies undermining the credibility of the applicant's claims.
15. The delegate asked the applicant to provide details about his activities with the BNP. He told the delegate he became a member of the BNP in 2002 at the age of 16 when he was in year 10. When he was asked about how he became an official member of the BNP, the applicant did not give a direct answer to that, although the delegate repeated the question several times. Rather, he referred to his popularity, his relationship with Mr Y, the then BNP president of the youth wing, and his attending meetings for two years. When asked about his duties as a general secretary, he replied he did what Mr Y told him to do, sometimes he signed documents. The delegate clearly put to the applicant she wanted details of his activities from the applicant as she was seeking to assess whether or not he did perform that position. He repeated he followed what Mr Y told him to do. When asked again, he said he helped poor people in the village. He took sick people to hospital. He briefed junior members to participate in any protests and to behave properly. When asked did he recruit new members and what did he say, he replied he did in his local area and he would say the BNP are very good and work for the country. In the IAA letter he provides generally the same information, but states Mr Y was the union chairperson. He told the delegate too he attended protests, sometimes twice a month, sometimes once every two months. The protests were about price rises, opposition to government decisions and opposing false allegations against people.
16. I am mindful the applicant was able to identify the chairman of the BNP, describe the BNP flag and was generally aware of the dates the BNP and AL were in power and when there was a caretaker government. He was familiar too with the outcome of the 2014 election. The delegate quoted country information which is supportive of the applicant's claim children are involved in politics in Bangladesh, for which they receive some payments. However, I consider

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<sup>5</sup> 0:58:15 on PV interview recording 2 of 2

these to be general, basic political knowledge most people with a normal level of interest in politics in Bangladesh would be aware of. He was unable to describe in any detail the content of the BNP constitution or the aims and objectives of the party. When the delegate encouraged him to provide more detail about the aims of the BNP, he said to be good for the country, to develop the country and to help the poor people. There should be no poor and rich, the same good for everyone and be against hostility, promote foreign investment. The delegate asked his knowledge of the 19 points program of the BNP. He said it related to discussions with the government a caretaker government. When encouraged for details as to what the points are, he repeated it was about discussions with the government about a caretaker government, to ensure the party which claims electoral victory, will form government. Details of the 19 points program are in the review material. They are the aims and goals of the BNP. They are not discussions points about a caretaker government.

17. I consider the delegate gave the applicant ample opportunity to discuss his claimed role with the BNP and I consider the applicant's responses were extremely vague and not consistent with someone who genuinely claims to have been a member of the BNP since the age of 16 and to have held a position as local leader of the BNP since the age of 18. I place particular weight on his inability to identify any of the 19 points program. I consider the applicant's vague responses to undermine the credibility of his claims he had any role in the BNP. I rejected above the applicant's submission in the IAA letter if I found his evidence at to be vague that I should invite him to a hearing. He had an opportunity to discuss his claims fully at the TPV interview.
18. The applicant initially told the delegate he had never voted. He said that was because there was a bomb attacks which prevented him from voting. When asked which year that was, he said 2000 and then said 2008. He said the election prior to 2008 was in 1999. He later said he voted at an election in 2005, but then changed to say there was no election in 2005. He claimed he attended a political meeting at the end of 2007 at which he met the unsuccessful BNP candidate for his area at the 2008 election, Mr I (I note Mr I is also the purported author of the BNP letter). He then claimed to have a voting card in Bangladesh. He was unsure whether he would be able to obtain the document when the delegate indicated she would expect him to provide that document, but she did not formally request he provide it. He was given 7 days to provide any other supporting documents and also told any document received prior to making a decision would be taken into account. He did not provide the voter card. In the IAA letter, he claims to have misunderstood whether the delegate was referring to his voter card or birth certificate. I am not persuaded by that. The delegate was clearly asking him about his voting history at the time she raised with him whether he had a voter card. Further, he provided his birth certificate to the delegate. The IAA letter goes on to explain why he does not have a voter card, which is the same explanation he gave the delegate as to why he did not have a national ID card, he was absent from his village on the day the relevant cards were issued, so he had to wait until the next time. I find it implausible the applicant would twice be absent on the day of issue of such important ID documents. I consider the applicant's evidence regarding his voting history was inconsistent and his explanation for not having a voter card or an ID card not to be plausible. I place weight to on the applicant claiming only to have met Mr I once as a candidate, yet Mr I is also the purported author of the BNP letter. I consider these further undermine the credibility of the applicant's claims.

#### *Attack and hospitalisation*

19. The applicant consistently claimed he was attacked by supporters of the AL. At the TPV interview, he described the day of the attack in some detail. He attended a protest in his village in April 2012. They went to the Union Council. On completion of the protest, he was attacked

when going back to his workplace. He was attacked by 4-5 people. He was unsure if they lived in his village. He believes he was attacked because he was popular and because he had attended the protest. He had injuries to his arm and leg. This is all generally consistent with the claims in his TPV statement. It is not consistent though with his evidence at the entry interview. At which he claimed he was attacked in November 2011. In his TPV statement and at the TPV interview the applicant claims he gave the wrong date because he was scared at the time of his entry interview, because he had just arrived in Australia after the long boat journey. I am not persuaded by that explanation, there is too big a variance between April 2012 and November 2011 to be explained in the way the applicant is claiming. As set out above, I do place some weight on the applicant's evidence at the entry interview.

20. The delegate put to the applicant, she was unable to find any reports verifying there was a BNP official named Mr T or that false allegations were made against Mr T. She invited the applicant to provide supporting evidence about that. He did not. In the IAA letter, the applicant states Mr T was not a senior officer. That is why there may not be any reports about him. He adds there were reports in the local news, but not online. In the TPV statement, he claimed Mr T was a district level general secretary of the BNP youth wing. In the IAA letter, he claims Mr T to be the district president of the BNP youth wing. For the reasons set out above, I do not consider this inconsistency to be another misunderstanding by the applicant about the English terms president/general secretary. I consider it if Mr T genuinely held the position and the applicant genuinely was involved with the BNP, the applicant should be able to consistently identify what position Mr T held. His inability to do that, undermines the credibility of his claims.
21. The delegate put to the applicant concerns she had regarding the discharge certificate he provided related to his hospitalisation after the attack. The delegate referred to typing errors in English on the discharge card pro-forma and shadowing consistent with cutting and pasting. In the IAA letter, he claims not to know the nature of the English errors in the discharge card. I also cannot discern any apparent errors in the English on the pro-forma parts of the discharge card. I find the applicant's explanation the shadowing is an artefact of the document being emailed to him to be plausible too. However, I note the name of the clinic is inconsistent with the name of the hospital which is within the wet-stamp under the signature of the treating doctor. I consider that undermines the credibility of the document. As was the delegate, I find it troubling too the doctor refers to the applicant being a victim of an assault (which is misspelt) as the diagnosis, rather than describing the injuries the applicant claims to have incurred. I am mindful of the information in the DFAT report on Bangladesh <sup>6</sup> regarding the prevalence of fraudulent documents in Bangladesh. For these reasons, I place little weight on the discharge certificate.
22. Due to the applicant's inconsistent and implausible evidence and his non-persuasive explanations, I find the applicant was not a credible witness. I reject that he was a member of the BNP or of the BNP youth wing and I reject he was a political activist. I reject too that he ever held the position of general secretary/secretary general and/or president of the local BNP and/or the local BNP youth wing. I reject he attended any protests. I reject he was attacked by supporters of the AL and I reject he was hospitalised with injuries. I consider the applicant has fabricated these claims as a basis upon which to apply for protection in Australia.
23. I am willing to accept the applicant is a low-level supporter of the BNP. He claimed all of his family support the BNP, but did not claim they were members. During the TPV interview he

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<sup>6</sup> "DFAT Country Information Report Bangladesh" (5 July 2016), *Department of Foreign Affairs and Trade* CIS38A80121206

told the delegate none of his family members had suffered harm in the past. He said that is because they were normal supporters of the BNP only, not leaders. He repeated that in the IAA letter. The DFAT report states there has been an increase in political violence since the 2014 election, but indicates members of political parties, youth or student wings, are subject to low-level risk of inter-party violence, although that risk may increase during periods of political unrest. As his family have not suffered harm in the past due to their support of BNP and I found the applicant is someone who too is only a low-level supporter of the BNP, on the credible evidence before me, I am not satisfied the applicant faces a real chance of serious harm from supporters of the AL and/or the Bangladesh authorities because of his low-level, pro-BNP political opinion.

24. I have had regard to all of the evidence before me and considered all of the applicant's claims individually and cumulatively, as well as his personal circumstances. I am not satisfied he has a well-founded fear of persecution from supporters of the AL and/or the Bangladesh authorities for any of the reasons in s.5J(1)(a), now or in the reasonably foreseeable future if he returns to Bangladesh.

#### **Refugee: conclusion**

25. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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26. A criterion for a protection visa is that the applicant is a non citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

#### **Real risk of significant harm**

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

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

28. I found above the applicant singularly or cumulatively does not have a real chance of serious harm on the basis of pro-BNP political opinion. For the same reasons, and applying the authority in *MIAC v SZQRB*<sup>7</sup> I am not satisfied the applicant will face a real risk of significant harm from supporters of the AL and/or the Bangladesh authorities if he is removed to Bangladesh.

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<sup>7</sup> (2013) 210 FCR 505



**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

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

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

...

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

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

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

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

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

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

...

## **5J Meaning of well-founded fear of persecution**

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

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

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

## **5K Membership of a particular social group consisting of family**

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

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#### **36 Protection visas – criteria provided for by this Act**

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

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

...

#### *Protection obligations*

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

#### *Determining nationality*

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

#### **91W Evidence of identity and bogus documents**

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
  - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
  - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
  - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
    - (i) refuses or fails to comply with the request; or
    - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
  - (b) either:
    - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

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**91WA Providing bogus documents or destroying identity documents**

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
  - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
    - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
  - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
  - (b) either:
    - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
    - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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