



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

VIETNAM

IAA reference: IAA17/03050

Date and time of decision: 14 September 2017 15:55:00

Denny Hughes, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Vietnam. He applied for a protection visa [in] February 2017. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] July 2017.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information was obtained or received.

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - The applicant faced regular harassment and extortion from the local police. The applicant purchased a [vehicle] in 2009. The police forced the applicant to pay bribes in order that he could undertake [work]. In mid-2011, the applicant's [vehicle] was confiscated by the authorities for failure to pay bribes/taxes. The applicant paid the amount to have his [vehicle] returned. In July/August 2011, he could no longer afford to run the [vehicle] and he sold it.
 - In 2011, the applicant's nephew's [item] was stolen. When the applicant went to the police station to make a complaint, and then query why the [item] was damaged, the police threatened him. Later the same day, the deputy of the police and [other] police officers attended his home and again threatened him, however he avoided harm by staying in his home.
 - In October 2011, the applicant attended participated in a protest in his home area against environmental disasters and poor living conditions. There was a [farm] in the applicant's area which caused pollution and contaminated the village's drinking and farming water.
 - The protest went for [a number of] days. The applicant acted like a leader at the protest, yelling out protest slogans and holding up placards.
 - The authorities broke up the protest and the applicant was hit with a police baton. [A number of] people were arrested after the protest and imprisoned [for] months.
 - After the incident, three summonses were issued against the applicant, which stated he was to attend the police department. The summonses were dated [in] November 2011, [date] November 2011 and [date] November 2011.
 - After the applicant received the summonses, he moved to another province and lived in hiding. He continued to work [casually] .
 - In 2011, police attended the applicant's brother's house several times, asking for the applicant and details about his whereabouts. The applicant's other siblings were subsequently visited by the police in December 2011.
 - The applicant left Vietnam legally using his own passport.

- The police have discriminated against his wife because of his actions in the protests. They keep asking his wife for bribes and she does not have enough money. His family have been living in rental accommodation and it is hard to pay the rent.
- He cannot change his political views against the Vietnamese government and the government has already targeted him. He has principles and he believes in the matters he protests against.
- The applicant fears harm throughout the whole of Vietnam including assault, death or imprisonment at the hands of the Vietnamese police on the basis of his political views. He has personally been persecuted before through threats to him and his family, and discrimination against his wife by his feared persecutors. There are three outstanding summonses for him to attend for an interrogation in his home area. He cannot rely on the protection of the Vietnamese state and cannot safely relocate anywhere else in Vietnam.

Refugee assessment

4. 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

5. 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.
6. The applicant spoke Vietnamese during the visa interview through the aid of an interpreter. He has provided a range of identification and translations of documents in support of his identity. The applicant confirmed he held a valid Vietnamese passport, and left Vietnam legally, but he no longer has the passport, as it was taken by the people smuggler during his travels.
7. I accept that he is a Vietnamese national from [Do] Luong, Nghe An province and have assessed his claims on that basis. I accept his wife and children continue to live in the same [place] in Nghe An.

8. I note the applicant indicated during the visa interview that his parents died when he was very young (around [age] and [age] years of age) and that the government took his land from him and his siblings. He said the authorities told them there was no documentation and they sold the land to other people. Country information before me indicates that property and land rights in Vietnam are a contentious issue.¹ I accept those claims and that he and his siblings lost access to their parents' property around [number of] years ago, and faced some hardship as a result of losing both their parents and their estate. However, the applicant did not claim to fear any ongoing harm on this basis or that he was at risk of losing his own land (he is not a landowner). I accept the impact of those events was significant the applicant and his siblings, but I am satisfied that property and land issues do not present any ongoing concern or risk for the applicant.

Claims related to his time as [an Occupation 1]

9. In his arrival interview, the applicant indicated he had faced one issue with the police in the past. He stated that the police/authorities had taken his [vehicle] because he had not paid his taxes. He stated that his business went bad and he was unable to pay overheads and tax.
10. In his written application, the applicant stated that he drove a [vehicle] from 2007 to 2009, and that he bought his own [vehicle] and drove it between 2009 and 2011. He claimed the police would ask him for bribes, and they confiscated his [vehicle] in around July or August 2011. He raised money to pay the bribe and get his [vehicle] back.
11. In his visa interview, the applicant discussed his concerns with corruption and oppression from the Vietnamese police. He claimed that every day when he was driving his [vehicle] he would make approximately [amount] VND, but would need to pay bribes of approximately [amount] VND. He claimed it was not a tax, as the police took the money for themselves and did not issue receipts.
12. The applicant was asked what would happen if he did not pay. He claimed they would write out a notice and they would take his [vehicle]. He was asked whether this happened in the past. He said it happened many times. He would need to pay an official fine, as well as the bribe to get his [vehicle] back.
13. In his written application, the applicant claimed that shortly after he raised enough money to get his [vehicle] back (July or August 2011), his nephew's [item] was stolen. He stated that he attended the police station to make a complaint about the [item] being stolen. The police recovered the [item], but it was damaged. He raised his concerns about the condition of the [item] with the police, but he was rebuffed by them and told it was just [an item], and asked him what he wanted. He claims the police later followed him to his house, and the deputy and [number to number of] police came to his home and threatened him. He claims they asked him whether he wanted to live or die. He said this meant they wanted him to keep his mouth shut or they would kill him. He said they stayed for about an hour, but they could not get in because they had locked the doors.
14. At the visa interview, the applicant provided a broadly consistent account of the [item] being stolen. At the police station he queried with the police why the [item] was damaged, and the police dismissed him and told him the [item] was rubbish. He challenged the police deputy and told him that he was a public servant and he should not say those sorts of things. He told them

¹ DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212.

he wanted fairness. He confirmed that that afternoon they came to his home and threatened to assault him.

15. The delegate asked him why they would come to his home over a disagreement regarding [an item]. He stated that these men were members of the village police. He claimed that a few days later while visiting his in-laws, they towed his [vehicle] to the police office. He went to the police station to claim it and was told that they had taken it because he had not paid his taxes. He told them he had been paid taxes, but had not kept the paperwork. The applicant had to pay [an amount] VND (approximately \$[amount] AUD) fine to recover his vehicle. He borrowed the funds and got his [vehicle] back, but he was very upset with how he had been treated. He sold the [vehicle], but recovered much less than he had originally paid for it.
16. After the [vehicle] was sold, he did not have any further issues in relation to the incident with the [vehicle] or his nephew's [item], but he was still harassed by the police – specifically when he was involved in a protest, which I consider separately below.
17. In his arrival interview and written application, the applicant indicated that his [vehicle] was confiscated on one occasion. In his written application he confirmed this was in July or August 2011, and that he borrowed money to recover his [vehicle]. Shortly thereafter his nephew's [item] was stolen. I note that evidence is inconsistent with his evidence at the interview. In the visa interview he claimed he was forced to pay bribes on a daily basis, and that his [vehicle] was taken many times because he did not or could not pay the bribes. He also claimed that his [vehicle] was towed *after* the confrontation with the police at his home, not before.
18. The applicant has been reasonably consistent about his concerns with his [vehicle], and I am satisfied that he owned and drove a [vehicle] for work, and that in the course of operating that [vehicle] he was required to pay low level bribes to the police. Given the inconsistencies in his evidence, I consider he has exaggerated the number of times he has had his [vehicle] confiscated and the frequency in which he was forced to pay bribes. Nevertheless, I am prepared to accept that his [vehicle] was confiscated on one occasion, and that he was likely required to pay a large fee/fine to recover it.
19. In terms of the confiscation of his [vehicle], I note his evidence at the arrival interview was that it was taken because he had not paid his taxes as he was unable to service his overheads. In his written application, he said his [vehicle] was confiscated because he could no longer afford to pay the police bribes. At the interview, he said the police told him he had not paid his taxes. When he told them he had paid his taxes they asked for evidence. He said he did not keep any paper work because he no longer needed it after he had paid his tax. They told him he needed to pay a large fine. He borrowed the money to pay the fine and recover his [vehicle]. After that he said he sold the [vehicle] because he was upset.
20. I found the applicant's evidence about whether his [vehicle] was confiscated for bribery or taxation reasons to be concerning. His evidence about not holding onto his taxation documentation was a concern for me, and indicated that, potentially, he had in fact not paid his taxes as claimed. That would be consistent with his earlier evidence at the arrival interview that his [vehicle] was taken because he did not pay his taxes. However, equally I accept that this kind of leverage could have been used by the authorities to exploit the applicant for additional bribery. In the circumstances, I find that the applicant had not paid his taxes, and that he was forced to pay additional bribes to reclaim his [vehicle]. I accept that he likely paid smaller bribes a number of times prior to this, and that the cumulative effect of low level, but persistent bribery, and the later cost of the recovery of his vehicle was a tipping point for the applicant and he decided to sell his vehicle out of frustration. That is consistent with his oral

evidence that he sold his [vehicle] because he was upset. While I accept the fine to recover his vehicle on the one occasion was significant, on his own evidence the amount of the bribes he paid prior to this was low level ([amount] VND), and I do not accept that the bribes were at a level that threatened his capacity to subsist or make a living. I consider any issues he had with paying his taxes was not related to the bribery demands, but was instead related to the success, or lack of success, of his [business].

21. While inconsistent, I am not concerned about whether his [vehicle] was confiscated before or after the incident at the police station and his home. In either respect, I accept it occurred in the context of his wider frustrations with the police. However, I do not accept that his attendance at the police station was an expression of a political opinion or protest as he claims, but find instead that it was a by-product of his frustration with the village police in his home area after repeated bribery demands and a perception that they were not acting in his or his family's interest. As discussed below, I have concerns about his claims to hold any political views. I consider his claim that it was a political act is an embellishment designed to give the impression that he has strong political views and is politically active.
22. In terms of the incident at his home, I find it implausible that his confrontation with the police about his nephew's [item] would have escalated to the point where he would be confronted at his home by the deputy of the village police and [police] officers. I accept he may have spoken openly, even angrily, about his frustrations with the police, but even in that context I cannot see why the police would be motivated to let him go only to come to his home later that same day to confront him. If the applicant has spoken or acted in a way the police considered inappropriate, I consider they could have harmed or detained him in the context of the police station, as opposed to confronting him later at his home. The country information before me indicates that the police at all levels in Vietnam operate with significant discretion and little transparency, and abuse, beatings and arbitrary arrest and detention are not uncommon.² In that context, I do not consider the village police would have deferred taking action against the applicant if he had acted in a way that prompted such a response.
23. Moreover, if the applicant had been confronted by village police in the way he claims, which he claims left him and his wife fearful for his life, then this would have been a significant event and I consider this would have formed part of his earlier evidence in the arrival interview. I do not accept he omitted this evidence during his arrival interview out of fear of the Vietnamese government. On his own evidence, the threat from the police was localised and limited to his home area. I find that omission from his earlier evidence was significant, and in the context of my other concerns about the plausibility of this claim, I do not accept that the applicant was confronted at his home by the deputy of the local police following the confrontation over his nephew's [item].
24. Based on his evidence, I am satisfied that following the sale of his [vehicle], the applicant faced no further issues from the authorities, whether in relation to his past interactions with the police, or any work he undertook in period between when he sold the [vehicle] (July/August 2011) and the period he claimed he left that area (November 2011). I find it significant that in the months that followed the selling of his [vehicle], he faced no harassment or bribery requests from the police (other than in relation to his claimed involvement at the protest, which is discussed below). That is a three to four month period, and that indicates to me that the bribery demands he faced from the authorities were not directed at him specifically, but were opportunistic and related to the specific nature of [vehicle] driving business. That also

² DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212; DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

indicates to me that the claimed threat from the police at his home did not occur. Were it otherwise, I consider the applicant would have been visited by the police again and/or intimidated further during this period.

25. I consider his issues with the police reached an end following the sale of his [vehicle]. I find there is no real chance of the applicant facing bribery or extortion demands, or any other harm, in relation to his past [vehicle] driving business or interactions with the local village police.
26. Beyond this, I have considered whether the applicant would face serious harm on return to Vietnam if he returned to his home area or elsewhere in the country, and/or again started to drive a [vehicle] or run another business. I accept that corruption and inefficiency remains a key feature of life in Vietnam and that it impacts many Vietnamese people and businesses. For example, DFAT indicates that Vietnamese may resort to fraudulent documents, or to obtain them unofficially, to avoid corruption and inefficiency in the responsible government agencies. More broadly, Vietnam is ranked 115 out of 188 countries in the latest United Nations Human Development Index, and Transparency International's 2016 Corruption Perceptions Index ranked Vietnam 113 out of 176 countries.³
27. If the applicant were to return to Vietnam, I accept he and his family may again face bribery and corruption from the local police/authorities, in particular if he sought to start a new [business], however I am not satisfied such bribery or interference would constitute serious harm. If he was exposed to bribery and interference from the authorities, I find it would be low level (small amounts) and infrequent, and while it would be frustrating and challenging for the applicant to experience, I find it would not result in any threat to his life or liberty, result in serious economic hardship, threaten his capacity to subsist or earn a livelihood or otherwise amount to serious harm as non-exhaustively defined in the Act. In this regard, I give significant weight to the fact that he faced no further interference after selling his [vehicle] in 2011, both in his home area, and his casual work in Ha Tinh, where he worked [up] until his departure in 2013. Further, I have found that he sold his [vehicle] out of frustration, and not because he could no longer afford to pay bribes to the police. On the contrary, I am satisfied that the applicant can find work and subsist in Vietnam, notwithstanding the corruption and bribery that exists in the country.
28. I find there is not a real chance of the applicant facing serious harm on the basis of his past profile and interactions with the Vietnamese police or authorities, or on the basis of his future work or businesses, from the Vietnamese police or other authorities.
29. On a separate and independent basis, in terms of bribery and corruption within the Vietnamese police and authorities, I accept this is a problem faced by many in Vietnam. However, I am satisfied that any remote chance of harm he fears in relation to official corruption, would not be for the essential and significant reasons of his race, religion, nationality, membership of a particular social group or political opinion, but rather a consequence of endemic corruption in Vietnam, and therefore that s.5J(1)(a) and 5J(4)(a) would also not be satisfied.

Claims related to political opinion

30. The applicant claims to fear harm on the basis of his political opinion and involvement in a protest in October 2011.

³ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

31. The applicant did not raise this claim during his arrival interview dated [in] May 2013. In that interview, the applicant was asked why he left Vietnam. He stated that life in Australia is easier and has better opportunities. He said his family in Vietnam is very poor and has no permanent place to live or stay. He discussed how being in Australia would enable him to work (in the Australian community) and improve his family's situation. He could send money back to his family and buy them a house. He was asked whether this was the only reason he left Vietnam, he confirmed it was. Those answers alone are potentially explainable. He may have assumed the emphasis of the questions was why he should be allowed to stay in Australia. However, he was also asked a number of specific questions about his political involvement, including involvement in activities and protests against the government. He was also asked whether he had ever been arrested or detained by the police or security agencies. The applicant answered no to these questions. The one exception to this was the applicant answered yes to whether the police had impacted his daily life. He stated that they had. He explained that the police/authorities took his [vehicle] once because he had not paid his tax. He said that his business went bad and he was not able to pay his overheads and even tax.
32. In additional information to the Department dated [in] August 2013, the applicant added to his claims. He claimed that corruption in the country made it hard to earn a living. He said the local authorities made it difficult for him to work as they continually stopped him and if he did not pay them money, the authorities towed away his family [vehicle] and he would have to pay them more money to have his [vehicle] returned. He also claimed that there was a [farm] in his local area. The farm [had] contaminated the drinking water in the area. Local residents protested and [people] were arrested by the police. He claimed he was one of the protesters. And he moved to Ha Tinh Province after the protest as he feared for his safety and possible arrest.
33. In his written statement accompanying his visa application, the applicant claimed that he holds political views against the government because the government makes hardship for people in Vietnam. He claims he has participated in protests against environmental disasters and poor living conditions brought about by the actions of the Vietnamese government. He has also raised his concerns with the police treatment of people in Vietnam and has been threatened because of these views.
34. The applicant addresses his failure to raise his claims in the arrival interview in his written statement. In terms of that interview, he states he was asked to give a brief description of his claims, so he did not give the full details of his claims at that time. He states that the Department did not explain to him what was relevant and what he needed to tell them. He stated that if there were any inconsistencies between the visa application and his previous interviews with the Department this may be due to issues with interpretation or the limited time he had to answer questions. He also stated he did not provide all the information about the harm he experienced in Vietnam at his entry interview with the Department because he feared that if this information somehow got back to the Vietnamese government, it would cause hardship for his family back home. He did not understand that the interview was confidential.
35. During the visa interview, the delegate put to him her concerns about his failure to raise these claims in his arrival interview. The applicant stated that when he was interviewed, he was not confident to report about what happened to him in Vietnam. He was worried for his family's safety in Vietnam.
36. As noted by the delegate, the arrival interview is an imperfect process. The context and timing of the interview necessarily means that inconsistencies, misinterpretations and omissions may

arise, and they should be weighed reasonably and fairly in assessing the credibility of an applicant's claims. However, I also note that the interviewing officer advised the applicant that the arrival interview was an opportunity to raise his reasons why he should not be removed to Australia. He was advised of the expectation that he give true and correct answers to the questions asked and the implications if he provided different evidence in future interviews. He was also advised of the protections in place in terms of his information and claims, and that this information would not be shared with the Vietnamese government. The applicant confirmed he understood these matters. I do not accept his claim that he was not told what was relevant or that he was pressed for time. The applicant has not indicated what, if any, interpreting issues were present. In any event, I consider his failure to raise these claims in total would not be attributable to interpreting deficiencies. While I accept he may have been distrustful of government authorities given his time in Vietnam, I also note when questioned about why the authorities at the airport took no interest in him despite the claims that there were summonses/warrants issued in relation to him, he stated that the warrant was only inside the province. In fact it was highly localised to his home area. In that context, I do not accept that he would not raise these claims at least in a general sense, or otherwise indicate he held political views or was involved in a protest against the [farm] because of its environmental impact.

37. Weighing everything before me, I consider the applicant's failure to raise those claims, even summarily, strongly indicates to me his claims are lacking in credibility and not genuine.
38. The applicant claims in his written statement that he attended a protest in 2011 in his home area to protest several years of pollution to the environment caused by a local piggery. He claimed the people came together for the protest, but it was not organised by any particular group. He was not an organiser of the protest, just a participant. He knew of one protester who owned a [vehicle] business, and one of the organisers. He claimed that thousands of people participated in the protest and it lasted for [days]. He claimed he acted like a leader at the protest, including yelling before anybody else and that he lifted up a placard. People were copying his actions. He claimed to have been at the protest for all [the] days.
39. He claimed the police came to the site of the protest and tried to stop it. There were also military and police dogs. He was hit by a police baton. [People] were arrested and imprisoned for 12 months.
40. Within a week after the protest, he received three summonses to attend at the police station for an interrogation because of his actions in the protest. The dates of the summons were [in] November, [date] November and [date] November 2011. He claimed the police delivered the three summonses to his brother's home because they could not find the applicant. He claims they tried to find out from him brother where he was living but he would not tell them. The police thought he was one of the leaders in the protest. They wanted to interrogate him about his involvement in the protests. The applicant was fearful that once interrogated, he would be beaten or imprisoned for his involvement. He claimed that the two men he knew had already been imprisoned.
41. After he received the summonses, he moved to another province (Ha Tinh) [to] escape from the police. He did not come back to live in Do Luong after that, only visiting when it was necessary. He would come back at night time and leave early in the morning so the police would not catch him. The applicant claimed he lived illegally and underground in Ha Tinh. He could not live a normal life and lived discretely to avoid bringing attention to himself. He claims he was able to work casually, but was fearful he would be found.

42. In December 2011, [police] went to his brother's house and asked for him. His brother did not tell them any information. They attended several more times looking for the applicant. His siblings were also asked about his whereabouts, and this lasted for about a month. The police told them he would be okay if he came back, but he did not trust them, as he knew everyone else that had been involved in the protest had been caught.
43. The applicant's oral evidence at the visa interview before the delegate contradicted these claims in several respects. His claims are also contradicted by country information about the protests.
44. At the visa interview, the applicant was asked what he did at the protest. He claimed he held up placards. He confirmed many people were holding up placards and there were many groups. He was asked what else he did at the protest, and he said they all did the same thing. He said the farm was not damaged, and they just held up signs. When asked why he would be specifically targetted given how many people were involved in the protest, he said he raised his voice and held up a placard. He said they mainly targetted people in the front of the crowd who had raised their voices and asked for the farm to be closed. He claimed he escaped from arrest, and later received a summons.
45. In his oral evidence, the applicant did not claim that he was at the protest for [all the] days. His evidence did not support his claim that he acted as a leader during the protest, rather that he protested in the same way as everyone else. His evidence was that he held up a placard and spoke loudly, like many people did. He claimed he escaped arrest, but did not claim that he was hit with a baton. I have given weight to those discrepancies.
46. The delegate put to the applicant that the timing of his attendance at the protests was not consistent with the country information available.⁴ He indicated that he attended a [protest] [in] October 2011. He claims he was later issued three summonses, on [dates in] November 2011. Copies and translations of those documents have been provided.
47. The report cited by the delegate is consistent about the existence of the [farm], its environmental impact and the local protests, however, the report indicates that the protests commenced for the first time in [November] 2011. And that the protests escalated in late December 2011 and early January 2012.⁵
48. The delegate put to him that this was inconsistent with his claim to have attended a protest in October 2011, and seriously undermined the provenance of the summons issued in early November 2011, as the summonses would predate the actual protest itself. She referred to country information about the prevalence of document fraud in Vietnam.⁶
49. The applicant responded that he may have been wrong about the date of the protest, and that it could have been late October or early November, but he is not sure. The delegate emphasised that this would mean the summonses were wrong. He said he did not think so. She put this concern to him again towards the end of the interview. The applicant said that he remembered the incident took place in that year, but maybe he did not remember exactly the period when. He said it had been a long time since the protest. She once more put to him that

⁴ DTI News, "Locals attack pig farm to protest against pollution", 3 January 2012, <https://www.vietnambreakingnews.com/2012/01/locals-attack-pig-farm-to-protest-against-pollution/>.

⁵ DTI News, "Locals attack pig farm to protest against pollution", 3 January 2012, <https://www.vietnambreakingnews.com/2012/01/locals-attack-pig-farm-to-protest-against-pollution/>.

⁶ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

this did not explain how the summonses were issued before the protest even took place. He said he was sure the summonses were issued after the protest.

50. I have concerns about the applicant's failure to raise these claims in his arrival interview and have given that fact weight when considering the genuineness and credibility of these claims. I accept the applicant may not recollect the exact date of the protest. However, when considered against country information that not only contradicts the claimed date of the protest, but does so in a way which undermines and contradicts the documentary evidence he has provided in support of these claims, his claims and supporting evidence cannot be considered genuine or credible.
51. Further, I note when asked whether there were other protests, the applicant said there was not and that this was the only protest. This is contradicted by the country information obtained by the delegate which indicates that the protestors were there between 12 and 22 November 2011, and on 30 December 2011 a large protest resulted in the release of thousands of pigs, with a further protest involving hundreds of locals taking place on 1 January 2012. The applicant claims to have left the area by this time, but also that he returned a number of times to visit his relatives. In that context, I find it significant that he did not know of the other protests, in particular the newsworthy incident involving the release of several thousand pigs. This also indicates to me that his interest in the protests and the situation at the pig farm was low level.
52. In the circumstances, I accept he may have attended one of the protests in his home area in or around November 2011. However, I do not accept he was active or took any leadership role in the protest, or that he came to the attention of the authorities, that he avoided arrest, that warrants or summonses were issued for his interrogation, or that he has any profile as a result of his participation in these protests, or that the police or authorities have any interest in him whatsoever. On the information before me, I find the summonses are fabrications. I do not accept that his brothers were questioned about his whereabouts, or that his wife or any member of his family was subjected to questioning, threats or discrimination on the basis of his political activities, opinions or profile. I accept the applicant may have moved to Ha Tinh between 2011 and 2013, but I do not accept he was in hiding. I consider he was likely taking up work opportunities following the sale of his [vehicle], and this explains why he would still return to his home area. It follows that I consider there is no real chance of the applicant or his family facing any harm in connection with his attendance at the 2011 protest.
53. In terms of his fears on return, the applicant claims that he cannot change his political views against the Vietnamese government and the government has already targetted him. He has principles and he believes in the matters he protests against.
54. The applicant attended one protest, and I find it was in a low level capacity. Given where he lived and the timing of his claims, I have accepted that he attended along with several hundred other local people. However, I consider he has embellished his involvement and interest in the protest. When asked whether he had been involved in any other protests, he said this was the only important event in his area, and that they did not have a chance to participate in other protests because nothing important took place. I accept the hamlet the applicant lived in may have been otherwise peaceful, but I find it significant that the applicant was never otherwise politically active. I also note the applicant has not claimed to have been politically active in Australia.
55. I find the applicant attended one protest in or around October or November 2011, but that his involvement was low level. I have not accepted that his attendance at the police station in

2011 was an expression of a political opinion or protest as he claims, but find instead that it was a by-product of his frustration with the village police in his home area. I have found the applicant has fabricated his claims that the police have any interest in him, whether related to the protest or his political opinion, his previous issues with the police related to his [vehicle] or nephew's [item], or otherwise.

56. While I accept he has been frustrated with the authorities in the past, I do not consider he has strong political views against the Vietnamese government. I do not accept he was ever politically active in the past outside of the 2011 protest, and I am not satisfied he would be involved in protests in the future. On return to Vietnam, I am satisfied he would seek to find work and provide for his family, and would not be politically active. I am satisfied there has been, and would be, no modification of his behaviour to avoid persecution, but instead his limited past and future activities are and would be a genuine reflection of the low level nature of his political views or interest in such matters.
57. Weighing everything before me, I find there is no real chance of the applicant facing, arrest, interrogation, assault, death, imprisonment or any serious harm at the hands of the Vietnamese police or authorities on the basis of his political views, any actual or imputed political opinion or profile, including in connection with his past involvement at one protest in 2011, or his interactions with the police in the same year.

Claims related to his time in Australia

58. I note the applicant's written and oral evidence is that he held a valid Vietnamese passport and left legally through an international airport. I accept that penalties exist (a range of fines) for Vietnamese nationals that depart the country unlawfully, including those who leave the country without travel documents or false passports.⁷ On the evidence before me, I am satisfied the applicant did not leave the country in any way that is in breach of Vietnamese law.
59. Information from DFAT indicates that 'fleeing abroad or defecting to stay overseas with a view to opposing the people's administration' is an offence under Article 91 of the Vietnamese Penal Code. However, DFAT advises that it is unaware of any cases where this provision has been used against asylum seekers.⁸ Given my assessment of his low profile, and my findings that there are no summonses or warrants issued in relation to the applicant, I am satisfied the applicant would not face any penalty under this provision.
60. I am satisfied there is a possibility that given his time spent in Australia and the loss of his original passport, this may indicate to the Vietnamese authorities that he applied for asylum in Australia and/or was in immigration detention.
61. While I accept the authorities may determine he had sought asylum in Australia, I do not accept that there is any chance or risk of harm to him on this basis. DFAT advice is that there is no information before it that persons who have sought asylum outside of Vietnam receive different treatment from the government for having done so, although those that have departed unlawfully may be briefly detained and fined for that departure.⁹

⁷ DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212; DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

⁸ DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212; DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

⁹ DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212; DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

62. The applicant no longer has a passport, having given his travel document to smugglers during his travels to Australia. I accept the applicant may be questioned about his missing travel document, however I am satisfied that the authorities would be able to determine his identity through his other documentation and that he left Vietnam lawfully. The applicant would not face a fine or other penalty for illegal departure. And the information before me does not suggest he would face a penalty for the loss of his travel document. Given it does not appear he has breached Vietnamese law, I am satisfied any questioning would be brief and that he would face no detention, charges, fine or other penalty. For clarity, I do not consider any brief period of questioning at the airport would constitute serious harm.
63. DFAT assesses that persons who paid money to organisers of people smuggling operations are viewed by the Government as victims of a criminal activity (people smuggling), rather than as criminals facing the penalties allowed in the law for illegally departing Vietnam. While the country information indicates some returnees may be briefly detained and interviewed, DFAT assesses that long-term detention, investigation and arrest is conducted only in relation to those suspected of involvement in organising people-smuggling operations. DFAT understands this to be the case in relation to several individuals who were on board vessels returned to Vietnam in 2016.¹⁰
64. There is no claim or suggestion before me that the Vietnamese authorities would consider that the applicant was involved in people smuggling. I am satisfied he would not face a real chance of being detained or harmed as a person connected with people smuggling, nor is there any basis to suggest he would be imputed to have such a connection.
65. I find that the applicant would return to Vietnam as an ordinary returnee, who left the country lawfully, and has no adverse political or other profile. Given this low profile, I find there is no real chance or risk of the applicant suffering detention, investigation, arrest or otherwise being seriously harmed as a returnee, in regard to his lawful departure, or for having sought asylum in Australia.

Refugee: conclusion

66. Having regard to all the information before me, I am satisfied the applicant would not face a real chance of serious harm on return to Vietnam on the basis of his attendance at the 2011 protest. I find there is no real chance of him being seriously harmed on the basis of any actual or imputed political opinion or profile, or in connection with his past (or future) profile and interactions with the Vietnamese police or authorities, or as a person who left Vietnam and sought asylum in Australia.
67. I have accepted he may face bribery, interference or corruption from the Vietnamese police and authorities, but I have found it would be infrequent, low level and would not constitute serious harm, and there is not a real chance he would face serious harm on this basis. I have also found that corruption and bribery is widespread in Vietnam and it would not be directed against the applicant for the essential and significant reason(s) of his race, religion, nationality, membership of a particular social group or political opinion, and 5J(4)(a) would also not be satisfied.
68. 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).

¹⁰ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

Complementary protection assessment

69. 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

70. 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.

71. I have accepted the applicant may be briefly questioned on arrival at the airport, but I have found he would not face any detention, charges or other fines. I am not satisfied that being stopped at the airport and questioned on return to the country would constitute significant harm. It would not amount to the death penalty, an arbitrary deprivation of life or torture. Further, on the evidence before me, I am also satisfied that any questioning would not involve pain or suffering that is cruel or inhuman in nature, or severe pain or suffering, or would be intended to cause extreme humiliation.

72. I have accepted that the applicant may be exposed to low level and infrequent corruption, interference and bribery by local authorities or police on return to Vietnam. While I have accepted this would be difficult and highly frustrating for the applicant, I do not accept it would amount to the death penalty, or result in an arbitrary deprivation of life, or torture. I do not accept that it involves intentional pain or suffering, is cruel or inhuman in nature, or is intended to cause extreme humiliation. It follows that I do not accept that any corruption or bribery he may face on return to Vietnam would constitute significant harm.

73. Furthermore, I have found there is endemic corruption within the Vietnamese police and government authorities that impacts many Vietnamese. I have found he has no other profile that would put him at risk in this regard. For these reasons, I am separately satisfied that any risks in terms of corruption, interference and bribery are faced by the population of the country generally and are not faced by the applicant personally, and therefore the qualification in s.36(2B)(c) also applies.

74. In relation to his other claims, I have found above that the applicant would not face a real chance of serious harm on return to Vietnam on the basis of his attendance at the 2011 protest. I find there is no real chance of him being seriously harmed on the basis of any actual or imputed political opinion or profile, or in connection with his past (or future) profile and interactions with the Vietnamese police or authorities, or as a person who left Vietnam and sought asylum in Australia, or for any other reason. For the same reasons, and applying the authority in *MIAC v SZQRB* (2013) 210 FCR 505, I am also not satisfied there is a real risk the applicant will face significant harm upon return to Vietnam for these reasons.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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