



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

BANGLADESH  
IAA reference: IAA19/06465

Date and time of decision: 18 April 2019 12:51:00  
I Sheek, 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 a referred applicant, or their relative or other dependant.*

## Background to the review

---

### Visa application

1. The referred applicant (the applicant) is a Bangladeshi national from [Village 1] in Mymensingh district. He departed Bangladesh by boat [in] February 2013 and arrived in Australia on [in] March 2013. On 13 March 2017 he lodged an application for a protection visa (PV).
2. On 8 March 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate did not accept that the applicant was an active or a low level supporter of the Bangladesh National Party (BNP) in Bangladesh. The delegate did not accept that he had been assaulted by or that he was of any interest to members or supporters of the Bangladesh Awami League (AL). The delegate concluded that the applicant would not face a real chance of harm in Bangladesh due to his illegal departure, being a failed asylum seeker or for any other reason.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). On 3 April 2019, the IAA received a submission on behalf of the applicant from his representative, [Ms A]. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. [Ms A's] submission addresses the delegate's decision and findings. To that extent, it may be regarded as argument rather than 'information' and I have had regard to it.
4. In her submissions [Ms A] has referenced relevant case law and a number of publications. Some of these have been taken into account by the delegate. The following reports were not before the delegate and are new information:
  - US State Department, 2016 Human Rights Report (date not listed);
  - International Crisis Group, Political Conflict, Extremism and Criminal Justice in Bangladesh, 11 April 2016;
  - Odhikar, Annual Human rights report 2017, January 2018.
5. The reports quoted by [Ms A] all significantly predate the delegate's decision. There is no information at all regarding why they could not have been provided to the delegate. As these reports comprise country information I am not satisfied that they are credible personal information in the relevant sense. The applicant has not satisfied me that either of the requirements of s.473DD(b) have been met and I am precluded from considering this information.

### Applicant's claims for protection

---

6. After his arrival in Australia the applicant was interviewed by an officer of the then Department of Immigration and Border Protection (now the Department of Home Affairs) on 7 April 2013. Together with his PV application he provided a statutory declaration dated 12 September

2016. On 12 November 2018 the applicant attended an interview (“the PV interview”) with the delegate at which his representative [Ms A] was present. The applicant claims:

- The AL control the politics in his area. He and his family support the BNP. He attended public meetings and rallies held by the BNP. He was invited to join the AL but declined. Because of this he was harmed by members of the AL and forced to flee. If he returns to Bangladesh he will again be harmed by supporters of the AL, who are currently in power and act with impunity;
- The AL are still seeking him and recently killed his brother and nephew because of their connections with him. He is suffering from a number of mental health issues because of this.

### **Factual findings**

---

7. Based on the information provided in his visa application, identity documents and oral evidence, I accept that the applicant’s background is as follows: he was born on [date] in [Village 1], [a] region, Mymensingh district and is a Bangladeshi national. He is of Bengali ethnicity and Sunni Muslim faith. His father is deceased. He is one of [number] siblings [born] in [Village 1]. The applicant has not been employed in Australia.
8. There has been considerable variation in the applicant’s stated history. In his arrival interview of 7 April 2013 the applicant gave a detailed background, stating that he attended school to Grade 5, ceasing studies [year specified]. He then worked [for] various employers until 2005. From 2005 he was an employee of [a business], employed as [another occupation] in the Gajipur Cononari area. The factory closed down in January 2013 and he decided to seek better income than could be obtained by continuing to work [in other industries]. He left his village of [Village 1] around [February] 2013 and travelled by train to his friend’s house in Gajipour; three days later he took the train to Chittagong from where he left Bangladesh by boat.
9. The applicant made a further statement on 6 June 2013 in which he said that members of the AL attempted to extort money from him and told him that if he did not pay they would shut his shop. They came to his home and beat him. Then they burned down his shop. The applicant had not previously mentioned having a shop.
10. In his PV application the applicant stated that he was educated to the third year of high school, ceasing studies in [year] aged 15. In his statutory declaration of 12 September 2016 he stated that because he was the [information deleted] son he was able to avoid working [in a specific occupation] and so did not work at all until 2008. His father had purchased a shop in 2000 and passed away later the same year. The applicant opened his own business [in] these premises in 2008 and ran the business until 2012. The applicant then claimed that in October 2012 members of the AL came to his shop and attacked him with knives. They ransacked the shop and took all of the stock. No-one came to his aid as they were afraid of the thugs. He ran to his uncle’s house and received treatment for his injuries. He was subsequently advised by the other shop owners that the thugs had burned down his shop after he fled. He went to live with an uncle in [City 1]. The AL thugs came to his house in [Village 1] searching for him in November 2012 and twice more after [January] 2013. They then burnt down his home, where his mother was living. He has never reported any of these events to the police as the police side with the AL.
11. At the PV interview in November 2018 the applicant stated that his shop sold all sorts of [products]. The delegate asked who his suppliers were and the applicant responded “the

suppliers used to supply things to my shop. I cannot say the name of my suppliers.” Two to three months before October 2012 the AL thugs came to his shop and threatened him. They wanted to knife him but one of them said let’s give him another chance so they “cut a little bit of my arm”. He reported this event to the police. His shop was [in the vicinity of] the police station. When the thugs heard that he had done this they were very angry. They came back to his shop but the applicant had been told that they were coming and so was not there. They took all of the money that he had left in the shop and the valuable [products]. The applicant did not reopen the shop after this event. The thugs came to his home to harm him but his mother told them not to so they didn’t. They went and burned his shop down. The applicant fled the village and went to stay with a friend in Gajipour. Later they came and burned his house down.

12. In his statutory declaration the applicant stated that he had not given true information at the arrival interview as he was afraid to say what had actually happened to him. At the PV interview he stated that he was not mentally fit on arrival. Also he feared that if he gave the correct information he would not be allowed into the country. Although the latter statement may be a reason for a new arrival to fail to disclose their political views, I do not accept that the applicant would give a completely different education and work history for this reason. In the applicant’s more recent evidence relating to his shop and the reason for the closure of this business, he has continued to give contradictory evidence. He has stated that the AL beat him at his home then went to his shop and burned it down. He has stated that they knifed him at his shop, took the stock and then burned the shop down after he fled. He has stated that they knifed him at the shop; some time later they stole his takings and stock; two to three months after the knifing they burned the shop down. He has stated that he has never reported any of these events to the police. He has stated that he reported the knifing to the police. He has stated that after fleeing the village he stayed with an uncle in [City 1] and that he stayed with a friend in Ganjipour.
13. In view of the significant and ongoing variation in the applicant’s evidence I conclude that he is not a witness of truth. I do not accept that he ran his own [business] and that this was ransacked or burned down for any reason. I conclude that the applicant’s initial evidence regarding his education and work history was accurate; that he was educated to age 11 and worked as [one occupation] and then [another occupation] before leaving Bangladesh. I also accept his initial statement that he left Bangladesh in order to earn more money overseas.
14. In relation to any political views, at the arrival interview the applicant answered in the negative to the questions: “Have you or any members of your family been associated or involved with any political group or organisation?” and “Were you or any members of your family involved in any activities or protests against the government?”. I accept as plausible that the applicant may have wished to conceal any political activities or views on arrival to Australia. In his 6 June 2013 statement the applicant notes that he was a member of the BNP. In his statutory declaration he noted that “the allegiance of my family members is to the BNP” and this party is better for small business. He claimed that he attended BNP meetings about once a month and that “I would sometimes be a conduit for papers and information that the MP would give me to inform the village leaders about different issues.” He further claimed that his eldest brother had “political problems” and left Bangladesh for Kuwait in 2009.
15. At the PV interview the delegate asked the applicant about his political views and activities. He stated that he started supporting the BNP in 2008. In relation to his party involvement he stated he was “just a worker” then added that he was a village leader. He had no official position but when there were meetings in the village he would organise them. He also took supporters to meetings in other areas and ensured their safety. The delegate asked whether

he voted in the 2008 election and he stated that he did not. Initially the applicant stated that he could not vote because BNP supporters were not allowed into the voting centres: “they would beat us and use rifle”. Later he stated that he registered for a voter ID card but it never arrived. The delegate asked whether the applicant participated in the election and he stated that he did. When asked how, he responded “by helping people participate in the election”. When asked whether any of his family were involved with political groups he responded that “no-one is involved in politics”.

16. As can be seen from the summaries of evidence above, the applicant’s political claims have also continued to evolve. While he initially (in April 2013) claimed to have no political affiliation he claimed in June of that year that he was a member of the BNP. In his 2006 statutory declaration he claimed that he and all of his family were BNP supporters, also that his brother left Bangladesh due to “political problems”; the applicant has later stated that only he had any political involvement. The only political activities the applicant mentioned in his statutory declaration were attendance at rallies and meetings and “being a conduit” for information from the local MP. At the PV interview he claimed to be a village leader and to have undertaken a wide range of political activities. I do not find it plausible that he would “help people participate in the election” but not vote himself and find his reasons for not voting unconvincing. I conclude that the increasing embellishment of the applicant’s claims of political activity are further indications of his lack of credibility. In her submissions to the IAA [Ms A] contends that “anyone who knows anything about Bangladeshi rural culture knows that support of one political group or another is mandatory at village level”. When asked what he preferred about the BNP the applicant’s response indicated some familiarity with their policies. I accept that he and likely his family members preferred the policies of the BNP to that of the AL and were to that extent supporters of the BNP. I do not accept that the applicant was a member of the BNP or that he undertook activities such as organising meetings or transportation of members/supporters.
17. The applicant has claimed that the various persecutions to which he was subject by the AL members/supporters/thugs were for the purpose of forcing him to join the AL. In relation to this, a media article from 2011 does not support the contention that BNP supporters were at that time coerced, threatened or forced to join the AL; in fact the opposite is indicated. The article notes in part: “All the ward committees have also been directed to prepare lists of the people loyal to Awami League to make them members. ‘The faithful can get Awami League membership through filling a prescribed membership form,’ said Prof. Bazlur Rahman ... ‘After evaluation of the lists of the people interested to join Awami League, we will distribute the forms through ward committees so that the members of other political parties cannot get the AL membership’”.<sup>1</sup> On the basis of this and the applicant’s poor credibility I am not satisfied that he was subject to any adverse actions by members of the AL in order to force him to join that party. I am not satisfied that the applicant was or is of any interest to any members or supporters of the AL.
18. In his statutory declaration the applicant noted that “I sometimes go to help the BNP activities in Australia when they hire a room for meetings.” He gave no further information on this at his PV interview and I do not conclude that any “help” is ongoing. The applicant does not claim to be a member of the BNP in Australia and I find he is not. The applicant has recently claimed that his brother and nephew were murdered during 2018. He claims that his brother was killed because he was seen having a [conversation] with the applicant on his mobile phone and that the nephew was killed two weeks later because he had sent some photos of the brother’s funeral and related events to the applicant. The applicant claims that the killers were AL

---

<sup>1</sup> The Daily Sun, ‘Rajshahi AL to launch membership drive’, 2 November 2011, CX277017

members or supporters. I have not accepted that the applicant was of any interest to AL members. I reject the claim that any members of his family have been harmed due to their relationship with the applicant.

19. The applicant has provided medical reports indicating that he is suffering from symptoms of anxiety and depression. A report from [an organisation] dated 22 October 2018 notes that his symptoms are due to traumatic experiences in his country of origin; further to this he is suffering from grief and loss due to the recent deaths of family members. The author notes that the applicant was still in the assessment phase of his treatment at the time of the report. There are no further medical reports before me and his ongoing treatment needs are unstated. I accept however that he may need ongoing treatment for his mental health issues, whether by way of medication or counselling/therapy.

### **Refugee assessment**

---

20. 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**

21. 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.
22. The applicant is a Bangladeshi national; it follows that Bangladesh is his receiving country. The applicant is not a member of and has not undertaken any activities for the BNP such as organising meetings or rallies. I have accepted that the applicant supports BNP policies. Country information indicates that Bangladesh is prone to high levels of politically motivated violence, which manifests regularly in the form of violent clashes between supporters of different factions of the same party (intra-party violence), supporters of rival parties (inter-party violence), and between party supporters and law enforcement agencies. Fatalities and serious injuries resulting from these clashes are common. Politically motivated violence tends to peak during periods of heightened political unrest, including during elections, strikes, and blockades. It tends to be most prevalent outside Dhaka, particularly in northwest and

southeast Bangladesh.<sup>2</sup> The applicant is from Mymensingh district, to the north of Dhaka. I have not accepted the applicant's claims that he was assaulted or persecuted by AL members or supporters in 2012. I have not accepted that he has encountered any harm in the past due to his political views. I have not accepted that members of the AL were seeking the applicant in 2012 or that they have recently killed members of his family. I have found that the applicant was and is of no interest to AL activists, members or supporters.

23. Country information indicates that over recent years intra-party violence between AL factions has been the most common form of politically motivated violence largely due to the party's complete control over state institutions. Competition between rival factions and candidates for lucrative contracts, tenders and appointments to senior party positions, has superseded ideological differences.<sup>3</sup> The applicant has at no point claimed to have been involved with the AL. The country information does not support the conclusion that the applicant would face a real chance of harm from politically motivated violence in his home area of Mymensingh district. I conclude that the applicant does not have a well-founded fear of persecution on the basis of any actual or imputed political opinion.
24. Although not raised by the applicant, the delegate considered whether he faced any chance of harm as a returning failed asylum seeker or due to having departed illegally. I accept from his evidence that the applicant departed Bangladesh without a passport, which country information indicates may amount to an offence under the Emigration Ordinance Act (1982) (EO Act).<sup>4</sup> There is no information in any of the material before me to support that the Bangladeshi authorities enforce the EO Act against returning Bangladeshi asylum seekers who left without a passport. I am not satisfied that the applicant faces a real chance of any harm in Bangladesh on the basis of having departed illegally. The International Organization for Migration's Assisted Voluntary Returns and Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Bangladesh government, Bangladesh accepts both voluntary and involuntary returnees.<sup>5</sup> There is nothing in the material before me indicating any mistreatment of returnee asylum seekers. DFAT reports that it has no evidence to suggest that recent returnees from likeminded countries have received adverse attention from authorities or others. DFAT assesses that most returnees, including failed asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily.<sup>6</sup> I am not satisfied that the applicant faces a real chance of any harm in Bangladesh on the basis of having made an application for asylum in Australia.

#### **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**

---

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

---

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report Bangladesh 2018", 2 February 2018 CIS7B83941169; 3.59

<sup>3</sup> DFAT, "DFAT Country Report Bangladesh 2018", 2 February 2018 CIS7B83941169; 3.62

<sup>4</sup> Ibid; 5.21

<sup>5</sup> International Organization for Migration, "Bangladesh", 1 August 2014, CIS29397

<sup>6</sup> DFAT, "DFAT Country Report Bangladesh 2018", 2 February 2018, CIS7B83941169; 5.23

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 have accepted that the applicant may continue to suffer from the symptoms of anxiety and depression. Country information indicates that there are few support services available for those suffering from mental health disorders and no specific mental health authority in Bangladesh. Considerable social stigma attaches to reporting mental illness.<sup>7</sup> The review material includes an article about the opening of a mental health clinic in Dhaka, which quotes the Managing Director of the clinic as follows: "A patient has access to primary counselling in the country but getting secondary mental health treatment is very difficult. Currently just a handful of medical colleges and the National Institute of Mental Health and Hospital provide secondary services. But the demand is much higher than the supply and providing services to people with limited resources is very hard."<sup>8</sup> Although treatment for mental health conditions is clearly limited in Bangladesh, there is no evidence that the applicant would be denied medical treatment on an arbitrary basis on return. I further note that the shortage of mental health facilities and treatment is one faced by the population of the country generally and is not faced by the applicant personally, therefore such a shortage does not constitute a real risk that the applicant will suffer significant harm (s.36(2B)(c)). I am not satisfied that the applicant otherwise faces a real risk of significant harm due to his mental health conditions.

29. I have concluded above that the applicant does not face a real chance of harm on the basis that he is a BNP supporter, that he departed Bangladesh illegally or that he sought asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard,<sup>9</sup> I am equally not satisfied that the applicant faces a real risk of significant harm on return for the purposes of s.36(2)(aa) for these reasons, including when considered individually or cumulatively.

### **Complementary protection: conclusion**

30. 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).

---

<sup>7</sup> DFAT, "DFAT Country Report Bangladesh 2018", 2 February 2018 CIS7B83941169; 2.15

<sup>8</sup> Dhaka Tribune, "World-class mental health clinic opens in Dhaka", 18 February 2018, CXBB8A1DA35652

<sup>9</sup> *MIAC v SZQRB* (2013) 210 FCR 505



## **Decision**

---

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

## Applicable law

---

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

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

In this Act, unless the contrary intention appears:

...

***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.