



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

MYANMAR

IAA reference: IAA19/06893

Date and time of decision: 27 August 2019 15:03:00

K Allen, 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) claims to be a Burmese Muslim from Yangon in Myanmar. On 27 July 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 24 July 2019 a delegate of the Minister for Immigration refused to grant the visa on the basis that the applicant was not owed protection.

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).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in [year] in Yangon. He is of Burmese Sunni Muslim ethnicity and faith. His father worked as a [occupation] in Yangon and then moved to [Country 1] in 2007. His mother lives in Yangon and she remarried when the applicant was young.
 - He is stateless because Myanmar does not recognise him as a citizen because he is a Muslim. His family members are also stateless and are not recognised by the government in Myanmar. Because he is stateless, he was never issued a national identification card. This means that he was not able not travel freely throughout Myanmar nor was he permitted to leave the country legally.
 - Muslims are a minority religion in Myanmar and there is widespread abuse of Muslims across the country. On many occasions he chose not to attend mosque because he feared being targeted with violence or threats and he was not permitted by his parents to attend at mosque because they believed it was unsafe. His parents preferred that they prayed at home instead of attending mosque.
 - He went to local government schools in [Township], Yangon [during the years] and finished his education after year [number]. After that he was supported by his family. The students at his school were from different religions; however, the Muslim students were in the minority and they would often experience verbal abuse from other students because of their religion.
 - In 2007 there were big demonstrations by Buddhist monks against the Myanmar government. In September 2007 his father was working as a [occupation] and on occasion he was paid to deliver food to some of the anti-government demonstrators. The local authorities wrongfully accused his father of helping the demonstrators and supporting their movement because he was a Muslim.
 - Army personnel and members of the local police came to their house to question his father about his involvement in the anti-government demonstrations. His father went into hiding and then left for [Country 1] in November 2007 because he believed that the

authorities would arrest him because of what they believed to be his political involvement.

- When the authorities could not find his father they continued to visit the house and became angry and threatened to arrest his brother. He feared that he would also be arrested and feared for his safety.
- In May 2008 he departed Myanmar illegally with his brother and they went to join their father who was staying with his sister in [Country 1]. After he left, his mother told him that the police returned to his house once or twice to search for him and his brother.
- In May 2013 he travelled to Australia with his father, brother, [and other relatives].
- If he is forced to return to Myanmar, he will be detained, interrogated, tortured or killed by the Myanmar authorities because of his association with his father whom they believe was involved in anti-government demonstrations and he will be treated worse than other people because he is a Muslim.
- Aggression against Muslims in Myanmar has increased recently and there have been incidents where mosques have been burned down. He will not be permitted to practise his religion without restrictions and he will be targeted because of his religion.
- He will have no rights as he is stateless and would find it very difficult to find a job because he is a Muslim.
- The government could arrest, harm or even kill him if he returns to Myanmar because he left the country illegally, because of his association with his father and because he does not have any national identification documents.

Factual findings

Religious and ethnic profile

1. The applicant claims that he was born in [year] in Yangon. In his SHEV interview he was able to describe Yangon and answer questions about his schooling and family. His father worked as a [occupation] in Yangon and then moved to [Country 1] in 2007. His mother lives in Yangon and she remarried when the applicant was young. I accept that he was born and lived in Yangon, Myanmar and that his mother still lives in Yangon.
2. The applicant claims to be a Burmese Muslim. I note that in his Arrival Interview his ethnicity was recorded as [ethnicity] but in his SHEV application he clarified that he is not [ethnicity] but in fact he is Burmese. I accept, based on his place of birth, family history and accounts at interview that the applicant is of Burmese ethnicity.
3. The applicant has been consistent in relation to his claims about his Islamic faith. The most recent census revealed that the biggest Muslim populations are in Yangon and Mandalay regions and Mon State. There are 345,612 Muslims in Yangon Region (comprising 4.7 percent of the population)¹. In his SHEV interview, the applicant provided his Islamic name and was able to recite some verses from the Koran in Arabic. There is no information before the IAA to indicate that the applicant is of any other faith and I accept that the applicant is a Muslim.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 2.12, 3.70

4. The applicant contends that he is stateless, undocumented and unable to obtain citizenship or citizenship documentation in Myanmar because he is a Muslim. I have had regard to DFAT advice² about the Myanmar Citizenship Law that was considered by the delegate. In order to be recognised as a citizen in Myanmar, DFAT advises that a person must belong to one of the 135 officially recognised national ethnic groups. According to the US Department of State and TSU Press³, the law automatically grants full citizenship to members of the 135 officially recognised national races. In his Arrival Interview he stated that he left Myanmar in April 2004 because he was not allowed to have citizenship. In his SHEV application he revised the date of departure to May 2008 when he was [age] years old. He reiterated that he is stateless because Myanmar does not recognise him as a citizen because he is a Muslim and because he is stateless, he was never issued a national identification card. In his SHEV interview he was asked how he attended school if he was stateless. He responded that he had a student identity card but not a national identity card. The delegate put to the applicant at interview that his brother had told the Department that their father had a citizenship green card and that's how he got his driver's license and his uncle also stated that he is a citizen. The delegate put the applicant that he went to school and had a student card and that the evidence points to him being a citizen like other members of his immediate family. The applicant was unable to provide a meaningful response when these matters were put to him, simply stating that he was young. I note that the applicant was an adult at the time he departed Myanmar. Overall, I do not accept that the applicant is not a citizen. I consider that as he is of Burmese ethnicity he therefore had an automatic right to full citizenship and that he held citizenship as claimed in his Arrival Interview.
5. I have considered whether the applicant is undocumented. The applicant has not provided any documents in support of his claimed identity. He claimed he held a student identity card but did not get a national identity card. At his SHEV interview the delegate asked the applicant whether he had any identity documents. He responded that he did not and that his family members did not have any identity documents. He stated that in 2013 he was issued with a UNHCR card in [Country 1]. The delegate asked him what he did between 2008-2012 in [Country 1] without identification. He responded that he did not go out so much so did not need documents. I note, however, that the applicant claimed to have worked in [Country 1] so I do not accept that he has been entirely forthcoming about his documentation.
6. The delegate put to the applicant information about common identity documents in Myanmar and noted that he would have needed to have these documents to be enrolled in school. The applicant claimed that he has studied up to grade [number] in a public school in Myanmar and stated his siblings also attended school and studied up to grade [number]. The TSU press report⁴ states that a birth certificate in Myanmar provides legal identity information including the parent's particulars, place and date of birth, race and religion. It is normally obtained from the township health department in urban areas and rural health centres in the rural areas in Myanmar, birth certificates are issued by the Ministry of Health upon the birth of a child. Smile Education and Development Foundation and Justice Base state⁵ that birth registration is a key component in preventing statelessness. It is often the first legal document that an individual acquires, allowing them to access other services such as education and health. The Smile Education and Development Foundation and Justice Base

² DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 3.1

³ US Department of State, "Human Rights Report 2014 Burma", 25 June 2015, OG2B06FAF35, p.29; T. Gibson, H. James & L. Falvey, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535, p.82

⁴ T. Gibson, H. James & L. Falvey, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535

⁵ Smile Education and Development Foundation and Justice Base, "Access to documentation and risk of statelessness", 1 December 2017, CISED50AD8574

report dated 1 December 2017 states that in Myanmar, a birth certificate and the family household list are necessary for accessing primary and higher education. The Ward or Village Tract Administration Law requires all births and deaths to be registered with ward or village tract administrators. The punishment for non-compliance is a maximum seven days imprisonment or MMK 5000 (approximately AUD 5). Citizens without birth certificates may be denied higher education and job opportunities. Most children in urban areas such as Yangon are registered. When this information was put to him at the SHEV interview the applicant conceded that his birth certificate might be with his mother. The applicant has not obtained a copy of his birth certificate and presented it to the Department or the IAA.

7. During the SHEV interview, the applicant was shown a copy of a family household list, a common form of identity documentation used in Myanmar. He claimed to have never seen such a document. Whether a person is stateless or not, the country information before me⁶ indicates the applicant would in all likelihood have been on a household list. The household list is a central identity document in Myanmar. It provides identification of residential status including the date of the record, name of state, township, city, village, street, where the house is physically located, room number, and building number. It also contains personal information including name, date of birth, gender, father's name, and relationship with the household head, occupation, registration number, ethnicity, nationality and religion. According to DFAT⁷, it would be rare for a citizen of Myanmar who is resident in the country not to be registered on a household list. If a person is found to be unregistered, the penalty is a maximum of seven days' detention at the police station, during which time the person must prove they belong to a household and have the head of the household come to register them on their household list. A household list must be presented when applying for an identity card, birth certificate, school enrolment, recommendation from a ward/village administrator, travel permit, etc. Additionally, this document is not (or was not) confined to Burmese citizens. Indeed, the household list was often the only formal documentation accessible to persons of Rohingya ethnicity. In urban areas, delivery/birth certificates and household lists were always needed to enable enrolment at primary as well as secondary school. When the applicant questioned about this at interview conceded that his parents probably had a household list. The applicant has not obtained a copy of his household list from his mother or father and presented it to the Department or the IAA.
8. Later in the SHEV interview, the delegate asked the applicant again if his parents were citizens of Myanmar. He did not answer the question directly and focused his response on the possession of identity documents. After being asked a further time he conceded that they were born in Myanmar and were Myanmar citizens and that his mother may have a threefold citizenship card. He told the delegate that his father and brother had told him this before they got their UNHCR card in [Country 1].
9. I consider that the applicant is a citizen of Myanmar and has documentation in support of his citizenship and that he would have required such documentation to be enrolled in school. I do not accept that the applicant holds no identity documentation and I consider it very likely the applicant has chosen not to provide this identity documentation to bolster his protection claims.
10. I have considered whether the applicant is a citizen but has been discriminated against in the provision of citizenship documentation because of his Muslim religion. I have weighed

⁶ T. Gibson, H. James & L. Falvey, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535, p.86, p.99

⁷ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 5.30-5.33

country information from DFAT and the BHRN⁸ about discrimination in the issuance of identity documentation and other discriminatory barriers for Muslims and other minorities in Myanmar. I accept there are documented incidents of Muslims from different ethnicities being refused documentation. Reasons for this varied, ranging from the applicant being unable to provide extensive and often difficult to obtain documentation to prove family lineage, and the refusal of immigration authorities to register a Muslim person as Bamar (the majority ethnicity). The reports indicate that some Muslims have been required to choose a 'foreign' ethnicity to self-identify as Muslim on applications for citizenship cards. I note that the applicant has not claimed to have applied for identification documents and been refused. He has not claimed that he had to register as a foreign ethnicity or that he faced any of the other cited barriers to the issuing of documentation. I consider that he holds documentation and very likely has chosen not to provide it to the IAA.

11. Overall, weighing all of the evidence before me, I do not accept the applicant is stateless or undocumented. I have found his evidence about his ethnicity and his lack of documentation was inconsistent, unsupported by the country information and lacking in credibility. There was little in his evidence to support his claims that he and his family members in Myanmar are stateless, or that there would be any basis to impute the applicant with such a profile. The information above also demonstrates to me that the applicant and his family would have possessed some identity documentation, regardless of their ethnicity or citizenship status. At a minimum, I consider the applicant would have had a birth certificate and a household list. I find his refusal to disclose this information was not because he was undocumented, but rather was designed to conceal the fact that the documents would reveal aspects of his profile, principally his ethnicity and citizenship status, which would undermine his protection claims. I consider that the applicant is a documented citizen of Myanmar and that Myanmar is the receiving country.

Harm in Myanmar

12. Beyond his status in Myanmar, the applicant's substantive claims are quite brief. He has claimed to have been verbally abused at school as a child because of his religion. He has claimed that he and his brother were threatened by police because of his father's political activity. I have significant concerns about the credibility of the applicant's central claims in relation to the harm that he fears from the Myanmar authorities and Buddhists in Myanmar. It is my assessment that the applicant has embellished and exaggerated his claims in order to support his application for protection and I have concerns about his general credibility and motive for departing Myanmar.
13. In his Arrival Interview he stated that he left the country because there was religious violence and there is no place for Muslims. He said that nothing happened to him personally. In spite of travelling to Australia with his father, his father's brother, his brother and his brother's family, when the applicant was asked whether any family member was involved in any political activities against the Government, he had stated none of his family members were involved. He had also stated that police and security or intelligence organisations did not impact on their day to day life in Myanmar. If his father and he left Myanmar due to his father's involvement during anti-Government protests and for the fear of being arrested by the police, it is reasonable to consider that the applicant would have stated about his father's involvement in distributing food to the protesters and the applicant being threatened by the police in Myanmar at his Arrival Interview. The fact the applicant did not provide these

⁸ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206; BHRN, "Persecution of Muslims in Burma", 4 September 2017, CISED50AD5558

details may indicate that he is embellishing his claims for the purpose of advancing his SHEV application. Furthermore, during his Arrival Interview the applicant has stated that he left for [Country 1] during 2004. When the discrepancy in his statements regarding the time of his departure from Myanmar was put to him for comment, he stated that he made a mistake and tried to correct it but the Department did not correct it.

14. In his SHEV application he claimed he was verbally abused by other children at school because he was part of the Muslim minority. He also claimed that he and his brother were harassed and threatened by the police because their father was wanted for questioning over supporting protesters against the Myanmar government. This is in stark contrast to the Arrival Interview.
15. At the SHEV interview the applicant was asked if anything had happened to him personally in Myanmar. He did not raise that he had been verbally abused at school. He stated that police came to his house and interrogated him several times about where his father was. The delegate asked the applicant to elaborate. He explained that nothing happened to him prior to 2007 but in 2007 he and his brother were threatened by the police because of his father's role in the Buddhist monks' revolt against the government so they left the country. He explained that his father was a [occupation] and he was paid to distribute food and juice purchased by others to Buddhist protesters. The delegate put to the applicant that his father would appear to have had a limited role in the protests and was asked why the authorities would spend so much time looking for him. He explained that anyone who was involved was interrogated and arrested and he was also Muslim. He said that the police came looking for his father one to two times per week, in total five to six times. The delegate asked how he knew this and he responded that his brother told him. His father heard they were looking for him so he went to [Country 1] suddenly without telling anyone. The delegate asked the applicant why the police did not take him or his brother as threatened. He responded that they were too young to take. He was asked about his mother's involvement. I consider that at this point in the interview the applicant became quite evasive. He claimed to not be able to answer the question because he was so young at the time. I note that the applicant was at least [age] when these claimed events occurred and they are central to his protection claims. Overall when giving his evidence, the applicant sounded confident when recounting information which he stated his brother had told him but when asked for more details responded that he was too young to know.
16. In his SHEV interview, the delegate asked the applicant why he left Myanmar. He responded that after they left the police kept coming. The delegate noted that it is now 2019 and these claimed events occurred in 2007, there is a new government and he asked the applicant why he would be worried now. The applicant responded that we live in [Township] and the mosque was shut down and they are making trouble for all of us. He did not claim to continue to fear harm from the police. He confirmed that his mother is still living in Myanmar unharmed. I do accept that it is plausible that the applicant's father, as a [occupation] was hired to distribute food to Buddhist protesters during the 2007 protests I do not accept as plausible that or his family were ever of any interest to the authorities because of that. The applicant's account of the events of 2007 was consistent on some points which appeared rehearsed but he could not answer any probing questions about those claims becoming evasive. He could not provide any meaningful explanation for inconsistencies between the Arrival Interview and SHEV application. Further I do not find it plausible that the applicant's father was of interest to the police in 2007 or that he would have suddenly left for [Country 1] without any explanation to his sons who he left behind. I do not find it plausible that if this did occur that the police would have repeatedly made visits to the family home without avail or threatened the sons repeatedly without taking any further action. Overall I prefer the

applicant's evidence in his Arrival interview and I consider that he is of no interest to police in Myanmar, does not have any actual or imputed political profile, either personally or by association with any family members.

17. As noted above, I accept that the applicant is Muslim but I do not accept that he is stateless or undocumented or that he has faced harm on that basis. He attended school until year [number] which is consistent with having citizenship rights and/or documentation. DFAT reports⁹ that Muslims outside of Rakhine State can generally access a similar level of government services to other ethnic groups. While there are credible reports of authorities discriminating against people from Muslim groups, DFAT advice is that these incidents represent informal, societal discrimination by Bamar public officials and do not represent official government policy. DFAT further assesses¹⁰ that Muslims outside of Rakhine State face a low risk of societal violence on a day-to-day basis. I accept that the applicant may have been called names on some occasions by some students but I do not accept that he was ever harmed by teachers or excluded from school because of his religion. Additionally, the applicant expressed concerns in his SHEV application about attending mosques in Myanmar but he did not claim to have ever been subject to any harm attending mosque or being prevented from practising his religion.

Illegal departure/Failed asylum seeker

18. The applicant claimed that he departed Myanmar illegally with his brother and lived in [Country 1] from 2008-2013 with his father, sister and other family members before they travelled to Australia. I have found the applicant is a national/citizen of Myanmar. However, I am prepared to accept the applicant has not previously held a passport. I accept he left the country illegally and, given the method of his return, it would very likely be apparent to the authorities in Myanmar that he was returning after seeking asylum in Australia.

Refugee assessment

19. 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

20. 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

⁹ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 3.71

¹⁰ Ibid, 3.75

- 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.
21. I have accepted the applicant is a Burmese Muslim who was born and lived in Yangon. The applicant's claims and history are tied to Yangon in Myanmar. He has not advanced that he would seek to live elsewhere in the country. It also appears his family links remain in Yangon. This is the area he lived with his family and this is where he attended school and where his mother continues to live. Given all the circumstances, I find this is the area he would return to live should he return to Myanmar now or in the reasonably foreseeable future.
22. I have found the applicant is a national and citizen of Myanmar. I have not accepted his claims that he or his family were stateless or undocumented. I consider that the applicant held an identity card and would be able to evidence his citizenship and be free to return to his home in Yangon.
23. I accept that the applicant is a practising Muslim and note that there is a significant Muslim population in Myanmar. Section 34 of Myanmar's Constitution entitles all Myanmar citizens to 'freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health'. Section 361 of the Constitution 'recognises the special position of Buddhism' as the faith professed by the majority of citizens; this applies only to Theravada Buddhism. Section 362 of the Constitution further recognises Christianity, Islam, Hinduism and animism as 'the religions existing in the Union at the day of the coming into operation of this Constitution'. There are several other provisions in the Constitution that prohibit discrimination against citizens on the basis of religion, including section 352 which bans discrimination in the employment of public officials¹¹.
24. I accept that the applicant was verbally abused by other non-Muslim students at school because of his Muslim religion but not otherwise subject to any discrimination or other harm. I have not found that he faced discrimination in terms of movement, access to education, services or housing. I accept that he was allowed to attend school and held a student identity card. With reference to the applicant's continued ability to access rights and services including employment on his return to Myanmar, I have had regard to the fact that his father was employed in Myanmar and held a driver's licence. I have had regard to the US Department of State which reported back in 2015 that there are some restrictions against Muslims in Myanmar which have impeded their ability to pursue higher education opportunities and assume high-level government positions and that Muslims were unable to invest and trade freely¹². I have also had regard to DFAT¹³ which reported more recently that Muslims outside of Rakhine State can generally access a similar level of government services to other ethnic groups. While there are credible reports of authorities discriminating against some people from Muslim groups, DFAT's advice is that these incidents represent informal, societal discrimination by Bamar public officials and do not represent official government policy. Overall, DFAT assesses that Muslims outside of Rakhine State experience moderate

¹¹ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 3.47

¹² US Department of State, "Human Rights Report 2014 Burma", 25 June 2015, OG2B06FAF35, p.44

¹³ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 3.71

levels of societal discrimination and low levels of official discrimination on a day-to-day basis¹⁴.

25. There are reports of a rise in anti-Muslim sentiment at both the official and societal level in Myanmar in recent years and that, in its most extreme form, this has resulted in violent incidents against members of the Muslim community¹⁵. DFAT has reported¹⁶ that prominent Buddhist nationalist monk, Ashin Wirathu, has led an anti-Muslim campaign since the 2012 violence in Rakhine State. Myanmar's highest Buddhist authority, the State Sangha Maha Nayaka Committee (or Ma Ha Na), imposed a one year preaching ban from March 2017 on Wirathu for spreading hate speech with the potential to incite violence. During the ban, Wirathu continued to post online videos and comments on social media, although Facebook removed his account in February 2018 for "consistently sharing content promoting hate". Wirathu was a leading member of the Ma Ba Tha. In May 2017, the Ma Ha Na also imposed a ban on Ma Ba Tha activities, and the group were ordered to disband and remove its anti-Muslim propaganda from across the country. In response to the ban, the group rebranded as the Buddha Dhamma Parahita Foundation. In July 2018, the Ma Ha Na again ordered the group to cease its activities. DFAT is not aware of any recent activities of the group.
26. There have been isolated reports of harm against some Muslims as a consequence of this anti-Muslim sentiment. In May 2018, local media reported¹⁷ that nationalist monks raised concerns with police of Rohingya hiding illegally in Mingala Taungnyunt Township, Yangon. The reports stated that when police investigations found no one to be living illegally in the neighbourhood, monks and Buddhist community members violently attacked the Muslim community, injuring at least two people. Police arrested eight individuals for their involvement. Several credible sources described¹⁸ a case in January 2018 of a young man being harassed and beaten in the street by plain clothed police in Yangon reportedly because of his Muslim appearance. However, DFAT advises that societal violence between Muslims and Buddhists has not occurred in every town with a Muslim population in Myanmar, nor does it occur on a daily basis. According to DFAT, Muslim and Buddhist communities that are mutually dependent for trade and other livelihood purposes and generally live together without violence. Muslim communities in major cities (like Yangon) generally live peacefully¹⁹. Overall, I accept that religiously-motivated violence does occur but it is not a recurrent or systematic feature of the security environment in Myanmar, at least in terms of the capital, or that it involves the level of violence, severity or frequency seen in other parts of the country, such as Rakhine State. In terms of recent violence, I note the government has cracked down on monks and ultranationalists for inciting violence in the capital. Ultimately, I accept and rely on DFAT's analysis that Muslims outside of Rakhine face a low risk of societal violence on a day-to-day basis.
27. I have considered whether the applicant would be prevented from practising his Muslim religion on his return to Myanmar. DFAT reported²⁰ that in April 2017 authorities closed two madrassas that educated several hundred primary school students in [Township], Yangon. The closure was reportedly in response to protests by a group of up to 100 Buddhist nationalists who claimed the schools were illegally operating as mosques. At the time of publication of the most recent DFAT report, the two madrassas remained closed. There were

¹⁴ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 3.75

¹⁵ Ibid, 3.75

¹⁶ Ibid, 3.64

¹⁷ Ibid, 3.73

¹⁸ Ibid.

¹⁹ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28, 3.44

²⁰ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 3.72

no reports that official mosques had been closed in [Township]. In June 2018, a large community prayer in [Township] was banned by authorities, and police charged the Muslim prayer leader and two other community members with failure to obtain a permit to organise prayers, punishable by a fine or up to six months in prison. There is no indication that ordinary Muslims, who were not leaders, were arrested in response to that incident. There are also reports²¹ that in recent years, authorities have blocked the rebuilding of mosques and madrassas that have been either damaged, destroyed or sealed and requests for new religious buildings were delayed, and even when approved some decisions were reversed. Overall I am satisfied that Islam is practiced widely around the country including in Yangon and other major centres. I accept that there have been some incidents when mosques have either been closed and approval for rebuilding mosques has been delayed for various reasons. However, I consider that in spite of these closures, mosques are still operating particularly in Muslim areas in Yangon and I am not satisfied that there is any restriction on Muslims with the applicant's profile being allowed to worship. In spite of his claimed fears, the applicant has not claimed that the authorities ever prevented him or his family from practising their religion in Myanmar or that his mother who remains in Myanmar is unable to practise her religion.

28. DFAT assesses that Muslims outside of Rakhine state face moderate levels of official and societal discrimination and a low risk of societal violence on a day-to-day basis, on the basis of their religion. I accept that the applicant has been called names because of his Muslim appearance and I consider that there is a real chance that such treatment may occur again. However, I do not consider that such treatment, should it occur would amount to serious harm as set out in the Act. I find the applicant would not be prevented from finding work, accommodation or access to services, or be denied the ability to make a livelihood because of his religion. The advice before me does not suggest that Muslims in Myanmar are unable to practise their faith outside of Rakhine state safely and I am not satisfied that the applicant would face a real chance of harm in relation to the practise of his religion. Given the analysis before me, I do not accept he will need to modify his behaviour, conceal his religion or religious appearance (including religious attire), or otherwise act discretely in terms of his religion (and religious practise) to avoid persecution.
29. I accept that the applicant has never held a passport and that he departed the country illegally in 2008 and lived and worked in [Country 1] for five years before travelling to Australia. He claims to fear that if he is forced to return to Myanmar he will be imprisoned because he left the country illegally and that he will be treated adversely because of his cumulative profile. DFAT reports²² that it is aware of a small number of voluntary returnees entering Myanmar via international airports during 2017 and 2018, but has not received reports of questioning of or adverse treatment toward returnees by government officials following their return to Myanmar. Returnees to Myanmar who departed the country illegally are technically subject to up to five years imprisonment for having illegally crossed a border; however that reporting indicates this provision has not been enforced in recent years. As evidence of this, DFAT notes²³ that the government in Myanmar has made agreements to return refugees from Thailand to provide them with integration support and documentation. DFAT states²⁴ that it is not aware of any credible reports of mistreatment of failed Rohingya asylum seekers stemming specifically from their pursuits for asylum overseas. I have no reason to consider that analysis would not extend to other returnees to Myanmar who are

²¹ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 3.62

²² DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28, 5.41

²³ DFAT, "DFAT Country Information Report - Myanmar", 18 April 2019, 20190418091206, 5.39

²⁴ Ibid, 5.51

nationals of the country and have other ethnic and religious profiles, including Muslims from Yangon. If there were such instances, I consider there would be reporting in relation to this.

30. I am not satisfied the applicant has any adverse profile with the Myanmar authorities, army or security forces either directly or by association with his father. He lived in Yangon and there is no suggestion that he was politically active, that he was involved in any conflict in any part of Myanmar including those areas that have reported violence. As such I do not consider that he would have any additional adverse profile on return to the country. I find that he departed illegally, but as a citizen and national of Myanmar, and as a person with no other adverse profile, I am not satisfied there is a real chance he would be subjected to harm or mistreatment on return to Myanmar for reasons of his illegal departure. I accept DFAT's advice about penalties for illegal departure is somewhat equivocal, but in the absence of specific reporting that these provisions are being used by the authorities, I am not satisfied there is a real chance he would face any penalty or imprisonment on return. In terms of his asylum claims in Australia, the information before me does not support that he would face a real chance of harm on the basis of his profile from having sought asylum in Australia even when considered in combination with his Muslim religion, background and experiences.
31. I have found the applicant is not stateless or undocumented. I have found he is not from an ethnic minority, and that he would have no adverse profile, and face no penalty, on the basis of his illegal departure and/or claims for asylum in Australia. I consider his only profile relates to his religion as a Muslim, and I have found he would not face a real chance of serious harm for that reason. It follows that even when considered in a cumulative sense, and having regard to the totality of the information before me, I am not satisfied there is a real chance the applicant would face serious harm if he returned to live and work in his home area in Myanmar.
32. I am not satisfied that the applicant holds a well-founded fear of persecution.

Refugee: conclusion

33. 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

34. 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

35. 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.

36. I have found the applicant may face low and moderate levels of official and societal discrimination on the basis of his religious profile. I have also found that any discrimination he may face based on that profile would not amount to serious harm. As above, the information before me indicates official and societal discrimination is at low and moderate levels, would not involve violence or other serious harm. I have found he would not be prevented from finding work, accommodation or access to services, or be denied the ability to make a livelihood because of his religion. I accept that if the applicant was exposed to low or moderate levels of official or societal discrimination, it would be challenging, and may cause him stress and frustration. However, when having regard to his individual circumstances, including his past experience living in Myanmar, his otherwise low profile, his family connections in Yangon, his status as a citizen, and the country information considered above, I do not accept that such discrimination, should it occur, would not amount significant harm as defined. I am not satisfied that it would amount to the arbitrary deprivation of life or the death penalty. I am also not satisfied that it would amount to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment as set out in the Act. I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Myanmar there is a real risk he will suffer significant harm.

37. In relation to the remainder of the applicant's claims, including his cumulative profile, background and experiences, I have found that there is not a real chance that the applicant will face any harm on his return to Myanmar. Real chance and real risk involve the same standard²⁵. On the same factual findings, I am similarly not satisfied that the applicant faces a real risk of suffering any harm, including significant harm on those grounds, should he be returned to Myanmar.

Complementary protection: conclusion

38. 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.

²⁵ *MIAC v SZQRB* (2013) 210 FCR 505

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.