



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

VIETNAM
IAA reference: IAA19/07081

VIETNAM
IAA reference: IAA19/07082

VIETNAM
IAA reference: IAA19/07084

VIETNAM
IAA reference: IAA19/07083

Date and time of decision: 24 September 2019 13:58:00
D Corrigan, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants (the applicants) claim to be Vietnamese nationals. They arrived in Australia by boat [in] July 2013. On 31 July 2017, they lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 28 August 2019, a delegate of the Minister refused the application. The delegate did not accept that the first named applicant (the applicant) was of any adverse interest to the Vietnamese authorities because he printed banners or placards for anti-China protests in 2011. He also found the applicant did not face a real chance of serious harm or significant harm on account the applicant's health, his involvement in a protest against the Vietnamese government in [City 1] and a departmental data breach.

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). No further information has been obtained or received.

Applicants' claims for protection

4. The applicants are the applicant and his wife and their two children.
5. The applicants' claims can be summarised as follows:
 - He worked as a printer in Saigon. He was approached in May 2011 by customers to print two lots of banners (60 and 40 units) that had anti-China slogans. He did so and was paid for it. The banners were used in a large protest but he did not take part in this. The protestors were arrested and badly beaten and revealed his name.
 - After the protest, he was visited by police who questioned him. They wanted him to pay money which he did on several occasions. The officer whom he paid the money to, informed him he was about to get arrested so in December 2011 he went and hid at his grandparents' home in Dong Nai province. After this, the police came to his home and left several summonses that said he was against the government.
 - In June 2013, he met his wife and children in [in a town] and they departed Vietnam.
 - He has participated in protests in [City 1] regarding the Vietnamese government's treatment of political prisoners.
 - He has suffered [a health incident] in Vietnam and Australia and has high blood pressure.

Refugee assessment

Well-founded fear of persecution

6. 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.

Country of reference

7. The applicants have provided originals of their Vietnamese national identification cards and birth certificates and have consistently maintained that they are Vietnamese nationals. I accept that they are Vietnamese nationals and I find that Vietnam is their receiving country.

Banner and placard claims

8. I have carefully considered the applicant's claims but I do not consider them to be credible. I do so for the following reasons:
 - The applicant has claimed that a police officer who was extorting him informed him that he was going to be arrested by other officers and he therefore was able to run away to Dong Nai province. I do not consider it plausible or credible that a police officer who had acted with malign intent to the applicant such that he had extorted the applicant on a regular basis for substantial sums of money, would have warned the applicant of such looming action by the police force, particularly as such action would have involved a substantial risk of this unauthorised and unprofessional disclosure being later revealed by the applicant to others in the police force and to lead to disciplinary action against the officer. I find this detracts from the credibility of his claims.
 - The applicant has claimed that he went and lived at his grandparents' home in Dong Nai province at that he did so for around 18 months before coming to Australia. He has not claimed that the police ever came to this home to look for him at his location. I do not consider it plausible or credible that they would not have searched for him at this location during such a long period given he was staying with close relatives and was of such adverse interest to the authorities that they had issued several summonses for his arrest. I also note that Vietnam has a system of household registration and national identity cards for Vietnamese citizens that the police could have utilised to find his grandparents' home.¹ I find this further detracts from the credibility of the claims.
 - The applicant told the delegate that his wife had received several summonses but his wife did not pay much attention to them and she just left them on a desk. I note, however, it is claimed that the applicant was facing persecution and significant harm at the hands of the Vietnamese state and that is the reason why they fled Vietnam and sought the protection of the Australian government. The summonses would have been

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Vietnam", 21 June 2017.

of very obvious and critical importance in helping to establish that the claims were true and in ensuring his protection from such treatment. I do not consider it credible or plausible, in all the circumstances, that the wife would not have paid much attention to them or left on the desk or that the applicant and her would not have made the effort to collect such critical evidence from their home in Saigon before departing Vietnam. I consider this further detracts from the credibility of the claims.

9. Given these highly significant concerns about his credibility, I do not accept that the applicant was ever approached by customers to print banners that had anti-China slogans and that he did so. I do not accept that the banners were used in a large protest and that the protestors who were arrested and badly beaten revealed his name. I do not accept that after the protest, he was visited by police who questioned him. I do not accept that they wanted him to pay money which he did on several occasions. I do not accept that the officer whom he paid the money to, informed him he was about to get arrested by other police and that he went and hid at his grandparents' home in Dong Nai province. I do not accept that after this, the police came and left several summonses at his home that said he was against the government. I note that the applicant stated that he did not take part in the protests in Vietnam. I do not accept that the applicant is or ever was of adverse interest to the Vietnamese authorities or anyone else. I do not accept that the applicant children will not be able to get a proper education upon their return as the applicant has claimed. I find that none of the applicants face a real chance of any harm on account of these claims.

Protests in Australia

10. The applicant told the delegate that he had participated in protests in [City 1] against the Vietnamese government. Asked what his role in them was, he only said they were protesting against the regime's treatment of political parties and he did not give any details of what he actually did and I consider his evidence to be very vague. He did not refer to such participation in his SHEV application and at the start of the SHEV interview when he was asked if there was anything in his application he would like to add or change, he answered "no" and did not refer to such activities. He has not provided any evidence to support that he took part in such demonstrations and he has not indicated that he ever took part in demonstrations against the Vietnamese government or was politically active in the years that he lived in Vietnam. He has not claimed to have ever undertaken any other political activities since arriving in Australia, six years ago. Overall, I am not satisfied that he ever took part in such protests or that he has political opinion which is against the Vietnamese government. I do not accept that these claimed activities have led him to be of adverse interest to the Vietnamese authorities or anyone else. I find that none of the applicants face a real chance of any harm on account of these claims.

Departmental data breach

11. Based on information in the referred materials (a letter to the applicant dated 12 March 2014), I accept that the applicants were affected by a Departmental data breach in January 2014 in which the Department inadvertently published a document on its website that contained details of detainees' names, dates of births, gender, nationalities, and details about their detention including when they were detained, the reason and where. However, the evidence indicates that it did not include any details about claims for protection and I note the applicants did not make their SHEV application for another three years. I accept it is possible that the information in the disclosure may have become known to the Vietnamese government and others and that it could be deduced that the applicants had applied for protection in Australia. However, I note that the Department of Foreign Affairs and Trade

(DFAT) have stated that they have no information to suggest that people known or believed to have sought asylum in other countries are mistreated on return by the government. They also state that they understand that people who have paid money to organisers of people smuggling operations are not subject to fines.² DFAT have earlier stated that they assess that the Vietnamese authorities generally consider that Vietnamese citizens seek asylum abroad for economic reasons and do not treat failed asylum seekers differently to other returnees.³ There is no other information before me to suggest that failed asylum seekers are harmed or targeted upon their return. Given this evidence, I find that the applicants do not face a real chance of any harm on account of these matters.

Healthcare

12. I accept that the applicant had a [health incident] in Vietnam and another in Australia and that he suffers from high blood pressure as he stated at this SHEV interview. I note that he told the delegate that he had received treatment in Vietnam in the past and that DFAT have reported that the government provides access to basic health care for all its citizens in both urban and rural areas.⁴ Given all this, I do not accept that any of the applicants would be denied health care or would face a real chance of facing any harm on account of these matters.

Overall assessment

13. I find that the applicants do not face a real chance of any harm for any reason. Their fear of persecution is not well-founded.

Refugee: conclusion

14. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

15. Under s.36(2)(aa) of the Act, 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

16. 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

² Ibid.

³ DFAT, "Vietnam: Treatment of failed asylum seekers on return to Vietnam", 24 July 2013.

⁴ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017.

- the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
17. I have found that the applicants do not face a real chance of any harm on account of claims relating to the applicant's making of banners and placards for anti-China demonstrations and subsequent targeting, the applicant's claimed participation in demonstrations against the Vietnamese government in [City 1], their health, their being failed asylum seekers who used people smugglers and the Departmental data breach. I also find that they do not face a real risk of significant harm when considering these matters and claims.
18. I am not satisfied that there is a real risk that any of the applicants will be arbitrarily deprived of their lives, be subject to the death penalty or be subject to torture. Nor does the evidence before me indicate that there is a real risk that they will be subjected to cruel or inhuman treatment or punishment or degrading treatment or punishment. I am not satisfied the applicants face a real risk of significant harm for any reason.

Complementary protection: conclusion

19. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

Member of same family unit

20. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include spouses and dependent children.
21. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 [Official 1] 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.