



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA19/07435

Date and time of decision: 18 December 2019 10:29:00
L Hill, 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 citizen of Bangladesh. He arrived in Australia in January 2013 and applied for a Safe Haven Enterprise Visa (protection visa) on 30 May 2017. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 29 October 2019.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 22 November 2019, the IAA received an email from the applicant's representative. Attached to the email was a submission and GP letter. The submission contains discussion on why the applicant does not agree with the delegate's decision. To the extent that the discussion reiterates and addresses the claims made by the applicant to the delegate, this is not new information and I have considered it in this review.
4. The representative contends that amongst other issues the delegate's conclusion regarding the applicant's impairment is legally unreasonable and not based on accurate finding of fact but rather mere speculation or suspicion. She failed to take into account the medical evidence and based her findings on her own preconceived biases pertaining to the applicant's credibility. She used perceived inconsistencies in the evidence and her own subjective opinion to arrive at an erroneous conclusion. The representative referred to various Federal Court decisions in support. I have noted the representative's contentions however I am conducting a de novo review on the basis of the materials before me, and as such, I am not bound by the delegate's decision.
5. In the submission the representative also refers to the articles; Cognitive Screening and Assessment and The Mini-Mental State Examination. These articles were not before the delegate before the decision was made. They are new information. They were provided in support of the argument that the delegate's findings that suggested that the applicant had rigged the MMSE test were legally unreasonable given that the MMSE test is the most widely used cognitive functioning assessment tool. They are publically available sources which pre-date the delegate's decision. They are not personal information. It is not in contention that arising from the results of an MMSE test conducted by a medical practitioner in September 2019, the applicant was assessed as having a moderate cognitive impairment and I am of the view that these articles do not materially add to the information before me in this regards. I am not satisfied that there are exceptional circumstances to justify the consideration of this new information.
6. The submission also contains argument about the vulnerability of the applicant arising from his [Medical Condition 1] induced cognitive impairments and in support makes reference to the UNHCR Guidance Note on the Psychologically Vulnerable Applicant in the Protection Visa Assessment Process. This guidance note was not before the delegate before the decision was made. It is new information. It is a publically available source which pre-dates the delegate's decision. It is not personal information. I am satisfied that the applicants' vulnerabilities have been identified and assessed and that they have been considered in this decision. I am not

satisfied that there are exceptional circumstances to justify the consideration of this new information.

7. Attached to the email was a [Organisation 1] letter dated 22 November 2019. This source was not before the delegate before the decision was made. It is new information. It post-dates the delegate's decision. The content of the letter relates specifically to the applicant and provides a medical history and contemporary results for a MMSE test which potentially impacts on the protection visa assessment. The applicant has satisfied me that the requirements of s.473DD(b) of the Act are met. I am also satisfied that there are exceptional circumstances to justify the consideration of this new information.
8. At the conclusion of the IAA submission, the representative advised "that a more comprehensive [medical] report will be available within 28 days so we ask that the Authority delay in making its final decision until this time". On 16 December 2019, the IAA responded to the representative's request and advised that her request had been considered but not granted as the 21 day period for submissions had lapsed on 22 November 2019 (the same day that the representative had emailed the IAA) and that the circumstances provided did not warrant extending the time in this case. The issues relating to the applicant's medical conditions and/or symptoms were raised with the delegate and submissions and documentation were provided in support. The applicant was advised of the delegate's decision at least six weeks ago and at least four weeks has passed since the applicant's current representative was appointed. Having regard for all of these matters, in the circumstances of this case I have decided to proceed to a decision on the basis of the material before me.
9. Finally, in the IAA submission, the representative has contended that "given that the delegate relied extensively on adverse credibility findings, we submit that, should the Authority not be minded to remit this matter to the Department, then an interview must be convened to discuss [the applicant's] claims further, and for the Authority to makes (sic) its own assessment as to [the applicant's] credibility as a witness. I am conducting a fast-track review and s.473DB of the Act sets out that, subject to the other provisions of Part 7AA, the review is to be on the papers. Unlike Part 7 of the Act, there is no right to a hearing and no statutory right for an applicant to present his or her case on review. The applicant has been given an opportunity to present his claims and was assisted by an interpreter when doing this. The applicant has also been represented throughout the protection visa process, and submissions and supporting documentation have been provided in relation to the determinative issues including the significant differences in aspects of the applicant's evidence, which I have considered. It is also not apparent to me why any further evidence could not have been provided in writing. I am satisfied that it is not necessary or required in the circumstances to seek further information or interview the applicant in this case.

Applicant's claims for protection

10. The applicant's claims can be summarised as follows:
 - He was born [in] [Location 1] Upilla, Tangail District, Dhaka Division and is a national of Bangladesh.
 - He and his family are supporters of the Bangladesh Nationalist Party (BNP). He and his younger brother, M were also members. He held the position of [Position 1] for the BNP for one year.

- On account of his and his younger brother M's membership and support to the BNP he was targeted and his life threatened by supporters of Awami League (AL). A few months before he departed Bangladesh supporters of AL tried to convince him to join AL. He knew these people from the local area but they had different political views.
 - The general security situation in Bangladesh worsened and the threats to his life became more serious and arrangements were made for him to leave. In October 2012 he departed Bangladesh.
11. The applicant claimed that he fears on return that arising from his and his younger brother, membership and his and his family's support to the BNP on return he will be harmed by supporters of AL. The Bangladeshi authorities including the police will not protect him from this harm because they support AL and AL is in power.

Refugee assessment

12. 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

13. 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.
14. The applicant claims to be a national of Bangladesh and I accept that he is and that Bangladesh is the receiving country for the purpose of this review.
15. I have before me the following support letters regarding the applicant's health conditions; Dr PKS, 11 November 2011, Dr PKS, 5 December 2011, [Organisation 1] letter, Dr RA, 6 September 2019, [Organisation 1] letter, Dr YW, 22 November 2019. In the submissions, by the applicant's former and current representative, it has been contended that in light of the applicant's [Medical Condition 1] induced cognitive impairment he was not able to articulate his protection claims and respond to questions. The differences in his evidence including his

inability to recall dates, to focus on specific time frames or events or to recall memories consistently should be seen in the context of his cognitive impairment.

16. I have listened to the protection visa interview and I agree with the delegate that for the first part of the interview in which the applicant was asked questions about his personal background he was able to provide answers to the questions without any significant hesitation. It was not until the delegate started to ask questions about his claims for protection, approximately forty eight minutes into the interview that his answers appeared not to correlate with the questions asked. The delegate ending the interview on the perceived inability of the applicant to understand the questions. I have also listened to the entry interview, which was conducted approximately two weeks after his arrival in Australia and at least three years after he had been diagnosed and treated for [Medical Condition 1] and similar to the first part of the protection visa interview, he was able to provide answers to the questions without any significant hesitation. Furthermore, unlike the protection visa interview, the entry interview was not paused or ceased on account of any perceived inability of the applicant to provide information or understand the questions; rather he engaged in this interview for the entire duration of one and a half hours.
17. I have had regard to the information contained in the various support letters and I accept that approximately nine years ago the applicant was diagnosed and treated for [Medical Condition 1]. I also accept that in September 2019, a medical practitioner assessed him as having a moderate cognitive impairment which was attributed to his past [Medical Condition 1] diagnosis. I am not satisfied however that the impact of the applicant's health conditions and/or symptoms are such that any claims he has presented to the Department since his arrival in Australia, including at his protection visa interview are unable to be accurately assessed. Nor am I satisfied that the concerns that I have identified with the evolution and variations in his evidence, which I have discussed below can be attributed solely to his health conditions and/or symptoms.
18. Furthermore, on the evidence before me after the applicant's diagnosis and treatment for [Medical Condition 1], he was able to subsist and economically support himself and his family in Bangladesh. Furthermore, since his arrival in Australia he has been able to gain and maintain employment. He has also been able to provide monetary support to his family who remain in Bangladesh. While I accept he will continue to suffer from a moderate cognitive impairment on return, given the applicant's particular circumstances including his past capacity to subsist in Bangladesh and Australia, I am not satisfied he will suffer any harm on this basis on return. I also note that the applicant did not claim that if he required any future treatment for his medical conditions and/or symptoms that he would be denied or unable to access medical treatment or services in Bangladesh. Nor does the country information before the delegate indicate that this would be case.
19. Finally, it cannot be disregarded that there are details in the most recent [Organisation 1] letter dated 22 November 2019 which have not been raised before, that being that it states that the applicant "sustained a head injury from motorbike accident in 2001" and that "he stated that he had surgery at a Victorian Hospital for the head injury". The applicant has never mentioned before that he had in the past sustained a head injury. Nor do any of the submissions provided by the applicant's former and current representatives indicate that the applicant's medical conditions and/or symptoms including his moderate cognitive impairment arise on this basis. Rather, it has been specifically contended that it was the applicant's previous diagnosis of [Medical Condition 1] which induced his cognitive impairment, which is consistent with the details of the [Organisation 1] letter dated 6 September 2019. Finally, it is evident on the details of this letter that the information

regarding the applicant's head injury was self-reported and in the absence of any substantiating evidence, I am not satisfied that the applicant has previously sustained a head injury from a motorbike accident.

20. The applicant claimed that on account of his and his younger brother M's membership and support to the BNP he was targeted and his life threatened by supporters of AL. A few months before he left Bangladesh supporters of AL tried to convince him to join. As the general political situation in Bangladesh worsened the threats to his life became more serious.
21. The applicant's claims regarding his and his brother's membership and support to the BNP and that they have been targeted and threatened by supporters of AL have been generally consistent throughout his interactions with the Department; however I have a number of concerns as noted below, and in contrast to the representative's submissions I am not satisfied that consistency alone is sufficient in this case for a conclusion that these claims are true.
22. The applicant's evidence regarding his own level of involvement with the BNP has varied. In the entry interview he stated that he and his younger brother, M were members and supporters of the BNP. He made no mention of holding a positions or role within the BNP. In his protection visa statement he stated he was [Position 1] for the BNP for one year. He indicates that he was offered this position when he was studying year [level] (1993). The applicant has provided a BNP letter to corroborate his involvement with this party however the letter which is dated 2017 indicates that he currently holds this position given that it states; "he is a [Position 1] in the BNP [Location 1] Upazila Branch". It makes no reference to when or how long he held this position for. The applicant has addressed this concern. He stated that this aspect of the BNP letter is incorrect and that English is not the first language of the writer. I have considered these explanations however I am unpersuaded by them. I find it difficult to accept that such important information such as his role with this party would be recorded incorrectly in an official BNP letter purported to have been written by the President of the Branch. Nor is it apparent why an official BNP letter would be written in English when it was not the writer's first language.
23. The applicant's evidence regarding his family's level of involvement with the BNP evolved over time. In the entry interview he indicated that he and his younger brother, M were members and supporters of the BNP. In the protection visa statement and interview, while he reiterates that he and his younger brother, M were members and supporters of the BNP he further claims that his family were known as BNP supporters. They were a BNP family. In the former representative's submission it was contended that the applicant's evidence in the statement and interview was not inconsistent with his evidence at his entry interview because at the time of this interview he was focused on his and his brother's problems but that his whole family supported the BNP in Bangladesh. I have considered this explanation however I am unpersuaded by it. I have listened to the entry interview recording and the applicant was specifically asked if anyone else from his family had been involved, he stated no. Furthermore, in the statement which the former representative contends was produced on the basis of the detailed instructions of the applicant no mention was made of the applicant's new claims at the protection visa interview that in addition to his younger brother, M, two of his other brothers had also departed Bangladesh on the basis of their involvement in politics.
24. The applicant's reasons for leaving Bangladesh in 2007 were problematic. In the entry interview the applicant indicates that he went to [Country 1] to work in 2007. At the

protection visa interview he indicated that he went to [Country 1] in 2007 because after the government changed he received threats. He did not live in his village and instead hid near his in laws for three to four months. A friend suggested to his brother that as his life was under threat he should go somewhere else. His father contacted his cousin who was living in [Country 1] and arrangements were made for him to travel to [Country 1]. While I acknowledge that this evidence loosely correlates with events described in his protection visa statement, however he indicates that these events occurred prior to his departure in 2012 and not 2007. Furthermore, I find the applicant's evidence that he later returned to his home village in Bangladesh in 2010 because he had been affected by [Medical Condition 1] and needed to get proper treatment and rest difficult to reconcile with claims at the protection visa interview that he had departed in 2007 because his life was under threat.

25. The applicant's evidence at the protection visa interview regarding his reasons for leaving Bangladesh in 2012 did not correlate with his evidence in his protection visa statement. At the protection visa interview, the applicant indicated that he had left Bangladesh because of his involvement in a procession which took place before he departed. During the procession an altercation took place between BNP and AL supporters. Weapons were used and many people were injured. He was charged with being involved. In contrast, in the protection visa statement, he made no mention of this event and instead made a reference to the deterioration in the general political situation which escalated the situation for him and the threats to his life became more serious. These differences were put to the applicant for comment. In the former representative's submission it was contended that the applicant instructs that while he did take part in a procession in which there was conflict between two groups and people were injured, he left the procession without being injured. He was not charged for his involvement in this procession, and did not know why he had said this. I have considered the explanations for the variations in this aspect of the applicant's evidence however I am unpersuaded by them. In this case, while he may have sought to withdraw parts of his evidence, it remains that his claims that he was involved in a procession in which he witnessed people being attacked and injured are not insignificant, and I find it difficult to accept that had this event occurred as claimed he would not had made mention of it, even if only briefly when he had the opportunity to do so in his protection visa application which his former representative had assisted him to prepare, he did not. I also found the applicant's responses at the protection visa interview regarding this event to be extremely disjointed and they lead me to conclude the applicant was not providing evidence regarding his own lived experiences.
26. Separately, I have considered the BNP letter which has been provided in support of his claims that he was a member and supporter of the BNP. Apart from the issues regarding his position noted above, other details of this letter raise concern. Firstly, while the letter reiterates his evidence that he began supporting the BNP in 1993, it refers to him joining and being a dedicated worker of the BNP party, it makes no mention of him having been a member. Secondly, and more significantly, it states that "[the applicant] has one or more political cases in Bangladesh because he is the political worker of opposition party, BNP", which is inconsistent with the evidence before me. The former representative's submission states that the applicant "has never been charged with a crime or offence or any country". Finally, I agree with the delegate that the format of the letter, that being the misspelling of "Presedent" and "Bangladesh Nationalists Party" and the incomplete BNP flag in the letterhead further undermines the reliability of this letter and when this is considered with the concerns above, I am not satisfied that the BNP letter has any probative value and I give it no weight.

27. As discussed above, I am not satisfied that applicant's health conditions and/or symptoms solely explain the concerns I have identified above with the evolution and variations in his evidence, and in the present case I am not satisfied the applicant has been a truthful witness regarding his and his family's past experiences of harm perpetrated by AL in Bangladesh. I am not satisfied that he or any members of his family were members, associated with and/or involved with the BNP. Nor am I satisfied that the subsequent events that he claimed arose on these bases are true, including that he was forced to move, he and his family members were targeted for recruitment or harassed and threatened by any groups or individuals including AL or that this led to him and his three brothers making arrangements to depart Bangladesh. I am satisfied the applicant has contrived these claims to enhance his claims for protection. Furthermore, as I have rejected the applicant's claims that he or any members of his family were targeted for recruitment by AL in the past and refused to join, I am not satisfied that on this basis he would be perceived to have any political profile on return.
28. At protection visa interview, the applicant stated that he loved the BNP and that is why he supported this party. He was asked what he loved about the party. He stated that BNP worked for the development and democracy of the country and they ensure employment and maintain a peaceful environment and their politics are constructive. This is why he loved the BNP. I found his statements in this regard to be broad and difficult to reconcile with his claims that since 1993 he has been a supported this party and when this is considered with my rejection of his claims regarding past membership, association with and/or involvement with the BNP in Bangladesh, it leads me to not be satisfied that the applicant is a supporter of the BNP. Rather, I am of the view that the applicant has contrived his political claims in their entirety to enhance his claims for protection and it follows that I am not satisfied that the applicant has been associated with, supporter or member of and/or involved in any political groups, organisations or activities in Bangladesh. He has not claimed and nor is there any information before me to suggest he has been involved in politics or any political groups, organisation or activities since leaving Bangladesh in 2012. I am not satisfied that on account of any political beliefs he will seek to engage in politics or any political groups, organisations or activities on his return.
29. Other than the applicant's claims regarding the BNP which I have rejected the applicant has not claimed that he fears harm for any other reason on return to Bangladesh. Accordingly, I am not satisfied the applicant faces a real chance of harm on his return to Bangladesh now or in the reasonably foreseeable future.
30. I am not satisfied that the applicant has a well-founded fear of persecution.

Refugee: conclusion

31. 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

32. 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

33. 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.
34. I have found the applicant does not face a real chance of harm on any of the bases claimed. As 'real risk' involves the same standard as 'real chance', I am also not satisfied that the applicant faces a real risk of significant harm on these bases.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

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.