



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA20/07720

Date and time of decision: 10 February 2020 16:32:00
S McNeill, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) is a national of Bangladesh. On 9 August 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV application).
2. On 13 November 2019 a delegate of the Minister of Immigration (the delegate) refused to grant the visa.

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. On 23 January 2020 the IAA received a submission from the applicant's representative. The submission mostly consists of legal argument against the delegate's findings and this I have considered. It also reiterates the applicant's claims. The representative has also identified new information.
5. He states the applicant has had contact with his mother who has advised their home had been visited again by rival political party members and threats were made against the applicant unless money was paid. This occurred approximately one week ago which has also added to further fear to the applicant particularly given his brother is missing presumed killed. He submits given this event occurred after the decision and that past events similar to this have occurred, exceptional circumstances exist to consider the same. Whilst his brother is missing presumed killed is not new information, that rival political party members came to their home a week ago making threats against the applicant unless money was paid is new information.
6. The submission is dated 23 January 2020 and therefore this claimed event would have occurred on approximately 16 January 2020 and I accept it was not and could not have been provided to the Minister prior to the decision being made under s. 65. Whilst this reflects personal information about the applicant and his family capable of being believed I have a number of concerns. Firstly, the information lacks substantive details. The applicant has not advised what time of day this event happened, how many rival political party members visited or what political party they belonged to, nor has he stated how much money was demanded. The delegate had credibility concerns regarding the applicant claims in general and in particular his claims that a group of four men visited his home in August 2017 which corresponded with the timing of his SHEV visa application and I too share those concerns. Given the timing of this new claim, the same time as his SHEV application is being referred to the IAA which causes considerable doubts in my mind as to its legitimacy and the lack of corroborative details regarding the incident to convince me as to its probative value, I am not satisfied there are exceptional circumstances to justify considering this information.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:
 - He was born in [year] in [Village 1], Manikganj District, Bangladesh.
 - He is of Bengali ethnicity and a Sunni Muslim.

- He is illiterate.
- He was a supporter of the Jamaat-e-Islami (JI). He became involved with JI because his father was very closely involved with them. He was well known in his area because of his father's long time involvement with the party.
- His father participated in protests and gave lectures to the general public as a representative of JI. His family had been involved with JI since his grandfather's time and he wanted to follow in their footsteps.
- The Awami League (AL) and the Bangladesh National Party (BNP) are the biggest political parties in Bangladesh. They were often trying to get him to come to their meetings and support them. They tried to recruit him because he supported JI.
- In February 2013 some people came to his friend A's shop and asked where he was. A lied and said he didn't know. He was hiding in the back of the shop. They were looking for him and his friends because he had refused to participate in their protest rally.
- They started beating A and asking where he was. The police were there and did nothing. By that time he had escaped out the back of the shop and gone home.
- Around a month later some people came to A's house, beat him up outside and killed him. They then set his body on fire. He suspects it was the same people who came to his shop looking for him.
- After that his father told him he needed to get away for safety. He went to his friend's house in [location] where he stayed five or six days. He did not feel safe. He was questioned by the local people about what he was doing there and where he was from. His friend told him he could not shelter him long. He then moved to Cox's Bazaar and got a boat to [Country 1].
- A few weeks after his escape some BNP and AL came to his parent's home and asked where he was. His father said he didn't know. They didn't hurt his father because he is an old man. They said if they find him they will kill him.
- Three months ago someone called his brother-in-law and said he was in trouble in Australia and demanded 10, 000 taka otherwise he would be in more trouble. His family were scared and tried to call him but couldn't reach him at the time so they paid the money.
- People come to his parent's house quite frequently and ask where he is. One month ago four people on a motorbike dressed like a bike gang, said they were his friends and asked his father when he would return. His father knew they were not his friends.
- He fears being killed by the AL or BNP if returned to Bangladesh because of his support for the JI and his refusal to support their parties.

Refugee assessment

8. 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

9. 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.
10. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Bangladesh and that Bangladesh is the receiving country for the purpose of this review.
11. Based on the information before me, I accept the applicant's background as follows: He was born in [year] in [Village 1], Manikganj District, Bangladesh. He is of Bengali ethnicity and a practising Sunni Muslim. He is single. He has [number of siblings]. He has a limited education studying until year five or six. In Bangladesh he sometimes helped his father farming rice and learned [specified skill] at his friend's workshop.
12. I have carefully considered the applicant's claims for protection. I have significant doubts as to the overall credibility of the applicant's claims in general and my reasons are as follows. The applicant's evidence has shifted considerably throughout the protection application process. Whilst the applicant in his SHEV application claimed he was a supporter of the JI and he wanted to follow in the footsteps of his father and grandfather, at his SHEV interview on 19 September 2019 the applicant appeared to down play his support for the JI. The applicant stated he had never voted and he was not a member of a political party in Bangladesh. When asked why he was seeking protection in Australia, the applicant again said he was not involved in politics but he used to like JI and the AL and BNP pushed him to attend meetings and threatened him because he was not interested in attending their meetings and gatherings. They threatened him if he did not they would file a case against him as a smuggler or something like that or they would kill him.
13. At his SHEV interview the applicant for the first time introduced the claim that for refusing to join AL or BNP gatherings or meetings they would file a case against him. The applicant whilst explaining his claims said he was offered money to attend their meetings but he told them he wasn't interested because he didn't like this type of fighting. The applicant spoke about hiding in his friend's shop and then stated 'they' actually did some robbery in his home and took away rice and stuff. The robbery on his house is also an additional claim not included in his SHEV application.
14. At his SHEV interview the applicant also for the first time claimed his brother had returned from [Country 2] and been threatened. Asked about his brother, the applicant said he was involved in politics but nowadays he was not sure where he lived, maybe he was overseas. He did not know

which party his brother was involved with. His brother had been in [Country 2] working and he hadn't had contact with him since three years ago (approximately October 2016). His brother went back to Bangladesh, there were some problems and now he didn't have any contact with the family. Further on in the interview, the applicant said his brother returned from [Country 2] and went from Dhaka to their village. One week after he returned home some people demanded some money because he had been in [Country 2]. They came with big knives and attacked him. One week after this incident at night time his brother left him and they didn't know where he was. He told his mother not to tell the people or him about his location. His brother told his mother that because she was old they would not torture her but they might damage their property or home. A week later they went to his home.

15. I do not find the application's description of this incident convincing. Given his family's claimed history of involvement with the JI I find it concerning the applicant did not know which political party his brother belonged to. His evidence regarding this claimed incident was also sketchy. The applicant did not provide an approximate date of when this occurred and it can only be assumed this is after the lodgement of his SHEV application in August 2017 given there is no mention of this incident in his written claims. His evidence regarding his brother also changed during his SHEV interview, initially he didn't know where his brother was and then he was missing after returning from [Country 2] and presumed dead.
16. The applicant's core claim that people tried to find him at his friend A's shop in February 2013 and that when they failed to find him, they beat A. One month later they came to A's house, beat him up and then set him on fire, I consider lacks plausibility. Asked about the incident with his friend at the shop at his SHEV interview and when it happened, the applicant said he couldn't remember the exact date without attempting to offer an approximate date. The applicant stated while he was there they set his friend on fire. After that he left the country and escaped through the back door of the shop. His friend was then set on fire. Earlier on in the interview the applicant in recalling his claims stated he had a friend who had [a] shop and he used to sit with him. He somehow left the shop and they killed his friend in front of him, they set him on fire. He came home and told his mother and then he told his friend that he had to go overseas and his friend told him to go to Chittagong. He went there and was wondering around like a mad person because he knew no one there. One person approached him and told him he could send him overseas.
17. The applicant's evidence at his SHEV interview differed considerably to his written claims. In his written claims A's body was set on fire after he was killed at home after being beaten a second time and the applicant did not claim to be present. However, at his SHEV interview A was set on fire in front of him at his shop. Whilst in his written claims it was his father who told him to leave for his safety at his SHEV interview he told his friend he had to go overseas and his friend told him to go to Chittagong. The applicant failed to mention he stayed with a friend in [location] for five to six days.
18. At the end of his SHEV interview the delegate noted the applicant in his entry interview had stated nothing specific happened to him in Bangladesh. The applicant stated he mentioned what happened to him at the beginning and he was now mentioning it. He did not mention the new things at the time. The delegate noted he had not mentioned his friend had been killed. The applicant said the he had mentioned it and he had heard the recording and had told them his friend was killed and set on fire. When he arrived at the time he did not have 100 per cent sense and he could not mention all those things properly but he had mentioned that.
19. The applicant participated in an arrival entry (entry) interview on 28 June 2013 after arriving in Australia [in] June 2013. Asked why he left Bangladesh, the applicant stated he used to work for

Jl. There was a lot of problems and fighting in Bangladesh. He fled that political situation because he got scared. Asked whether any specific incidents happened to him, the applicant said 'no' he was scared of the situation. Asked what would happen to him if he returned to Bangladesh, the applicant said as he was involved in Jl the AL might shoot him because he didn't go to there. He also stated he supported the Jl. Whilst information given in his entry is consistent with regards to his support for Jl unlike his later evidence he also stated he worked for Jl which is another discrepancy.

20. I agree with the delegate and note that despite the applicant's claims that he did mention the death of his friend in his entry interview the recording of his entry interview does not support this statement. There is no mention of the death of his friend in his entry interview. I accept the applicant is of limited education and had only been in Australia for a week at the time he undertook his entry interview. I am also mindful that an entry interview is not the place for a detailed exploration of an applicant's claims; however, the death of his friend was the very reason the applicant no longer felt safe in Bangladesh. His failure to disclose or even allude to this incident is of great significance.
21. At the beginning of his entry interview the applicant was told it was his opportunity to provide any reasons why he should not be removed from Australia. He was expected to give true and correct answers to the questions asked and that he should understand that if the information he gave in any future interview was different from what he told now, this could raise doubts about the reliability of what he had said. The applicant responded 'yes' to the interviewing officer when asked if he understood what was being said and whether he understood the interpreter. I have had regard to the representative's arguments. I am not satisfied his failure to mention the death of his friend by people who were seeking to harm him was because of any lack of trust in the authorities and that he found it difficult to speaking openly to authorities in Australia or that providing evidence to the interpreter would impede the accuracy of the evidence provided.
22. There are other aspects of the applicant's claims I have concerns with. The applicant also in his entry interview did not mention his long family association with Jl. In his SHEV application he claimed a long time family involvement with Jl and that his father participated in protests and gave lectures. At his SHEV interview the applicant stated his father was involved with politics and there were problems and he told his father not to be involved with politics and nowadays he was not. His father used to give lectures about Islam. He went to someone's home or gatherings at the bazaar and gave speeches. He would go to tea stalls and senior people invited him to gatherings and he used to tell people to help others and 'do good.' It does not make sense to me why the applicant who only claimed to support Jl would be targeted and not his father who had more influence or involvement with the Jl.
23. At his SHEV interview the applicant introduced new evidence regarding recent events pertaining to his father. The delegate put to the applicant that he had claimed two years ago four people came to his house and asked where he was. The applicant stated two years ago they used to come to his home every week. They were wearing masks and riding a bike. His mother told them he was not home and if they had a problem to contact him in Australia. They used to carry knives with them and hide them. They used to hit the tin shed of their home when they left. I note in his written claims in describing this incident it was his father who spoke to these people and they pretended to be his friends but his father realised they were not. Again the applicant has not recalled his written claims with consistency.
24. The applicant then stated about a week ago 'those people' raped a disabled girl and his father saw the incident. There was a meeting in regards to the incident and afterwards AL came to one

person's home and destroyed [his] motorbike. They became angry with his father and his father was now reluctant to have contact with people in his area. Asked again when this incident with the girl happened, the applicant changed his evidence and stated it occurred a month ago. One person was caught and he was made to pay 200,000 taka to the girl's mother not to inform the police. His father was now hiding at home. They destroyed the motorbike of a man who was a member of the city council and 'those people' beat him.

25. In my view the applicant seemed to be manufacturing his evidence in response to the delegate's questions in order to embellish and strengthen his claims for protection. The applicant appeared to do so in order to avoid discussing his own individual claims. The applicant then stated the AL killed a girl in Chittagong and set her on fire. The girl was a student of an Islamic school, a madrassa. Some people wanted to rape her and her father was a teacher at that school. They called her to the roof of the school and set her on fire. Asked whether her father was a JI member, the applicant said he is a Muslim but he wasn't sure if he was a member or not; the incident was on Facebook. Whilst such an incident is distressing I do not understand its relevance to his own claims and see it as an attempt by the applicant to deflect attention from his own claims for protection.
26. Another issue that concerns me is the applicant's claim that when he escaped out the back of his friend A's shop and they beat A, the applicant went directly back to his home. This is despite his claims that 'they' looking for him. It does not make sense why he would go home if indeed they were looking for him given they would likely search his home. The applicant did not claim that he attempted to hide from them. I also find it somewhat farcical his family would pay a 10,000 taka demand when they could not reach him at the time when an unknown person would call his brother-in-law and demand money. The applicant in his SHEV application claimed to speak to his parents over the phone every week or fortnight. At his SHEV interview he stated he spoke with his parents once or twice a week. Given the dearth of information with regards to this claim, why he could not be contacted at this point in time by his family and my overall concerns regarding the applicant's credibility, I find he has contrived this claim in order to strengthen his claims for protection.
27. Asked by the delegate who was responsible for the attack on A, the applicant said AL and BNP people. He used to spend time at that shop and AL and BNP knew that. They were wearing masks so he didn't know which party, he wasn't sure. If someone was wearing a mask how could he identify. He used to sit with his friend and his friend told those people he was not interested in attending the meetings. The applicant again developed his narrative in response to the applicant's questions noting in his SHEV application he did not claim that they were wearing masks. I find it perplexing how the applicant was unable to articulate with any certainty who was seeking to harm him instead claiming that both the AL and BNP sought to recruit him. He claimed that a few weeks after he escaped some people from the AL or BNP came to his parent's house and asked where he was.
28. Country information indicates Bangladesh has long had a two-party political system dominated by the AL and the BNP and the relationship between the two parties is characterised by a longstanding political and dynastic rivalry, which has increased over time.¹ Bangladesh is historically prone to high levels of politically motivated violence (PMV).² Since it came into power in 2008, the AL has considerably restricted the activities of opposition parties, particularly the BNP and JI.³ Active members of the opposition political parties including the BNP who participate

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Bangladesh", 22 August 2019, 20190822132438, 3.61-3.62.

² Ibid 3.92.

³ Ibid 3.67.

in demonstrations face a high risk of arrest and physical violence both from the security forces and ruling party activists (AL).⁴ Given the claimed period of time various people have sought to harm the applicant and his family, the intensity of their visits to his family home since his departure and that the AL has been in power since 2008, I consider it nonsensical the applicant is so wavering in his claims as to the true identity of his persecutors.

29. Asked by the delegate why he thought they were targeting him, the applicant said it was not only him but other people who were in the same age group. They invited all people to attending their meeting and he declined their meeting and said he liked peace and didn't want conflict. Asked whether only he refused, the applicant said him and some of his friends, 'they' filed five or six cases against those friends and some were now in [Country 3] and others in [Country 2]. Somehow they left the country.
30. Asked whether there was someone in particular he was afraid of in Bangladesh, the applicant said he was fearful of everyone; how could he know if a person was good or bad. Asked whether he was involved in politics in Bangladesh, the applicant said he like JI at the time. When he went to the mosque they used to tell him there were gatherings. The applicant did not state he attended any of their gatherings. Asked if he went back to Bangladesh whether he would be involved in politics, the applicant said how could he; they had tried to get him involved in different meetings but he declined. 'Those people' had told his family that if he returned after one month or six months they would put a false case against him for drugs or something.
31. The applicant's oral evidence came across as hurried, superficial and exaggerated. I am not convinced by his claims that despite only liking JI and refusing to attend their meetings or support them, AL or BNP people would go to such lengths to harm him and threaten to kill him over such an extended period of time and that this behaviour would be ongoing over six years after he departed Bangladesh. Noting the applicant has at least been consistent in his claims to support JI, I am prepared to accept the applicant supports JI or likes JI but I am not satisfied the applicant's affiliation with the JI extends beyond that of a low level supporter. Furthermore, DFAT has not seen evidence of forced recruitment to political parties, and considers it unlikely to occur. Parties hold membership campaigns each year, through which parties recruit large numbers of members. According to a 2018 survey by the Asia Foundation, around 80 of Bangladeshis have limited interest in politics, and those that do are not necessary members of any party.⁵
32. Whilst I accept the applicant's father and grandfather may have also supported JI, I do not accept his father was well known in his local JI, gave lectures about Islam as a representative of JI. I find the applicant has exaggerated his father's role with JI. Given the claimed level of harassment and intimidation his family have endured since his departure from Bangladesh in 2013 including the threats made against his life, the payment of 10,000 taka through deceit that he was in trouble in Australia and the frequent attendance of people to his house asking questions about him over an extended period of time, the attack against his brother by a group demanding money who came with big knives, and lastly the threats made against his father after he witnessed a rape, I am not convinced his parents would remain in their village.
33. I accept the applicant may have witnessed incidents of political violence in Bangladesh given it is historically prone to high levels of political motivated violence (PMV). PMV manifests in the form of violent clashes between supporters of different factions of the same party, supporters of rival parties and between parties and law enforcement agencies. Fatalities and serious injuries

⁴ Ibid 3.70.

⁵ Ibid 3.65.

often result from these clashes and PMV tends to peak during periods of heightened political unrest, including during elections, strikes and blockades.⁶ The applicant has not claimed to have been political active in Bangladesh and I am not satisfied he was personally involved in PMV prior to his departure. I do not accept that the applicant's friend A was beaten to death and set on fire as claimed. I accept the applicant may have witnessed such violence but I do not accept that it was had any connection to him, his support for JI or for his failure to support either the BNP or the AL and attend their meetings.

34. Given I have rejected the applicant's claims that he was targeted by AL or BNP people, supporters or members I do not accept that after he departed from Bangladesh, AL or BNP people came to his house and told his father if they found him they would kill him. I do not accept that in approximately May 2017 someone called his brother in law and told him he was in trouble in Australia and that his family paid 10,000 taka. I do not accept people have frequently come to his house asking for him and that in approximately July 2017 four people came on motorbikes asking his father about him. I do not accept that his brother after returning from [Country 2] was forced into hiding or that an attack was made against him by people with big knives demanding money. I do not accept that one month prior to his SHEV interview his father witnessed a rape and that since then his father has been in hiding. I am of the view the applicant has contrived these claims and that he is not a witness of truth.
35. According to DFAT, JI is the largest Islamist party in Bangladesh, with historical strongholds in northern Bangladesh and Chittagong. It is committed to the creation of an Islamic state with a *sharia* legal system, and to the removal of 'un-Islamic' laws and practices. Five leaders convicted by the International Criminal Tribunal (ICT) of war crimes during the Liberation war were executed between December 2013 and September 2016. JI has periodically held major strikes or demonstrations particularly against the ICT which resulted in large scale property damage and the deaths of numerous protesters at the hands of the security forces. Thousands of JI members have been detained in counter terrorism operations including through enforced disappearances.⁷ JI was banned from participation in the 2014 elections on the basis of its anti-secular views.⁸ The applicant has not demonstrated any knowledge of these recent events concerning JI further undermining his claims for protection.
36. Authorities have particularly targeted for arrest the JI's senior leadership, few of who remain free and active. Other targets include prominent members and in some cases family members. Lower-level members have reportedly been able to avoid the attention of authorities either through paying bribes or by physically relocating. DFAT assesses as credible reports that the situation is better for JI members in villages than in cities.⁹ Having found the applicant not to be a JI member but a low level supporter, the applicant does not fit the profile.
37. DFAT assesses that senior JI leaders face a high risk of arrest and legal sanction. Active JI members and members of its student wing Chhatra Shibir who do not engage in political activities and demonstrations face a low risk of arrest, although this may vary according to location.¹⁰ The information before me does not indicate low level JI supporters are at risk of any harm. Given the applicant has not been politically active since his arrival in Australia over six years ago I am not satisfied the applicant as a low level supporter of the JI would be politically active on his return to Bangladesh.

⁶ Ibid 3.92.

⁷ Ibid 3.83-3.84.

⁸ Ibid 3.86.

⁹ Ibid 3.85.

¹⁰ Ibid 3.88.

38. Taking everything into consideration, the country information and the applicant's personal circumstances, that he is a low level supporter of the JI who is not otherwise politically active, and that his parents continue to reside in [Village 1] and who I have found to not have come to any harm, I am not satisfied the applicant faces a real chance of any harm on account of his being a low level supporter of the JI on his return to Bangladesh now or in the reasonable foreseeable future.

Refugee: conclusion

39. 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

40. 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

41. 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.

42. I have concluded that the applicant does not face a real chance of any harm for the reasons claimed. Given 'real chance' and 'real risk' involve the same standard, I am not satisfied he faces a real risk of any harm on these bases.

Complementary protection: conclusion

43. 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.