



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA20/07801

Date and time of decision: 24 February 2020 15:15:00
S Ryan, 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 national of Bangladesh and arrived in Australia [in] January 2013. On 28 June 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 23 January 2020 and referred the matter to the IAA on 29 January 2020.

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). No further information has been obtained or received.

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - He was born in the village of [name] in the Gazipur (also spelt 'Gazipur') district of Bangladesh in [year]. He is of Bengali ethnicity, follows Sunni Islam and is a citizen of Bangladesh.
 - He lived with his parents and siblings until 2012 and his family are known to have supported the Bangladeshi National Party (BNP).
 - In 2012 he resisted repeated efforts to recruit him by a criminal/militia group that uses the name '[Group 1]' and who he believes are associated with the Awami League. He fled to Australia after he had unsuccessfully attempted to evade their attention by moving to Dhaka.
 - While he does not have any personal political affiliation he fears harm from political parties and the criminal groups working for them as an imputed BNP supporter and/or a person who has resisted these groups.
 - Since he left Bangladesh the [Group 1] have continued to look for him. They have repeatedly threatened and assaulted his family members for refusing to disclose his whereabouts.
 - He cannot live in any other part of Bangladesh as the [Group 1] has a network throughout Bangladesh and are capable of finding him anywhere.
 - Bangladeshi authorities are corrupt and ineffective and cannot protect him.
 - He fears harm from Bangladeshi authorities and the groups they pay to work for them on account of having sought asylum in Australia. They may find out his claims for protection and harm him, or frame him for a crime he has not committed.

Factual findings

Identity and Background

4. In assessing the applicant's claims I have had regard to the evidence he has provided in the Entry Interview conducted in February 2013, the additional oral statement made to the

Department in April 2013, the SHEV application lodged in June 2017 and the evidence he gave during the SHEV interview conducted in January 2020.

5. I am willing to accept the applicant's evidence with respect to his basic circumstances, noting his evidence on these elements of his biography has been consistent, and is supported by copies of identity documents, namely his Bangladeshi birth certificate and Citizenship certificate. I accept that the applicant is a Sunni Muslim born Gazipur district of Bangladesh and is a national of Bangladesh. Accordingly I have assessed him against Bangladesh as the receiving country.
6. I am willing to accept that the applicant has worked on his and others' farms after leaving school and until some point in 2012. I note the applicant claims to have studied at primary school between the ages of [age span]. He also claims he then studied a further three years of high school, and then left his studies to work on his father's farm at the age of [a later age]. His late commencement of education appears highly unusual; particularly noting country information confirms Bangladesh has a compulsory and free primary school education system. I have some concerns that the applicant's account of the level of education he has attained and/or the period in which he undertook schooling may not be accurate, however I also take into account he has not been asked to explain why he commenced education at such a late age and I draw no adverse inference from this apparent anomaly in his biography.
7. I accept that his parents continue to live in their village in Gazipur and that he has [number] brothers, [number] of whom live in Bangladesh and the other, MRH, lives in [Country 1].

Omissions from evidence in the Entry Interview

8. The applicant took part in an Arrival and Induction interview (Entry Interview) [in] February 2013 in which he provided information that is substantially at odds with evidence that he has provided to the Department with his SHEV application. During the SHEV interview held in January 2020, the delegate put him on notice that the reasons he had given for having left Bangladesh in the Entry Interview were not consistent with the evidence he provided with his SHEV application.
9. The applicant responded that he had been scared about disclosing his problems with the criminal group in that interview and that it was only later, after having been assured by his Case Manager in [City 1], that he felt able to provide his reasons for leaving Bangladesh. The information considered by the delegate confirms the applicant provided to the Department on 8 April 2013 an additional oral statement concerning his reasons for leaving Bangladesh.
10. I take into account the fact that the Entry Interview is not conducted for the purpose of intended to provide a full exploration of a persons' claim to asylum, although it does in part seek to elicit a person's reasons for departing their country and other matters that may be regarded as pertinent to a protection claim. I am willing to accept that participating in a formal interview with a government official in February 2013 may have been a somewhat daunting experience for the applicant. I also take into account the applicant appears to have limited education and that he is unfamiliar with immigration processes and formal interviews, and also that the interview was conducted with the assistance of an interpreter.
11. Having reviewed the audio record of this interview I consider it was conducted in calm and friendly manner. It is also evident from the flow of the interview and detailed nature of his responses that he understood the Bengali interpreter and the questions he was being asked.

12. Noting it was conducted more than three weeks after his arrival, and considering the highly detailed responses he provided in that interview, it is not apparent from the responses he gave that he was suffering from memory loss, confusion or suffering any ill effects from the journey to Australia.
13. The interviewer spent considerable time asking the applicant about his circumstances in Bangladesh, his manner of travelling his reasons for leaving and the reasons he did not want to return. In that interview the applicant provided specific and detailed responses to these questions and the interviewer did not interrupt him at any point and, at times, asked him to provide more detailed answers.
14. While I have considered his explanation that he was fearful of providing information about his claims for protection in this interview, I note that the applicant was willing to disclose that he had sometimes been harassed by a group. The interviewer asked him a number of follow up questions and did not attempt to limit his responses. When asked if there was anything else that happened that made him leave Bangladesh he responded '*no, nothing happened*'.
15. Given the extent of the omissions, the centrality of this group to his protection claims, and the matters that he did raise in that interview, I do not accept that the applicant's omission of any part of he and his family having been subjected to prolonged, intensive harassment and physical assault by this group can be plausibly attributed to the nature of the Entry Interview, or to the applicant's unspecified fear of providing more detailed responses.

Attempted recruitment by the [Group 1]

16. The applicant claimed in the 2017 SHEV application that he had resisted repeated attempts by the [Group 1] to recruit him in early 2012 and fled to Dhaka to avoid them, and that they had continued to aggressively pursue him, even after he left Bangladesh in November 2012.
17. During the Entry Interview the applicant provided a substantially different account of his circumstances and reasons for leaving Bangladesh in when compared to the evidence he has given later. When asked his reasons for travelling to Australia he stated that he wanted to support his family, and it was only when the interviewer asked whether there were any other reasons he mentioned that he was sometimes prevented from working in the field by people working for the '*opposition party*' that sometimes went by the name "[Group 1]". He did not suggest he or any member of his family were threatened or harmed and specified that none of his family were involved in any political activity.
18. In the April 2013 oral statement made to his Case Manager whilst he was in detention in [City 1] he claimed an opposition group the group had threatened him as they objected to him working on neighbouring farms and his statement. He mentioned he had just become aware that his parents had been assaulted after his departure, but did not suggest he himself had been assaulted. The applicant provides a substantially different account in the 2017 written statement where he indicated that he had been approached by masked men who attempted to recruit him and he claimed the [Group 1] is associated with the ruling political party, the Awami League.
19. During the SHEV interview the applicant initially having been approached by a '*terrorist group*' in January 2011. He then corrected the timing to 2012 when the delegate pointed out to this was different to the timing of the same event in the account he gave in his SHEV application. The applicant described having been beaten very badly by three men who were armed with a stick. The delegate questioned the applicant in some detail regarding his description of the

attackers, particularly noting that the applicant had initially said he knew the men lived nearby but didn't know their names as they were not locals. The delegate pointed out that his 2017 written claims had described the men as being masked, which appeared to be in conflict with the evidence he had just given. The applicant responded that he had forgotten to mention the men were masked and that he had made a guess that they were not local people based on their '*shape and figure*' and actions as '*terrorists*'.

20. I do not find this explanation persuasive, noting the applicant's initial response to the delegate's question as to whether he recognised the men clearly indicated he recognised the men as persons living in his area and did not suggest their faces were obscured by masks. I consider the evidence provided by the applicant during the SHEV interview with regard to his three personal interactions with this group to be scant in detail, inconsistent, and unpersuasive.
21. The Awami League have ruled Bangladesh since 2008 and have a mass supporter base, including members and auxiliary groups. There is no information before me indicating they have any difficulty attracting supporters and activists to their party, associate organisations and groups, or that they use coercive recruitment strategies. The country information strongly suggests that it is highly unlikely that a person such as the applicant; a rural farm worker with limited education and employment skills, who is from a poor rural family and who has never been a member of a political party or involved in political activity; would be repeatedly targeted over many years by a group associated with the Awami League on account of having refused to join their group.
22. For all of these reasons I have serious concerns with his claim to have been harassed and pursued by this group after refusing their attempt to recruit him.

Time in Dhaka

23. The applicant claimed in the SHEV interview that he left his home village in March 2012 to escape the [Group 1] and first stayed in [a named] District of Dhaka for about one month and began working in a data entry job for a [products] company. He claimed he left after one month after having being told by a watchman or security guard in the building where he lived that people had been making enquiries about him. He claimed to have fled [that district] and moved to the Uttara district of Dhaka and continued working for the same [products] company. He had spent about four months in Uttara when his friend rang him to tell him the [Group 1] knew where he lived and were coming for him. He also claimed that his parents were assaulted by the [Group 1] shortly after he had arrived in Dhaka.
24. The delegate then pointed to the inconsistencies between this account and the evidence he had provided about the same period in the 2017 written statement. She noted that the applicant had given substantially different evidence concerning the sequence of events and also the timeframes in which he lived in different areas and in which the events occurred. The applicant responded by explaining he had become confused about the sequence of events in Dhaka. He also explained that he had confused his employment in Dhaka with his job in [Country 2].
25. I note in this context that, when asked during the 2013 Entry Interview about where he had lived immediately prior to leaving for Australia, the applicant stated that he had lived with his parents in their village up until his departure in November 2012, and that he had not lived anywhere else prior to leaving Bangladesh.

26. For all of these reasons I have serious concerns with the scant and inconsistent evidence given by the applicant regarding the period in which he claims to have lived in Dhaka.

Attacks on his family

27. The applicant claims in the 2017 written statement that he was advised by his mother while he was in [Country 2] (in January and February 2013) that the [Group 1] had come to the family house to look for him and had beaten both his parents so badly they were hospitalised. He claimed his mother contacted him again after he arrived in Australia and advised him the [Group 1] visited his home whilst his mother was alone and that their assault on her led her to be admitted to hospital with a cut head.
28. The applicant raised a new claim in the SHEV interview that the group had assaulted his parents in May 2012 shortly after he had left for Dhaka, and that this assault had resulted in his mother sustaining a fractured head. When the delegate asked why he had not previously mentioned this incident he explained that the 2012 assault had not resulted in serious injuries to his parents and he did not have a medical certificate for this attack. The applicant gave evidence during the SHEV interview that his parents had been attacked by the [Group 1] on a total of two occasions, and then changed this to three occasions when the delegate drew his attention to the fact that he had described three attacks. He responded by explaining that he had not counted the 2012 attack on his parents as he had only raised this during the SHEV interview. If true, the assault of his parents in their own home for the first time would seem to be a significant event, and I note also that he described this to the delegate as a key event leading to his decision to flee Bangladesh. For these reasons I do not consider his explanation for having omitted any part of this attack from his earlier evidence to be plausible or persuasive.
29. I have serious concerns with the evidence given by the applicant in support of his claim that his parents were attacked on three occasions; noting that each account is substantially at odds with other evidence he has given, his account of events changed each time the delegate put the inconsistencies to him, and his explanations for having done so were poor and implausible. As just one example to illustrate this point the applicant described the attack on his mother for which she had a medical certificate and when asked by the delegate to estimate when this attack occurred, he claimed that his parents were attacked a few weeks prior to him lodging his SHEV application in June 2017. The delegate then pointed out the certificate referred to his mother having received medical attention in February 2013, and he responded that he had mixed up the two events and that, because the attack in 2017 had not resulted in serious injuries and he had been told by his lawyer it was not necessary to include it in the written statement and he should raise this at the SHEV interview.
30. I have had regard to the medical document presented by the applicant, which purports to record a visit to a medical clinic by his mother and describing injuries she sustained [in] February 2013. On its face it may be taken to have some corroborative value of the applicant's claim his parents were attacked in February 2013. However I have some strong reservations as to the authenticity of this medical document, noting that the Australian Department of Foreign Affairs and Trade (DFAT) and the UK Home Office describe the widespread prevalence of fraudulent documentation in Bangladesh. I particularly note this purports to be a copy of a handwritten document that is written in English (not a language spoken by the applicant or his parents), is without any security features, and has not been issued by in a regulated manner by a government authority. Noting this, and given my serious concerns with the applicant's evidence in relation to the claimed attacks on his parents, I am not satisfied that this is a genuine document.

31. The applicant also described the [Group 1] having targeted his brother, MRH. His statement indicates that the [Group 1] attacked MRH with knives and cut him whilst he worked in the fields in his village [in] May 2015. His statement specified that MRH had left the family's home in May 2016 to avoid being targeted by the [Group 1]. In this context I note that the applicant gave evidence in the 2013 Entry Interview that MRH was living in [Country 3], and confirmed in January 2020 that MRH was living in [Country 1]. While I cannot rule out that MRH returned from [Country 3] at some point between 2013 and 2016 and lived with his family in Bangladesh, in the absence of any corroborative evidence confirming this attack, I have concerns with the veracity of the applicant's claim his brother was attacked whilst working in Bangladesh in 2015.
32. These matters, taken with my earlier doubts concerning his claim to have been harassed and pursued by this group, leads me to have strong concerns with the applicant's claim that his family have been repeatedly assaulted by members of the [Group 1].

Conclusions

33. I accept it can be difficult to provide oral evidence in a formal interview via an interpreter, and I take into account that the applicant was not accompanied by a legal representative during the SHEV interview, although I note he had confirmed he considered assistance in preparing his written claims. I also acknowledge that the passage of time can make it difficult to recall precise details about past events, or provide comprehensive accounts of stressful or traumatic events that occurred some time ago. Taking these matters into account, I am willing to make some allowances with respect to the applicant's ability to recall precise dates and sequences of events, particularly for minor matters. Nevertheless I have also had regard to the fact that these are not minor or inconsequential events in his life, these are matters that are central to his claims for protection. I also note the discrepancies between his accounts are numerous and significant.
34. I have taken into account country information that confirms some 'auxiliary groups' associated with Bangladesh's main political parties are a front for groups undertaking criminal activities; including violence and extortion, particularly against people associated with opposition parties. I note the example DFAT gave involved Awami League activists reportedly extorting business owners affiliated with the Bangladeshi Nationalist Party (BNP).
35. I do not consider the applicant's claim that his family is publicly associated with the BNP to be credible, he gave evidence in the Entry Interview that no one from his family have any political affiliations or activities and confirmed in the SHEV interview that this is the case. He has not provided any evidence elsewhere that would suggest he or any member of his family are interested in politics or involved in public expressions of their political opinions. Even if I were to accept his family have voted for the BNP, given their lack of any public profile, he has not explained how his family would have become publicly known to be BNP supporters. The applicant does not claim he or his family have been extorted by this group and I do not accept as credible his speculative suggestion that he may have been targeted on account of being an imputed BNP supporter.
36. Considered cumulatively, my concerns with the veracity of the applicant's multiple accounts of the events that led him to leave Bangladesh are significant; to the extent that they are suggestive of fabrication and cannot be plausibly explained as clarifications, minor variations, or the addition of minor details. Furthermore I find his explanations for having given these varying accounts to be unpersuasive. He has provided scant and inconsistent evidence and on

nearly every aspect of his protection claims, and no part is substantiated by credible, corroborative evidence.

37. For all of these reasons I find that I am not satisfied the applicant was prevented from working by an 'opposition party', or that he has resisted an attempt by a criminal, political or militant group to coercively recruit him in 2012. For the same reasons I am also not satisfied that he was assaulted by this group or that any member of his family has been harassed or assaulted as part of this group attempting to locate the applicant.

Profile with Bangladeshi authorities

38. I am not satisfied the applicant has an adverse profile with any group associated with the Awami League, or that he has any direct or imputed association with any political party, including the BNP. I am also not satisfied that he has an adverse profile with the Awami League or the Bangladeshi government for these reasons.
39. Nonetheless I accept that he has bypassed Bangladesh's formal immigration procedures when departing in November 2012 and that, given he would need to apply for a Bangladeshi passport from Australia, the circumstances of his departure and his period of residence in Australia would be apparent to Bangladeshi authorities if he were to return.

Refugee assessment

40. 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

41. 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.
42. For the reasons provided earlier I am not satisfied that the applicant has resisted attempts to recruit him by either a criminal group or group associated with the Awami League, or that he or his family has been harassed or harmed by them. I find he would not have an adverse

profile with any such group, or with Bangladeshi authorities for these reasons on return to Bangladesh. I am also not satisfied that the applicant has ever been or is currently known as an actual or imputed supporter of the BNP. I find he does not face a real chance of harm on these bases.

43. I have had regard to the risk of harm faced by the applicant, as an ordinary Bangladeshi civilian who departed Bangladesh illegally after having sought asylum in Australia. I note DFAT's 2018 characterisation of the security situation in Bangladesh as volatile; particularly concerning the ongoing threats of politically motivated violence, sectarian and other forms of religiously inspired terrorist violence, and criminal violence.
44. I have considered recent country information describing the increased politicisation of government institutions and their use in furthering the political control of the ruling party, the Awami League. This has included credible claims of politically motivated mass arrests, detention, disappearances and extrajudicial punishments carried out against the political opponents of the Awami League. DFAT observed in February 2018 that the extent of the control the Awami League has over Bangladesh is evident in the fact that, as inter-party violence has declined since 2015, the majority of politically motivated violence can now be characterised as intra-party violence between rival factions of the Awami League.
45. I note in more recent reporting before me, that the Bangladesh national election held in December 2018 featured weeks of politically motivated violence and indicates that some activists and members of opposition parties were arrested.
46. DFAT describe how domestic Islamist militants have conducted many small-scale but violent terrorist attacks; predominantly targeted at the Bangladeshi government, foreigners, religious minority groups, and civil society activists perceived to be challenging their conservative Islamist values. DFAT assesses that extensive counter-terrorism operations undertaken by the Bangladeshi authorities have reduced the capability of militant groups, particularly since the middle of 2016.
47. The country information before me describes the prevalence of violent, extrajudicial actions taken by Bangladesh's security forces against criminal gang members, political activists, and Islamist militants. The information before me indicates that those civilians at a particular risk of harm are persons who are members of, or who are closely associated with political parties, extremist Islamist groups, or criminal gangs.
48. There is no credible information before me that the applicant has ever been involved in any political activity, or that he is an imputed or actual supporter of any political party in Bangladesh. I am not satisfied that he would become involved in any type of political activities or events upon return to Bangladesh and that this would not be due to any fear of harm, but rather a lack of any genuine interest. I further note he does not claim to have ever been a member of an extremist Islamist group or criminal syndicate, and there is no evidence suggesting he seek to join such groups upon return to Bangladesh.
49. I have found that the applicant departed Bangladesh by boat and did not have a Bangladeshi passport or exit through a formal channel. In order to return to Bangladesh the applicant will need to apply for a passport issued in his own name and DFAT confirms that authorities undertake individual checks against returnees to verify their identity. I accept that these circumstances will make it apparent to Bangladeshi authorities that the applicant's manner of departing Bangladesh bypassed procedures provided in the Emigration Ordinance Act. While the law provides for penalties of up to one year imprisonment or a fine of 5000 taka for

persons departing in the circumstances similar to the applicant, I note DFAT reports that it is not aware of these penalties being enforced, and this view is supported by the International Organisation for Migration report in 2014 that persons in the applicant's circumstances are typically regarded as victims of people smuggling networks rather than law breakers. I consider it to be no more than a remote possibility that these penalties would be applied to the applicant.

50. The applicant feared harm on account of his asylum claims becoming known to Bangladeshi authorities. He did not indicate how his particular claims for protection would become known to the Bangladeshi authorities. There is no credible information before me that indicates that his claims, or the fact that he has made an application for asylum, have been disclosed to any person in Bangladesh. Nor is there any information suggesting this would become known as a result of his return to Bangladesh.
51. DFAT advise that most returnees, including failed asylum seekers, are unlikely to face adverse attention, and those cases that do include high profile individuals who have engaged in political activities outside Bangladesh, or have been convicted of serious crimes. Considering the applicant's low profile, the evidence before me does not suggest he would be targeted by Bangladeshi officials for any of these reasons. This, of course, does not preclude the possibility of a person not fitting these profiles facing adverse attention from authorities for another reason. However, considering the particular circumstances of the applicant, I am satisfied that the likelihood of the applicant facing adverse attention from Bangladeshi authorities is remote.
52. I am not satisfied that the applicant faces a real chance of harm for reasons of having departed Bangladesh illegally and sought asylum in Australia, or on account of the general security situation in Bangladesh.

Refugee: conclusion

53. The applicant does not have a well-founded fear of persecution. 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

54. 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

55. I have concluded above that the applicant does not face a real chance of any harm on any of the bases claimed. As 'real risk' and 'real chance' involve the application of the same legal standard, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

56. 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.