



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA20/08623

Date and time of decision: 31 August 2020 10:00:00
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 is a national of Bangladesh. He arrived in Australia [in] June 2013 and on 4 August 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 31 July 2020 the delegate of the Minister for Immigration 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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in [year] in [Village 1], Norshindi Province of Bangladesh.
 - He is of Bengali ethnicity and his religion is Islam.
 - His father is an Imam, one of the religious leaders. When he was around [Age 1] years old, some people in the Awami League (AL) were involved in an altercation with his father near the local Mosque. He knew they were from the AL because they were from the same locality and involved in politics, but he had not met them before the altercation or interacted with them.
 - The altercation took place because of the financial situation at the Mosque related to buying things for the Mosque; his father told him this. People were donating money to the Mosque and the person who was keeping money for the Mosque was the local AL leader.
 - The Imam tells that person what is needed for the Mosque and how the money should be spent and during the discussions the altercation broke out. When he saw this, he got involved in the fighting and he beat the AL people with a stick for hitting his father.
 - After this, the local AL leaders would not allow him to stay in his own hometown. He went to Norshindi City and worked in [a] factory for three months.
 - People from the AL found out he was working in [a] factory and chased him down. He saw the people and he ran as a result he wasn't harmed at the time.
 - After that he lived in his uncle in the middle of Dhaka for two to three days and lived in several other places including a mosque. Then he informed his father what had happened. His father contacted people in [Country 1] who helped him flee. His father and brother used their income to send him to Australia.
 - Since arriving in Australia, he has contacted his father once a month by telephone. He is very old and cannot move; he is not in danger because unlike him his father cannot get out of bed. The rest of his family is not in danger as he is the bone of contention because he was involved in the altercation. His brother works in a government organisation, so he was not involved at the time of the altercation.

- He fears being seriously harmed including being beaten or killed by the AL. He cannot relocate as he is being targeted for a political reason and members of the AL are everywhere.
- He fears the AL because they believe he is against them and has a differing political opinion because he fought against them.

Refugee assessment

6. 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

7. 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.
8. 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.
9. Based on the oral and documentary evidence before me, I accept the applicant’s background as follows: He was born in [year] in [Village 1] in Norshindi Province in Bangladesh, is of Bengali ethnicity and a Sunni Muslim. The applicant, along with his parents, has a brother and [number of] sisters. His sisters are married and live with their families; the applicant’s brother remains with his parents in his village. I accept prior to his departing Bangladesh the applicant worked for a short period in [a factory] in Norshindi city. The applicant departed Bangladesh illegally by boat without a passport from Chittagong and his father and brother made all the arrangements.
10. In relation to the applicant’s core claims that he got into an altercation with some AL people because they hit his father, the Imam at the local Mosque, following a disagreement with the person who kept the money for the Mosque, I have a number of significant concerns. First is the fact the applicant made no reference to this incident in his arrival interview.

11. Following the applicant's arrival in Australia [in] June 2013, some four weeks later he participated in an arrival and induction (arrival) interview on 29 June 2013. This arrival interview was undertaken in two parts. According to the transcript, when asked why he left Bangladesh, the applicant stated that his father was one of the religious leaders and his father organised everything; he did not know why his father sent him to Australia. Asked why he left his country, the applicant said his father told him to go to Australia. The interviewing officer put to the applicant that he had made this journey because his father had told him and that he had no reason to leave his country, the applicant responded that whatever his father said he had to obey his instructions. Asked if there were any other reason, he left his country, the applicant said 'no'. Asked if he knew why his father sent him, the applicant said his father didn't tell him any reason. His father took him to Chittagong and handed him over to a guy who put him on a boat to Indonesia.
12. While in his arrival interview the applicant referred to his father holding the position of a religious leader, he made no reference to the incident referred to in his SHEV application. At his SHEV interview on 23 July 2020 the delegate put to the applicant that he had only stated his reasons for leaving Bangladesh were that his father told him to go to Australia and he had to obey his father's instructions and there were no other reasons; whereas in his SHEV application and in his interview now it was because of the altercation with the cashier from the AL party. The applicant stated that when he arrived, he had no idea about this country's systems, it was later that on he wrote the details; he didn't know why the delegate was asking about the arrival interview. He had mentioned he was tense, and his statement was not very well thought out. He had nothing else to add. I note in the applicant in his statement included in his SHEV application, claims that he did not elaborate on his grounds in his entry (arrival) interview because he felt 'uneasy' noting he had handed a letter explaining his grounds to the Department while in detention in Perth. This letter is not in the review material and it is unclear how long the applicant had been in Australia when he wrote it.
13. The applicant's justification for not presenting his core claim, his altercation with the cashier, at the first opportunity because he felt 'uneasy' I consider is simplistic, half-hearted and lacking in substance. The applicant had already been in Australia for almost a month and would have gain some familiarity of his new environment. I also do not find the applicant's explanation to the delegate regarding his failure to notify the Department either persuasive or meaningful. The applicant was told at the beginning of his arrival interview that it was his opportunity to provide any reasons why he should not be removed from Australia, that he was expected to give true and correct answers to questions asked. Furthermore, he should understand if the information he gave at any future interview was different from what he told now; this could raise doubts about the reliability of what he had said.
14. While I understand the arrival interview is not the occasion for an applicant to provide their protection claims in full or for these claims to be explored or tested, the applicant presented as lacking any knowledge of why his father had sent him out of Bangladesh and had only embarked on this journey because his father had instructed him to. I also accept the arrival interview is an imperfect process but I note the applicant was provided with interpreters in the Bengali language and the transcript of this interview indicates he responded 'yes' when asked if he understood the interpreter and what was being said to him. I am not convinced he failed to outline this core claim in his arrival interview because he felt uneasy.
15. Other aspects of his evidence which also cause me concern is the applicant's inability to accurately pinpoint when the altercation happened. In his SHEV application the applicant claimed it was when he 'was around [Age 1] (his best guess)' when some AL people were involved in an altercation with his father near the local Mosque. The applicant has consistently

claimed that he was born on [date]; he has also provided a copy of his birth certificate as evidence. The applicant would have been [Age 1] at the end of 2011. I note the applicant could only provide 'his best guess' for the date. The applicant had already been in Australia over four years and claimed he was in contact once a month with his father by telephone and could have clarified with his father the date prior to lodging his SHEV application. Again, he could have done so prior to his SHEV interview where only after prompting by the delegate did the applicant provide an approximate timeframe.

16. Asked by the delegate when the incident happened and could he tell him the date, the applicant said he didn't remember the date, it was about 2013, the beginning, early 2013. In response the delegate then said the beginning of 2013, January, February or March, is that what he was saying. The applicant then said he thought it was like that. Asked when he left Bangladesh to come to Australia, the applicant said he didn't come to Australia straight away he went to [Country 2] and after 17 or 19 days he left by boat. He left Bangladesh sometime in May and he worked in Norshindi city for two to three months before. The delegate put to the applicant that this incident would have happened the end of February or early March and the applicant said he thought so, at the end of February or early March.
17. The applicant's SHEV application indicates he left high school in year 10 in 2003, and therefore he has had some level of education. In the SHEV interview audio recording in my view the applicant came across as rather unsophisticated; however, I consider it remarkable he could not spontaneously volunteer a more definite date for the event which purportedly changed the direction of his life and that led to him flee his village. I note in February or March 2013 the applicant would have been [Age 2] not around [Age 1]. I also observe in his arrival interview the applicant indicated he began his work in [a] factory in 2012 and finished in December 2012; and while he claimed it was also this period in his statement included with his SHEV application, in the SHEV Form he provided a different time period of between January to April 2013 and again at his SHEV interview this changed to between March and May 2013 following the delegate's prompting. The applicant's inability to provide a consistent timeframe of events prior to his departure or a more confident date of the incident causes me to doubt its actual occurrence.
18. I also share the delegate concern's regarding the applicant's father and that he continued in his role of Imam even after the altercation when the applicant himself was forced to flee. I accept the applicant's father was a religious leader or Imam as the applicant has been consistent in this regard throughout the protection application process; however, the original discussion or argument which developed in to the altercation was between his father, the Imam, and the cashier. His father had a title and stature within his community. It would make more sense for the cashier to target his father, the Iman, than the applicant who was a young man with no status.
19. At his SHEV interview the applicant stated at the Friday prayers funds were collected from people who came to prayer and someone collects funds for the purchase of certain items. The funds used to be with committee members who were mostly AL and very powerful. Some spent money for something else and there became an issue. Asked how it affected his father, the applicant said as Imam his father had to say what were the requirements of the Mosque, such as furniture, and his job was to state what equipment he needed. His father needed a mic and then the committee member spent some money on some other thing, and this resulted in an argument with his father. In the committee there were 10 to 12 members and one of them is the cashier who maintained this fund. Only one person was against his father, the cashier. His father had been the Imam for six years and the cashier who started all the trouble was new.

His father was assaulted, he (the applicant) was present there and the cashier hit his father. He (the applicant) had a fight with the cashier; he used his fist, his hand to hit him.

20. After that incident, they came with a group of people to assault him, but he left the village. They came the day of the assault, but he was hiding so they couldn't find him and the next morning he left. Asked where he was hiding, the applicant again stated he was hiding, and they couldn't find him. Asked why he was hiding, the applicant repeating himself said he was hiding so they couldn't find him. Asked again, he said he was hiding because they came with many people together to get revenge and he was afraid, so he was hiding. Asked whether he knew they were already coming since he was hiding, the applicant said actually he was home, when they were coming one of his friends told him they were coming to assault him and he better escape so he managed to escape from his house. He spent the night at his friend's house who lived maybe 10 km away and he walked there. Nobody saw him, if they had they would have stopped him there. He spent the night at his friends and in the morning, he left for Norshindi. The applicant presented as evasive and vague responding to the delegate's questioning in this regard and he seemed to be constructing the evidence of his escape in line with the delegate's questioning although somewhat unsuccessfully and without conviction.
21. Towards the end of the interview the applicant confirmed his family was still in the village. His father was no longer the Imam. After he left the country, after some time his father suffered a stroke and wasn't Imam anymore. Nothing had happened to his family. I find it strange that despite the original altercation being between his father and the cashier who was purportedly a very powerful AL person, his father remained in the position of Imam even after the applicant's departure. His father was not forced to step down from this role or resign but only relinquished his role after a stroke. It does not make sense to me that the applicant who only came to his father's defence would be forced out of the village and it is not apparent on the evidence before me that anyone was seriously injured or killed as a result of the applicant hitting someone. The applicant was a young man with no position, job, or political connection. Furthermore, while the applicant claimed he beat AL people with a stick (SHEV application) his narrative changed at his SHEV interview when he stated he hit the cashier with his hand/fist.
22. Taking all these concerns into consideration, I am not satisfied the applicant came to his father's defence following an altercation with the AL connected cashier and that subsequently the applicant was driven out of his village. I am more persuaded his arrival interview provides a more accurate account of the reasons the applicant departed Bangladesh; that he did so upon his father's instructions. I am of the view the applicant has fabricated this claimed altercation and I reject this claim. Given this, I am also not satisfied the applicant was found working in [a] factory by the AL and that they chased him down and he fled that place. I am also not satisfied the applicant had to hide at his uncle's place in the middle of Dhaka for two to three days and lived in several other places including at a local mosque. I am not satisfied the applicant was of any adverse interest to the AL leaders, members or supporters in his village at the time he departed Bangladesh. I am not satisfied the applicant faces a real chance of any harm on any of these bases on his return to Bangladesh now or in the reasonably foreseeable future given I have rejected this claim.
23. Given his consistent evidence in this regard, I have accepted that the applicant departed Bangladesh unlawfully without his passport. The applicant has resided for over seven years in Australia and sought asylum. While the applicant did not claim to fear harm on this basis the delegate considered the applicant's illegal departure and that he will be considered a failed asylum seeker on his return to Bangladesh and so have I. There is no information before me to indicate the applicant has done anything in Australia either online or in a public forum that

would attract the adverse attention of the Bangladeshi authorities. The applicant has also not claimed to have been politically active in Bangladesh or Australia.

24. The Australian Department of Foreign Affairs and Trade (DFAT) reports that the Emigration Ordinance Act (1982) (EO Act) makes it an offence to depart from Bangladesh other than in accordance with the procedures laid down in the EO Act.¹ DFAT's report from 2014 indicates that DFAT is not aware of any incidence of enforcement of these provisions and there is no indication in the 2019 report that this has changed.² There is no country information in the review material to support that the Bangladeshi authorities enforce the EO Act against returning Bangladeshi asylum seekers. I am not satisfied that the applicant faces a real chance of any harm in Bangladesh because of having departed illegally.
25. Bangladesh accepts both voluntary and involuntary returnees. The International Organisation for Migration's Assisted Voluntary Returns and Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Government of Bangladesh. DFAT has no evidence to suggest that recent returnees from likeminded countries have received adverse attention from authorities or others.³
26. In 2014 the International Organisation for Migration estimated that over five million Bangladeshis were currently working overseas, contributing greatly to their families, communities and country's economy through remittances. Migration was increasingly being recognised as a viable livelihood option and one of the major development issues for Bangladesh. This report noted several challenges faced by migrant but did not indicate migrants returning from overseas were vulnerable to extortion. Furthermore, irregular migrants are viewed as victims of smuggling networks rather than lawbreakers.⁴
27. Bangladesh has a very large diaspora; tens of thousands of Bangladeshis exit and enter the country each year. It is unlikely the authorities have the capacity to check on or monitor each of these people, and the vast majority will re-enter the country without incident unless they have a particular political profile, particularly with the BNP. The applicant does not have this profile. DFAT assesses that most returnees, including failed asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily.⁵
28. I am not satisfied that the applicant faces a real chance of any harm in Bangladesh as a returning asylum seeker or a returning failed asylum seeker who departed unlawfully. I am not satisfied the applicant faces a real chance of any harm on his return to Bangladesh now or in the reasonably foreseeable future.

Refugee: conclusion

29. 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).

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

² 'DFAT Country Report Bangladesh 20 October 2014', 20 October 2014, CIS2F827D91369; DFAT, "DFAT Country Information Report - Bangladesh", 22 August 2019, 20190822132438.

³ DFAT, "DFAT Country Information Report - Bangladesh", 22 August 2019, 20190822132438.

⁴ 'Bangladesh', International Organization for Migration, International Organization for Migration, 01 August 2014, CIS29397.

⁵ DFAT, "DFAT Country Information Report - Bangladesh", 22 August 2019, 20190822132438.

Complementary protection assessment

30. 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

31. 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.
32. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
33. 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

34. 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.