



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA20/08694

Date and time of decision: 27 October 2020 14:31:00
G Deal, 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 applicant (the applicant) claims to be a Bangladeshi national of Sunni faith from Dhaka, Bangladesh. [In] August 2013 he arrived by boat in Australia. On 15 August 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (protection visa application) with the then Department of Immigration, now part of the Department of Home Affairs (the Department).
2. On 17 September 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. While accepting it was plausible the applicant was extorted as a local business owner by local gangs, the delegate found significant aspects of the applicant's claim to have been the victim of a lengthy campaign of harassment, assaults and extortion by supporters of the Bangladesh Nationalist Party (BNP) and Bangladesh Awami League (AL), leading to him closing his business and eventually living essentially on the run from them, implausible, varied and embellished. The delegate had serious concerns about the credibility of this claim and did not accept it or that the applicant was on anyone's target list. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm, and was not a person in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. By email dated 13 October 2020 the applicant's migration agent lodged a submission with the IAA. I have had regard to the information contained in the submission that was before the delegate as well as the various arguments raised. It also contains the new information discussed below. No further information has been obtained or received.
5. Relevantly, the applicant told the delegate that a BNP group of supporters as well as a group of supporters from the AL started to extort him in 2012. He said he was not political and that he was targeted by these groups because his business was successful, and these groups told him they gave the money to their leaders.
6. The submission now states that the applicant had been the victim of extortion since 2008 and that this continued until 2011. His business became "very popular and reliable among the political workers and leaders of Awami League, BNP in Manipur area. His place of business became the hub for meeting political workers of AL and BNP. He provided services to the public and political workers very efficiently and accurately at very cheap service charge". This is new information. The applicant's submission indicates this information is being provided because the delegate did not accept his claim to have been extorted as credible and that the delegate raised the issue of any connection with political parties as being vital. In the visa interview the issue of when the extortion commenced was interrogated, because the applicant had said in his visa application that it had started in 2012 while in the visa interview, he said it commenced early 2011. At the time the applicant said that the date in his visa application, namely 2012, was correct. In his visa application the applicant said that he did not support AL and that he had "never had any connection with any political party" and that he believed he was targeted specifically "because my business appeared to be successful". His evidence in the visa interview echoed this and when he was specifically asked why he thought the two groups were targeting him he said it was because his business was doing well. Given these details were squarely at

issue in the visa interview I am not satisfied this information could not have been provided to the delegate before she made her decision. The claims also differ significantly with what he has previously said, the applicant has not provided any explanation for the change in this regard beyond stating they have been provided upon discovering the delegate did not accept this aspect of his claims because, as the applicant understood, the issue of politics was “vital”. I do not accept the new information is credible, in the relevant sense. The applicant has not satisfied me as to the matters in s.473DD(b) of the Act. I am also not satisfied exceptional circumstance exist to justify considering the new information.

Applicant’s claims for protection

7. The applicant’s claims can be summarised as follows:

- He is a Bangladeshi of Sunni faith from Dhaka Province, Bangladesh. His mother, father, [and specified family members] live in Dhaka Province.
- After completing his schooling, he [studied] at [a named college]. He subsequently taught students and then ran his own business selling [products] until 2013.
- In about 2012 once his [business] was established, a group of BNP supporters and, separately, a group of AL supporters, started to extort money from him. He initially paid them to avoid trouble, but eventually refused when he could no longer afford to.
- Both groups subsequently subjected him to ongoing threats, harassment and assaults. He was eventually forced to close his shop and go into hiding. However, because of their networks they were able to repeatedly locate him and eventually he was forced to flee Bangladesh in fear of his life in about July 2013. While he reported these incidents to police, they did nothing to protect him.
- He left Bangladesh illegally with the help of a people smuggler.
- The AL and BNP groups continued to look for him in his absence up until about 2018.

Factual findings

8. The applicant had the assistance of a migration agent with his visa application which was lodged with the Department in August 2017. The visa interview was held on 12 August 2010. Due to “COVID-19” it was conducted by telephone by way of a three-way link between the applicant, Bengali interpreter and the delegate. The applicant said he understood the interpreter and had no objections to using her. He was also advised to notify the delegate if he did not understand anything during the interview. The applicant confirmed he had read and understood the information sheet provided to him about Australia’s protection visa obligations before attending the interview. The delegate advised that the purpose of the interview was for her to ask him questions about his claims and that it was also an opportunity for him to provide any further information he might have in support of his visa application. She advised that it was his responsibility to provide all his claims for protection and evidence in support of these claims and that if his application were refused, he might not get another opportunity to do so. At the conclusion of the visa interview the delegate also advised the applicant that any information he provided prior to his decision being made would be considered.

9. Based on the evidence, including the documentary evidence, I accept the applicant is of Sunni faith and was born in [year] and is from Dhaka, Bangladesh, and is a national of Bangladesh. The applicant has consistently claimed to have studied up until [grade in] high schooling, undertaken

further studies at College, to have then tutored and then moved to Mirpur where he opened a [shop]. He has consistently claimed that his family still live in Mirpur and that he left Bangladesh illegally. I accept these aspects of his claims. Based on a letter from the Department addressed to the applicant I also consider some of his information may have been subject to a 2014 Departmental data breach.

10. The applicant's main claim is that he fears harm from AL and BNP supporter groups who assaulted, threatened and extorted him in the past in connection with his [business]. When asked in the visa interview if he had any other reasons to fear returning to Bangladesh the applicant said that he did not. The applicant has consistently claimed to have been harassed and extorted by local groups linked to political parties after opening his shop because his shop was successful, that he eventually closed his shop because of the harassment, that he moved to [Town 1] for six months and then left Bangladesh illegally from Chittagong in July 2013, ultimately bound for Australia. The country information before me¹ reports that at that time criminal activity had increased in Bangladesh in recent years. The applicant has presented consistent evidence in relation to this aspect of his claims and it is plausible in light of the country information. I accept the applicant was extorted by local groups who claimed to have political affiliations, because his business was perceived as successful. I accept that this eventually forced him to close his shop and he lived in [Town 1] for six months in a share house and then illegally left Bangladesh in July 2013, ultimately bound for Australia.
11. However, details in relation to the applicant's claims to have been severely mistreated and targeted and pursued by a group of BNP supporters and, separately, a group of AL supporters, even after he closed his shop, eventually forcing him to live on the run from them and then flee Bangladesh in 2013 in fear of his life, have varied considerably. Like the delegate I have serious concerns regarding the veracity of these aspects of his claims.
12. In his visa application the applicant provided very specific detail about the amounts he claims to have paid the AL and BNP groups, however, when asked about these claims in the visa interview the information he volunteered varied considerably. In his visa application he said that for the first seven to eight months the groups demanded around 20,000 taka from him per visit but that the amounts increased eventually reaching about 5 lakhs or 500,000 taka and he could not pay these amounts. In contrast, in the visa interview he said the first time they came he paid them 50,000 taka, the second time they came he paid them 75,000 taka, then 125,000 taka, then 200,000 taka, then 300,000 taka and then he paid them another 200,000 taka. When asked if that was all he paid them he said that it was. When the delegate noted the variations in his evidence the applicant said he could not remember exactly how much he had paid. While I appreciate it has been some eight years since these events, in circumstances where the applicant volunteered these quite specific details, I do not find this explanation convincing and I do not accept it. I also note the variations are significant.
13. In his visa application while briefly mentioning the BNP at the beginning of his claims, he then detailed ongoing threats and assaults by the AL group with little mention of the BNP group and he said that since being in Australia it was AL supporters who had looked for him. In his visa application he said that after refusing to pay, when returning home from his shop AL supporters assaulted him and detained him at a house and beat him. They demanded 7 lakhs or 700,000 taka and after agreeing to pay this they released him. The AL supporters continued calling him. They demanded he pay them 20 lakhs within a month or so. Even when he changed his number they tracked him down and told him if he did not pay them they would kill him. He shut his shop

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Report Bangladesh 20 October 2014', 20 October 2014, CIS2F827D91369.

for three months and reported the incidents to the police, but they did nothing. He returned to his village and hid. AL supporters called him and told him they knew where he was and would send their people to harm him if he did not pay. That was when he fled to [Town 1], in Dhaka City, in about 2012 or 2013. He lived in a share house in [Town 1] for about six months. However, the AL tracked him down there too and called him and on one occasion assaulted and mugged him while he was in the street.

14. When asked in the visa interview who it was that was targeting and assaulting him the applicant initially just said it was the miscreants from the AL and that there were some others but he did not know them. When the delegate noted he had also mentioned the BNP in his visa application the applicant appeared to adjust his evidence stating they were miscreants from both the AL group and the BNP group as well as some people he did not know. When asked about the assaults he also mentioned, for the first time, that the BNP supporters called him demanding 12 lakhs (a not inconsiderable sum) indicating they then went to his shop and assaulted him and only left when some locals entered. When the delegate asked why the applicant had not mentioned this incident in his visa application the applicant said he was not asked about this incident in the arrival interview. The delegate said she was not referring to his arrival interview and that it was not mentioned in his visa application however, the applicant merely repeated the same explanation.
15. The claimed incidents of targeting also varied considerably. For example, in the visa interview the applicant made no mention of the AL group forcibly taking him to a house and assaulting him and demanding 7 lakhs as was detailed in his visa application. The applicant also only mentioned being harassed by the AL and BNP groups over the phone while in [Town 1]. Despite having the opportunity, he made no mention of the claimed assault and mugging by the AL group in [Town 1] that was detailed in his visa application. Somewhat at odds with his claim in his visa application to have been assaulted and mugged by the AL group in Mudga he even stated in the visa interview that they did not know where he was located during this period. After discussing his time in [Town 1] in the visa interview the delegate asked him if he thought of relocating anywhere else after he left there. The applicant said he did not think this would help as they had a network and would locate him wherever he went. He made no mention of living at various locations for short periods after leaving Mudga and before departing Bangladesh, as he had detailed in his visa application.
16. The country information before me² indicates that at around that time most politically motivated violence in Bangladesh tended to occur between political parties or groups imputed with certain political allegiances. In this case the applicant has not said he was involved in any protests or other similar activities and has consistently said he had no involvement in politics, which I accept. The applicant has consistently claimed he was targeted by these groups because his successful business was a good source of revenue for them, which I accept. Leaving aside the significant variations in his accounts, I find it difficult to believe he would continue to be targeted and perused after he had closed the business and moved multiple times. In particular, I find the claim that these same groups continued to look for him some four years after he had closed his business and left Bangladesh, difficult to believe.
17. While it has been some eight years since the claimed incidents, I do not accept the passing of time a convincing explanation for the significant variations in the applicant's narrative of claimed incidents of targeting which he had firsthand experience of and which he claims led him to fear for his life and flee Bangladesh. In the visa interview the applicant said that he opened his shop in 2008 and his evidence is that he closed this shop shortly after being first extorted and harassed

² DFAT, 'DFAT Country Report Bangladesh 20 October 2014', 20 October 2014, CIS2F827D91369.

in 2012. While I accept the applicant was briefly extorted and threatened by local gangs in the area in 2012 I consider he has exaggerated the extent to which he was targeted and extorted and do not accept this was to the level claimed or that he was subject to on-going threats, harassment and assaults after he closed his shop or that he was wanted by either the BNP or AL group, their associates or anyone else when he left Bangladesh in 2013. It follows that I do not accept his family has been harassed by the AL group, the BNP group or anyone else in relation to his whereabouts.

Refugee assessment

18. 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

19. 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.

20. I accept the applicant is of Sunni faith from Dhaka, Bangladesh, and is a national of Bangladesh although I note he has not particularised any claims related to his faith which I also note is the dominant faith in Bangladesh.³ I consider Bangladesh the receiving country. As he is from Dhaka and has family there, I consider if he were to return to Bangladesh he would very likely return to there. I accept he was extorted by opportunistic criminal elements, after his [shop] had become established in the area. However, I do not accept the applicant was otherwise actively targeted by these group, AL supporters, BNP supporters or anyone else after he closed his shop or when he later left Bangladesh in 2013.

21. DFAT, Odhikar and other reports state that it is alleged that AL and its associates have engaged in various criminal activities since coming into power more than 10 year ago, including extortion, voter intimidation at polling booths, abductions, attacks on ordinary citizens, and casting fake votes, among other things.⁴ They also indicate police cooperation, including in relation to the

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

⁴ DFAT, 'DFAT Country Information Report Bangladesh', 22 August 2019, 20190822132438; Odhikar, 'Human Rights Monitoring Report 1-31 May 2018', 4 June 2018, CIS7B839411182; Daily Star, The (Bangladesh), 'Torun League leader killed

targeting and silencing of leaders and activists of the opposition party, BNP, and other AL opponents engaged in protesting or demonstrating various issues. Somewhat consistent with this the applicant has submitted that criminal elements sometimes exploit their AL affiliations for their own monetary gain such as through extortion under the guise of political donations. I note the applicant closed his shop some eight years ago. I do not accept he was pursued after he closed his shop. The applicant has not been involved in protests or other political activities in Bangladesh or Australia and has clearly stated he is not political. The applicant has not indicated he would reopen his [business] if he returned to Bangladesh. He has not opened a similar shop in Australia or even worked with [the same products]. In the visa interview when asked about his work in Australia he indicated he had had a career change over the last seven or so years stating he was now [another occupation]. The applicant has not claimed his family in Dhaka currently face any harassment or harm. In the circumstances I am not satisfied he faces a real chance of harm on these bases.

22. The delegate considered whether the applicant would face harm as a returning “failed asylum seeker” and I note the applicant has been in Australia for several years. I accept the applicant left Bangladesh illegally and also consider that some of his personal information (name, date of birth, nationality, gender and details about detention) may have been subject to the 2014 Departmental data breach. DFAT’s report indicates that with the exception of convicted criminals, persons wanted by the security forces and intelligence agencies and those with a political profile including those who are high-profile and have engaged in political activities abroad, most returnees, including “failed asylum seekers”, are unlikely to face adverse attention on return.⁵ DFAT reports it has no evidence to suggest returnees have received adverse attention from the authorities or others and notes that tens of thousands exit the country each year and that the authorities are unlikely to have the capacity to check on or monitor people, with the vast majority re-entering without incident. A 2014 DFAT⁶ report states it is an offence under the *Emigration Ordinance Act (1982)* (EOA) to depart Bangladesh other than in accordance with the procedures laid down in that Act, and that failing to do so may result in up to one year imprisonment or a fine. However, DFAT also noted at that time that it was not aware of these penalties being enforced and the other country information before me, including DFAT’s 2019 report, does not indicate otherwise.
23. The applicant is not a convicted criminal, was not wanted by the authorities or anyone else when he left Bangladesh some seven years ago, does not have a political profile and has not engaged in any political activities since being in Australia. I do not consider the applicant has an adverse profile of interest to the Bangladesh government or those working with them or anyone else in Bangladesh. Only limited details were briefly released in the 2014 Departmental data breach, and there is no information that third parties have accessed the applicant’s information during this breach. Based on the country information detailed above and the applicant’s profile I am not satisfied he faces a real chance of harm on account of his illegal departure from Bangladesh, for being a failed asylum seeker who has spent several years in Australia or the data breach.
24. I am not satisfied the applicant has a well-founded fear of persecution.

in Jessore bomb attack’, 15 May 2018, CXBB8A1DA27259; Dhaka Tribune, ‘Chhatra League leaders lobbying to secure top posts’, 11 May 2018, CXBB8A1DA27095.

⁵ DFAT, ‘DFAT Country Information Report Bangladesh’, 22 August 2019, 20190822132438.

⁶ DFAT, ‘DFAT Country Report Bangladesh 20 October 2014’, 20 October 2014, CIS2F827D91369.

Refugee: conclusion

25. 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

26. 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

27. 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.

28. 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.

29. In considering the applicant's refugee status, I have concluded that there was no 'real chance' the applicant would suffer harm on his return to Bangladesh for the reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

Complementary protection: conclusion

30. 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.