



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA21/09470

Date and time of decision: 11 August 2021 10:28:00

V Price, 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. He lodged an application for a protection visa with the Department on 28 June 2017.
2. On 7 July 2017 a delegate of the Minister for the Department refused to grant the visa to the applicant. The delegate did not accept that the applicant was a member or supporter of the Jatiya Party (JP) as he claimed, was not satisfied he had been harmed by members of the rival political party, the Bangladesh National Party (BNP), and determined that he did not face a real chance or risk of harm due to his illegal departure from Bangladesh.

Information before the IAA

3. I have had regard to the material given to the Immigration Assessment Authority (IAA) by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
4. The applicant participated in an Irregular Maritime Arrival and Induction Interview (arrival interview) with the Department in August 2013. The written transcript and recording of this interview were given to the IAA in the review material. It is not clear on the information before me whether this was before the delegate at the time of making the decision, and whether it is new information for the purpose of s.473DC(1) of the Act. In the event the arrival interview material does constitute new information, I have considered whether it satisfies s.473DD(a). The material contains information about the applicant's background and circumstances in Bangladesh and the reasons he left the country. Given the nature of the information and noting that the applicant provided this information shortly after his arrival in Australia, I am satisfied there are exceptional circumstances to justify considering the information. It meets s.473DD(a). I have considered whether to obtain information from the applicant in relation to this material, however noting that: it is his own evidence; he did in part refer to the arrival interview in his protection visa statement; the information he gave is broadly consistent with that he later provided in relation to his protection visa application; and I do not consider the information to be adverse to the applicant, I have determined that obtaining new information regarding this material is not warranted.
5. The applicant provided to the Department a letter dated 19 May 2021 from his current employer indicating that he has worked for the company for five years and is a valued member of the team. While I accept the letter goes to his work ethic, it does not address the applicant's background in Bangladesh, or his protection claims, it does not assist my assessment of his credibility or whether he faces a real chance or risk of harm on return to Bangladesh. I am not satisfied it is relevant to the assessment and I have not considered this further.
6. No further information has been obtained or received.

Applicant's claims for protection

7. The applicant's states that was born in [Village], Miran Patuakhali District Bangladesh on [Date]. He is an adherent of the Muslim faith.

8. The claims set out in the written statement accompanying his protection visa application can be summarised as follows:
- From the age of about [Age], older men in the community encouraged him to attend protests held by members of the JP in their village and surrounding areas, particularly when one of the leaders or high-profile members were scheduled to give a speech.
 - The applicant was interested in the promises of the JP to provide infrastructure including a new Madrassa, and to improve the market, school commute and the quality of life in the village. He was also attracted to their aims of reducing corruption, improving education and stopping the receipt of donation money from the less well-off members of the community. The applicant attended JP meetings while he was still in school and attended regularly attended meetings.
 - Senior members of the JP encouraged the applicant to tell other people in the community about the JP and obtained votes for the party. Between 1997 and 2013 the applicant voluntarily worked for JP recruiting new members. Once or twice a week he would attend the party office to discuss their policies. During elections, the applicant attended the office more frequently and worked day and night canvassing the village to obtain votes.
 - The rival political party, the BNP, were also active in the village and would target members of competing political parties for harm. The applicant was approached by members of the BNP approximately 3 or 4 times and was punched and threatened on several of those occasions. The last time the applicant encountered BNP members he was stabbed in the [Body part 1] with a knife. After this incident, he was afraid of being targeted again and decided to leave Bangladesh. He departed the country illegally on about 15 January 2013, arriving in Australia in July 2013.
 - Even through the BNP are not in power they have a lot of power and JNP members continued to be attacked. BNP members have asked his family to disclose his whereabouts.
9. The applicant sates he will be subjected to serious harm, tortured or killed, in Bangladesh by members of the BNP party. He would not be safe anywhere in the country as the BNP have connections throughout the country and continue to look for him. Although not claimed by the applicant, the delegate also considered whether the applicant faced harm due to his illegal departure from the country and as a returned failed asylum seeker.

Refugee assessment

10. 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

11. 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.
12. On the documentary and oral evidence before me, including the applicant's birth certificate and citizenship certificate, I accept that he was born in [village], Miran Patuakhali District Bangladesh, that he of Bengali ethnicity, is an adherent of the Muslim faith, and that he is a national of that Bangladesh. I find that Bangladesh is his receiving country.
13. The applicant resided in in Patuakhali District from his birth in [Year] until his departure for Australia in January 2013. He attended school up to grade ten in the district and was also employed as a salesman at a clothes shop in that area. The applicant's parents have passed away and he has one brother who lives in Dhaka. However, two of his brothers continue to reside in the family home in [the] village and his sister resides in the next village. He is in regular communication with his sister and occasionally talks to his brothers. Given his past residence in Patuakhali District and the presence of his family in that area, I find it highly likely he would return there in the future.
14. The applicant has consistently claimed since his arrival in Australia to that he was harmed in Bangladesh due to his involvement with the JP. Bangladesh has long had a two-party political system dominated by the Awami League (AL) and the BNP.¹ The country has historically been prone to high levels of politically motivated violence among supporters of rival parties, and there are credible reports of supporters engaging in criminal activity.² I have taken into account that the applicant's claims are consistent with this information and that he has been consistent in both his claimed involvement in the JP and the harm he suffered in the past during his arrival interview and in the protection visa process. However, I have several concerns with his oral evidence at the protection visa interview which leads me to doubt the applicant was ever involved in any capacity with the JP or that he was ever harmed for this reason.
15. I take into account that the applicant named the founder and current leader of the JP at the protection visa interview and indicated that he canvassed the local area for votes for the JP. However, when asked, he was unable to identify the principals and ideologies of the Party, the process to become a member, the approximate number of protests he participated in and the purpose of those protests, or the approximate amount of time per week he undertook party work. Further, when asked on several occasions to specify his role and duties within the party generally as well as at specific party events such as protests or meetings, the applicant's answers lacked depth and were repetitive. For example, he provided the same

¹ Australian Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Bangladesh', 22 August 2019 20190822132438 (DFAT Report); and United Kingdom Home Office, "Bangladesh August 2010", 20 August 2010, 1734 (UKHO Report).

² DFAT Report; and UKHO Report.

response to several questions posed, stating that he did what was asked of him when the party called, and he executed their instructions. However, he could not then explain exactly what he did as part of those instructions. At one point the applicant gave evidence that he would sometimes gather people for protests or meetings, but he could not state how he went about gathering those people to attend those events.

16. The applicant claimed at interview that he was involved in the JP's election campaigns in 1996, 2001, 2008 and 2013. The delegate asked him who won the 2008 election, and the applicant's response was that it was won by the AL and the JP lost power. However, information is that the AL and the JP formed a coalition that year and jointly won the election.³ When this was put to the applicant, he changed his evidence and agreed that they had joined forces because the party could not win on their own. However, it is notable that he changed his evidence only after the contradictory information was put to him and I consider his earlier statement reflects his true position on this matter.
17. In my view, the applicant's evidence on the above matters is not commensurate with his claims that he had been involved with the party for over 16 years, undertook activities 'continuously', was a member of the party, and canvassed for votes during election times by explaining the JP's policies. If the applicant's level of political involvement was as claimed, it is implausible that he would not be able to provide details about the JP's ideology, the membership process, the nature of his own duties and roles in the party, and accurately recall the party's election strategies and outcomes in a campaign in which he claimed to have been involved. His inability to do so, leads me to doubt his claimed political involvement.
18. The applicant provided differing evidence about when the attack in which he claimed he was stabbed with a knife occurred. In the written statement accompanying his protection visa application he stated this was the incident precipitating his decision to leave the country, indicating it occurred just prior to his 2013 departure. In contrast when asked about this at the interview, he initially stated he could not recall when the incident occurred, and later said that it was when the BNP were in power sometime between 2001 and 2006. Given the purported importance of this incident to the applicant and his life, I consider that it not insignificant that he did not know when this event occurred and that fact his evidence differed on this matter contributes to my concerns regarding his claims of part harm due to his political activities.
19. The applicant claimed that his family were visited by members/supporters of the BNP after he departed the country, and that they continue to visit the home searching for him. However, when asked, he was unable to explain why they would remain interested him after 8 years. Noting the passage of time, and considering he was not a high profile figure of the party, he is not currently active in the JP, and the BNP are not in power,⁴ all of which were put to him at the interview, I consider it to be implausible anyone would now be searching for the applicant, which contributes to my concerns about his claims.
20. I have considered the passage of time since the claimed events, and that the applicant was not assisted by a representative during the interview. However, given the purported significance of the claimed events to the applicant's life, and to the extent of his claimed political engagement, I consider that he would have been able to provide a broadly consistent, detailed and plausible account of his involvement with the JP and the incident in which he claimed to have been injured, had these events occurred as claimed and I am not

³ UKHO Report.

⁴ DFAT Report.

satisfied these matters account for the concerns I have identified above. The interview was conducted with the assistance of a Bangladeshi interpreter, the applicant indicated he understood the interpreter, and appeared able to respond to the questions put to him and engage with the delegate during the interview. I consider he was able to meaningfully participate in the interview and there are no suggestions that there were errors in the interpretation such that his evidence given at that time was misunderstood. As noted above, have also considered that the applicant's written statement and arrival interview provided generally consistent accounts of these past events, and that he was able to provide some basic information about his claimed political activity and the JP Party leadership. However, ultimately, these matters do not overcome my concerns discussed above.

21. To support the claims that he was injured by BNP supporters in the past, the applicant submitted a photograph of the scar on his [Body part 1], and a letter from [Dr A] at [Medical centre], dated 11 May 2021, confirming he has a scar on his [Body part 1]. However, [Dr A] merely states that the applicant has reported the scar is due to a knife injury from an assault. [Dr A] does not offer a medical opinion about the cause or nature of the wound, or otherwise suggest that the scar is consistent with a knife related injury. In my view, the letter does not establish how the applicant received this scar. I accept the applicant does in fact have a scar from an injury to his [Body part 1]. He also claimed at interview to have an injury to his [Body part 2], and I am prepared to accept this is the case. However, I am not satisfied that he was injured in the manner claimed. Neither the letter from [Dr A], nor the existence of the scars themselves overcomes the identified concerns with the applicant's evidence, as set out above.
22. The applicant provided a certificate dated 15 May 2021 stated to be from the [Office holder 1] of the Patuakhali District JP party to support his claimed membership of the party. I have several concerns with this document. The name of the party is spelled incorrectly throughout which I consider to be unusual for a purportedly official document issued by the organisation. It is also written in the present tense, with the author appearing to state that the applicant is now an active worker of the party, which is at odds with his own oral evidence that he has not undertaken work for the party since 2013. It also does not identify whether the applicant is a member of the party, how long he has been involved in the party, or detail the nature of the work he is alleged to have undertaken for the party. I am not satisfied that this document has any evidentiary weight in establishing the applicant's claimed involvement with the JP, and nor am I satisfied it overcomes the concerns I have identified above with the applicant's oral evidence.
23. The applicant provided a letter dated 10 May 2021 stated to be from the [Office holder 2] of the Sub-District National Party Patuakhali. The author purports to confirm the applicant's participation in politics since 1997 as well as the past attacks he has endured in connection with his political activity. However, I also have several concerns with this document. It does not refer to the JP, but rather to the 'National Party'. The author states that the applicant 'cooperated in financial assistance to different educational establishments' and undertook 'public service based activities such as improvements to roads, culverts and bridges.' These are the matters which the applicant claimed formed part of the JP's political agenda, but his evidence did not indicate that he personally undertook these activities. Further, while I note that the author states that the applicant was attacked in 2004 this is directly at odds with the applicant's written statement that it occurred close to his 2013 departure from Bangladesh, and even if you consider it falls between the period put forward by the applicant at interview, this does not overcome the applicant's inability to identify when he was harmed. I am not satisfied that this document has any evidentiary weight in establishing the applicant's

claimed involvement with the JP, and nor am I satisfied it overcomes the concerns I have identified above with the applicant's oral evidence.

24. On the totality of the evidence before me, I am prepared to accept the applicant's claims that he voted in the elections, and that he may have voted for the JP. However, I am not satisfied that the applicant was either an active open supporter or member of the JP as claimed. I am not satisfied he undertook any work for the party, including attending protests, attending meetings, gathering crowds for events, or canvassing the village for votes. I am not satisfied that the applicant was threatened or harmed by BNP members/supporters or anyone else while undertaking work for the JP as claimed. Nor am I satisfied that members or supporters of the BNP ever visited the applicant's family home looking for him. I am not satisfied he was of any interest to the BNP at the time of his departure from the country, and I am not satisfied that he faces a real chance of harm for any reason associated with his past political activities on return to Bangladesh now or in the reasonable foreseeable future.
25. While politically motivated violence continues to occur in Bangladesh, information from the Australian Department of Foreign Affairs and Trade (DFAT) indicates that the December 2018 election was relatively peaceful in comparison to Bangladesh's previous election cycles.⁵ It also states that those most at risk of politically motivated violence and other harm under the current AL government are high-profile figures and senior members of opposition political parties and active members of opposition political parties, who openly engage in protests or opposition to the government.⁶ Further, information indicates that in recent years intra-party violence between AL League factions has been the most common form of politically motivated violence largely due to the party's complete control over state institutions.⁷ I accept and give weight to this information.
26. I am not satisfied that the applicant was involved in politics in the past and he has not been politically active here in Australia, despite having the opportunity to do so, which leads me to find he is not interested in engaging in political activities in the future. I am not satisfied that the applicant will become politically active, or that he will become an active supporter or member of any political party on return to Bangladesh. I accept that he may vote in future elections, however having regard to the information above, voters in an election do not fall within the categories of individual at risk of harm. I am not satisfied that the applicant faces a real chance of harm for reasons of his political opinion or activities on return to Bangladesh now or in the reasonably foreseeable future.
27. I accept that the applicant departed Bangladesh illegally in 2013 and that he will be returning as a failed asylum seeker. The *Emigration Ordinance Act (1982)* makes it an offence to depart from Bangladesh other than in accordance with the procedures laid down in the Act with penalties from three months imprisonment to a fine.⁸ However, the current DFAT report does not indicate that penalties have been applied for illegal departure or that persons who departed illegally otherwise face serious harm.⁹
28. DFAT states that Bangladesh accepts both voluntary and involuntary returnees.¹⁰ Bangladeshi authorities have generally insisted on a case-by-case, community-level police check to verify the identity and Bangladeshi citizenship of returnees before authorising their return and

⁵ DFAT Report.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

issuing travel documents. While DFAT states that this process has caused delays in returning Bangladeshis in some cases, particularly given the large numbers of people awaiting return, there is no suggestion that this process of itself results in any harm to the returnees.¹¹ DFAT advises that the International Organisation for Migration's Assisted Voluntary Returns and Repatriation program assists returnees in cooperation with the returning country and the government.

29. The independent information before me is that the authorities do not have the capacity to monitor returnees and that the vast majority of Bangladeshis will re-enter the country without incident.¹² In the event that a returnee has a particular political profile, particularly with the BNP, their entry into the country will be noted.¹³ I am not satisfied that the applicant has, or will in the future have, any such profile and I am not satisfied his return will be noted. DFAT states that they have no evidence to suggest that recent returnees have received adverse attention from authorities or others, and nor does the evidence before me indicate that those who departed illegally face any harm for this reason.¹⁴ Overall DFAT assesses that most returnees, including failed asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily.¹⁵ Having regard to the evidence before me, including the independent information and the applicant's profile and circumstances as discussed above, I am not satisfied that he faces a real chance of any harm on return to Bangladesh now or in the reasonably foreseeable future, for any reason associated with his illegal departure from Bangladesh or as a failed asylum seeker.
30. I am not satisfied that the applicant faces a real chance of harm or serious harm on return to Bangladesh now or in the reasonably foreseeable future for any of the reasons he has claimed. He does not have a well-founded fear of persecution.

Refugee: conclusion

31. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

32. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

33. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid; and International Organisation for Migration (IOM), "Bangladesh", 1 August 2014, CIS29397.

¹⁵ DFAT Report.

- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

34. 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.

35. I have found above that the applicant does not face a real chance of harm on return to Bangladesh. As 'real chance' and 'real risk' involve the same standard,¹⁶ I similarly find for the same reasons and on the evidence set out above (including the applicant's accepted claims and circumstances and the independent information cited above), that the applicant's claims as discussed above do not give rise to a real risk of harm for the purpose of s.36(2)(aa) of the Act.

36. Having regard to the applicant's claims individually and cumulatively, I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there is a real risk that he will suffer significant harm for any of the reasons he has claimed.

Complementary protection: conclusion

37. 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.

¹⁶ *MIAC v SZQRB* (2013) 210 FCR 505.

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.