



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA16/00189

Date and time of decision: 27 May 2016 10:16:44
Rosie Mathlin, 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 an 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 arrived in Australia by boat in October 2012.
2. [In] August 2015 he lodged an application for a temporary protection visa (TPV), claiming that he faced harm in Bangladesh from members of the Awami League (AL) because he was imputed to be a supporter of an opposition political party as a result of relationships with members of that party.
3. [In] April 2016 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa, finding that the applicant was not credible and that his claims should not be accepted. The delegate found the applicant was not a refugee, did not face a real risk of significant harm and was not a person in respect of whom Australia has protection obligations for the purposes of s.36(2) of the *Migration Act 1958* (the Act).

Information before the IAA

4. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).

Applicant's claims for protection

5. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
 - The applicant claims that he has been imputed to hold certain political opinions because of his association with [a Relative A] and a friend. When the applicant first raised this claim with his case officer in February 2013¹, and at the beginning of the protection interview, the applicant stated that he was associated with the Bangladesh Nationalist Party (BNP) because of his friend. In his TPV application and later in the protection interview, he claimed that he was associated with Jamaat Islamiah (JI).
 - In 2004 or 2005 the applicant's [Relative A] ran for election in their village on behalf of JI. People who were involved in his campaign were frequently harassed and attacked by members of the AL. The applicant had helped distribute election material for his [Relative A].
 - The applicant's friend [Mr A] was also involved in political activities on behalf of the BNP or JI. He attended meetings and demonstrations. At the protection interview the applicant said that [Mr A] was a leader of the party in the village and he organised all the 'postering' and processions.
 - The applicant was not a member or supporter of any party but he was considered to be because of his association with his friend and his [Relative A].
 - [Mr A] was involved in a demonstration at an AL government minister's house in the village, in which the house was damaged. Shortly afterwards, in September 2006, the

¹ Email message dated [in] February 2013 from Case manager, Wickham Point to MA Protection, on DIBP file.

applicant and [Mr A] were discussing the incident when they were attacked by AL supporters.

- Fearing for their lives, they both left Bangladesh. [Mr A] went to [Country 1]. The applicant heard that [Mr A] was beaten to death by AL supporters. The applicant told his case manager in February 2013 that [Mr A] was killed in December 2006, before the applicant left Bangladesh; he later claimed that [Mr A] was killed after he returned from [Country 1] in October 2010.
- The applicant left Bangladesh in 2007 after obtaining a valid passport and a three year temporary [visa] for [Country 2]. AL supporters are very active in [Country 2] and the applicant was recognised there by an AL supporter from a village close to his home in Bangladesh. The applicant was then harassed at his home and his workplace. Because he felt unsafe in [Country 2] he left in 2012 and travelled to Australia.
- The applicant's [siblings] have both faced harassment because they are associated with the BNP or JI for the same reasons as the applicant. His father's [farm stock] was poisoned in 2012 because he also was imputed to be a supporter. This harassment is continuing even though the applicant's [Relative A] is no longer politically active.
- They cannot go to the police because the police are in the pay of the AL.
- The AL won elections in January 2014. The election campaign was very violent and the applicant would have been harmed had he been there. Since then the AL government has cracked down violently on the opposition and its supporters.
- The applicant's father still receives threats against the applicant.
- The applicant will face problems on return because he came to Australia asking for asylum. As a person seen to belong to JI the authorities will think that he said bad things about them.

Factual findings

6. The applicant has provided a very unsatisfactory account of the reasons for which he left Bangladesh and subsequently [Country 2]. When he first arrived in Australia he did not mention the political reasons which he subsequently claimed were the basis for his claim to protection. He has provided inconsistent and contradictory information at different times. When interviewed by the delegate at the protection interview he provided repetitive, vague answers to questions about the events that he claimed had happened to him. I do not accept that the applicant left Bangladesh for the reasons claimed. Nor do I accept that he was harassed in [Country 2] and that he left [Country 2] for the reasons claimed.

Failure to mention claims at entry interview

7. At the entry interview when he first arrived in Australia the applicant stated that he left Bangladesh because there was no work and his parents were in financial difficulties. He said that he left [Country 2] because of poor working conditions. He said that there were no other reasons.
8. He raised the claims on which he now relies for the first time with his case officer in February 2013, apparently after being "screened out" of the refugee determination process². At that

² Ibid.

time, he indicated that he left Bangladesh because his friend, a BNP member, had been killed by AL supporters in December 2006.

9. In the statutory declaration submitted with his TPV and when asked at the protection interview why he had not mentioned the political persecution that he now claims led to his departure, he said that it was only after a time when he felt safe and secure in Australia and knew that he would be safe from the same kind of political harassment that he had experienced before that he felt secure enough to give the real reasons for his departure.
10. I do not accept that this is the case. I consider that the applicant was given ample opportunity to provide full details of his claims at the entry interview. I do not accept that, having left [Country 2] to come to Australia, he was not aware that Australia was a safe country where he would not face persecution by AL supporters, and where he could fully explain the reasons why he was seeking protection.
11. I consider that, as he stated at the entry interview, the applicant left both Bangladesh and [Country 2] for economic reasons and not because he faced political persecution.

With which political party does the applicant claim to be associated?

12. When the applicant first raised his political claims with his case officer in February 2013, and at the beginning of the protection interview, the applicant stated that he faced problems because of his association with members of the BNP. In his TPV application and later in the protection interview, he claimed that he was associated with JI. While, as noted by the delegate in the protection interview, the BNP and the JI are associated with each other, they are separate parties³. I have considered whether the confusion may have arisen because his [Relative A] was associated with JI while his friend was with the BNP, but this is not what the applicant is claiming.
13. I consider that if the applicant were telling the truth about his circumstances he would have accurately and consistently referred to the political party with which he claims his [Relative A] and his friend, and by imputation, he were associated.

Friendship with [Mr A] and associated problems

14. The applicant claims that the immediate reason for his departure from Bangladesh was because of problems he faced because of his friendship with [Mr A], who he claims organised most of the JI activities in their village. The applicant claims that one day he and his friend were attacked by four or five AL members when they were sitting in a little tin meeting house in the village, talking. At the protection interview he was asked a number of questions about the claimed attack. His description changed over each recount, his answers were vague and lacked credible details, and overall his account appeared to be implausible. For example, he said that the attack happened in a tiny little house, yet he claimed that the attackers came through one door and he and his friend escaped through another door. He described how the attackers smashed the walls and the furniture with hockey sticks before attacking the applicant's friend, at which point they both escaped, but it is difficult to see how they were able to escape being harmed at all, when attacked in a small space by four or five men armed with hockey sticks; moreover, from the applicant's account it appears that it was only when his friend was attacked that they realised the danger and decided to run, which, again seems implausible

³ See for example, Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report Bangladesh 20 October 2014", 20 October 2014, CIS2F827D91369

given his description of the incident starting with the attackers smashing the walls and furniture before turning their attention to the applicant and his friend.

15. I have considered the document provided by the applicant which purports to confirm the attack in the clubhouse and the death of his friend⁴. The applicant himself stated, however, that his father obtained the document at the applicant's request to be provided in support of his TPV application. In these circumstances, it is not clear that it is an objective and independent account of the events, rather than a recount of information provided to the author by the applicant. Moreover, country information referred to in the delegate's decision indicates that fraudulent documents of all kinds are easy to obtain in Bangladesh⁵. Given this information and in circumstances where the documents were prepared at the applicant's request, I give them no weight as independent corroboration of the applicant's claims. They do not overcome the many deficiencies in the applicant's own evidence.
16. In his discussion with his case officer in February 2013 the applicant stated that his friend had been killed in December 2006, and this was the reason for his own decision to leave Bangladesh. In the TPV he stated that his friend fled to [Country 1] in December 2006, and was killed when he returned to the village in October 2010. Asked to explain this discrepancy, the applicant said that some people said that [Mr A] had been killed in December 2006, but then it turned out that he had gone to [Country 2], or had been attacked but did not die, then the applicant heard that he had died later. I do not accept these explanations. I do not consider that the applicant would be mistaken about such an important matter, and in particular whether [Mr A] had been killed before or after the applicant's departure from Bangladesh, if it were true.
17. The applicant has provided a confused and inconsistent set of explanations for his responses to the claimed threat of harm, appearing to change his story from time to time. For example, he said at the protection interview that at first he did not take the threats seriously, and it was only when his friend was killed that he got scared and started taking it seriously. However, as put to the applicant in the protection interview, he also claimed quite inconsistently that he was so scared after the claimed attack in September 2006 that he dropped out of college and left Bangladesh for [Country 2]: this seemed to indicate that he took the threats very seriously. He also said that while he was in [Country 2] he thought the AL supporters in the village might have forgotten about him and so he considered returning, before he found out that [Mr A] had been killed. This statement seems inconsistent with his claim that he continued to be threatened in [Country 2] by associates of the AL people in his village. It is incongruous that he would think he might be safe in Bangladesh when he claims that he continued to be threatened by AL supporters even in another country.

Association with [Relative A]

18. The applicant claimed in the statutory declaration submitted with his TPV that his [Relative A] had unsuccessfully stood for election for the JI in 2004 and 2005. He stated that his [Relative A] is no longer politically active because of his age. The applicant has provided no details of any harassment or threats or harm that he suffered while in Bangladesh because of his association

⁴ Letter dated [in] March 2013 purportedly written by [Mr B], the Chairman of the [local] Union council of [District 1], Comilla, Bangladesh.

⁵ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report Bangladesh 20 October 2014", 20 October 2014. CIS2F827D91369; UK Home Office, "Country Information and Guidance Bangladesh: Background information, including actors of protection, and internal relocation", 28 November 2014, section 2.11, OG180885B43.

with his [Relative A], although he says that both he and his [Relative A's] sons continue to be threatened; he says that his [Relative A] is not harmed because he is old.

19. The delegate accepted that the applicant's [Relative A] stood for election for the JI, and that the applicant assisted in his campaign. However, he considered that the applicant had fabricated all claims of harm due to his political activity or associations.
20. I do not accept that the applicant's [Relative A] stood for election for the JI. As noted above, the applicant did not mention his [Relative A's] claimed political involvement at the entry interview. Nor did he mention it in the discussion with his caseworker in April 2013 at which he first raised his political claims, mentioning only the claims concerning his friend. Because of his failure to mention his [Relative A's] claimed political involvement at the earliest opportunity, I do not accept this claim.
21. In any event, the applicant has not given a credible account of either himself, his [Relative A], or any member of the extended family remaining in the village having been subjected to harm because of the claimed political association with the [Relative A]. He has not claimed that he was subjected to any form of serious harm at any time prior to the 2006 events, despite his [Relative A's] involvement in politics for about two years prior to that. He claims that his [Relative A] has never been harmed in any way because he is an old man, but I do not accept that this would provide protection if his [Relative A] were actually a member of JI who ran for office; I consider it implausible that the [Relative A] would not be harmed because of his age, while members of his extended family faced serious harm merely because of their association with him. While the applicant claimed that his father's [farm] was ruined in 2012 because the [stock] were poisoned, he did not provide any basis for his belief that the [stock] were poisoned by AL supporters for political reasons, simply referring to the claimed threats against the family and the fact that no one else would have done it. Given my concerns about the applicant's account generally, his vague claims about the poisoning of the [stock] do not of themselves establish any other, independent basis for finding that he or his family has faced harm for political reasons.
22. I do not accept that the applicant's [Relative A] ran for office on behalf of JI. I therefore do not accept that the applicant is imputed to hold any political views because of his association with his [Relative A] and I do not accept that he faces any kind of harm because of a political imputed to him.

Experiences in [Country 2]

23. The applicant claims that he lived in [Country 2] from October 2007 until September 2012. He claimed that he worked in a shop from October 2007 until April 2011, but left that job because he was harassed and threatened by AL supporters. He claims that he then worked in another job until he left [Country 2] to travel to Australia in September 2012 because the threats were continuing.
24. The account given by the applicant at the protection interview of his experiences in [Country 2] was vague. Despite being asked repeatedly for details of the threatening behaviour he repeated the same vague claims that he was abused and threatened by AL supporters who loitered around his workplaces. It is difficult to accept that the applicant was subject to sustained death threats for five years; it would be reasonable to expect that either the threats would have escalated into actual violence, or that they might have diminished, given the passage of time since he left Bangladesh. Moreover, apart from changing jobs in an unsuccessful attempt to avoid the claimed harm, the applicant appears to have taken no

reasonable steps to protect himself in [Country 2], either by approaching the authorities or the UNHCR. In my view, this casts further doubt on the overall credibility of his claims.

25. I do not find the applicant's account of being subjected to threats in [Country 2] because of his imputed political associations in Bangladesh to be credible. I note that his claims to protection are assessed only against Bangladesh, not [Country 2], but his account of his experiences in [Country 2] is nonetheless relevant to an assessment of his overall credibility

Political violence

26. The applicant has provided country information indicating that political violence between the BNP, AL and JI is rife in Bangladesh, and I accept that this is the case. The delegate considered extensive country information to this effect which I have also had regard to⁶. However, the applicant has not provided any credible evidence to support a finding that he has any political association or has been involved in any political activity, or that he would be in the future. In these circumstances, I am not satisfied that the applicant is at risk of being harmed in political violence.

Failed asylum seeker

27. Because I do not accept that the applicant was associated with JI, the BNP or any other political party, or that he is viewed by the authorities or any one in Bangladesh as associated with JI, the BNP or any other political party, it follows that I do not accept that he would face problems on return because the authorities would suspect that he criticised the government in the context of an asylum application.
28. DFAT assesses that people returning to Bangladesh voluntarily or involuntarily are unlikely to face adverse attention on return, especially given that thousands of Bangladeshis enter and leave the country every day. DFAT considers that the return of failed asylum seekers is unlikely to be reported by airport authorities to any other agency, beyond the "normal processes" for recording the movements of nationals⁷. There is no other information available to me to suggest otherwise⁸.

Refugee assessment

29. 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

30. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

⁶ Cited in primary decision record, footnotes 6-12.

⁷ DFAT Country Report Bangladesh 20 October 2014 at [5.32]-[5.33].

⁸ US Department of State "Human Rights Report 2014 Bangladesh", 25 June 2015, OGB2B06FAF201; UK Home Office "Operational Guidance Note Bangladesh", 16 September 2013, OGCOD145418.

- 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
- 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

Identity and nationality

31. Based on the documentation provided by the applicant (which was accepted by the delegate), I accept that his identity is as claimed, and that he is a national of Bangladesh and of no other country. I therefore find that Bangladesh is the receiving country for the purposes of s.5J of the Act.

Real chance of persecution

32. For the reasons set out above, I do not accept that the applicant was viewed as a supporter of any political party in his village because of his relationship to his [Relative A], or his friendship with [Mr A]. I do not accept that the applicant faced harm of any kind because of his actual or imputed political opinion or activities prior to his departure from Bangladesh. I do not accept that his friend was killed, or that any members of his extended family have been threatened or harmed in any way because of any political imputed to them for any reason, or because of their association with the applicant. I do not accept that the applicant was threatened or harassed in [Country 2] for reason of his political opinion, actual or imputed. There is no credible evidence before me suggesting that the applicant faces harm of any kind for reason of actual or imputed political opinion should he return to Bangladesh.
33. Because I do not accept that the applicant has been imputed to hold any political opinion, I do not accept that he would be suspected of having criticised the government while outside the country and I do not accept that he would face harm for this reason. Based on the country information I find that failed asylum seekers do not face a real chance of any kind of harm on return to Bangladesh, regardless of any political opinion.
34. I have considered the claims of economic disadvantage put forward by the applicant in his entry interview – that there are no jobs and no income and his family was in financial trouble and poor. However, as I do not find the applicant credible and as he has not pursued this claim in the TPV application, I am not satisfied that there is a real chance that the applicant will suffer serious harm, directed at him for any of the reasons set out in s.5J(1) of the Act, as a result of his economic circumstances.

Refugee: conclusion

35. 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

36. 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

37. Under s.36(2A), a person will suffer 'significant harm' if

- the person will be arbitrarily deprived of his or her life; or
- the death penalty will be carried out on the person; or
- the person will be subjected to torture; or
- the person will be subjected to cruel or inhuman treatment or punishment; or
- the person will be subjected to degrading treatment or punishment.

38. The applicant has not made claims that he faces significant harm for the purposes of complementary protection separate from the claims he has made under the refugees criterion.

39. As set out above, I do not accept that the applicant has provided a credible account of the reasons for which he claims to have left Bangladesh, or the events which he claims caused him to leave. I do not accept that he faced harm of any kind there for the reasons claimed in his TPV application. The reasons provided in his entry interview were not pursued in the TPV, and as I have found the applicant to be generally not credible, I am not satisfied that the applicant faces a real risk of any form of significant harm as a result of the lack of jobs in Bangladesh, or because of his or his family's financial situation. I do not accept that there is a real risk that he faces significant harm, as defined, on return, for any reason.

Complementary protection: conclusion

40. 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

...

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.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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