



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

VIETNAM

IAA reference: IAA16/00408

Date and time of decision: 26 August 2016 16:20:13

Denny Hughes, 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 citizen of Vietnam. He applied for a protection visa [in] July 2015. A delegate of the Minister refused to grant the visa [in] July 2016.
2. The delegate accepted the applicant was Catholic and that he disliked the Communist regime in Vietnam, but did not accept that there was a real chance or real risk the applicant would be harmed on return to Vietnam for reasons of his religion, his political opinion, as a failed asylum seeker or as someone who departed Vietnam illegally, or that he would suffer severe economic hardship or be targeted by people traffickers.

### Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant's representative provided a 10 page submission to the IAA [in] August 2016. [In] August 2016 that submission was returned to the representative as it did not comply with IAA Practice Direction No.1. An amended submission was received [in] August 2016. I have considered the submissions and am I satisfied that the legal arguments and the majority of the country information included is not new information. There are two instances of new country information referenced in the submission that were not before the delegate.<sup>1</sup> Given the recency of the information, I am satisfied it could not have been provided to the Minister before the decision was made. While no express claims were made on the application of s.473DD, considering all the circumstances, including the age of the applicant, I am satisfied there are exceptional reasons to consider this new information.

### 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:
  - He fears returning to Vietnam because his father told him it was unsafe to stay and he would have a better chance for a safer future if he left and he would not be prevented from going to school.
  - His family are extremely poor and his father told him that he could not afford to raise him anymore and that he needed to go away to a better place away from the dangers of Vietnam. His father asked a local convent to take his sister because they couldn't afford to raise her and they did not want bad people to take her away. His father said he could not be sent to the convent. Instead, his father gave what money he had to arrange for the applicant to leave Vietnam.
  - His father feared he would be taken away by people who were forcing children to work for no money. People from outside the village would come in and target the poorest families in the village. They would visit them and ask the parents to give them their

---

<sup>1</sup> The 'Vietnam' page of the 'Enemies of the Internet' website (<http://surveillance.rsf.org/en/vietnam/>); Amanda Hodge, "Kids orphaned as Vietnam jails parents over asylum bid", The Australian, 29 July 2016.

children and they would give their children a better life. They were made to give money and the families did not see them again. His parents knew that they were not taking the children for a better life. His mother said they were taking children away and making them work for no money and they never returned to their families.

- Their family was so poor because the government took his grandfather's land. His grandfather owned a small block of some land in their village. His grandfather was friends with the man who was village head at the time. He made an agreement with his grandfather to loan more than half of his land to build a kindergarten for the smaller children in the village.
- When the village head died, the agreement between his grandfather and the village head was never recovered and the government never gave the land back to his grandfather. His father said that he and his grandfather approached the authorities about this to try and get their land back, but the government said it was their land and would not return it to their family. They told his father and grandfather that if they continued to pursue the matter that they would be silenced.
- His father and grandfather could not fight against the government and knew that if they continued to try, the authorities would follow through with their threat and probably kill members of their family until they left this matter alone. From then on, their family has been extremely poor to the point where they have struggled to live.
- What made matters worse for them was that their family are practising Catholics and the authorities make life harder for them than the majority of the population who are Buddhists. Employers don't want to employ Catholics and the authorities try to push the Catholic children out of the public schools if parents cannot pay the fees.
- If he is forced to return to Vietnam he will be sent back to a worse life there than when he left.
- Things will be worse for his father and his family because they arranged for him to come to Australia. The authorities will punish them severely for sending him out of the country unlawfully. The authorities will not protect his family or him because they are the ones who will punish them. The government is very corrupt and treat poor Catholic families like his very badly.
- His mother recently told him that his father had to leave because the authorities came to their house looking for him. They knew his father had sent him away unlawfully and told his father if he did not make him come back to Vietnam, they would put him in prison.
- His father was forced to leave his mother and she thinks he has travelled down to the south. He left their village without permission and his mother doesn't know where he is. When the authorities knew he had left the village they came to his mother and wanted to know where he is. She told them that she doesn't know and that he just went missing.
- His mother is struggling to support herself and his younger brother who is unable to go to school. If he is forced to return to Vietnam he will struggle to survive and he will face extreme hardship. He won't be able to return to school because he has no money and no way to support myself and his mother does not earn enough to support him too. He cannot relocate to another part of Vietnam because the situation will be the same in every region of Vietnam for him and he will face the same dangers wherever he goes in Vietnam.

## Refugee assessment

---

6. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### Well-founded fear of persecution

7. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
8. The applicant is a Vietnamese citizen of [Ethnicity] and Roman Catholic religion. The applicant provided no Vietnamese identification documents. Nevertheless, on the information before me, which includes his evidence given in Vietnamese at the interview before the delegate and the Department’s age assessment, I am satisfied the applicant is a [age] old male from Vietnam.
9. At the interview, the applicant confirmed that he had not suffered harm in the past in Vietnam, his claims principally relate to the harm he fears on return.

### *Claims relating to religion and political opinion*

10. In his written submissions accompanying his application the applicant claimed to fear harm on the basis of his Catholic. His faith was given as one of the reasons his grandfather and father faced difficulties when dealing with the authorities over the recovery of his grandfather’s land. He also claimed in the submission that as they are practising Catholics the authorities make life harder for them than the majority of the population who are Buddhists. He claimed that employers do not want to employ Catholic and the authorities try to push the Catholic children out of the public schools if parents cannot pay the fees.
11. The delegate noted that the applicant gave no evidence at the departmental interview that he feared harm on the basis of his religion or on the basis of any political opinion. The delegate found that the applicant’s religious activities were at a very low level and concluded that he would not face a real chance of serious harm on this basis.

12. The submission to the IAA contends that the delegate was wrong to conclude that the applicant's religious activities or political views were at a low level given he was asked no questions about how he practised his faith in Australia or Vietnam or the depth of his religious or political beliefs. The representative also suggests that the delegate failed to use targeted questions regarding the source of his fear, and instead used vague and open ended questions such as "did you fear harm?" and "are there any other reasons why you fear returning to Vietnam?". She further submits that as the applicant left Vietnam as a child, it was unreasonable for the delegate to expect him to fully articulate his political views in the interview when questioned in the way he was.
13. I have considered the representative's submissions on the interviewing of unaccompanied minors and I agree that evidence given by minors needs to be taken with care and consideration of their age and maturity, and their evidence needs to be weighed appropriately given their age and other relevant considerations.
14. I note that an earlier interview was abandoned by the delegate because the representative was not in attendance. The interview was rescheduled and took place at a later time. The applicant was represented at the time of the rescheduled interview before the delegate. A representative from 'Save the Children' was also present as the applicant was under the age of 18.
15. The applicant presented at his interview as a softly spoken, but intelligent and mature young man. His evidence was calmly given at the interview and he did not appear distressed or otherwise unable to give evidence, although I accept his representative's submissions made during the interview that he was nervous and he may not have presented his case in the best order. I found the delegate's approach was relaxed and open during the interview. On several occasions during the interview the delegate emphasised that he had not made his mind up about his case, but had to put certain information to him as part of that process. The applicant was provided with a number of opportunities to present evidence about his claims and what he fears on return to Vietnam, including in consultation with his representative, after a natural justice break, and in post-interview submissions sent to the delegate.
16. At no point during the interview or in the post-interview submissions did the applicant or his representative make reference to the applicant fearing harm on the basis of his religion or provide specific claims that he held political opinions against the Vietnamese government apart from indications that he did not like the current Communist regime.
17. In view of all the circumstances, I am satisfied the applicant was given a fair interview and opportunity to present his case. The applicant and his representative were asked open questions and given multiple opportunities to expand on his claims, including in post-interview submissions. I find that the applicant and his representative's failure to raise any claims relating to his religion and political beliefs to be significant. Nevertheless, I have considered the submissions to the IAA on his religious practice and political views.
18. The applicant claims in those submissions that in [City 1] he has the freedom to practise his religion in safety and peace, whereas in Vietnam he would often be stopped by the police when attending church. The representative submits that the applicant spent his formative years in a democratic, western country, and that it is reasonable to expect that he has adopted an approach to his faith that embraces a flexible, and social justice orientated manner of practice, and that it is also reasonable to expect that he would continue to practice his faith in this relaxed manner in [Province 1], as opposed to the manner sanctioned by the Vietnamese authorities. It is submitted that he should not be forced to modify his religious practice.

19. In terms of his political claims, no further detail of his specific beliefs or practices were provided, although it was submitted that the act of seeking asylum would be seen as an expression of anti-government or pro-democratic beliefs. In terms of the claim he would be imputed to hold such opinions from seeking asylum, I have dealt with that claim below.
20. I accept that Catholics who are known to express anti-government or pro-democratic beliefs are persecuted. On the basis of the information before me, I find that the applicant has never been religiously or politically active, nor am I satisfied that there is any indication that he would be religiously or politically active on return. While I accept he has come to appreciate the freedom he has had religiously and politically in Australia, I am not satisfied on the evidence before me that he would be active in either respect on return. I find that at most, he is an ordinary, but genuine member of the Catholic Church, and he holds low level anti-government and pro-democratic beliefs.

### *Religion*

21. In terms of the risk to him as an ordinary member of the Catholic Church, for the following reasons I find that he would not face a real chance of being seriously harmed.
22. The Vietnamese Constitution provides for freedom of belief and religion, however that freedom is not unqualified. DFAT's overall assessment of religion in Vietnam is that it is tolerated, so long as adherents practice within state-sanctioned boundaries and do not challenge the interests or authority of the state.<sup>2</sup> While Catholics are in the minority in the country, estimates are that they number approximately 6.5 million of Vietnam's population of over 93 million people.<sup>3</sup> Furthermore, the numbers of Vietnamese practising with the Catholic Church is growing, as does the number of new congregations as demand for the church grows in certain communities.<sup>4</sup>
23. Official treatment of Catholics in Vietnam varies depending on whether Catholics practise in a registered or unregistered church, and/or whether the church or its members are outspoken or critical of the Vietnamese government. The information before me indicates that those Catholics that worship quietly, and in a manner that is sensitive and consistent with government policy only face a low risk of interference. Conversely, members of unregistered churches that are considered by the Vietnamese authorities to be opposed to the government are likely to be monitored, harassed, detained, arrested or otherwise prosecuted by the authorities.<sup>5</sup> DFAT advises that, on its best estimates, upwards of 30 activists connected to the Catholic Church have been arrested since 2011 and have either not been charged or are facing charges for crimes against the State.<sup>6</sup>
24. In the submission to the IAA, the applicant's representative claims that he fears serious harm not solely on the basis of his religion, but in particular as a Catholic from [Province 1]. I accept the applicant is from [Province 1] and would worship there on return. I accept the country information cited by both the delegate and the representative indicates that [Province 1] has been a flashpoint of religious tension in recent years. There is evidence of Catholic activists being mistreated, detained and jailed, following incidents at prayer vigils and demonstrations of properties formerly owned by the Catholic Church, and other instances where worshippers

---

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.10.

<sup>3</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.4.

<sup>4</sup> Ibid, at p.10.

<sup>5</sup> Ibid, at p.9-11.

<sup>6</sup> Ibid, at p.10.

have been harmed for studying and worshipping at unregistered churches.<sup>7</sup> More recent country information collated by the Department of Immigration indicates that tensions in the province appear to have eased, with evidence of regular church activities occurring in [Province 1]. There have also been no recent incidents relating to land disputes in the province, albeit there is evidence of conflicts of this type elsewhere in Vietnam. Elsewhere, there remain instances of religious activists and Catholics critical of the government being detained or harmed. In addition, difficulties also persisted for churches in remotes areas seeking to register with the government.<sup>8</sup>

25. I accept that religiously and politically activist Catholics have been targeted for harm by the government in Vietnam, including within [province 1].<sup>9</sup> On the limited evidence the applicant has provided about his faith, I do not accept that the applicant falls within the class of Catholics who are known to express anti-government or pro-democratic opinions, whether within [Province 1] or outside of it. I do not accept the applicant would be religiously active on return to [Province 1], nor do I accept there is anything about his religious profile or beliefs that would impute him with such religious or political opinions on return.
26. I accept that the applicant is a Catholic and would practise his faith in [province 1]. I note the applicant has not claimed to have worshipped in an unregistered church. In addition, given that he has not experienced any past harm on the basis of his religion apart from low level police interference, I am satisfied that he has not been involved in an unregistered or religiously activist church in [Province 1], nor will he be in the future.
27. I acknowledge the representative's submission that the applicant has adopted an approach to his faith that embraces a flexible, and social justice orientated manner of practise, and that it is also reasonable to expect that he would continue to practice his faith in this manner in [Province 1]. As above, the country information indicates that religious practice in [Province 1] has been free of conflict in the last two or so years, with a number of indications of ordinary religious practice continuing in the region without incident, including the opening of a new church and the training of those in the catechism.<sup>10</sup> This is consistent with country information that Catholics in Vietnam who worship quietly and in a manner that conforms to government policies and sensitivities are able to do so with a low risk of official interference. I acknowledge that this does not necessarily mean that issues in the province will not arise again in the future, but in that regard I find that issues for Catholics and Redemptorists in [Province 1] in the past have arisen in the context of religious activism and disputes with the state. I find the applicant is not religiously active and I am not satisfied he has or would attend a religiously active or unregistered church. I am satisfied that an ordinary Catholic like the applicant would not be modifying his behaviour by attending a registered Catholic Church in [Province 1] just as I am satisfied any past attendance at registered churches did not involve any modification of his behaviour to avoid harm. I am also satisfied this type of religious practice is not inconsistent with the style of church going he has become accustomed to in Australia.
28. While not raised at the interview, I accept his claims that he was stopped by the police when attempting to attend church and that his family may have faced difficulties when dealing with

---

<sup>7</sup> United States Commission on International Religious Freedom (USCIRF), "U.S. Commission on International Religious Freedom Annual Report Vietnam 2013", 1 January 2013, CIS25872, at p.9.

<sup>8</sup> Department of Immigration and Border Protection (DIBP), 'Vietnam: VNM CI160222173118213 - Roman Catholics in Vietnam', Country of Origin Information Section (COIS), 2 March 2016, CR0D9DEFA78, at p.2-7.

<sup>9</sup> USCIRF, "U.S. Commission on International Religious Freedom Annual Report Vietnam 2013", United States Commission on International Religious Freedom, 1 January 2013, CIS25872.

<sup>10</sup> DIBP, 'Vietnam: VNM CI160222173118213 - Roman Catholics in Vietnam', Country of Origin Information Section (COIS), 2 March 2016, CR0D9DEFA78, at p.2-3.

authorities on account of their religion. This is consistent with country information about the government's police forces that monitor the activities and networks of religious organisations in Vietnam, and a police force that in general acts with impunity and is corrupt.<sup>11</sup> However, I find that this is low level discrimination and does not of itself constitute serious harm. As I am satisfied the applicant is not a member of an unregistered church, I find there is no real chance of that discrimination increasing should he attend a registered church on return to Vietnam.

29. In terms of schooling and employment, the country information indicates a degree of discrimination towards a range of religious adherents, but does not support the applicant's claims that employers do not want to hire Catholics, or that Catholic children are pushed out of schools if they do not pay fees. The US State Department assesses that while unofficial policies of the Communist Party and the military may prevent advancement by religious adherents in the government and military, adherence to a religious group generally did not seriously disadvantage individuals in nongovernmental civil, economic, and secular life.<sup>12</sup> Education is universal and free until the age of 14, and while there is evidence of barriers to education for certain minority ethnic groups and children with disabilities, and economic concerns may prompt poorer families in rural areas to discontinue their children's educations,<sup>13</sup> there is no clear evidence in the country information that children are denied access to schooling on the basis of their religion.
30. There are credible reports of past harm against Catholic activists and those seeking to practise in unregistered churches and despite progress in Vietnam, those risks are ongoing. However, DFAT's overall assessment is that it is not aware of credible claims of societal abuse or systemic discrimination based on religious practices,<sup>14</sup> and while the US Department of State indicates that there are reports of societal abuses or discrimination based on religious affiliation, belief, or practice, those reports appear to relate to activists and those involved in unregistered churches. As above, its overall assessment was that religious adherents in Vietnam are not seriously disadvantaged in everyday life.
31. I accept that there are low levels of official and societal discrimination against Catholics in Vietnam, and this may manifest as low level and limited discrimination in employment and schooling, however I am not satisfied there is evidence of discrimination against ordinary Catholics that amounts to serious harm. I am satisfied the applicant may face a degree of low level discrimination on return for reasons of his religious beliefs and practice, and that there may be barriers to career advancement in the government and military, but I do not accept there is any real chance he would be denied employment or further education, or otherwise suffer discrimination amounting to serious harm on the basis of his religion.
32. In view of all the information before me, I find there is not a real chance of the applicant being seriously harmed on the basis of his religious practices and beliefs in [Province 1] or elsewhere in Vietnam, or any actual or imputed political opinion arising from his religious practice or beliefs.

#### *Political opinion*

33. In terms of his political opinion, for the following reasons I find the applicant would not be seriously harmed on return to Vietnam.

---

<sup>11</sup> UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417, at p.61-62.

<sup>12</sup> US Department of State, "Vietnam - International Religious Freedom Report 2012", 20 May 2013, OGEA594416.

<sup>13</sup> UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417, at p.61-62.

<sup>14</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.10.



34. The applicant has not claimed to be politically active in Vietnam in the past, which is unsurprising given his age, but he has also not claimed to have been politically active in Australia, or that he intends to be politically active in relation to his opinions on return to Vietnam.
35. The Constitution guarantees citizens of Vietnam the right to freedom of speech and freedom of the press, and have the right of access to information, the right to assembly, the right to association, and the right to demonstrate. However, it also places limits on these rights, indicating that such rights 'may not be limited unless prescribed by a law solely in case of necessity for reasons of national defence, national security, social order and safety, social morality and community well-being'.<sup>15</sup>
36. The country information indicates the government maintains considerable control and restriction on overt political activism in Vietnam, and there is clear country information before me on the harsh treatment of religious and political activists in Vietnam.<sup>16</sup> I accept that there are credible risks to those outspoken and critical of the State. However, the country information does not suggest that a person would be at risk of serious harm for possessing low level pro-democratic or anti-government views.<sup>17</sup>
37. While I accept that that during his time in Australia the applicant may have developed western pro-democratic beliefs, and he may continue to hold low level anti-government views towards the Communist party, I am not satisfied he would seek to express those opinions in any overt way, nor am I am satisfied he would become politically active with those beliefs on return to Vietnam, that he would otherwise be politically (or religiously) outspoken or critical, or be imputed to hold any political opinion, against the State on return to Vietnam. I find that the low level of his political views is not a result of him modifying his behaviour out of any fear of persecution, but simply reflective of the fact that his views are in fact of a low level. I have also found above that he would not be imputed to hold any such political opinions as a result of his religious practice.
38. In view of all the information before me, I find there is not a real chance of him being harmed on this basis of his political views, or any actual or imputed political opinion arising from those views or his religious practice.

*Failed asylum seeker and illegal departure*

39. The applicant claims to fear harm from the Vietnamese authorities because he left the country illegally. In submissions to the IAA, the applicant also claims that the act of seeking asylum would be seen as an expression of anti-government or pro-democratic beliefs and this would put him at risk from the authorities. At the interview, the applicant noted that a boat of 46 asylum seekers was returned to Vietnam from Australia. He claims that the Australian government had assured them that they would not be harassed or persecuted on return, but four of the 46 them were imprisoned, harassed and tortured very badly. The applicant said that they cannot trust the Vietnamese government.

---

<sup>15</sup> Ibid, at p.12.

<sup>16</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.10-13; United States Commission on International Religious Freedom, "U.S. Commission on International Religious Freedom Annual Report Vietnam 2013", United States Commission on International Religious Freedom, 1 January 2013, CIS25872; US Department of State, "Human Rights Report 2014 Vietnam", 25 June 2015, OG2B06FAF196, at p.3, 10.

<sup>17</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.12-13.

40. I accept the applicant left Vietnam without a passport. Having considered country information about illegal departure from Vietnam, it follows that I am satisfied that he left the country in breach of Vietnamese law.<sup>18</sup>
41. The applicant has also claimed that since his departure the police have visited and questioned his father about his departure/disappearance from his home area and threatened him that he would be imprisoned if the applicant did not return. The applicant's father has since left for another part of Vietnam. Having considered the broader country information relating to concerns with child trafficking and people smuggling in Vietnam, I find it plausible that the police would question his father about his unplanned and unexplained departure or disappearance from his home area and that the authorities may have threatened to charge him over the applicant's disappearance.
42. The Constitution of Vietnam provides for freedom of movement<sup>19</sup> albeit there are penalties for Vietnamese nationals that depart the country unlawfully, including without travel documents or false passports. Fines for departing without a travel document range between VND 2 Million and VND 10 Million (AUD \$120 to 600).<sup>20</sup> I have accepted the applicant departed Vietnam without a passport in violation of Vietnamese law and I find he may be liable for a fine on that basis. DFAT advice is that there is no information before it that persons who have sought asylum outside of Vietnam receive different treatment from the government for having done so, although those that have departed unlawfully may be briefly detained and fined for that departure.<sup>21</sup>
43. I have considered the representative's submissions and the available country information on the persecution the applicant may face on return as a failed asylum seeker. I have also considered more recent reports cited by the delegate of four asylum seekers returned to Vietnam (from a group of 46) who were jailed for terms of 24 to 30 months.<sup>22</sup> The report indicates that these returnees were not prosecuted for seeking asylum, but for their role in organising the group of asylum seekers. This is consistent with DFAT advice that suggests that people who have used people smugglers are seen as victims of crime, in contrast to the people smugglers, facilitators or people that aid in that crime.<sup>23</sup> While the country information indicates some returnees may be briefly detained and interviewed, DFAT assesses that long-term detention, investigation and arrest is conducted only in relation to those suspected of involvement in organising people smuggling operations and reporting and monitoring is confined to returned political activists.<sup>24</sup>
44. The applicant has not claimed to have been involved in people smuggling, nor is there anything in the applicant's history or background that would suggest he would be seen as a people smuggler or otherwise involved in the venture, especially given his young age. The weight of country information before me does not indicate that ordinary returnees or failed asylum seekers face a real chance of being harmed on return. I find there is no credible basis to suggest the applicant would be seen as a facilitator or person otherwise engaged in people

---

<sup>18</sup> Ibid, at p.19.

<sup>19</sup> US Department of State, "Vietnam - Country Reports on Human Rights Practices 2012", 1 April 2013, OG0DB5438193, at p.25.

<sup>20</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.19.

<sup>21</sup> Ibid, at p.19-20.

<sup>22</sup> Heath Aston, "Fears returned Vietnamese asylum seekers are being grilled in police detention", Sydney Morning Herald, 23 April 2015, CXBD6A0DE17949; Ben Doherty, "Vietnamese asylum seekers forcibly returned by Australia face jail", The Guardian, 24 May 2016, CX6A26A6E4619; Amanda Hodge, "Kids orphaned as Vietnam jails parents over asylum bid", 29 July 2016.

<sup>23</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.19.

<sup>24</sup> Ibid, at p.19-20.

smuggling. It follows that I do not accept there is any real chance of him being seen to be involved in people smuggling or being prosecuted by the Vietnamese authorities on this basis.

45. In weighing this aspect of his claims, I have also considered the fact that the applicant's details were released as part of a privacy breach of Departmental systems in [year]. I accept the submissions that there is a possibility that the applicant's details were obtained by the Vietnamese security authorities and that this may indicate he sought protection in Australia, however in light of the information before me, I am not satisfied he would face a real chance of serious harm because he sought or failed to obtain asylum, even if the government was aware of this. The country information before me does not indicate that any additional profile or political opinion would be imputed to him as a result of the data breach or for seeking asylum that would put him at risk of harm on return.
46. The applicant has also claimed that given the length of time spent in Australia, his manner of speech, style of dress, mannerisms and social opinions have been irrevocably altered and he will be targeted as a failed asylum seeker and will be imputed to have western ideals and adopted [pro]-democratic political beliefs. I have accepted the applicant will be identifiable as a failed asylum seeker. I have accepted the applicant will hold low level political opinions on democracy and the Vietnamese government. I am prepared to accept that his personal traits, dress and mannerisms may provide further evidence of this. However, there is no country information before me that indicates that persons perceived to have western ideals or adopted pro-democratic beliefs are at risk of persecution on these bases. I have also considered whether his religion or political beliefs would impute to him an anti-government or pro-democratic profile, but for the reasons given above I find he is an ordinary member of the Catholic church and that he holds low level political opinions. I find that he has not and would not be religiously or politically active, and that he would not have any profile that would put him at risk of harm on return. I accept there are credible risks to those that are politically or religiously active and outspoken or critical of the state, but I have found the applicant is not such a person, and in the absence of country information which suggests the contrary, I do not accept he would be imputed to be or otherwise be harmed or dealt with differently by the authorities on return for any of these reasons.
47. I acknowledge the concerns expressed by the representative about the risks to the applicant as a returnee and failed asylum seeker, however the weight of country information indicates that he would not be at risk for these reasons. The US State Department states that the Vietnamese authorities have been generally cooperative with UNHCR and other humanitarian organisations in relations to returning refugees and asylum seekers.<sup>25</sup> While there are risks to people smugglers and certain Vietnamese nationals with high profiles, I accept the DFAT advice that there is no information to suggest that people known or believed to have sought asylum in other countries receive different treatment from the Vietnamese government for having sought asylum.<sup>26</sup>
48. The information before me leads me to find that as the applicant has no religious or political profile, there is not a real chance that the applicant would suffer serious harm or mistreatment from the authorities or government, or that he would endure anything more than a brief detention if he returns to Vietnam, even when accounting for his age, his religious beliefs and practice, any westernisation or imputed western values or ideals he might be imputed to hold, any low level pro-democratic or anti-government political views he holds or would be imputed

---

<sup>25</sup> US Department of State, "Vietnam - Country Reports on Human Rights Practices 2012", 1 April 2013, OG0DB5438193.

<sup>26</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.19-20.

to hold, the fact that he left the country illegally or because he is, and would be identified as, a failed asylum seeker.

49. While I have found that he would not face a real chance of harm as a returnee or failed asylum seeker, including for any other aspect of his profile, I do accept that there is a real chance the applicant will be fined under Vietnamese law due to his illegal departure and he may be briefly detained and questioned by immigration officials and police on return.
50. On the basis of the country information before me, I am satisfied that the provisions and penalties under Vietnamese law are laws of general application that apply to all Vietnamese equally. The information before me does not indicate the law is discriminatory on its terms, nor is there any country information before me that indicates that the law is applied in a discriminatory manner or that it is selectively enforced.
51. I find that the applicant would not face a real chance of harm on return to Vietnam as a returnee, as a person who left Vietnam illegally, or as a failed asylum seeker. I am satisfied that there is no additional risk to him arising from his age, his religion, any low level religious or political opinion he might hold, the departmental data breach, or any other characteristic he may hold. I accept he may be fined, questioned and briefly detained, but I again find this would not constitute serious harm and would be the application of a law of general application.

### *Trafficking*

52. The applicant also claimed to fear that he would be trafficked on return to Vietnam as a child from a poor family in a rural area.
53. In terms of trafficking, the country information confirms this remains a serious issue in Vietnam.<sup>27</sup> I have considered country information provided by the representative on the trafficking of children and teenagers in Vietnam, including the serious levels of trafficking in a range of areas, including [Province 1]. That information also confirms that traffickers typically target poor rural areas where people are desperate for money.<sup>28</sup> I also accept the point made in the submission that the figures on the trafficking of men and boys in Vietnam may not reflect the complete picture. There is little support for male victims in Vietnam, which may indicate the number of boys and males that are trafficked is underreported. I note from that information that male babies are in particular demand, but there is no suggestion that the applicant is at risk on this basis.
54. The representative has also claimed that his ethnicity is a factor, being [Ethnicity], referencing a study of women and girls trafficked which indicated that 78.9% of those trafficked were [Ethnicity].<sup>29</sup> There are 54 ethnic groups, of which the [Ethnicity] or '[Ethnicity]' majority makes up approximately 86 per cent of the population.<sup>30</sup> The report cited by the delegate appears to be making the point that the number of ethnic minorities trafficked in Vietnam is higher than the national average among the population, rather than any point about the level of [Ethnicity] targeted.<sup>31</sup> Nevertheless, I accept that the majority of persons trafficked in the country are of the [ethnicity] and that this is a factor.

---

<sup>27</sup> Ibid, at p.6.

<sup>28</sup> Ngoc Le, "Nearly 2,000 children in Vietnam suffer abuse each year: new data", Thanh Nien News, 16 January 2016.

<sup>29</sup> Child Exploitation and Online Protection Centre, "The trafficking of women and children from Vietnam", 2011, at p.10.

<sup>30</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.4.

<sup>31</sup> Child Exploitation and Online Protection Centre, "The trafficking of women and children from Vietnam", 2011, at p.10.

55. In [specified time] from the date of this decision, the applicant will turn [age], and will reach the age of majority under Vietnamese law. I do not suggest that reaching the age of majority removes the threat of the applicant being trafficked entirely. I accept that boys and males in Vietnam are victims of trafficking and the figures may be higher than reported, however the country information before me clearly indicates that the overwhelming risks to those in Vietnam are women and children.<sup>32</sup>
56. In terms of the State response to trafficking, while the country information indicates that government does not fully comply with the minimum standards for the elimination of trafficking, there are positive indications that it is making significant efforts to address the crime and its occurrence.<sup>33</sup>
57. The applicant's age and maturity are a factor in assessing the risk to him personally, and suggest to me that he is in a significantly stronger position to protect himself from the threat of trafficking than he was when he first arrived in Australia [in] 2013. Poverty, economic pressures and vulnerable families in rural areas appear to be significant factors that increase the risk of children being trafficked or sexually exploited.<sup>34</sup> While the applicant comes from a poor family in a rural area, and I accept there are risks, I also note that he is educated and, significantly, he understands the risks associated with trafficking in his country. He is mature and intelligent and has a family network in Vietnam. I accept his family is poor and of limited means and his father is currently missing, however based on his own evidence, they are also a family that has recognised the risks for him and his sister, and have taken significant steps to protect them from those risks. I expect that protection to continue.
58. Considering his personal circumstances, and country information before me which indicates the Vietnamese government is taking some steps to increase the investigation and prosecution of human traffickers,<sup>35</sup> I find there is only a remote chance, and therefore not a real chance that he would be seriously harmed by traffickers or become a victim of trafficking on return to Vietnam.

#### *Economic Status*

59. The applicant has consistently claimed that one of his main motivations for coming to Australia was to have a better start. I accept that the applicant comes from a poor family and his life has been one characterised by disadvantage. DFAT advises that while economic growth continues in Vietnam, significant income disparities remain.<sup>36</sup> I accept that part of the applicant's income concerns stem from the applicant's grandfather losing his property and while I accept that there have been difficulties for the applicant's family in accessing justice in this regard, I am not satisfied that the grandfather's loss of his property was for any reason other than because of a failed agreement.
60. While there is country information before me that suggests there are considerable difficulties the poor and those of low economic status in Vietnam may encounter,<sup>37</sup> that information does not indicate a person like the applicant faces a real chance of being seriously harmed because he is poor or from a poor rural family. I accept that he may encounter barriers in accessing

---

<sup>32</sup> Child Exploitation and Online Protection Centre, "The trafficking of women and children from Vietnam", 2011; UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417.

<sup>33</sup> UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417, at p.121-122.

<sup>34</sup> Child Exploitation and Online Protection Centre, "The trafficking of women and children from Vietnam", 2011; UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417.

<sup>35</sup> UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417, at p.123-124.

<sup>36</sup> DFAT, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212, at p.4-5.

<sup>37</sup> UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417.

health care, education and other amenities, and may feel marginalised because of his economic status, however I am not satisfied he would be denied the capacity to subsist or that this would otherwise amount to serious harm. In addition, the evidence before me is that those disadvantages are a by-product of Vietnam's general economic situation, and not a product of harm directed at him because he is poor or from a poor family.

61. Considering all the circumstances, I do not accept there is a real chance of him suffering serious harm on this basis him being poor or being from a poor rural family.

### **Refugee: conclusion**

62. In view of the evidence, country information and submissions before me, I find there is not a real chance the applicant would suffer serious harm in Vietnam in the reasonably foreseeable future on the basis of his religion, his age, for being poor or from a poor family from a rural area, any actual or imputed political opinion he may hold, his illegal departure, as a returnee or failed asylum seeker, that he would be trafficked or on account of any other factor considered above, whether considered singularly or cumulatively.
63. 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**

---

64. 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**

65. 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.

66. I have accepted the applicant may face a degree of low level discrimination on return for reasons of his religious beliefs and practice, but I have not accepted there is any real chance he would be denied employment or further education, or otherwise suffer discrimination amounting to serious harm on the basis of his religion. I also find that any low level discrimination he may experience on return would not constitute significant harm. There is no suggestion the discrimination would amount to the death penalty; an arbitrary deprivation of life or torture. Further, on the evidence before me, I do not accept that any low level discriminatory treatment he may experience would involve pain or suffering or extreme humiliation.

67. I have found there is not a real chance the applicant would suffer serious harm on the basis of his religion, his age, for being poor or from a poor family from a rural area, any actual or imputed political opinion he may hold, his illegal departure, as a returnee or failed asylum seeker, that he would be trafficked or on account of any other factor assessed above, whether considered singularly or cumulatively. For the same reasons, and applying the authority in *MIAC v SZQRB* (2013) 210 FCR 505, I am also not satisfied there is a real risk the applicant will face significant harm upon return to Vietnam for these reasons.
68. I accept there is real chance, and therefore real risk, that the applicant may be briefly detained and interviewed on arrival and that he may be fined for his departure. However, on the basis of the information before me, I am not satisfied being briefly detained and interviewed, or fined, constitutes significant harm. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, on the evidence, there is no intention to inflict pain or suffering or extreme humiliation. I have also found there is nothing in his profile which would lead him to face any longer detention or other harm that would amount to significant harm during this process.
69. I have also found that while he would not be at risk of harm because he is poor or from a poor rural family, I accept he may encounter difficulties accessing health care, education and other amenities because of his economic position. I am not satisfied that those difficulties would constitute significant harm. They would not result in the death penalty, an arbitrary deprivation of his life or constitute torture. For the reasons given above, I have found that these are the by-product of the economic situation in Vietnam, and there is no information before me that there is any intention by the government or authorities to inflict upon the poor, or poor families in rural areas, pain, suffering or humiliation of any kind. Considering all the circumstances, I am not satisfied he faces a real risk of significant harm on return to Vietnam either on the basis of being poor or because he is from a poor rural family.

#### **Complementary protection: conclusion**

70. 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.