



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA19/06268

Date and time of decision: 27 February 2019 18:37:00

P Tyson, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Bangladesh. On 22 March 2017 he lodged an application for a Safe Haven Enterprise visa (protection visa). The application was refused by a delegate of the Minister for Immigration (the delegate) in a decision dated 21 January 2019. The delegate did not accept the applicant's claims to have been a member of the Bangladesh National Party (BNP) or to have been attacked by members of the ruling Awami League (AL) and concluded there was no real chance or risk of the applicant being harmed in Bangladesh because of his political opinion or because of his illegal departure from Bangladesh or return there as a failed asylum seeker.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The IAA received further material from the applicant's representative on 16 February 2019. The applicant makes a new claim that his son was abducted by AL workers in June 2018 and released [a number] months later, after the family made a payment. It is said that the applicant's [business] was closed when his son was abducted and the family have made a decision to sell it. These events are said to show that the AL are after the applicant and his family. It is claimed that the whole family lives in an atmosphere of fear and that the new AL government are more aggressive towards the supporters of the BNP. In support of these claims, the applicant has submitted a statement of details about the incident and his business in Bangladesh, photographs of the [business], (untranslated) evidence of its registration, and a copy of his son's identity documents. He has also submitted media articles regarding the recent elections in Bangladesh. With the exception of his son's identity card which was submitted to the delegate, I find this material to be new information.
4. The new events regarding the applicant's son are said to have occurred in June 2018, prior to the applicant's November 2018 protection visa interview. The new claims contradict the evidence given by the applicant at the interview and were not made to the delegate despite the applicant having the opportunity to do so. The applicant was specifically asked about his family, and while he initially made claims his sons had been harassed, he then said that no incidents had occurred. The applicant was given the opportunity to add any claims he wished to make at the end of interview, and to provide further information afterwards. He was advised that if he did not raise all his claims and the application was refused, he may not have another opportunity. The applicant has offered no explanation for his failure to tell the delegate of these events. He has not said he only learnt of them recently, noting his evidence at the interview that he spoke to his family almost weekly. An abduction of the applicant's son, lasting for [number] months and carried out by the group the applicant claims to fear, would be a significant event of obvious relevance to his claims. It is unbelievable that if such an event had occurred, not only would the applicant fail to raise it during the interview, but would state that no incidents had occurred to his sons. The applicant's son's identity document, photographs of the [business] and registration documents do not corroborate the claimed abduction or closure or sale of the [business] or otherwise materially add to what is before me. Taking into account all of these matters, I am not satisfied there are any exceptional circumstances to justify considering the new claims or documents.

5. One of the media articles submitted by the applicant is dated 30 December 2018 and the other appears from its URL to be dated 1 January 2019. The applicant claims that these articles show that the election was not fair and BNP workers, voters and supporters were tortured, killed and harassed. There is no explanation as to why the applicant did not provide this material to the delegate, and there is already information before me regarding the recent elections and related violence. The new articles do not relevantly add to what is already before me. The applicant has made no submissions as to what exceptional circumstances might exist to justify considering this new information and none are apparent to me.
6. The applicant has submitted a 'response' which refers to receiving notification of his refusal and correspondence from the IAA and obtaining migration advice. The applicant implicitly makes a request for an interview. The applicant's protection visa interview with the delegate explored the claims in his written statement and was of over two hours duration. He was advised at that time of the importance of providing detail about his claims. Beyond the new information which I am not considering for the reasons above, he has not indicated what additional information he might now provide. In the circumstances of this case, I have determined not to exercise my discretion to invite further information from the applicant.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:
 - The applicant supported the BNP in elections in 2012. He became a low-level member in his village, taking the grievances of others to BNP representatives and the chairman, and encouraging those he knew to vote for the BNP. He was known in the village as a BNP man.
 - After the 2012 election, 5-7 men from the village who supported the AL came to the applicant's [business], made rude and derogatory comments about his support of the BNP and beat him with steel rods. He was able to run away when they were interrupted by villagers, and sought medical treatment. He experienced ongoing pain.
 - A few months later, the applicant was warned by friends that men from the AL were going to beat him again. He was at his [business] when 5-7 masked men approached and beat him. Employees and customers got them off him, and the applicant ran to the house of a friend then went to the doctor.
 - The applicant was afraid and did not go to work, keeping a low profile at the houses of friends and relatives. At the suggestion of his brothers he went to Dhaka and stayed with a friend for [a number of] months, before leaving Bangladesh with the assistance of a smuggler, using a false passport. He went initially to [Country 1] then to [Country 2] and [Country 3] before travelling by boat to Australia.
 - The applicant's friends have told him that men from the AL continue to ask where he is.
 - The applicant is afraid he will be seriously harmed by men in his village and the ruling AL for reason of his involvement with the BNP. The situation is now worse as the AL is firmly in power and the political circumstances are particularly bad. He fears the AL will find him, physically harm him and stop him from getting work. They have a grudge against those that supported the BNP.
 - The applicant will not be protected by anyone including the authorities, as the police side with the party in power. It is not easy to go somewhere and settle there, one needs

money, shelter and familiar people. If the applicant relocates AL people will find and kill him.

Refugee assessment

8. 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

9. 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.
10. The applicant has made consistent claims regarding his identity and nationality since his arrival in Australia, and has submitted his own and family members' identity documents in support. I am satisfied that his identity and nationality are as claimed and that Bangladesh is the receiving country for the purpose of this review.
11. I do not find the applicant a credible witness regarding the events that he claims led to his departure from Bangladesh. As set out below, there have been multiple significant inconsistencies in his claims, and his evidence at the protection visa was undetailed and vague in respect of key matters.
12. The applicant's evidence at the protection visa interview regarding his involvement with the BNP and knowledge of that party was not persuasive. In his statement of claims submitted with the visa application the applicant indicated that his activities for the BNP included listening to grievances and taking them to the representatives of the BNP at the Thana level and to the Chairman and encouraging others to vote for the BNP. At the interview, he claimed that during election times he would go from door to door, canvassing, and that was his main job. He made no mention of taking grievances to BNP representatives. The applicant claimed to have attended meetings and run processions. While he was able to identify places that meetings were held, the only procession he identified having joined was after a national

election won by the BNP. The AL has been in power since 2008¹, suggesting that the last election won by the BNP was some years prior. The applicant was asked about the identity of the BNP candidate he had supported in the 2012 elections, with whom he claimed to have gone door to door, introduced to others and told them to vote for him. He was unable to recall the name of this person, giving only his popular name. Overall, the applicant's evidence regarding his involvement and activities with the BNP was vague, despite the delegate specifically explaining to him during the questioning on that topic that it was his opportunity to give as much information as he could, and the applicant confirming he understood. The evidence did not give the impression that the applicant was speaking from genuine experience.

13. The applicant was asked why he had joined the BNP, and said that he liked its activities, but when asked to elaborate said that it was his party of choice and most of the people in the village and his friends supported it. In contrast, the applicant was able to give more specific reasons in his statement of claims, saying that he felt the BNP supported the villagers, issued food cards for starving people and listened to his problems, and helped the entire village. Asked whether he could identify any ideologies, cultures or agendas he liked about the BNP, he said he couldn't, and when probed, said that policy matters depend on the high level leaders. He was asked what distinguished BNP from other parties and made him want to join it, and referred to the AL being involved in violence, but BNP not being involved in any violence. According to country information², the BNP believes Islam is an integral part of the socio-cultural life of Bangladesh and favours Islamic principles, whereas the AL is more secular. On the applicant's evidence he has been involved with the BNP for a significant period of time, saying at the protection visa interview that he began political activities a couple of years after leaving school which, on the information provided in his application, was in 1978. While I appreciate that a low-level member as the applicant claims to have been could not be expected to have a detailed knowledge of party policies and have taken into account the applicant's limited education, given his considerable period of membership, it is concerning that he was not able to provide any information at all about BNP's political ideology or explain more convincingly his own commitment to the party.
14. The applicant has also given unconvincing evidence regarding the events which he says led to his departure from Bangladesh. On his claims he was attacked twice in 2012 by men he believes to have been members of the AL. The attacks are said to have occurred in his [business]. However, his account of the attacks at the protection visa interview differed in significant respects from that in his written claims. Regarding the first attack, his written statement claims that the attackers were interrupted by villagers who helped him run away. In contrast, his evidence at the interview was that there were people working in the [business] at the time, but that he ran away and did not know what happened next, or whether other people had come to the [business]. His statement describes the second attack as being carried out by masked men who approached the applicant from behind and beat him over the head and back, before employees and customers got them off him and he ran out the door. He later went to the doctor and received medicine. At the interview, however, he stated that at this second attack, he saw the men and as soon as they approached the [business] he ran away, before they could hit him. The delegate sought clarification, and the applicant confirmed that he escaped without any physical injury, and had clearly seen the men who came to attack him. When the evidence from his statement was put to him, he

¹ UK Home Office, "Country Policy and Information Note Bangladesh: Opposition to the government", January 2018, OG9EF767910.

² Bangladesh Nationalist Party, "Bangladesh Nationalist Party", 1 November 2012, CIS24493; DFAT, "Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

stated he was puzzled and found it hard to remember or recall things. While I take into account that these events occurred some years ago, the evidence as to what took place, particularly in relation to whether or not he was beaten at the second attack, is so different that I do not accept this can be explained by the passage of time or difficulties in recall.

15. There is a further inconsistency in the applicant's evidence about his movements between the second attack and his departure from Bangladesh. In his written statement, the applicant said that following the attack, he went and stayed in Dhaka for [number of] months. However, at the interview he initially said that he had lived in Dhaka for around a year before coming to Australia. He then changed his evidence and said that if he had any problems in his village he would go and live in Dhaka for [a number of] days on and off. Later in the interview, he again reiterated that if he had problems in the village he would spend time in Dhaka, saying that if he came to know people were coming to look for him, he would leave the village and stay there. The evidence between the written claims and interview and within the interview itself is inconsistent regarding the length of time the applicant spent in Dhaka and whether he remained there continuously or went on occasion.
16. The applicant also gave shifting evidence about his family's current circumstances. He initially said at the interview that his family, including his sons, were living in the village. Asked later where his family lived and their circumstances, he again said the village, and that his sons had occasionally been harassed by the AL. He then changed his evidence and said that his sons do not continuously live in the village but only occasionally go there, because they are subject to harassment. However when asked what the AL do to harass them, he referred to his sons being afraid of being picked up by police or being asked for forceful donations. In response to further questioning, he conceded that nothing had actually happened and no incident had taken place.
17. Finally, the applicant's claims to have left Bangladesh because of his involvement with the BNP and the attacks which followed are significantly undermined by information he provided at an arrival interview conducted in February 2013. The applicant was asked about the reasons he had left Bangladesh and what he feared on return, and referred to his economic situation, his lack of success at farming and difficulty supporting his family. He indicated that he had no involvement with any political group or organisation in Bangladesh. When the information from the arrival interview was put to the applicant at the protection visa interview, he offered no explanation and said he had no comment, could not think straight and was unable to explain things properly because of the tension caused by his current circumstances in Australia. He was advised he could submit a further response but did not do so. The applicant was told at the arrival interview that he should be open and honest, and that the interview was an opportunity to provide information about his circumstances. While I take into account the circumstances of the arrival interview, being relatively brief and occurring, in this case, around a week after the applicant's arrival in Australia, the applicant was directly questioned about his reasons for leaving the country and political involvement and I do not accept he would have failed to at least mention his problems with the AL or his involvement with the BNP if those things had occurred as he claimed.
18. Considering the above as a whole, I do not find the applicant a credible witness regarding his experiences in Bangladesh. I am willing to accept that he may prefer the BNP over the AL and may have voted for them in elections, but I do not accept he has had any involvement with the BNP beyond this. I do not accept he was a member or took part in any meetings or activities with the BNP in his village, that he was known as a BNP supporter, attacked, that his sons have been harassed or that men from the AL ask about his whereabouts.

19. I accept that the applicant may in the future vote for the BNP in elections, but do not accept he will otherwise have any political involvement or express his views or that he has any interest in doing so. The most recent report of the Department of Foreign Affairs and Trade (DFAT) and other country information cited by the delegate³ indicates that there are high and increasing levels of political violence in Bangladesh, particularly between the AL and BNP and that this was expected to worsen prior to the 2018 elections. Recent media reports⁴ indicate that these fears were borne out. The lead up to the December 2018 election, in which the AL retained power, saw weeks of violence, mass arrests of opposition activists and politicians, and at least 17 deaths on polling day following a violent campaign season. The deaths were said to involve seven ruling party workers and five BNP workers. In the lead up, activists from both sides complained of attacks on supporters and candidates. The election itself was marred by allegations of voting irregularities and rigging at the hands of the AL, and there were reports of over 50 complaints from supporters of the BNP alleging intimidation and threats, and being forced to vote in front of ruling party men. Following the elections there have been reports of reprisals targeting the opposition (which includes the BNP).
20. The ruling AL has focused on restricting the activities of opposition parties such as the BNP, including arresting thousands of members and supporters. However, DFAT assesses that while senior members of the BNP face a high risk of arrest, and active members who participate in demonstrations face a high risk of arrest and violence, ordinary members who do not engage in political activities and demonstrations face a low risk. The UK Home Office similarly states that the number of people affected by political violence remains low compared to the size of the parties and generally, there is not a real risk of serious harm for ordinary party members and supporters. While the information indicates an increase in political violence during the elections as expected, in my view it does not establish that the earlier assessments made by DFAT and the UK Home Office are no longer accurate or reliable.
21. I do not accept the applicant will have any political involvement beyond voting for the BNP in elections. The information before me refers to instances of threats and intimidation of supporters of the BNP during the election, but does not suggest wide-scale targeting of non-party members or non-active supporters such as the applicant. I consider the chance of the applicant being subjected to threats or intimidation during elections, targeted for any harm, caught up in political violence, or otherwise harmed because of any view he may hold in favour of the BNP no more than remote.
22. The applicant has consistently claimed to have flown from Bangladesh to [Country 1] using a fake passport organised by a smuggler. The delegate considered whether the applicant would be harmed because of his illegal departure from Bangladesh and return there as a failed asylum seeker. DFAT⁵ states that Bangladesh accepts both voluntary and involuntary returnees, although may require a community level police check to verify their identity and citizenship. While authorities may take an interest in high-profile individuals who have engaged in political activities outside of Bangladesh, DFAT has no evidence to suggest that returnees have received adverse attention from authorities or others. Given this information, I do not accept that Bangladeshi authorities or other groups or persons take an adverse

³ Such as Department of Foreign Affairs and Trade (DFAT), "Country Information Report Bangladesh", 2 February 2018, CIS7B83941169; UK Home Office, "Country Policy and Information Note Bangladesh: Opposition to the government", January 2018, OG9EF767910; Odhikar, "Annual Human Rights Report 2017", 12 January 2018, CIS7B8394170.

⁴ The Guardian (Australia), "Bangladesh PM Hasina wins thumping victory in elections opposition rejects as farcical", 31 December 2018, 20190110155914; ABC News, "Bangladesh election prompt deadly clashes and allegations of vote-rigging", 31 December 2018, 20190110160249; Channel News Asia, "Hasina sworn in as Bangladesh PM after 'tainted' polls" 7 January 2018, 20190108135953.

⁵ DFAT, "Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

interest in persons believed to have applied for asylum abroad. I note that DFAT further indicates it is an offence under the law of Bangladesh to depart Bangladesh other than in accordance with the procedures laid down in the law, relevant here because the applicant has said he departed Bangladesh using what he believes to have been a fraudulent passport. However, DFAT has previously reported⁶ that it is not aware of any cases where those provisions have been enforced, and its more recent report does not refer to any such cases. Other material cited by the delegate⁷ suggests that Bangladesh authorities are generally sympathetic to irregular migrants. I do not accept that the applicant had any prior adverse profile with the government or any groups in Bangladesh and am not satisfied there is a real chance of him being harmed because he departed on a false passport and/or sought asylum in Australia.

23. At his arrival interview, the applicant made claims that he was in poverty in Bangladesh and his farming was not profitable. However, it is apparent from the applicant's evidence that his brothers were able to raise the money to send him to Australia, that he had both farming land and a [business] in Bangladesh, and that he has also had some work experience in Australia. While I accept the applicant faced some financial difficulty in Bangladesh and will do again on return, I am not satisfied that his circumstances are such that there is a real chance of him experiencing financial hardship in the reasonably foreseeable future at a level that would threaten his capacity to subsist or otherwise amount to serious harm.
24. Taking the applicant's claims as a whole, I find there is not a real chance of him being seriously harmed in Bangladesh in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

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

Complementary protection assessment

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

Real risk of significant harm

27. Under s.36(2A), a person will suffer 'significant harm' if:
 - the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or

⁶ DFAT, "Country Report Bangladesh", 20 October 2014, CIS2F827D91369.

⁷ International Organisation for Migration, "Bangladesh", CIS29397.

- the person will be subjected to degrading treatment or punishment.
28. I accept that the applicant may experience some financial difficulty in Bangladesh, however having regard to his circumstances in Bangladesh including experience in [his business] and farming, work experience in Australia and his evidence that his brothers paid for his travel to Australia, I am not satisfied that there is a real risk of him experiencing economic hardship to an extent that would involve severe pain or suffering, pain or suffering from an act or omission that is cruel or inhuman in nature or extreme humiliation as required by the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment, or that would otherwise amount to significant harm as defined.
29. I have not accepted the applicant's claims regarding the BNP and have found he will not have any political involvement in the future beyond voting for the BNP in elections. I have found there is not a real chance of the applicant being harmed in relation to his political views or in political violence in Bangladesh, or because he departed Bangladesh using a fraudulent document and claimed asylum in Australia. The Federal Court has held that 'real risk' imposes the same standard as the 'real chance' test in the refugee criterion.⁸ Relying on the findings set out above, I am similarly not satisfied there is a real risk of the applicant being significantly harmed.
30. Considering the claims as a whole, I am not satisfied there is a real risk of the applicant suffering significant harm in Bangladesh.

Complementary protection: conclusion

31. 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.

⁸ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.