



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA19/06792

Date and time of decision: 29 July 2019 15:26:00
A Wilson, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Bangladesh. He arrived in Australia [in] March 2013. On 13 May 2016 he lodged an application for a safe haven enterprise visa (SHEV). On 27 June 2019 a delegate of the Minister for Immigration refused to grant the visa.
2. The delegate did not accept that the applicant was pressured by the Awami League (AL), the Bangladesh National Party (BNP), or any other political party to join them or that he had been threatened, kidnapped or assaulted. Nor did the delegate accept that he had been a Jamaat-e-Islami (JI) supporter. The delegate was not satisfied the applicant had a well-founded fear of persecution for any reason.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 22 July 2019 the applicant's representative provided a statement by the applicant to the IAA (the IAA statement). Apart from the issues discussed below, the IAA statement restates some of the applicant's claims that were before the delegate, and that I have considered below.
5. The IAA statement also cites country information from a number of sources discussing incidents of political violence in Bangladesh. This is new information about country conditions and not personal in nature. It pre-dates the delegate's decision by a number of years. Neither the applicant nor his current migration agent, who replaced an earlier agent around the time of the SHEV interview, has explained why the information could not have been provided to the Minister before the Minister made the decision under s.65 and no reasons are apparent to me. Relevantly, I note that at the close of the SHEV interview the delegate advised the applicant that any additional information he provided before a decision was made would be considered. More than five weeks passed between the SHEV interview and the s.65 decision without anything being submitted. Furthermore, other information on politically motivated violence in Bangladesh is already before me. The applicant has not satisfied me that the information meets s.473DD(b). Nor did the applicant point to anything that was relevant to the consideration of exceptional circumstances, and none are otherwise evident. I am also not satisfied that there are exceptional circumstances to justify considering the new information.
6. The IAA statement also includes a new claim: that the applicant's unnamed younger brother was attacked and beaten by AL supporters 'for ransom' in July 2019, and that he may be similarly treated if he were returned to Bangladesh. In support of this claim the IAA statement contained several undated photographs showing a man with injuries to his face and to several fingers on one hand. As presented, the incident post-dates the delegate's decision. However, in my view other evidence provided by the applicant undermines the claim and leads me to conclude that the new information is not capable of being believed. In both the 2016 SHEV application, and in the April 2013 entry interview conducted soon after his arrival in Australia, the applicant stated that he has two living brothers, both of whom are older than him. The only younger sibling he identified on either occasion was a sister. Also, when the delegate discussed his family circumstances with him at the May 2019 SHEV interview the applicant stated that of

his two elder brothers one was currently living in [Country 1] and had been there for the past seven to eight years, while the other brother had remained in Bangladesh. Having regard to the applicant's earlier evidence, the timing of the purported attack two weeks after he received the s.65 decision and the very limited information provided about the circumstances or context of this claimed attack, I consider that the new claim is not credible. In all the circumstances I am not satisfied that there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

7. The applicant's claims as set out in the SHEV application can be summarised as follows:
 - as his family had never joined or supported any political party he, and they, were targeted by all groups, particularly the AL and the BNP.
 - on unspecified dates he was prevented from working, forcefully taken from his home and forcefully taken to a procession, although he escaped from the procession.
 - he was threatened with death by all parties.
 - he moved to the capital Dhaka but AL workers there identified him and threatened to kill him.
 - he left Bangladesh in February 2013.
 - he fears if he is returned to Bangladesh it will be difficult for him to survive or he will be killed by the AL or he will be mistreated by the AL-led government.
8. The applicant's claims as stated during the SHEV interview can be summarised as follows:
 - around the time of the 2008 election the AL and BNP pressured him and his family to join their parties however the family were JI supporters.
 - in late 2012 he was returning from work when he was attacked and robbed by AL supporters, left unconscious, and as a consequence required treatment in hospital for a week.
 - the incident, referred to in the SHEV application, where he was forcefully taken from his home, happened in early 2013 when he was returning from work and was kidnapped by AL supporters who beat him and held him hostage for several days, only releasing him after his mother paid a ransom.

Refugee assessment

9. 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

10. 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.
11. On the basis of the applicant's documentary and oral evidence I accept: that he is a Sunni Muslim; that he was born and lived most of his life in Munshiganj district; that he completed primary school and high school until grade 10; that he worked in Bangladesh in farming for several years and in [Occupation 1] for a decade; that his parents and most of his siblings continue to live in Bangladesh; and that he is single.
 12. In support of his identity the applicant provided a copy of a Bangladeshi birth certificate in English. On that basis I accept that his name is as claimed and that he is a national of Bangladesh. There is no evidence before me to suggest that he has a presently existing right to enter and reside in any country apart from Bangladesh. I find that Bangladesh is his receiving country for the purpose of this review.
 13. In the 2016 SHEV application the applicant claimed his family was religious and never joined any political group or supported any specific group and as a result were always targeted by all groups, particularly the BNP and AL. He claimed they snatched his salary and money and insisted his parents send him to join their group. Sometimes they stopped him on the road and forbade him from going to work. He was even forcefully taken from his home. Several times his father and all of them were tortured and kept under political pressure. Finally, to save his life and obtain security he left Bangladesh. Although he was not involved in politics he was the victim of political harassment. He received death threats from all parties. Once they forcefully took him to a procession. However, because he was in the last position in the procession he escaped. He and his family went to the local police station to lodge a general diary against the AL workers but the police officer refused to take their complaint. He moved to Dhaka for his safety but some AL workers there identified him, threatened to kill him and he initiated an escape route to leave Bangladesh. If he is returned to Bangladesh he will be killed. The same issues will be repeated and his life will be insecure. They will create pressure on him to join them and if he refuses they might kill him. His life will be miserable and it will be difficult for him to survive. He will be harmed and mistreated by the AL government because he had this experience in the past and it is common in Bangladesh that the police illegally support government party members to harass opposition party members. There is no authority that would protect him if he returned to Bangladesh. He cannot relocate to another area in Bangladesh because where ever he goes he will have the same problem. In every corner of Bangladesh the political party has their office and agents. They will come and again threaten him and probably kill him.
 14. At the 2019 SHEV interview the applicant said he left Bangladesh because his life was insecure, he couldn't live or work, and atrocities were going on. In particular, around the time of the 2008 election the AL and BNP pressured him and his family to join their parties, however

because they were Muslims they allied themselves with the JI. When asked about the nature of his support for JI he said he infrequently joined their meetings and processions, around a total of 10 to 12 times, and canvassed for votes for them a couple of times. And when the AL and BNP sought to solicit their votes they told them they were JI supporters and intended to vote for JI.

15. At the SHEV interview he also stated that one evening in November 2012 after he had finished work he was walking towards the transport to take him home when around five people attacked him from behind, punching him and possibly hitting him with a rod. They robbed him and tied him up. During the assault they said he had been supporting and working for the JI all this time but now that the AL had won they were getting him back. He woke up in hospital seven days later suffering from back and head injuries. When asked why he thought he was attacked after four years had passed without him suffering any difficulties, the applicant stated he wasn't seen by them because he was working in a different place. It was just bad luck that they saw him on that occasion. When the delegate indicated she found it hard to understand how they hadn't found him in four years if they knew he was a JI supporter and they knew where he lived in the village, he stated he didn't go home all the time. He was staying where he worked half the time which was 2 ½ hours away so maybe that's why they didn't see him.
16. When asked at the SHEV interview to provide more information about the claim that he was 'forcefully taken from his home', he stated he was returning from work one night when he was kidnapped by the AL. They placed a hood over his head, tied him up, and then held him in their clubhouse for three days. They kicked and punched him and threatened that if he didn't join the AL he would be killed. His mother, who had been distressed when he had not returned home, was told by a sympathetic AL person that her son was being held by them. She approached local AL leaders, asked that they forgive him and paid them 1 lakh [100 000 taka]. His family went to the police but they didn't make a report because the police 'toe' the AL government line. When asked when the kidnapping occurred he initially said it was after the 2008 election, although he couldn't remember the exact date, before stating he was kidnapped after the 2013 election in January 2013.
17. When asked why he thought he would be harmed by the AL government given he has been absent from Bangladesh for over six years, he stated when he was accosted once he fought back and then he escaped and they will take out their grudge on him. When asked whether his family have been harassed by the AL or BNP since he has arrived in Australia, he stated his parents are old and sick so they're not interested in them. When asked whether his brother who lives nearby his parents has had difficulties, he said his brother is aligned with his in-laws. 'He sometimes faces problems but he's quick witted and clever so he's keeping level with them and tackling them'. When asked to explain what this meant, he said his brother had joined the BNP for his survival. When asked how this helped him when he had said it was mostly the AL harassing the family, he stated that even if the AL creates problems for his brother they can't do anything much because he's got a wife and child and his father-in-law is influential and he can sort out big problems.
18. When asked at the SHEV interview to provide more information about the claim that he had moved to Dhaka, he stated he went there because sometimes he had nightmares that people were trying to kill him. His father said he needed a change of scene and he had some friends in Dhaka so he travelled there. His friends told him about people who assisted persons wishing to leave Bangladesh. He returned to the village and talked to his father about this. His father supported him, his mother sold her ornaments [jewellery], and the arrangements were made for him to leave. When asked about the timing of this, he said he went to Dhaka in February 2013 and stayed there for two to three days. When the delegate indicated what he had just

told her was very different from the claim in the SHEV application concerning his experiences in Dhaka, he stated whenever there was a problem in his village he used to go to Dhaka and stay with friends for a couple days. After one of those trips when people saw him in Dhaka his friends gave him the idea to leave. So he came back to the village, got the money and 'skipped' the country.

19. When asked whether there were any reasons why he could not safely and legally relocate to either Dhaka or Chittagong if he was at risk in his village, he stated there is no security in Bangladesh and if you are returning from work people will ask you for money or stab or shoot you straight away. Also the dialect in those cities is different so as soon as he opens his mouth they will know he is not from local area and he will be found out. When asked about inconsistency between his evidence at the SHEV interview that political parties had been pressuring him to join them since the 2008 election, and his evidence at the April 2013 entry interview that political parties attempted to force him to join in only the month before he left Bangladesh, which would have been January 2013, he stated when he came to Australia by boat he was physically and mentally tired and stressed and was in no fit condition to tell anything and that may be the reason but now he is fit and calm and can give the whole story.
20. For a number of reasons I do not accept any of the applicant's claims regarding his purported political involvement in Bangladesh. I do not accept: that the AL, the BNP, or any other political party targeted him to join them, took his money, prevented him from working, forced him to participate in a procession, threatened him with death, attacked, kidnapped, or tortured him or his family. Nor do I accept that the applicant was a JI supporter or that he participated in JI-led political activities. Firstly, there have been significant shifts in the applicant's claims over time that he has been unable to adequately explain. For example, the claims of forced political participation and mistreatment set out in the 2016 SHEV application, which I note was prepared with the assistance of a registered migration agent, are quite different to what the applicant said happened to him when he was interviewed in May 2019. In the former he claimed neither he nor his family had any political affiliation prior to the AL and the BNP's attempts to recruit him, and he did not refer to any specific incidents where he was physically harmed by the AL or anyone else but rather made only vague references to being forcibly 'taken', suffering 'torture' and 'pressure' and being 'threatened'. Whereas in the latter he stated that he and his family were JI supporters, that he had participated in a variety of JI activities himself, and that on a specific date in 2012 he was severely assaulted and robbed by AL supporters and left unconscious, such that he needed to be hospitalised for a week; and that in 2013 he was kidnapped, beaten and held hostage for three days by the AL, and only released on payment of a ransom. In my mind these substantial disparities do not simply reflect the applicant providing additional detail during the SHEV interview. The circumstances described are so different that they undermine the credibility of the claims. If true, it seems implausible he would not have mentioned either his abduction or his assault resulting in unconsciousness and hospitalisation in the SHEV application. Also his description of where the kidnapping happened shifted. In the SHEV application he said he was taken from his home. At the SHEV interview he stated he was taken after work as he went to catch transport home from another village. The claim about his experiences in Dhaka just prior to his departure from Bangladesh also changed significantly. In the SHEV application he stated when he went to Dhaka AL workers there identified him and threatened to kill him. In the SHEV interview when asked about this claim he did not mention either the AL or being threatened by them until the delegate pointed out that what he had just told her differed substantially from the written claim.
21. There are also significant differences between what the applicant stated in the 2019 SHEV interview and what he said when he first arrived in Australia about the circumstances that had

caused him to leave Bangladesh. As previously mentioned, in the SHEV interview he claimed he had attended JI meetings and processions and canvassed for votes on their behalf. In the April 2013 entry interview the applicant was asked a number of direct questions about what political involvement, if any, he had had in Bangladesh. At that time, when asked whether he or his family had been involved with any political groups or organisations he stated 'no'. At that time, when asked whether there were any other political parties in his area, apart from the AL who he had already mentioned, he stated 'yes, the BNP and JI'. When asked did he have any involvement with either of these groups, he answered 'no'. In addition, the timing of some key events referred to by the applicant has differed substantially over time, and in my view further calls into question these incidents' veracity. In the SHEV interview the applicant stated it was around the time of the 2008 election that the AL and BNP pressured him and his family to join their parties. However, in the entry interview he said he was first asked by political party people to join their parties and was chased and forced to join their processions and meetings about one month before he left for Australia, which would have been around January 2013. In my assessment it is also significant that in the entry interview when discussing why he had left the country he omitted any mention of either the late 2012 attack he said had left him unconscious and hospitalised for a week or the early 2013 kidnapping where he said he was held for several days and assaulted before being released after the payment of a ransom. Additionally I note that the applicant stated at the SHEV interview that his abduction occurred in the context of an election occurring in January 2013. The country information before me refers to the Bangladeshi national election taking place in early 2014 rather than early 2013¹.

22. I have considered but am not persuaded by the applicant's explanation that any differences between what he said when he arrived in Australia and what he said during the SHEV interview were attributable to him being physically and mentally tired and stressed after travelling by boat to Australia. I am mindful that entry interviews are often relatively brief and are designed to gather information from the applicant on a range of issues and that in isolation they may only be of limited value. However, in this case I note that the applicant was interviewed more than three weeks after his arrival. I have listened to the audio recording of the entry interview. The applicant does not sound fatigued or worried and he confirmed that he understood the interpreter. I further note that the interviewer gave him a warning at the beginning of the interview that if the information he gave during a future interview was different from what he told her in the entry interview this could raise doubts about the reliability of what he had said.
23. I also consider the claims - that political parties repeatedly tried to forcibly recruit him and threatened, assaulted, and abducted him when he didn't join them - to be far-fetched and largely unsupported by the information before me, apart from the applicant's assertion. Articles discussing Bangladeshi political parties' recruitment drives do not indicate that political involvement is compulsory in Bangladesh or that it is generally achieved by force². Also, a contemporaneous assessment by DFAT commented that supporters or member of political parties were not at risk of being arrested or living in fear of violence on a day to day basis due to their political affiliations³. His insistence that if he returns to Bangladesh political parties, particularly the AL and the BNP, will harm him if he does not join them also sits oddly with his statement towards the end of the SHEV interview that they are not interested in his parents. Not only is that statement inconsistent with what he said earlier in the SHEV interview and the SHEV application, where he stated his family were also targeted, but it also seems illogical.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

² "Rajshahi AL to launch membership drive", Daily Sun, The (Dhaka), 02 November 2011, CX277017. 'AL, BNP Prepare for Next Polls - Searching for new members', The Daily Star, 8 July 2017, CXC90406620893. 'AL membership drive gains pace', Independent Bangladesh, 25 October 2017, CXC90406620890.

³ DFAT, "DFAT Country Report Bangladesh", 20 October 2014, CIS2F827D91369.

While it may be true that political parties would not be as interested in recruiting his elderly parents to undertake canvassing for them, they are still eligible to vote and they like him would presumably be vulnerable to being pressured or harmed for this reason, if it were occurring.

24. I find that the applicant was of no interest to the AL-led government when he departed Bangladesh. He has not claimed that he previously suffered harm from the Bangladeshi authorities. I note that in the SHEV application he answered 'no' to questions asking whether he had been charged or convicted of any offence or been the subject of an arrest warrant. Nor do I accept that the applicant was unable to work when he was in Bangladesh or that it will be difficult for him to survive if he is returned to Bangladesh. The applicant received primary school and high school education until grade 10. His own consistent evidence was that he was previously employed in Bangladesh in several occupations, namely farming and [Occupation 1] for many years. In Australia he has gained experience working in [Occupation 2]. He has parents and adult siblings who have lived and subsisted in Bangladesh in his absence overseas, and he has a brother who is employed in [Country 1]. In addition to these personal circumstances, country information before me indicates Bangladesh's economy has grown continuously at an annual rate of five to six per cent since the mid-1990s, accelerating to 7.1 per cent in 2016. The economy withstood the Global Financial Crisis with minimal ill effects, and economists forecast continuing strong growth in the medium term⁴.
25. In all the circumstances, I am not satisfied there is a real chance the applicant will be denied the capacity to earn a livelihood of any kind, where the denial threatens his capacity to subsist. I am also not satisfied there is a real chance the applicant will suffer any harm from the AL, the AL led government, or anyone else because he refused to support the AL, or the BNP, or any other political party either now or in the reasonably foreseeable future.
26. While he made no claim to fear harm for this reason, in the SHEV application the applicant recorded that he did not obtain a travel document and that he departed Bangladesh illegally by boat in early 2013. The delegate also considered whether he would suffer harm as an asylum seeker returning to Bangladesh, although the applicant made no claim in this regard.
27. Country information before me indicates Bangladeshis require a valid passport and visas (depending on the destination country) to depart the country. The Bangladesh Emigration Ordinance Act (1982) makes it an offence to depart from Bangladesh other than in accordance with the procedures laid down in the Act, and that doing so may result in imprisonment or a fine. However, DFAT has reported that it is not aware of any cases in which authorities have enforced these provisions. They state that Bangladesh accepts both voluntary and involuntary returnees but have generally insisted on a case-by-case, community level police check to verify the identity and Bangladeshi citizenship of returnees before authorising their return and issuing travel documents. The International Organisation for Migration's Assisted Voluntary Returns and Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Government of Bangladesh. DFAT has no evidence to suggest that recent returnees from likeminded countries have received adverse attention from authorities or others. DFAT assesses that most returnees, including failed asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily. Authorities may take an interest in high-profile individuals who have engaged in political activities outside Bangladesh, including people convicted of war crimes in absentia.⁵

⁴ DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

⁵ "The Emigration Ordinance Act (1982)", minlaw.gov.bd, 1982, CXBB8A1DA23900. DFAT, "DFAT Country Report Bangladesh", 20 October 2014, CIS2F827D91369. DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169. International Organisation for Migration, "Bangladesh", 1 August 2014, CIS29397.

28. I accept the applicant departed Bangladesh illegally. However, I have not accepted he was involved with the JI or that he was pressured, threatened, or attacked by the AL, the BNP, or any other political party in Bangladesh; or that he was of interest to the AL-led government when he departed the country. He has not claimed that he has undertaken any political activities outside of Bangladesh. As a result, I conclude that the applicant does not have a high political profile, or indeed any political profile. While the country information set out above indicates it is an offence for a citizen to depart from Bangladesh other than in accordance with the procedures laid down in the Act, it also indicates the law is not enforced and that returnees are provided with some assistance to resettle in Bangladesh. Having regard to the information before me, I am not satisfied there is a real chance the applicant will suffer any harm because he departed Bangladesh illegally or because he sought asylum overseas before returning to Bangladesh.
29. Overall, I am not satisfied the applicant has a well-founded fear of persecution in Bangladesh.

Refugee: conclusion

30. 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

31. 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

32. 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.
33. I have concluded that the applicant does not face a real chance of harm for any of the reasons claimed. As 'real risk' and 'real chance' involve the application of the same standard⁶, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

⁶ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

34. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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