



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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BANGLADESH

IAA reference: IAA19/07172

Date and time of decision: 29 October 2019 17:36:00

A Wilson, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Bangladesh. He arrived in Australia [in] June 2013. On 29 December 2016 he lodged an application for a safe haven enterprise visa (SHEV). On 12 September 2019 a delegate of the Minister for Immigration refused to grant the visa.
2. The delegate did not accept that the applicant's brother had disappeared or died or that the applicant was subject to extortion. The delegate was not otherwise satisfied the applicant had a well-founded fear of persecution or that there was a real risk he would suffer significant harm if returned to Bangladesh.

### 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 2 October 2019 the applicant provided a submission to the IAA (the IAA submission). Apart from the information discussed below, the IAA submission restates some of the applicant's claims that were before the delegate and addresses the delegate's decision and issues arising, and to that extent I regard it as argument rather than information and have considered it.
5. In the IAA submission the applicant also argued he should be provided with an opportunity to clarify and provide further and additional information in response to the delegate's findings because it was not evident from the SHEV interview that the lack of additional evidence from him to support his claims would be considered adversely.
6. I consider this to be request by the applicant for a further interview. I note the fast track review system is a limited form of review on the papers. There is no entitlement for an applicant to have an opportunity to put forward claims in a hearing at the review stage. In very limited circumstances the IAA may invite the applicant to provide new information or comment on new information at an interview. In this case, it is not apparent what further new information the applicant has to provide, or why it cannot be provided in written form. I note a registered migration agent assisted the applicant to lodge his 2016 SHEV application. While the agent did not attend the 2019 SHEV interview with the applicant, no written declaration was provided to the Department of Home Affairs (the Department) indicating that the migration agent was no longer acting on applicant's behalf. Correspondence from the Department repeatedly emphasised it was the applicant's responsibility to provide details of his protection claims and evidence to support the claims. Furthermore at the outset of the SHEV interview the delegate advised the applicant that if he did not give all his protection claims, and any additional relevant information he had, and his application was refused by the Department, he might not have another chance to provide the claims or information. At that point the applicant responded to the delegate "I don't have anything new. I've submitted all the things". Contrary to the applicant's suggestion in the IAA submission, the delegate did put him sufficiently on notice at the SHEV interview that she had doubt about key aspects of his claims. For example, the delegate asked him several times why in the arrival interview he had indicated his brother was missing but in the SHEV application he had indicated he was deceased. The delegate

also expressed reservations about the claim that he had been extorted and referred to the limited information that the applicant had provided in support of his claims. In these circumstances I am satisfied the applicant has had a fair opportunity to provide his claims and address the issues relevant to this review and that he has engaged with the delegate's decision in commenting and responding to it through written submissions. I am not satisfied a further interview is required in these circumstances, or that the power to get new information under s.473DC should otherwise be exercised.

### **Applicant's claims for protection**

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7. The applicant's claims can be summarised as follows:
- he operated [Business 1] and after his brother [S] went missing unknown people demanded money from him and threatened him.
  - he departed Bangladesh in the first half of 2013.
  - if he is returned to Bangladesh he fears he will be harmed by the group that threatened him previously.

### **Refugee assessment**

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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. On the basis of the applicant's documentary and oral evidence I accept: that he is a Sunni Muslim of Bangla ethnicity; that he was born and lived most of his life in Madaripur District, in Dhaka Division; that he completed around four years of primary school and around four years of madrasah school; that for many years he worked [in Occupation 1] [completing

various tasks]; that his mother and adult siblings continue to live in Madaripur District; and that he is married with one child who also live in that district.

11. In support of his identity the applicant provided a copy of a Bangladeshi birth certificate in English, a copy of a citizenship certificate in English, and a poor quality copy of a Bangladeshi driver's license. Although I have some doubt about their authenticity because he did not provide any original documents and at the SHEV interview he seemed to indicate he had a first name and family name rather than just one name as recorded on the identity documents, for the purpose of this review 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.
12. In the SHEV application the applicant claimed he left Bangladesh because he was doing business and after his brother [S] went missing local "antisocial people" wanted money from him. He doesn't know their names. They came to [Business 1] and demanded money, [amount] taka a day. They also threatened him and his business. He didn't seek help from the police because they are corrupt and far from his place and the "antisocial people" threatened if he contacted the police they would kill him and his family. He didn't try to move to another part of Bangladesh because he didn't have any relatives elsewhere. All his family lives in the village and his business is in the village. Also he didn't have even enough money to settle in another part of Bangladesh. He claimed his brother went missing and is still missing and he is afraid for his safety if he is returned to Bangladesh. He fears the people and group who demanded money and threatened him. The Bangladesh Government will not protect common people like him and the police are corrupt. He claimed he would be unable to relocate as he would not feel safe in any districts or places in Bangladesh and he doesn't have friends or relatives and he isn't an educated person. In the section of the SHEV application dealing with his family unit he indicated his brother [S] was deceased.
13. At the SHEV interview the delegate sought clarification from the applicant as to whether his brother [S] was missing, as he stated in the arrival interview, or deceased as he indicated in one part of the SHEV application but not in his claims for protection. In response the applicant stated they had [Business 1] that his brother used to run and people used to come and ask for money and when he was there they also came to him and asked for money. When the delegate asked again whether his brother was missing or deceased, the applicant said they had [Business 1] that his brother used to run. People came and asked for money and because of that reason they killed his brother. Then he started to do the business and people also came and asked for money. He fears for his life and that's why he left the country. When asked when his brother [S] died he stated [in] March 2013.
14. I accept extortion occurs in Bangladesh in a range of circumstances, as confirmed by country information before me<sup>1</sup>. Although I have some doubt about the period of his involvement with the business, I also accept the applicant operated a [Business 1] in Madaripur District for around four years from 2009. He consistently claimed to have run such a business from the time of his arrival in Australia. Although, the number of years he claimed to have carried on the business varied significantly over time – from 1998 to 2013

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169. DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438. UK Home Office, "Country Policy and Information Note - Bangladesh Religious minorities and atheists", 28 October 2018, OG9EF767962.

in the SHEV application; from 2001 to 2013 in the arrival interview; and from around 2009 to 2013 in the SHEV interview.

15. However, for the following reasons I am not satisfied that the applicant's brother [S] operated [Business 1] prior to or with the applicant, that [S] went missing or was killed in 2013 when he refused to pay money to unknown persons, or that the applicant was subsequently the victim of threats and extortion by unknown persons. Firstly, the applicant's account of [S]'s involvement with [Business 1], [S]'s status, the reason why [S] was targeted for extortion, and the circumstances of his own departure from Bangladesh was confused and unconvincing, and included a number of significant discrepancies. In the 2016 SHEV application, which was prepared with the assistance of a migration agent, the applicant didn't clearly state what role [S] had with [Business 1], if any. In the section of the SHEV application dealing with the family unit the applicant indicated [S] was deceased, but didn't indicate when he died. Somewhat confusingly, in the section of the SHEV application dealing with his claims for protection the applicant referred several times to [S] being "missing" but did not state he had been killed and he linked [S]'s targeting to a financial motive, saying people wanted money from him. In the SHEV application the applicant also indicated that 10 March 2013 was the date he departed Bangladesh. Whereas in the 2019 SHEV interview the applicant said, on several occasions, that he and [S] operated [Business 1]. He also said that [S] used to run the business. The applicant repeatedly said throughout the SHEV interview that [S] was killed. He nominated 10 March 2013 as the date of [S]'s death, and said that after [S] was killed an unknown group started demanding money from him. He also said that he left Bangladesh in late April or early May 2013. I have listened to the audio recording of the August 2013 interview conducted with the applicant about six weeks after his arrival in Australia. In that interview the applicant gave another account of events. First he said that [S] sometimes helped him in his business. Later in that interview when directly asked whether [S] worked with him at [Business 1], the applicant stated [S] did not work at [Business 1] but sometimes came there to help him. At that time it was also pointed out to the applicant that his evidence about whether [S] was deceased or living was unclear. It was put to him that earlier in the arrival interview he seemed to say that [S] had passed away but now he seemed to be saying [S] was missing. In order to clarify [S]'s situation, the applicant was specifically asked whether [S] was missing to which he answered "Yes". He was then directly asked whether he knew whether [S] had passed away, to which he responded "I don't know. He's missing". He was then asked whether he had heard anything about what may have happened to [S], to which he said he hadn't heard anything about him after he disappeared. In 2013 the applicant also repeatedly attributed the targeting of [S] to his involvement in politics. He said [S] was "lost because he engaged in politics". Later in the arrival interview when he was asked how [S] went missing he said "he was involved in politics".
16. Secondly, the applicant's account of the extortion he claimed he and [S] suffered was superficial and unpersuasive. In the SHEV application he didn't state when or how often attempts were made to extort money from him. When the delegate attempted to explore these issues with him at the SHEV interview the applicant seemed unable to fill in any of the detail. For example, when asked when the extortionists started asking for money, he said he didn't remember. When asked how many times [S] was threatened before he was killed, he said he didn't know accurately – "two, five, ten, or fifty times but they were telling him often". When asked how many times were he was personally approached and threatened by people demanding money, he said he didn't remember but they came several times. Whenever he was in the business they came and threatened him. Finally, I note the applicant did not provide a death certificate for [S], although he indicated in his SHEV

application that he was in contact with relatives in Bangladesh and they forwarded other documents to him.

17. I have considered whether these problems might be explained by the applicant's limited formal education, which was referred to in the SHEV application and elsewhere in the review material. However, I am not persuaded this is the case. Even allowing for limited schooling, I do not consider it credible that the applicant would be unsure about key aspects of his own claims such as his brother's role in the business and his fate, noting that on the other hand the applicant claimed he operated a successful business for a number of years. I am also mindful that during the arrival interview the applicant was asked about a range of issues beyond why he feared harm in Bangladesh and was asked to keep his explanation as to why he had left Bangladesh brief. However, these circumstances do not adequately explain why when directly asked he confirmed that [S] was missing and that he didn't know if he was dead, contrary to his later statements that [S] was dead.
18. I have accepted that the applicant formerly operated a local [Business 1] in Bangladesh. The applicant's evidence at the SHEV interview was that since his departure from Bangladesh in 2013 his family continues to own [Business 1] but that his uncle has rented it out to another operator. The applicant has not claimed that he intends, or will have the opportunity, to run [Business 1] again if he returns to Bangladesh. Although he stated at the SHEV interview that the business was not as lucrative as previously, he has not claimed that [Business 1's] current operator or his uncle who oversees the rental of [Business 1] has suffered extortion attempts in the six years he has been outside Bangladesh. I also note that soon after he arrived in Australia the applicant stated he and his family continue to own some other land that provides them with some income. The applicant also previously worked [in Occupation 1] on land owned by his family and other relatives in Bangladesh. In Australia he has done some work [in another occupation]. Having regard to his particular circumstances, I am not satisfied there is a real chance the applicant will suffer any harm in connection with having operated [Business 1] six years ago. Nor am I satisfied there is a real chance he will be denied the capacity to earn a livelihood of any kind, where the denial threatens his capacity to subsist or that he will otherwise suffer any harm.
19. In the 2016 SHEV application, when he was explaining why he thought the Bangladeshi authorities would not protect him if he were to return to Bangladesh, the applicant claimed his brother was involved with the BNP and that due to his family's political involvement he would not get support from the Government. Towards the end of the 2019 SHEV interview the delegate sought to clarify this issue with the applicant. The delegate asked him whether it was correct that one of his brothers was a member of the BNP as stated in the SHEV application. In reply the applicant stated that his brother [S] who passed away was not actively involved in the BNP. However [S] supported and voted for them. When the delegate asked him whether he himself was a supporter of any political party, the applicant said "No, not like that". When asked whether he had ever been involved in any political activities in Bangladesh or Australia, he said "No, neither here nor Bangladesh. We are just a supporter of a particular party".
20. Country information before me indicates the BNP is one of two political parties that have dominated politics in Bangladesh since independence; the second party is the Awami League (AL). It also indicates the relationship between the two parties has been characterised by longstanding enmity; that the two parties for the most part have alternated in the roles of ruling party and opposition; and that while each party has been in power they have used the state machinery against government opponents while in office. DFAT assesses that BNP members who actively oppose the AL government may be targeted

for criminal charges, especially if they are involved in violent protests. They also assess that members of opposition political parties, which includes the BNP, who do not engage in political activities and demonstrations face a lower risk of arrest, although this may vary according to location and timing<sup>2</sup>.

21. I accept that the applicant's brother [S] voted for the BNP on at least one unspecified occasion. I do not accept that [S] otherwise supported or was involved with the BNP. The applicant provided no details about any other political activities undertaken by [S], such as when or how often or in what other capacity [S] was involved with the BNP. I also note at the 2013 arrival interview when he was asked whether he or any members of his family had been involved in a political group, the applicant stated just his brother [S] was involved with the BNP but that all he knew about it was that "BNP" was the name of the party. I also note the applicant has not claimed that [S] was previously harmed or that he was previously harmed because [S] voted for the BNP. Furthermore at the arrival interview when asked whether he or any members of his family had been involved in any activities or protests against the government he stated "No". I find that the applicant himself has had no political involvement in either Bangladesh or overseas. His own evidence at the SHEV interview and arrival interview confirmed this. I also find that he has not been imputed with a political opinion because [S] voted for the BNP. The country information before me does not suggest that the relatives of BNP supporters are generally targeted or harmed. Having regard to his particular circumstances, I am not satisfied there is a real chance the applicant will suffer any harm because his brother [S] voted for the BNP some time prior to his departure from Bangladesh in 2013 now or in the reasonably foreseeable future.
22. In the SHEV application the applicant did not claim to fear harm as a result of having sought asylum overseas and he indicated he had departed Bangladesh legally using a passport. Nevertheless towards the end of the SHEV interview the delegate asked him whether he thought he would have any issues with the Bangladeshi authorities for coming to Australia if he were returned to Bangladesh, to which the applicant replied "If I'm staying here there will be no problem".
23. Country information before me indicates that Bangladeshis require a valid passport and visas (depending on the destination country) to depart from Bangladesh. It also indicates Bangladesh accepts both voluntary and involuntary returnees. The International Organization 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 have received adverse attention from authorities or others. Bangladesh has a very large diaspora, and tens of thousands of Bangladeshis exit and enter the country each year. It is unlikely that authorities have the capacity to check on or monitor each of these people, and the vast majority of returning Bangladeshis will re-enter the country without incident. If, however, those returning have a particular political profile, particularly with the BNP, it is likely that their entry into Bangladesh will be noted. 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

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<sup>2</sup> DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169. DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438.

convicted of war crimes in absentia. This is unlikely, however, for returnees without such a profile<sup>3</sup>.

24. I accept the applicant departed Bangladesh legally. He has consistently claimed this in the SHEV application and at other times. At the 2019 SHEV interview he confirmed he travelled from Bangladesh to [Country 1] using a passport. Again in 2013, soon after his arrival in Australia, he also referred to using a passport to leave Bangladesh and having a visa to enter [Country 1]. I find it is possible that if he is returned to Bangladesh it may be suspected that the applicant has sought asylum overseas. I also accept that country information indicates that the entry into Bangladesh of certain returnees with particular BNP profiles is likely to be noted and that high profile persons who have engaged in political activities overseas may be of interest to Bangladeshi authorities. However, having regard to the applicant's particular circumstances and the country information before me I am not satisfied there is a real chance he will suffer any harm for either of these reasons. I have found that the applicant himself has had no political involvement in Bangladesh or overseas. I have also found that he was not imputed with a political profile because his brother [S] voted for the BNP. Nor has he claimed that he will become politically active if he is returned to Bangladesh. As a result, I conclude that the applicant does not have a high political profile, or indeed any political profile; and that he was not of ongoing interest to the Bangladeshi authorities or anyone else when he departed Bangladesh in 2013 using a passport. I consider that if returned to Bangladesh the applicant will go back to his home area of Madaripur District where his mother, many adult siblings, and an uncle continue to live and where the family continue to own assets, including the rented [Business 1] and land. I also note that returnees are provided with some assistance to resettle in Bangladesh. In these circumstances I am not satisfied there is a real chance the applicant will suffer any harm because he has sought asylum overseas.
25. Overall, I am not satisfied the applicant has a well-founded fear of persecution in Bangladesh.

### **Refugee: conclusion**

26. 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**

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27. 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**

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

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<sup>3</sup> DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169. DFAT, "DFAT Country Information Report Bangladesh", 22 August 2019, 20190822132438. International Organisation for Migration, "Bangladesh", 1 August 2014, CIS29397.  
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- 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.

29. 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 standard<sup>4</sup>, 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.

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

30. 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**

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

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<sup>4</sup> *MIAC v SZQRB* (2013) 210 FCR 505.  
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## Applicable law

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### ***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.