



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

MYANMAR
IAA reference: IAA19/07231

Date and time of decision: 12 November 2019 17:30:00
D Hughes, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be From Myanmar. The applicant applied for a protection visa on 18 July 2017. A delegate of the Minister for Immigration refused to grant the visa on 25 September 2019.

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 applicant made submissions to the IAA. His submissions included a copy of a post-interview submission dated 11 September 2019. I am satisfied this document was before the delegate and is not new information. I am also satisfied the IAA submission does not contain new information in the relevant sense. In the event that I am wrong in that assessment, I consider the applicant and representative put these submissions before the delegate in a timely manner, and prior to a decision being made. Given what occurred during the visa interview, I consider the provision of updated information, submissions and documentation about his identity and circumstances would be credible personal information which was not previously known and may have affected consideration of the applicant's claims, in the sense contemplated by s.473DD(b)(ii). In terms of the country information provided in the submission, if that was not considered by the delegate, I am satisfied that such a barrier meant that it was not and could not have been provided to the Minister before the Minister made their decision, in the sense contemplated by s.473DD(b)(i). There is nothing adverse within the new information, and it supports the applicant's variation of his claims about his identity and experiences in Myanmar. In all the circumstances, I would be satisfied there are exceptional circumstances to justify consideration of the new information. However, again, I am not satisfied that it is the case that the IAA submissions contain new information.
4. The applicant has requested an opportunity to be interviewed by the IAA because the delegate made adverse credibility findings and he would like an opportunity to demonstrate he is a credible witness. I am satisfied the determinative issues in this review remain those as were before the delegate and that the applicant was very clearly put on notice of the delegate's concerns with his credibility and the reliability of his claims and evidence, both in the interview and the written decision. He was assisted in the visa interview by a representative, and I consider he was given a fair opportunity to advance his case. He also benefitted from post interview submissions, including submissions in relation to his credibility. Considering all the circumstances, I am not satisfied it is necessary to obtain new information from the applicant, whether via interview or in writing.

Applicant's claims for protection

5. The applicant initially advanced claims on the basis that he was a stateless Burmese Muslim, and a person that was denied citizenship and other documentation in Myanmar. Following his visa interview before the delegate, the applicant retracted these claims. His revised claims can be summarised as follows:
 - He left Myanmar because of the treatment he faced as a Burmese Muslim, and the discrimination he faced because of his religion.

- As a Burmese Muslim, he was prevented from accessing employment. He is afraid of Buddhist extremists, including the 969 movement. As support for 969 grows in Myanmar, so too does the discrimination he would face.
- He claims most workplaces put up a 969 sticker which shows the rest of the community that Muslims are not welcome. The shops also increase the price of things for people who are Muslim. He would also have to pay Buddhist monks and the local authorities or else they will put him in jail. Since he faces discrimination when he tries to find work, it is difficult for him to pay the authorities to keep himself safe.

Factual findings

6. The applicant's credibility, and the reliability of his evidence, is at the forefront of this assessment. In his visa application, written statement and initial oral evidence during the visa interview, the applicant advanced a history and profile, and made contentions about his identity and documentation, that have ultimately proven to be untrue.
7. The applicant claims to be from Yangon in Myanmar. The applicant provided a range of documentation after the visa interview that appears to support his claims to be from Yangon. When asked by the delegate to describe aspects of Yangon, he was able to freely describe his local area and nearby districts. On the information before me, I accept he was born in and grew up in a township in Yangon in Myanmar.
8. The applicant consistently claimed to be a Sunni Muslim. His birth certificate and household register indicates he is a Muslim. He claimed he practices in the form of prayer and fasts, and that he attends mosque. He was able to recite a short *shura* when asked by the delegate at the visa interview. On the basis of his evidence, I accept he is a Sunni Muslim.
9. The applicant contended in his visa application, and in the early part of the visa interview, that he was stateless, undocumented (other than a birth certificate) and not recognised as a citizen in Myanmar. He claimed this was because he was a Burmese Muslim. He contended that he and his family members were denied citizenship documentation, including citizenship cards and household register lists. He claims he was unable to be issued a graduate certificate from his university, because he lacked identity documentation. His lack of documentation also meant he was unable to obtain employment, other than helping with the family business. He claims that he was harassed by the authorities, and because he was undocumented, he had to pay bribes to the police. If he did not pay, he would have been at threat of false charges and forced labour.
10. The applicant arrived in Australia in mid-2013. He lodged his protection visa application with some legal assistance in July 2017, around four years after he arranged his travel to Australia through people smugglers. At the beginning of the visa interview, he was asked if he wanted to add or change any aspect of his evidence. He indicated he wished to provide his birth certificate and elaborate on his claims, but gave no indication he intended to vary or correct his claims and evidence. The delegate took him through his claims and evidence in some detail, highlighting his concerns that the applicant's claims about his claims and identity (citizenship and documentation status) were difficult to reconcile with country information. The applicant persisted in maintaining his claims and claimed profile.
11. The delegate then asked the applicant to detail his journey to Australia. The applicant provided his account of his journey through [Country 1], [Country 2] and [Country 3]. The

delegate asked him very directly whether he had ever held a Myanmar passport or travelled by air before he came to Australia. The applicant clearly indicated in the negative.

12. When the delegate put to him photographic evidence (of the applicant in [Country 4]) from Facebook that strongly contradicted his claims about his travels, identity documentation, and citizenship status, the applicant did not correct his evidence, but instead suggested the photos were fabricated using "Photoshop". He said he had never been to [Country 4].
13. The delegate summarised his concerns in some detail and then provided the applicant and his representative a break to make further submissions. After the break, the applicant's representative wisely suggested they would make submissions in writing. The applicant discussed his concerns on return to Myanmar as a Muslim, but did not give any indication that he intended to correct his account or any aspect of his claimed profile.
14. The applicant made extensive post interview submissions, conceding that many of his claims about his identity and past experiences were untrue, including his claims to be stateless, undocumented, and to have left Myanmar illegally.
15. By way of explanation for the numerous discrepancies in his evidence, the applicant contended that he was assisted by two people smugglers who helped him leave Myanmar. He claims the people smugglers help him prepare everything, including the stories he provided to the Department in support of his application. They told him if he did not say these things he would be forced to leave Australia. He claimed he was scared and did what they told him to do. In making the statement to correct his claims, he stated that he still fears harm in Myanmar as a Muslim. He claimed he is used to doing things like this to survive in Myanmar because he is from a marginalised group.
16. The applicant also provided a range of identity documents he previously claimed he did not have. He claims the people smugglers told him that if he showed the Department his identity documents, he will have to go back to Myanmar.
17. In the submissions, the representative contends there are valid reasons for the applicant's inconsistent information and this, combined with his updated statutory declaration, should not detract from his overall credibility. In his submission to the IAA, the applicant states that while he acknowledges he provided different information about his nationality and travel, he corrected this information in his post-interview submissions provided by his lawyer.
18. To suggest, as the applicant does in his submissions, that he provided different information, that he corrected his account, and this should not detract from his overall credibility, is a fairly generous and optimistic characterisation of the applicant's conduct in this matter. By the time of his written application, over four years had passed since he was assisted by people smugglers. Two further years had passed by the time of the visa interview, in which he was ably assisted by a volunteer legal service. In my view, the applicant was far removed from the influence and direction of the smugglers at this stage, yet he took no steps to correct his evidence. It was not until the delegate comprehensively contradicted his account that the applicant sought to correct his evidence. Even when presented with evidence that thoroughly contradicted his claims, the applicant's initial response was to provide a further false explanation (the "photoshopping" of his travel photos). I accept his explanation that he was shocked, and may have had to be evasive or use other tactics when dealing with corrupt authorities in Myanmar, but his willingness to provide further false evidence only underscores my concerns with his credibility and reliability. I do not accept the submission that his conduct in this matter should not detract from his overall credibility.

19. While aspects of his evidence and profile I have accepted in this assessment, the depth and extent of his false evidence is such that I am not satisfied the applicant is a witness of credit, and I have serious concerns about the credibility and reliability of his evidence, including in terms of his revised claims.
20. I note the applicant has provided a range of documentary evidence. Given my concerns with his credibility, I consider it fair to say that his documentary evidence should be approached with some caution. In its 2019 Myanmar report, DFAT states that:
 - *Document fraud is highly prevalent in Myanmar. Fraud can take the form of fake documentation, or genuine documentation provided on the basis of fraudulent information. The prevalence of corruption in Myanmar means that fake identity documentation can be purchased with relative ease, and identity feeder documents including birth, marriage and divorce certificates; household registration lists; and ... CSCs ... are all subject to significant fraud. While passports have more sophisticated security features, it is possible to obtain a genuine passport using a fake national identity card.*
21. While noting DFAT's analysis, I consider the documentation provided appears, at least in my experience, to be consistent with genuine documentation. Significantly, the documentation appears to be consistent and reconcilable with the applicant's past evidence about his identity and history in Myanmar (at least in terms of his name, age, parents and family composition, address, and study history). While I have serious concerns with the applicant's credibility, it appears the applicant has been consistent about his biographical details. I give that documentation some weight, and have assessed him below on the basis of that profile. Beyond that, I have little motivation to accept the applicant's claims.
22. To avoid any uncertainty, I accept the applicant's revised claims and am satisfied he is not stateless or undocumented. I accept his CSC, household list, graduation certificate, and other documentation as evidence that he is a (well) documented citizen of Myanmar. I do not accept he was ever denied (or delayed) citizenship or any other identity documentation, for any reason.
23. I am not satisfied and do not accept his earlier claims that he faced any barriers to accessing education or graduating for any of the reasons advanced. I accept and rely on his graduate certificate as provided, which indicates the applicant has in fact been very successful in his studies, as have his siblings.
24. The applicant initially indicated he was unable to find work because he lacked identity documentation and could not obtain his graduate certificate. He retracted that claim, but contended that he was nevertheless denied employment because of his religious profile. He also claimed that he was harassed by the authorities, and because he was undocumented, he had to pay bribes to the police. If he did not pay, he would have been at threat of false charges and forced labour. He has effectively retracted these claims as they pertain to his stateless profile, but continues to claim he faced interference from the authorities because of his religious profile. I have considered the variation of these claims relating to his faith further below, but I am not satisfied he was ever denied employment, or that he was ever harassed, threatened with false charges or forced labour, forced to pay bribes to the police because he was undocumented, stateless and/or denied a graduation certificate.
25. As I do not accept the applicant was undocumented, stateless, denied a graduation certificate or denied citizenship or citizenship documentation, I do not accept he faced any discrimination, barriers, threat, interference or harm for any of these reasons.

Religious profile

26. I have accepted the applicant is a Sunni Muslim. The applicant has claimed to have faced discriminatory, intimidating and threatening behaviour from the authorities, Buddhists and Buddhist extremists (monks) while living in Myanmar on the basis of his religious profile.
27. In his written statement, he claimed some of his friends experienced harm for being Muslim. In 2006, one of his friends was arrested by the police during a blackout and forced into the army. He claims in his written statement that in April 2013 he decided to leave Myanmar because he was encountering a lot of problems with the police and Buddhist monks.
28. At the visa interview, when asked why he left Myanmar, the applicant referred to his inability to obtain a graduation certificate and find a job. When asked whether he faced any other problems, he said once when he went to mosque, some Buddhist monks were swearing and abusing them. When asked if anything had happened to him personally, he said sometimes when he went out, Buddhists and Buddhist monks would swear at him. He would pretend he did not hear them, because he did not want to get into trouble. He also said that sometimes when he was walking, the police would ask him how much money he had. They would ask him if he is a citizen and take his money. He said the main problem was racism and abuse from Buddhist people.
29. The applicant has consistently indicated he faced verbal harassment from Buddhist and Buddhist monks. That level of societal discrimination, particularly if it occurred during a period of significant tensions in 2012-2013 as he claims, is consistent with the country information before me, including DFAT (2019) and Burma Human Rights Network (BHRN, 2017). However, I also consider the applicant's oral evidence reveals that he was exaggerating in his written statement when he claimed he was encountering 'a lot of problems' in Myanmar when he left in April 2013. At the interview, he detailed one instance of being verbally abused by Buddhist monks on his way to mosque. He also spoke generally of verbal harassment from Buddhists. That evidence did not give the impression that this behaviour was recurrent or ongoing, or was the catalyst for him leaving the country.
30. I do not accept his contentions that he was forced to pay bribes to the police. In his written and oral evidence, those claims were tied to his lack of citizenship and documentation. Having regard to his evidence, my concerns with his credibility in general, and his revised evidence that he was in fact a citizen and documented, I am not satisfied he was ever forced to pay bribes or was otherwise interfered with by the authorities, or that he was at threat of charge, arrest or forced labour/conscription, on the basis of his religious profile or otherwise.
31. In his written statement, he claimed he was able to practise his religion at mosque. He states the police did not disturb the mosque, because the leader of the mosque had paid the police off. He would attend mosque during the day, as the police were more likely to stop him at night. However, he fears that on return to Myanmar, he will no longer be able to attend mosque as frequently as before because it is too dangerous. He claims his local mosque is a two minute walk away, but the Buddhist monks intimidate his family and other Muslims as they make their way to mosque. If they respond, the Buddhists would call the police and have them arrested.
32. The applicant sought to contend that he would be unable to practise his faith freely without risk of harm on return to Myanmar. In his written statement from 2017, he stated that he was able to practise his religion and attend mosque. I consider that is an accurate reflection of his past experience in Myanmar, and I am satisfied he was not prevented and faced no

barriers in practising his faith in the past. Nevertheless, I have considered his claims in this regard prospectively below.

33. In addition to the above, the applicant also referred to the discriminatory practises of some stores in Yangon, which refused to serve Muslims or charged them higher prices. He also claimed he was denied employment because of his religion. There is some evidence of discriminatory practices against Muslims and businesses in DFAT's 2017 report on Myanmar. DFAT highlights some discrimination in terms of employment, but also states that while Muslims are rarely promoted to senior levels in government, the military or the police, discrimination is less severe in professional services. DFAT states that Muslims occupy senior positions in professional fields such as medicine, finance and legal services. Significantly, it does not indicate that Muslims are prevented from or unable to find employment.
34. The applicant's claims about the difficulties he had in finding employment were initially tied to his lack of citizenship and identity documentation. The applicant now contends those issues were tied to his religious profile. The applicant had a strong education. He contended his father had a business in Yangon. Having regard to the country advice above, and having regards to my serious concerns with his credibility, I am not satisfied and do not accept he was unable to find work because of his religious profile, or any other related profile. I consider this is a further exaggeration in the applicant's evidence. However, based on the reporting before me, I accept he may have experienced discrimination at some stores and businesses.

Departure from Myanmar

35. The applicant initially claimed that he departed Myanmar legally, across the border without a passport, but has retracted that claim. I accept his revised claim that he left Myanmar lawfully on a valid passport and travelled to [Country 3] by air, via [Country 4]. Given his time in Australia, I consider it plausible the Myanmar authorities will assess him as having sought asylum in Australia.

Refugee assessment

36. 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

37. 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.
38. I have found the applicant is a documented citizen of Myanmar. Having accepted that profile, I am not satisfied and do not accept there is any chance of him facing bribery, arbitrary arrest, false charges, imprisonment, forced labour or forced conscription, as he previously contended.
39. While I have serious concerns about the applicant's credibility, I accept he is a Burmese Muslim. I have assessed his religious profile, but also accept there is an ethnic component to that profile. While I accept he is a Burmese Muslim, I also accept his claim that he is readily identifiable as a Muslim from his ethnic appearance.
40. In assessing his profile, I have relied on the assessment of country information as it pertains to Burmese Muslims in Myanmar. Consistent with the applicant's claims, DFAT (2017) confirms that anti-Muslim sentiment is prevalent in Myanmar, especially outside of major cities. DFAT advises that reduced tolerance for Islamic faith activities has been, at least in part, propagated by a rise in anti-Muslim sentiment at both the official and societal level. In its most extreme form, this has resulted in violent incidents against Myanmar's Muslim community. As noted above, a report from the BHRN (2017) details the breadth of violence, other serious incidents and discrimination that have occurred over the last several years, including a historical timeline of incidents. While acknowledging that violent incidents occur, DFAT's overall assessment in 2019, one also highlighted in the submissions, was that Muslims (outside of Rakhine State) face moderate levels of official and societal discrimination and a low risk of societal violence on a day-to-day basis. I consider DFAT's assessment is consistent with other reporting before me, including the BHRN report.
41. The reports before me confirm there have been outbreaks of religiously motivated violence in Myanmar, notably in 2012-13, when there were a number of serious and violent incidents occurring throughout the country, including within the applicant's home area of Yangon. Consistent with the applicant's submissions, I also accept incidents and clashes involving Muslims continue to occur, including recent incidents highlighted by DFAT in Yangon in 2018, as well as the targeting of one Muslim man in 2018, as detailed by the UN Special Rapporteur in 2018.
42. While acknowledging those incidents, the reports before me do not indicate that, in the aftermath of 2013, violence towards Muslims (and ethnic minorities) has continued to occur with frequency in Yangon and other non-conflict areas in Myanmar. I have weighed the reports provided by the applicant, including those from the US Department of State (2017), the UNHCHR (2016) and the Permanent Peoples Tribunal (2017). These reports highlight issues for Muslims and other religious minorities throughout the country, instances of discrimination and examples of limits on religious freedoms, the persistence of hate speech, and the serious and negative impact of Buddhist nationalist groups. However, these reports also focus heavily on Muslims in conflict areas within the country, most significantly for Rohingya Muslims in Rakhine State. I do not consider the situation in Yangon is informed by the security situation faced by Muslims in other conflict areas in the country such as Rakhine. While I accept the reports indicate occasional violent incidents do occur, year on year, I

consider that violent incidents have been infrequent in Yangon and the surrounding areas over the last several years, particularly when considered against earlier periods where clashes were more frequent in the city, for example in 2012.

43. Having regard to the reporting before me, I accept DFAT's assessment that a person with the applicant's profile as a Burmese Muslim would face a low risk of societal violence on a day-to-day basis. I consider that analysis is consistent with the other reporting before me. Weighing the reports before me, I find there is no more than a remote chance of the applicant facing violence or related harm on the basis of his ethnic and religious profile as a Burmese Muslim within his home area of Yangon.
44. Reports from DFAT (2017; 2019), the US Department of State (2015), BHRN (2017), and Frontier Myanmar (2018), confirm that societal and official discrimination against ethnic and religious minorities manifests in a range of ways across government employment, education, accommodation, access to services (e.g. health and police), issuance (and re-issuance) of identity documentation, bureaucratic delays and bribery, freedom of movement and religious freedoms. The level of discrimination is most acute for Muslims (principally Rohingya Muslims) living in Rakhine State, and this is reflected in DFAT's differential assessment of the risks for Muslims in these areas. However, I also accept these reports refer to examples of official and societal discrimination outside of these areas, including urban areas like Yangon.
45. While hate speech and anti-Muslim rhetoric persists, I also consider there are indications of improvement in the country. In his revised claims, the applicant highlighted his fear of Buddhist monks and extremists, providing the example of the Buddhist nationalist 969 Group. In its 2017 report, DFAT confirmed that Buddhist nationalist groups (such as 969 and Ma Ba Tha) were vocal and influential advocates of discrimination against Muslims, and had advocated boycotts on Muslim-run businesses. However, in its 2019 report, DFAT confirmed Ma Ba Tha was ordered by the authorities to disband and remove its anti-Muslim propaganda from across the country. In response to the ban, the group rebranded as the Buddha Dhamma Parahita Foundation, but in July 2018, the central Buddhist authority again ordered the group to cease its activities. The 969 movement is not mentioned in the 2019 report. DFAT states that it is not aware of any recent activities of these groups.
46. I accept the applicant has faced some official and societal discrimination in the past as a Burmese Muslim, including at shops, and instances of verbal discrimination/harassment in public. Those experiences are consistent with the country information before me, and I accept would have caused the applicant (and his family) frustration. I also accept such experiences would be frustrating and challenging for the applicant (or his family) to again experience on his return to the country. Equally, I consider there are a number of significant positive indications in his past experiences. The applicant and his family appeared to have (and continue to have) a stable residence and business in Yangon for many years. The applicant is a university graduate, and two of his siblings also attend/attended university. He was able to practise his faith as a Muslim. He had a passport and was free to travel, including to [Country 4]. While claiming to have faced some discrimination, he did not indicate that he was interfered with or prevented from practising his faith in the past, nor did he claim he had modified his behaviour to avoid harm on the basis of his profile.
47. In assessing the future chance of discrimination or other harm to the applicant, I give weight to DFAT's advice that societal and official discrimination is at moderate levels. I give weight to the fact that the applicant would be returning to a major city (where incidents do occur, but anti-Muslim sentiment is less prevalent) and note the recent banning of anti-Muslim Buddhist groups. Moreover, while there is clear evidence of discrimination and barriers for Muslims

outside of Rakhine State, the reports before me do not indicate that Muslims in other areas such as Yangon are unable to access sustainable employment, education, health care or other basic services. I consider that assessment is consistent with the applicant's past experiences and having regard to his profile, I am not satisfied there is any chance the applicant would be denied or unable to access employment, accommodation, education, health care or other basic services because of his profile as a Burmese Muslim and citizen of Myanmar. For clarity, while I accept bribery and corruption is endemic, I am not satisfied and do not accept he would be subjected to bribery demands simply because he is a Burmese Muslim, or that he would be threatened with arrest, false charges or forced labour/conscription because of his profile.

48. The applicant's revised claims and submissions contend his family are attending mosque less frequently because of the threat from Buddhist and Buddhist monks. There is reference to advice from DFAT that some Muslims have restricted their religious practises out of fear of discrimination. I note DFAT's advice about the steps taken by some Muslims in Yangon to modify their religious practice. It is not clear how widespread this is, but I note the applicant did not state that he personally restricted his faith, practised a less conservative form of Islam or dressed to avoid harm in the past. Having regard to my concerns with his credibility, I find it significant the applicant did not specifically claim he would need to modify his religion, appearance, behaviour or identity to avoid harm in Myanmar.
49. The reports before me all highlight that the situation for (non-Rohingya) Burmese Muslims living outside of Rakhine State in Myanmar is challenging. As a Burmese Muslim, I accept the applicant will likely face some official and societal discrimination based on that profile should he return to the country. However, when looking to all the circumstances, and having regard to the reports before me, I am not satisfied any societal or official discrimination he may face would prevent him from finding employment, accommodation, education, identity documentation, or accessing basic services such as health care. In relation to health care, I give weight to the information cited by the delegate, from The Irrawaddy (2013) and Myanmar Times (2013) about free and public health care available to Muslims in Yangon.
50. While I accept the situation in Yangon would be frustrating and challenging for the applicant, I am not satisfied that any societal or official discrimination he may face on the basis of his profile as a Burmese Muslim would threaten his life or liberty, involve significant physical harassment or ill treatment, would deny him the capacity to earn a livelihood, cause him significant economic hardship, deny him access to basic services, threaten his capacity to subsist, or otherwise constitute serious harm, even when considered in a cumulative sense.
51. In terms of his religious freedoms, I am not satisfied and do not accept the applicant would need to modify his behaviour to avoid harm (whether through limiting his attendance at mosque, his appearance, or any other religious observance). As I am not satisfied he would face a real chance of harm for the reasons he has claimed, I do not consider he would need to modify his behaviour to avoid persecution in any relevant sense, including in the exercise and practise of his faith.
52. Having regard to all the information before me, I am not satisfied there is a real chance that the applicant will face harm, or discrimination amounting to serious harm, for reasons of his profile as a Burmese Muslim, or any related religious, ethnic or other profile arising on these facts, whether from Buddhists, Buddhist monks, anti-Muslim Buddhist nationalist groups (e.g. 969), the Myanmar authorities, or any other person or group, should he return to Myanmar now or in the reasonably foreseeable future. I find the applicant's fears are not well founded.

Claims related to departure and asylum claims

53. I am satisfied the applicant holds a citizenship scrutiny card (CSC) and previously held a valid Myanmar passport. He has copies of his identity documents. On his return to Myanmar, I do not consider there would be any uncertainty about the applicant's identity or citizenship status.
54. DFAT reports that it is aware of a small number of voluntary returnees entering Myanmar via international airports in 2017 and 2018, but has not received reports of questioning or adverse treatment toward returnees by government officials following their return to Myanmar. I acknowledge that returnees to Myanmar who depart the country illegally are technically subject to up to five years imprisonment for having illegally crossed a border, and DFAT states that it is aware of, but unable to verify, reports of this provision being enforced in recent years. However, as I have found the applicant departed the country legally, I am not satisfied there is any chance or risk of the applicant facing penalty on this basis.
55. I have considered whether the applicant would face any chance or risk of harm on the basis that he applied for protection in Australia. DFAT (2019) states that it is not aware of any credible reports of mistreatment of failed *Rohingya* asylum seekers stemming specifically from their pursuits for asylum overseas. The applicant is not of Rohingya ethnicity, but I have no reason to consider that analysis would not extend to other returnees to Myanmar who are nationals of the country and have a lower ethnic and religious profile. If it were the case, I consider there would be reporting in relation to such matters.
56. In relation to his religious profile as a Burmese Muslim, I have found he would not face a real chance of serious harm on return to Myanmar for these reasons. In the absence of advice to the contrary, I also consider this assessment would be true for the applicant on arrival and return to the country, and into the reasonably foreseeable future.
57. I have accepted his revised evidence that he departed legally as a citizen and national of Myanmar. As a person with no adverse profile, I am not satisfied there is a real chance he would be subjected to harm or mistreatment on return to Myanmar. Given his lawful departure and lack of any other profile, I find there is not a real chance he would face harm, penalty or imprisonment on return to Myanmar. In terms of his asylum claims in Australia, I again note that even the country's Rohingya population do not appear to have faced penalty or differential treatment for seeking asylum. I do not consider there is information before me that would indicate the applicant would face a real chance of harm for having sought and failed to obtain asylum in Australia, or any other profile from doing so.
58. It is apparent the information about the situation for returnees to Myanmar is limited. However, when considering what information is available, and my assessment of the applicant's limited profile, I am not satisfied there is a real chance of the applicant facing serious harm on return to Myanmar, because of his departure, the fact that he sought asylum in Australia, his ethnic and religious background, or on the basis of any other related profile.

Refugee: conclusion

59. 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

60. 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

61. 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.
62. I have found the applicant is a Burmese Muslim and a citizen of Myanmar. I have found there is not a real chance he would face violence or harm for reasons of his claimed profile. I have found the applicant may face moderate levels of official and societal discrimination for these reasons, but that any discrimination he may face because of his profile would not amount to serious harm. Having regard to the analysis above, I again accept that if the applicant were exposed to official or societal discrimination, it would be challenging and frustrating for him. However, when having regard to the applicant's circumstances, and the country information as assessed above, I am not satisfied that any discrimination he may face would involve significant harm as defined, even when considered in a cumulative sense.
63. In the assessment above, I have found the applicant would not otherwise face a real chance of harm for the reasons he has claimed. For the same reasons, I am not satisfied there is a real risk of the applicant facing significant harm for these reasons. I consider his cumulative profile is low level, and effectively limited to his religious and ethnic profile as a Burmese Muslim. For clarity, I am not satisfied there is any real chance or risk of the applicant facing serious or significant harm, even when his profile, and the discrimination he may face, is considered in a cumulative sense.

Complementary protection: conclusion

64. 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.