



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA20/08392

Date and time of decision: 15 June 2020 17:39:00
M Wei, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Bangladesh. He arrived in Australia in April 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790 in May 2017. A delegate of the Minister of Immigration (the delegate) refused to grant the visa on 14 May 2020. The delegate found that the applicant did not have a well-founded fear of persecution and was not at a real risk of significant harm upon his return to Bangladesh.

Information before the IAA

1. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No new information has been obtained or received.

Applicant's claims for protection

2. The applicant's claims can be summarised as follows:
 - He was born in [Year] in [a] village of Jhenaidah District, Bangladesh. He is of Bengali ethnicity and Moslem faith.
 - He was a supporter of the Bangladesh National Party (BNP).
 - In 2006, he was involved in a political discussion and identified as a BNP supporter. He was beaten and told not to make negative comments about the Awami League (AL).
 - On or about 2010, his family's land was unlawfully taken by his neighbours, who were supporters of the AL. He was severely beaten and still bears the scars today. The name of this neighbour was '[Mr A]'. He was unable to seek the assistance of the police or the village elders and councillors due to his neighbours' political affiliation with the AL.
 - [Mr A] demanded extortion money from him and others in the market. [Mr A] wanted him to join the AL. His protest of [Mr A]'s activities was met with physical assault from [Mr A] and his associates.
 - Two of his uncle have also been persecuted and are unable to leave their own home.
 - His brother was kidnapped overnight and was physically assaulted in 2016 by his neighbours ([Mr A]) who were looking for him.
 - He fears to be targeted by [Mr A] and the same group of people if he were forced to return to Bangladesh.

Refugee assessment

3. 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

4. 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.
5. The applicant arrived in Australia on [Date] April 2013. An entry interview took place on 18 April 2013. The applicant was invited to apply for a protection visa in May 2016. He lodged his SHEV application in May 2017. The applicant attended an SHEV interview on 28 August 2019.
6. The applicant has provided relatively consistent evidence since his arrival in Australia as to his basic personal details, such as his nationality, his date and place of birth, his parents and siblings. A copy of a birth certificate was provided with his SHEV application. According to the delegate, he later provided the original birth certificate. On the evidence before me, I accept the applicant is a [Age] year old male from [a] village in Jhenaidah District. I accept that he has [sisters] and one [brother], who continue to reside in Bangladesh, so too his parents who are living in his village. I find that Bangladesh is the receiving country.
7. While I accept the applicant's basic personal information as claimed, for the reasons discussed below, I am not satisfied that the applicant's claims for protection are credible.
8. The applicant claims that he and his family were persecuted because of his support of the opposition political party, the BNP. In his visa application lodged in 2017 the applicant claimed that he and his family were harmed in three incidents: the first incident occurred in 2006, when he was identified as a supporter of the BNP after he was involved in a political discussion in a bazaar. He was beaten as a result and was warned not to make negative comments about the AL. The second incident occurred in 2010, when his family's land was unlawfully taken by his neighbours who were supporters of the AL. He claimed that when he attempted to confront them, he was severely beaten and scarred. He also claimed that he unsuccessfully sought the assistance from village elders and councillors and was unable to seek the assistance from the police due to his neighbours' political affiliation with the AL. The third incident occurred in 2016. He claimed that his neighbours wanted information about his whereabouts and physically assaulted his brother when his brother told them he had no information about the applicant. He claimed that his brother was kidnapped overnight by his neighbours. That applicant's written statement is quite short, about one and a half page, though I also note that he stated that this was a summary of his claims and that he was happy to provide further details at his interview. I also note that the applicant's written application was prepared with the one-off assistance of a registered migration agent/lawyer from Refugee Legal and also a qualified interpreter.

9. The applicant attended the SHEV interview in August 2019. Having listened to the interview audio recording, I consider that the applicant's oral evidence at the SHEV interview was overall vague, general at best and at times, inconsistent with and departed from his other evidence.
10. The applicant was asked at the SHEV interview why he left Bangladesh. He responded that he was not a BNP member but he used to support the BNP. He initially said that he had some verbal altercation with 'somebody' which then became physical and this person 'grabbed' his property and a few days later attacked him physically. When he was asked who this person was and why he had attacked him, he then said his name was '[Mr A]' who was from the same village as him but a different suburb. When he was asked again who [Mr A] was and why [Mr A] attacked him, the applicant said that they are AL people and very influential and in contact with ministers or MPs. He said that during the daytime they were good to people but in the evening they had firearms. He stated that [Mr A] demanded extortion money from others in the village market and from him as well. When asked again why he was targeted by [Mr A], he said that [Mr A] attacked him because he protested [Mr A]'s activities. He said that [Mr A] wanted him to join the AL and wanted him to accept all [Mr A]'s activities without any protest. He said that as a citizen of the country he has every right to protest. He further claimed that two of his uncles protested as well and that his uncles could not leave their own home. He later claimed that one uncle was targeted because he worked for his uncle and he further claimed that one uncle was in jail and one uncle disappeared.
11. When the applicant was asked how he had protested [Mr A]'s activities, he replied that [Mr A] demanded extortion money from him and he paid once but [Mr A] 'demanded again'. He said that [Mr A] was a manipulative man. He continued to say 'he is from the village and I am from the same village. He is from the country and I am from the same country. So why should I give him extortion money?'. When he was asked further what he did in protesting [Mr A]'s activities, he said he protested by questioning [Mr A]: 'why should I give you extortion money? Why did you do all these wrong things?'
12. The applicant's evidence does not suggest this person [Mr A] held any position in his village or area. When the delegate asked him why this person [Mr A] was influential, his evidence was again vague. He said it was because he was an AL supporter and he did 'some activities' that actually helped AL to be in power because he showed his mind to 'some unlawful activities' and those were needed for the AL to be in power.
13. The applicant claimed at the SHEV interview that because he 'protested' [Mr A]'s activities, [Mr A] attacked him with a gun and sharp objects, which occurred in a late morning. When asked when this occurred, he said that he could not remember the exact month or year and it was probably in 2006 or 2007. I note this evidence departed from his claims in the visa application that he was beaten in a bazaar in 2006 (he did not claim then he was beaten by his neighbour) after he was involved in a political discussion and identified as a BNP supporter and that his problem with his neighbours started after his neighbours unlawfully took his family land in 2010.
14. When asked what happened between 2006/2007 after he was attacked and 2013 when he left Bangladesh, he claimed that after this attack, he took shelter in some relatives' houses. He said that he initially went to one sister's house in a different city and a few days or a few months later went to another sister's house. The applicant further said 'this is how I lived my life for six to seven years. I even could not go to my village'.
15. When it was put to him that he stated in the visa application he worked for his uncle in his village from 2001 to 2010, he replied that he used to go to his village for work during the day

and during the night he used to return to his place of hiding. He claimed that he could not stay at home and only worked and then leave. When asked between this attack in 2006 or 2007 and 2013 if anything else happened to him, he claimed that they found out his uncle was supporting him undercover and started to persecute his uncle and that they also grabbed a piece of his land. He claimed that one uncle was in jail and one uncle disappeared. When asked specifically between 2006 or 2007 and 2013 whether he saw [Mr A] and his people or he had anything personally to do with these people during those years, he stated that he ran away and did not see them after 2006 or 2007 and that 'they were looking for me but could not find me'.

16. I note this evidence is not consistent with his evidence in his visa application where he stated that after his family's land was taken in 2010 by his neighbours, he attempted to confront them. He was severely beaten and still beared the scars. While the applicant was recalling matters many years ago, given the applicant was claiming to fear harm from these people, I do not consider this inconsistency about his last personal contact with his alleged persecutors insignificant. Furthermore, I do not consider it is plausible that these people would not be able to locate him but were able to harm his uncle despite he was working for his uncle during the day for a number of years in the same village, if they were looking for him. The applicant's evidence that he would return to his village for work during the day for a number of years is also not consistent with his claimed fear of harm from [Mr A] and his people.
17. I note that the applicant claimed both in the visa application and at the SHEV interview that [Mr A] and his people came to his family home looking for him in 2016 and on this occasion his brother was beaten because his brother told them that he did not know the applicant's whereabouts. However, the applicant's evidence gives no insight why [Mr A] and his people visited his family home and harmed his brother three years after he left Bangladesh, where his evidence does not suggest that his parents or brother were otherwise physically harmed prior to 2016 or prior to his departure from Bangladesh in 2013, despite that [Mr A] and his people had been looking for him unsuccessfully since 2006/2007 (per his evidence at the SHEV interview). Of note, at another point of time during the SHEV interview, when he was asked if anything happened to his family due to their support of the BNP, he said 'no'. He added that they were not harmed and he was the only one harmed. While the applicant stated in the visa application that his brother was also kidnapped overnight, he made no mentioning at the SHEV interview that his brother was kidnapped.
18. The applicant's evidence as to his political affiliation with the BNP is also vague and unconvincing. He said at the SHEV interview that he could not remember when he started to support the BNP, referring to from a time when he could understand about politics. He claimed that he wanted to become a member of the BNP but he couldn't and he did not know why he could not be a party member. When asked again, he confirmed that he did not know why he could not become a member. When asked why he had supported the BNP, he referred to things that they are a good political party, they work for the destitute, they tried to establish the rule of law and that they built road, school and madrassas. When asked about his involvement in the BNP, he said that he had participated in meetings and processions, sometimes once in month, sometimes once in two months and sometimes once in six months and that he did not do other things to support the party.
19. I further note that the applicant's evidence at the entry interview was that he or his family had no association or involvement with any political group. His evidence then was that he came to Australia because the country situation was not good and he needed to support his family. When he was asked to expand why the country situation was not good, he said that the political groups, BNP and the AL, were killing people every day and referred to that one person from

his village was killed at night but he did not know who was responsible for the killing. His evidence at the entry interview also indicates that he came to Australia for economic reasons and he specifically referred to that his father sold the family land when his sisters were married and the remaining land was sold for his trips to Australia. The applicant was asked to comment on his statement he made at the entry interview that he had no political involvement, to which he responded that he was very sorry for this statement. He said that he was afraid if he revealed his identity there was a chance that he could be sent back to Bangladesh. He was further asked to comment on the dramatic shift of his evidence and why he did not disclose then he had political involvement or he was in hiding fearing of his life. He then claimed that his brain did not work properly at that time and that was why he did not disclose all his reasons then but what he told the delegate at the SHEV interview was all true.

20. Although the entry interview is a wide range one and not designed to explore an applicant's claims for protection for detail, it appears that the applicant was given several opportunities to expand his answers as to why he left Bangladesh or anything happened to him. While he mentioned that the country situation was not good because the political groups such as the BNP and the AL engaged in killings, and specifically referred to people who raised issues against the government were subject to harm, he did not refer to that he was personally targeted due to his political affiliation or for any other reason. It was also noted that he stated at that time that he did not live anywhere else in Bangladesh apart from his home village, which also contradicts his later evidence that he was in hiding from 2006 or 2007. I am mindful that the entry interview took place shortly after he arrived in Australia. On the other hand, I note that the applicant appeared to be able to provide quite detailed evidence otherwise such as information relating to his trip to Australia. The applicant provided no convincing evidence that he was fearful or his brain was not working as such he would have lied about his political involvement and failed to mention he was personally attacked. Considering his evidence in the context, I am not satisfied that his failure at the entry interview in disclosing his being a supporter of the BNP or his being targeted was for the reasons claimed. I consider these matters further undermine the credibility of his claims for protection.
21. I have also considered the supporting documentary evidence the applicant provided after the SHEV interview. Three letters of support are on the same letterhead of '02 No Madhuhati Union Council, Jhenaidah, Chairman's office'. The letters were all dated [June] 2012 and notarised [in] September 2019. Two letters were signed by the same person, '[Mr B]', though one letter bears a stamp of having the words 'Member, 2 No Mahduhati Union Council, Jhenaidah Sadar, Jhenaidah' and the other letter bears a stamp of having the words 'President, B.N.P. 2 No Mahuhati Union, Jhenaidah Sadar, Jhenaidah'. Another letter was purportedly signed by [Mr C], Chairman'. All three letters state that the authors know the applicant personally, that the applicant was injured by AL backed [Mr A] and his associates in his home village [in] July 2007 and underwent treatment at [a] Hospital. The letters also state that [Mr A] and his associates took possession of the applicant's land and beat him and drove him out of his house.
22. It is of concern to me that all three letters have identical content even though they were from two different individuals. It is also of concern that the same person '[Mr B]' wrote two identical letters on the same date. Although these two letters appear to have been written under different capacity, one being a member of the Union and one being the president of the BNP, they however both are on the Madhuhati Union letterhead.
23. Another letter which is on a letterhead of 'Bangladesh Nationalist party' of '02 No Madhuhati Union' was also signed by '[Mr B]', also dated [June] 2012 and notarised [in] September 2019, bearing a stamp of having the words 'President, B.N.P. 2 No Mhuhati Union, Jhenaidah Sadar,

Jhenaidah'. This letter states that the author knows the applicant personally and that the applicant 'played an important role in all programs as an active member of Bangladesh Nationalist Jubo Dal, Jhenaidah Upazila Brach, Jhenaidah'. I consider it is odd that the same person '[Mr B]' would have written three letters of support for the applicant on the same day and with two of the letters of having identical content.

24. Another letter was signed by '[Mr B], President, B.N.P Sadar Thana, Jhenaidah Thana', on a letterhead of 'Bangladesh Nationalist Party of Jhenaidah Thana Comity, Jhenaidah'. This letter has the identical content as the one signed by [Mr B] and was also notarised [in] September 2019, even though it was dated a few years earlier [in] January 2009. I consider it is not very likely that two different individuals would have written virtually identical letters of support despite there were three years apart. It is also surprising both authors state that the applicant played an important role in all programs as active member of the Bangladesh Nationalist Jubo Dal, where the applicant's evidence was that he was merely a supporter of the BNP (not a member or active member) and that he only attended meetings and processions and he did nothing else. Of note, the applicant's evidence at the SHEV interview was also that he was in hiding between 2006 or 2007 and 2013.
25. Two other letters do not have letterheads. One was from a named advocate signed [in] September 2019 and notarised on the same day. This letter states that the applicant's uncle is in jail and that the 'proof is in the jail receipt book'. No official jail or court documents were included. Another letter shows that it was signed by an unnamed residential medical officer of Sadar Hospital Jhenaidah [in] July 2019, notarised [in] September 2019. This letter states that the applicant received treatment in the hospital from [Date 1] July 2007 to [Date 2] July 2007, yet no hospital records were included.
26. I note that some of the documents also bear some other similar features. For example, five letters ended with the sentence 'I wish him success of his future life' and another one ended with 'I wish him progress and success in future life'. The headings 'To Whom It May Concern' of all seven letters have similar (if not the same) font and style.
27. With the exception of the letter from the advocate (which was purportedly signed in September 2019), all the other letters were purportedly issued before the SHEV interview. The letter from the medical officer was signed one month prior to the SHEV interview. The other five letters were purportedly written in June 2012 (four letters) and in January 2009 (one letter), before the applicant left Bangladesh and well before his visa application, though none of them were provided with his visa application (unlike the birth certificate, a copy of which was provided with his visa application even though it was issued at a much later time in 2016). While the applicant told the delegate at the SHEV interview that he could provide evidence to support aspects of his claims, when he was asked what evidence he referred to and where the evidence was, the applicant replied that 'you have to give me some time. If you could specify which evidence you require and I have to understand and figure out which one I can provide and which one I cannot'. The applicant made no reference to that there were letters of support from persons who held important positions in his union or the BNP. The applicant's apparent uncertainty as to what specific documents he had at the time of the SHEV interview, along with the matters discussed above concerning the documents, cause me to suspect that all these documents were the result of a more recent production after the SHEV interview.
28. Country information indicates that the use of fraudulent documents and fraudulently obtained genuine documents including official documents and political party documents are prevalent

in Bangladesh.¹ In light of my concerns raised above in respect of these documents, I consider they are not genuine and give them no weight. I note that the delegate had referred to these documents to the Department's Document Examination Unit (DEU) for examination and that the DEU's opinion is that the two letters with the BNP letterhead are fraudulent productions and the other five documents also lack credibility. However, I have arrived at my findings based on my own assessment of the documents themselves and the applicant's other evidence, and not being influenced by the DEU's opinion.

29. In the alternative, even I were to accept that these documents were genuinely obtained, I consider these letters have no probative value capable of supporting the applicant's claims due to their extreme pro forma nature (the identical content of the three letters on the Union Council's letterhead which were issued on the same day and the identical content of the two letters on the BNP letterhead, even they were issued three years apart, the issuing of three separate letters of support by the same person ('[Mr B]') on one day), the inconsistency which goes to the applicant's core claims (whether he was an 'active member' or merely a supporter of the BNP from persons holding important positions in the BNP), the mere assertion as to the applicant's hospital treatment (the lack of official records from the hospital) and the imprisonment of his uncle (the lack of official records from the jail or a court). These matters strongly suggest that the authors have no real knowledge about the applicant's circumstances or political involvement (despite claiming they knew the applicant personally). I give these documents no weight.
30. Having considered the evidence overall and the matters discussed above, I am not satisfied that the applicant was ever/is a BNP member or supporter. I am not satisfied that the applicant has had any political involvement, including attending BNP meetings or processions. I do not accept that he had made negative comments about the AL and was targeted for this reason. I am not satisfied that the applicant or his family members faced persecution from his neighbour [Mr A] and his associates or anyone else in Bangladesh. I do not accept that he was beaten, his land was taken, his brother was beaten or kidnapped or that his uncles were harmed as he claimed. I do not accept that [Mr A] or anyone else wanted him to join the AL. I do not accept that he was subject to extortion demand. I do not accept that he was in hiding as he claimed. I am not satisfied the applicant or his family members were and are of adverse interest to anyone in Bangladesh.
31. Country information indicates that Bangladesh is historically prone to high levels of political motivated violence, especially ahead of election times and that the ruling AL has been targeting senior members and active members of the opposition parties (particularly the BNP) since it came to power in 2008. Country information also indicates that successive Bangladeshi governments have faced the challenge of dealing with extremist Islamist groups who target government and civilian targets, such as media outlets, international NGOs and religious minorities, though the militant groups' capability has been reduced through the government's extensive counter-terrorism operation.² The applicant does not have a profile to be of adverse interest to anyone or any group.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Bangladesh", 22 August 2019, 20190822132438

² DFAT, "DFAT Country Information Report – Bangladesh", 22 August 2019, 20190822132438; Odhikar, "Annual Human Rights Report on Bangladesh 2018", 8 August 2019, 20190827144016; Odhikar, "Annual Human Rights Report 2019 Bangladesh", 8 February 2020, 20200218104232; Ain o Salish Kendra, "Political violence – January 2020", 11 February 2020, 202002214160604

32. I note that the applicant stated at the entry interview that he came to Australia by boat having paid a sum of money to people smugglers. He however made no claim to fear harm as a returning asylum seeker who had left Bangladesh illegally.
33. Given my findings above and on the information before me, I am not satisfied there is a real chance that the applicant would face any harm from a neighbour [Mr A] and/or his associates, AL people or anyone else, if he were to return to Bangladesh now or in the reasonably foreseeable future. Overall, I am not satisfied that the applicant faces a real chance of any harm, if he were to return to Bangladesh, now or in the reasonable foreseeable future.

Refugee: conclusion

34. 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

35. 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

36. 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.
37. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
38. I have found above that the applicant does not face a real chance of any harm. As real chance and real risk involves the same threshold, based on the information discussed above, I am not satisfied that the applicant faces a real risk of significant harm, if he were to return to Bangladesh, now or in the reasonably foreseeable future.

Complementary protection: conclusion

39. 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.