



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA20/08739

Date and time of decision: 25 November 2020 12:25:00
J Jennings, 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 citizen of Bangladesh. He applied for a protection visa on 25 August 2017. A delegate of the Minister for Immigration refused to grant the visa on 29 October 2020.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The IAA wrote to the applicant on 2 November 2020 and advised his case had been referred to the IAA. He was advised he could provide a submission to the IAA on why he may disagree with the Department's decision or any claim or matter presented to the Department that was not considered.
4. No further information has been received or obtained.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - The applicant claims to be a citizen of Bangladesh.
 - From childhood the applicant has experienced discrimination and bullying because of his appearance; people teased him and said he had a "criminal" look and looked like the devil.
 - The applicant grew up in a family that supported the Bangladesh National Party (BNP) and he supported the BNP.
 - The applicant had friends who were BNP supporters or officials. He attended some BNP meetings and rallies and assisted at the national election in 2009.
 - The applicant witnessed politically motivated violence and his association with members of the BNP caused him problems with opposing political groups and there was a possibility of him being attacked and killed.
 - The applicant was with BNP friends in 2010 when they were attacked in what the applicant believes was a politically motivated attack. The applicant was taken to hospital unconscious. He has a scar from injuries sustained in this attack. He did not report this attack to the police as they do not take any action and it might attract retaliation from the attackers. The applicant was scared for his safety and stopped going out and avoided his BNP friends.
 - In 2010 the applicant became friendly with [Mr A] who was a member of the BNP and a general secretary of the political union of [Name] College. [Mr A] was killed in 2010. The applicant suspects the attack was politically motivated by the rival group the Awami League (AL).
 - The applicant decided to leave Bangladesh and in 2011 he travelled to [Country]. From [Country] he came to Australia in 2013.

- His father bought some property in the local area and this brought him to attention and in 2012 he was extorted by some people for money. In 2014 he was called again by the extortionists who threatened him if he did not pay. He still did not pay them money.
- The applicant has been associated with the BNP in Australia.
- The applicant fears that should he return to Bangladesh he will be harmed because of his political neutrality and non-affiliation to any party and for an imputed political opinion as a BNP supporter.
- His fear extends to all of Bangladesh and he cannot obtain protection from the authorities.
- He is concerned his personal details were released in the data breach and that the authorities in Bangladesh have found out this information about him.

Factual findings

6. The applicant has consistently claimed to be a citizen of Bangladesh. The applicant has provided documents in support of his claimed identity and I accept the applicant's identity and nationality as stated and that Bangladesh is the receiving country for the purpose of this review.
7. I accept as plausible that the applicant was bullied and teased because of his appearance.
8. I have significant concerns regarding the applicant's claimed support of and association with the BNP.
9. At his 2014 Arrival Entry interview the applicant was asked if he or any family members had been members of or associated with any political groups and he stated "no". In the statement of claims submitted with his protection visa application in 2017 he stated that neither he nor his father were involved in politics. He stated that his political opinion "was more inclined to the BNP" because he believed the BNP to be the "lesser of two evils". He stated he was never affiliated with political parties and he represented his connection to the BNP as the result of having BNP associated friends with whom he attended some meetings and rallies.
10. In the 2020 protection visa interview the applicant provided a significantly different account of his BNP association and he stated that his father and family had always been BNP supporters, that he grew up in a BNP family and through that experience he became a BNP supporter. At this interview he recounted claims that his brother had left Bangladesh twice because of the harm he experienced as a BNP supporter and he stated his family in Bangladesh continue to be harassed because of their BNP association.
11. At the protection visa interview the delegate noted the variation in the applicant's accounts and provided him an opportunity to explain this. The applicant advised that he has difficulty recalling matters but that what he was saying at the protection visa interview was all true.
12. At the commencement of the protection visa interview the delegate asked the applicant about his health and he advised he has problems with memory; he advised he had this problem all his life and it affected his ability to study. The applicant has not provided any medical evidence in support of this claim or any evidence of any cognitive problems. I accept he has had limited education but note he has generally been in employment, including in Australia where he started a business with a partner although it was not successful, and he engaged in share trading in Bangladesh despite the claimed memory problems. I accept that an applicant may

have difficulty recalling events, particularly in regard to details, over a span of time but in this case the variation is stark; initially in 2014 the applicant stated neither he nor his family had political associations; in 2017 he specifically stated neither he nor his father were involved in politics but he claimed to have BNP associated friends and to have attended rallies; then in 2020 his claim is that he is from a BNP supporting family who have been harassed for that reason. I am not satisfied that this is a matter of lack of recall; in the statement of claims the applicant made explicit reference to the lack of political involvement and furthermore he attributed the harassment of his father to his recent property purchase, not to politics. It is also difficult to reconcile his statement of claims account that he “was not involved in politics ... not personally affiliated with political parties” and was more “inclined” toward the BNP because it was the “lesser of two evils” with his protection visa interview account that as an active supporter as soon as he saw a BNP rally he would “run” to join the rally.

13. I accept that overtime an applicant’s account may vary in some details but these accounts are at odds; moreover, while I accept that an applicant may forget certain events or details, particularly over a span of time, I am not persuaded an applicant would fail to recall their political opinion when completing a statement of claims, and furthermore that such a memory failure would cause them to misrepresent their political opinion in that statement of claims.
14. I do not accept that any memory problem the applicant may have would account for the omission in his 2017 statement of the claims regarding his and his family’s BNP support and subsequent harassment for this reason.
15. The applicant confirmed at the protection visa interview that he was not a member of the BNP but a supporter. When asked how he supported the BNP his response was limited to attending rallies, voting and talking about the BNP. He referred to talking to leaders of the student wing, which involved [Mr A], however his explanation of this was that at the meetings he just listened and did not join in.
16. In addition to this claimed involvement the applicant claimed to have had a role in the 2009 election on election day acting as a guard and checking the bona fides of voters.¹ I am concerned that the applicant only offered this information when asked by the delegate if he had been involved in any national elections; prior to that the delegate had asked a number of questions as to the applicant’s activities and he had been provided significant opportunity to put forward such a claim, but he only did so after being asked that precise question. I am concerned that he did not advance his involvement in such a significant election day role in response to earlier general questions as to how he supported the BNP. Additionally, I have difficulty accepting the BNP would entrust such an important task to a person who was not an official party member.
17. Elections in Bangladesh have been characterised as experiencing significant electoral irregularities, including the casting of votes and sealing of ballot boxes before polling day, and the intimidation and harassment of voters at polling places.² In the context of the disruptive electoral practises each of the parties has closely monitored the electoral processes, although in 2014 the BNP effectively boycotted election day due to the violence in the lead up.³ In the context of the violent rivalry and widespread electoral corruption I do not accept the BNP

¹ The national election was held in 2008 and I consider the reference to 2009 is a minor error in the applicant’s recall

² ABC News (Australia), Bangladesh election prompt deadly clashes and allegations of vote-rigging”, 31 December 2018; International Crisis Group, “Political Conflict, Extremism and Criminal Justice in Bangladesh”, 11 April 2016, CIS38A8012646; DFAT, “Country Information Report Bangladesh”, 22 August 2019, 20190822132438

³ DFAT, “Country Information Report Bangladesh”, 22 August 2019, 20190822132438

would place the applicant, who would have been only [Number] years of age and with no apparent experience of election processes, in such a role. The BNP had members in its active student and youth leagues and these leagues were heavily involved in election related activities and I consider it implausible they would use a non-member like the applicant in this role rather than an actual member with relevant experience.

18. I accept that the applicant may have witnessed politically motivated violence and was aware of the killing of [Mr A] by the AL in 2010, such violence was widespread. But I have concerns as to his claim he was associated with members of the BNP and as such he was harmed by their political opponents.
19. In this regard I have considered the claim he was attacked in 2010 in what he believes was a politically motivated attack.
20. The delegate invited him to explain this incident in detail at the protection visa interview and his account varied in salient matters to such a significant extent that I do not accept his claim is genuine. These are:
 - In the interview the applicant described being in his home village and walking on the road talking to friends on his phone when he was surrounded by people who attacked him. In his statement of claims his account was that he was in a park with some BNP people when they were attacked by some men. In considering the variation in this aspect of his account I take note that the delegate asked if he was alone at the time he was attacked and he stated that he was.
 - At the interview the applicant stated he went to the local medical clinic to have his injuries treated after the attack, whereas in the statement of claims he described being unconscious after the attack and being taken to hospital.
 - At the interview the applicant stated he reported the attack to the police yet in his statement of claims account he stated that he did not report the attack to the police for fear of possible reprisal and because he believed they would take no action.
21. I am not satisfied that such significant variations in these accounts, particularly whether he was alone or in the company of BNP people, can be explained by memory issues.
22. When asked at the protection visa interview why he considered the attackers were from the AL his response was that he did not have any enemies and it was common for the AL to attack BNP supporters. But considering his low level of activity I am not persuaded the applicant would have been perceived as a BNP supporter and attacked as claimed, particularly noting in this account he was alone and not in company of BNP people.
23. I note the delegate's adverse findings in regard to this claimed incident and her acknowledgment these inconsistencies were not put to the applicant at the protection visa interview but I take into account he has not raised any objection to the IAA despite being advised how to make submissions to the IAA about any of the delegate's findings he disagrees with.
24. Considered overall the applicant has failed to satisfy me he was attacked in 2010. I do not accept this claim. While the applicant may have scars I do not accept these were sustained in such an attack.
25. I am willing to accept that the applicant was a supporter of the BNP and voted for the party. I am willing to accept he attended some meetings or rallies during elections and listened to

leaders speak at such events. But I find he was not a member and I do not accept he was involved in supporting the BNP at the national election. Nor do I accept his relationship with [Mr A] was more than the applicant attending meetings at which [Mr A] spoke or that his relationship with other BNP officials extended beyond attending meetings/rallies. I find this to be low level activity and I do not accept this resulted in the applicant being harassed by AL supporters. Nor do I accept his family members were harassed as BNP supporters or that they continue to be harassed on this basis.

26. I accept as plausible that his father was subject to extortion demands after purchasing some property but I note his father did not pay the demands.
27. The applicant did not advance any claim to have joined the BNP in Australia until asked specifically by the delegate at the protection visa interview if he had done so. I am surprised he did not recount this matter in response to questions as to his BNP support and what he feared may happen to him on return to Bangladesh and that he did not do so casts doubt on his account of a connection with the BNP in Australia. The applicant has not provided any independent evidence from the BNP in Australia to support this claim. When asked to detail his interaction with the BNP in Australia he stated he went to a BNP group but went “rarely”, that he was given a position of member but is no longer a member seemingly because he did not attend. In connection to his attendance he further stated the time did not suit him. That the applicant did not advance this claim until prompted by a question from the delegate, despite earlier opportunities to do so, leads me to doubt he has engaged with the BNP in Australia. There is no independent evidence before me to support his claim he attended a BNP group or joined the organisation and considered overall I do not accept the applicant has joined or engaged with the BNP in Australia.
28. The information before me shows the applicant’s personal details were released in the 2014 data breach.

Refugee assessment

29. 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

30. 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.
31. I have accepted as plausible that the applicant was bullied and teased because of his appearance. In his statement of claims the applicant stated that because of his appearance he has been discrimination against in school, at work and everywhere in Bangladesh. He described this as involving bullying, teasing and taunting by people of his own age or younger. I accept that the applicant may have felt ashamed by this behaviour but I am not satisfied that this amounts to serious harm.
32. I have accepted that the applicant's father was subject to extortion after coming to attention following a property purchase and I have considered if the applicant would face any harm for this reason should he return to Bangladesh. But I note his father has not paid the extortion demands and that despite threats he has not been harmed by the extorters. It is claimed that his parents do not go out much to avoid harm, but if the extorters intended to harm them for non-payment it is not apparent why they have not approached them in the family home. I accept that extortion is a feature of business and life in Bangladesh but taking account of his father's experience I am not satisfied that there is more than a remote chance the applicant would face extortion, or harm on this basis, should he return to Bangladesh.
33. The applicant fears that should he return to Bangladesh he will be harmed because of his political neutrality and non-affiliation to any party and for an imputed political opinion as a BNP supporter. I have not accepted the applicant's activities of attending some BNP rallies/meetings and voting for the BNP would impute him with a political opinion as a BNP supporter that would attract harm from the AL or others. Nor do I accept that there is a real chance he would experience harm due to political neutrality and non-affiliation to any party.
34. The country information reports historical conflict between the opposing political parties in Bangladesh, largely between the AL and the BNP, and more recently intra-faction conflict within the AL. DFAT reporting indicates that criminal violence and armed robbery are common in Bangladesh and in rural areas is largely perpetrated by AL members against those affiliated with the BNP. High-profile figures or senior members of the BNP and other opposition political parties may face harm in the form of politically motivated arrest and legal sanctions. Those who openly engage in opposition against the current AL government or engage in political activities and demonstrations, may face arrest, criminal charges and physical violence from security forces and ruling party activists.⁴ However I have not accepted he joined the BNP in Bangladesh or his claim to have been attacked in the past because of a BNP association. While he may continue to support the BNP I find this would be a low level as previously and would not attract adverse attention from the AL, authorities or others.
35. Furthermore, the BNP was gutted in the 2018 elections which the AL won in a landslide.⁵ The dominance of the AL has led to conflict within the party with factions of the AL competing for a share of resources. Since this the most commonly reported politically motivated violence is

⁴ UK Home Office, "Country Policy and Information Note Bangladesh: Opposition to the government", January 2018, OG9EF767910; International Crisis Group, "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646; DFAT, "Country Information Report Bangladesh", 22 August 2019, 20190822132438

⁵ Guardian (Australian edition), "Bangladesh PM Hasina wins thumping victory in elections opposition rejects as farcical", 31 December 2018, 20190110160249

largely attributed to this and the AL's complete control over state institutions.⁶ I am not satisfied that the applicant faces a real chance of harm as a result of politically motivated violence on return to Bangladesh now or in the reasonably foreseeable future.

36. I note the volatility of the security situation in Bangladesh particularly politically based violence in the lead up to elections and terrorist attacks by Islamist extremist groups.⁷ However the indications are that those who come to harm are generally those associated with political parties or Islamist extremist groups or who are part of ethnic/religious minorities or are political/civil activists. I am not satisfied that the country information supports a finding that there is a real chance he would be harmed on this basis.
37. DFAT reports the prevalence of communal violence, politically motivated violence, and criminal related violence activity and Islamist terrorist groups operating in Bangladesh and describes the security situation as 'volatile'.⁸ However I am not satisfied that the country information supports a finding that there is a real chance the applicant would be harmed in such attacks. The country information before me points to those who are members of or closely associated with political parties, civil society activists, religious minorities, extremist Islamist groups, or criminal gangs as experiencing harm.
38. I note the applicant's concern that his details were released in the data breach and that the authorities will have found out this information about him. Voluntary and involuntary returnees may be subject to a community level police check to confirm identity and Bangladeshi citizenship. The country information indicates people with a high profile, particularly those engaging with BNP activities while abroad, may be of interest to the authorities on return to Bangladesh. DFAT advises it "has no evidence to suggest that recent returnees have received adverse attention from authorities or others" but that the authorities may take an interest in high profile individuals who have engaged in political activities outside Bangladesh, including people convicted of war crimes in absentia⁹. But I have not accepted the applicant has joined or been engaged with the BNP in Australia and there is no indication he has otherwise been engaged in any political activities while he has been abroad I am not satisfied he would be of adverse interest to the authorities or others or experience any harm as a returning failed asylum seeker.
39. The country information before me does not support a finding that returnees, involuntary returnees or failed asylum seekers, face adverse attention or mistreatment on that basis. The International Organization for Migration (IOM) provides integration assistance for many returnees, including voluntary returnee failed asylum seekers, which includes on arrival assistance at the airport in Dhaka to facilitate smooth processing of the large number of returnees. In its 2014 report of its activities IOM does not indicate concern as to the safety of returnees based on being failed asylum seekers.¹⁰ The country information before me does not indicate the applicant would face harm on return to Bangladesh for reason of returning as a failed asylum seeker whose details were released in the data breach or for reason of his low level BNP association.

⁶ DFAT, "Country Information Report Bangladesh", 22 August 2019, 20190822132438

⁷ UK Home Office, "Country Policy and Information Note Bangladesh: Opposition to the government", January 2018, OG9EF767910; International Crisis Group, "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016, CIS38A8012646; DFAT, "Country Information Report Bangladesh", 22 August 2019, 20190822132438

⁸ DFAT, "Country Information Report Bangladesh", 22 August 2019, 20190822132438

⁹ *ibid*

¹⁰ International Organisation for Migration (IOM), "Bangladesh", 1 August 2014, CIS29397

40. I have found that the applicant's concerns regarding bullying and teasing about his appearance would not amount to serious harm. I have otherwise found there is not a real chance of the applicant suffering persecution on any of the bases claimed now or in the reasonably foreseeable future should he return to Bangladesh.

Refugee: conclusion

41. 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

42. 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

43. 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.
44. 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.
45. I have found that the applicant's concerns regarding bullying and teasing about his appearance would not amount to serious harm. I also find that this does not amount to significant harm. The harm feared by the applicant does not include deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment as defined.
46. I have otherwise found that there is not a real chance that the applicant faces harm on any of the bases claimed. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

Complementary protection: conclusion

47. 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.