



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

VIETNAM

IAA reference: IAA17/03314

Date and time of decision: 14 May 2018 17:14:00

Denny 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 a citizen of Vietnam. He applied for a protection visa on 24 February 2016. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 1 August 2017.

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. To the extent the applicant's submissions to the IAA contain argument responding to the delegate's decision and reasserts claims that were before the delegate, I am satisfied this is not new information and I have had regard to those matters.
4. The submission includes new information. It includes a document marked 'A' which contains a pdf file purportedly of 'photos of people from the applicant's local church in Vietnam who were beaten by thugs employed by the Vietnamese police [in] August 2017'. The submission states that the Catholics were beaten due to their demonstrations against the Vietnamese Government for pollution caused by the Formosa Company.
5. There is no suggestion the photos refer to the applicant, his family members or anyone close to him. I am not satisfied the photos contain credible personal information. The submission contends the photos are from August 2017, but the photos are undated, and no supporting documentation (such as articles or blogs) beyond the claim in the submission has been provided that would assist in determining the date, location or provide other corroboration of the claimed incident. The applicant is represented, and I consider it was within his control to provide additional context and support for these photos. I acknowledge the applicant's claim that the photos are from August 2017, but on the basis of that claim alone I am not satisfied this information was not, and could not have been, provided to the Minister before the delegate made their decision. In any event, without better context, I am also not satisfied there are exceptional circumstances to justify consideration of the new information, and I have not considered the information pursuant to s.473DD of the Act.
6. The submission also refers to a video from [July] 2017 which it claims shows political intimidation, just prior to the beatings of the Catholics from the photos. The submission indicates a video is attached to the submission, but other than the Facebook videos links, no other video is attached. I am unable to have regard to the claimed video, but in any event, the video would predate the delegate's decision. It follows that I would not be satisfied that this information was not, and could not have been, provided to the Minister before the delegate made their decision. There was no suggestion the video contained credible personal information. For the same reasons, I would also not be satisfied there are exceptional circumstances to justify consideration of the new information.
7. The submission to the IAA refers to three Facebook video links, which the applicant claims show his mother being taken by the police in Vietnam. I am satisfied these links are not new information and they were originally before the delegate. The delegate indicated that he attempted to view the videos, but received an error stating 'Sorry, the content is not available right now'. The submission contends that there was no problem with the links provided to the

Department. They have checked the links and have been able to access the videos without issue. The submission suggests it could be an internal departmental policy on viewing videos that was the reason the videos were inaccessible to the delegate. The submission indicates that the evidence was submitted before a decision was made on the visa, and therefore that it should have been taken into consideration.

8. I have attempted to access the videos via Facebook. It provided the following error:

Sorry, this content isn't available at the moment.

The link you followed may have expired, or the Page may only be visible to an audience that you aren't in.

9. The error is similar to that experienced by the delegate. The applicant and the representative were on notice that access to the videos was a problem for the delegate. It was within the applicant's control to provide an alternative copy or access to the videos instead of resubmitting the links. I am unable to access or view the claimed videos, and can give this evidence no weight.
10. On 11 December 2017, the applicant advised the IAA that he now has a son, born [in] 2017. I am satisfied this is credible personal information and I am not satisfied that this information was not, and could not have been, provided to the Minister before the delegate made their decision. While of limited relevance, I am satisfied there are exceptional circumstances to justify consideration of the new information, and I have considered the information pursuant to s.473DD of the Act.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:

- He is a Catholic from Vietnam.
- The Vietnamese government dislikes Catholics. He protested against the government and the government and the police are after him. He was beaten by the Vietnamese police. They tried to take him to prison but he was able to avoid arrest.
- He travelled to South Vietnam, but it was not safe there. The police tried to capture him in a village. He was able to escape and decided to leave the country.
- His mother has been arrested in Vietnam. She was released after the intervention of her local priest and villagers. His family has now moved home to avoid the authorities.
- On return to Vietnam, he fears he would be harmed by the Vietnamese police because of his religious and political profile. He says he will be jailed, tortured and killed. He states this will happen because of his activities against the government about the wrong things they do.

Refugee assessment

12. 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

13. 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.

Background and identity

14. The applicant has provided little in the way of documentary evidence of his identity from Vietnam. I share the delegate's concerns about his failure to provide any form of photo or official identity documentation. He was asked if he had any documents that would prove his identity. He said he did not know, but there may be documents at his home. He confirmed he believed he had a birth certificate, but he was not sure if his family still had it. He claimed the police took all the family's identification documentation, including their household register (Hộ Khẩu). I have concerns about this explanation given the importance of the household register in terms of people registering their movements and accessing services in Vietnam.
15. Putting aside his lack of documentation, the applicant has spoken Vietnamese throughout this process. He has consistently claimed to be from a village in Nghe An province. He has also consistently claimed to be Catholic and that he attended a church in the [Town 1] parish in his home area. I found his evidence about his religious belief and adherence in Vietnam and Australia was credible. He has provided an untranslated Catholic family book (Sổ Gia Đình Công Giáo), and a letter from the parish priest, also untranslated. While I cannot speak to the content of these documents, in particular the letter, it is possible to identify the applicant's name from the family book and letter, his birthday, church and parish, which are consistent with his claims.

Assessment of religious and political claims

16. While the applicant has been broadly consistent about his Catholic faith, I found his specific claims to be lacking in credibility. They were lacking in detail, inconsistent, contradictory, and in some respects implausible.
17. As put to the applicant during the visa interview, the applicant's evidence in his visa application and visa interview contradicted central aspects of his later claims. In the arrival interview, the applicant was asked why he left Vietnam. The applicant said he left because the Vietnamese

Government suppresses Catholics. He said when he was attending church, he saw people in plain-clothes threaten the people in the church. He did not know where they came from, but they were threatening people because they were praying. He said it happened at the church in [Town 1]. When asked why he left Vietnam, he said because there was no freedom of religion. He confirmed that no one in his family was politically active or involved in protests against the government. He said he had never been arrested or detained by police and they did not impact his day to day life in Vietnam.

18. In contrast, in his written statement and in the visa interview, the applicant claimed that he and his mother were politically active and had attended political protests. He claimed he has a profile with the police, was monitored and on one occasion he was severely beaten at a vigil at his church. He also claimed that his mother was arrested, and that she continues to be harassed by the police in her area and she was forced to go into hiding.
19. I accept that the arrival/entry interview is an imperfect process. It happens soon after the person arrives at the detention centre, often after a difficult and protracted journey. In that context, I consider reasonable allowance should be made for some inconsistency and contradiction in statements, unintended omissions, interpreting errors, and having proper regard to the focus of the interview – which is not a protection assessment. However, I also consider it is a relevant consideration when weighing the value and consistency of an applicant's evidence.
20. I have considered his explanations for why he did not raise these additional substantive claims at the arrival interview. I accept that the applicant was only [age] at the visa interview and I have had regard to his claim that he was scared during the process. Equally, I have also had regard to the fact that a responsible adult was present during the visa interview. The interview itself was not rushed and the interviewing officer was calm and interviewed the applicant in a friendly manner. The applicant did not appear stressed during the arrival interview. He understood the interpreter and gave evidence freely.
21. At the start of the arrival interview in May 2013, the applicant was advised that it was an opportunity to provide reasons why he should not be returned from Australia to Vietnam. He was advised that he was expected to give true and correct answers, and the applicant confirmed he would. He was cautioned that if information he gave in future interviews was different from that provided at the arrival interview, it might raise doubts about the reliability of his evidence. He was advised of the protections in place in relation to his claims and information, and that his information would not be provided to the Vietnamese authorities, other than in limited circumstances. The applicant confirmed he understood this.
22. While the applicant was asked to be brief about his claims, he was not rushed or restricted in giving his evidence to the point where he was unable to articulate them. I accept that the interview was not an opportunity to put forward his claims in detail, but it was within the applicant's control to summarise his claims in a coherent way that was consistent with his subsequent more specific claims given in his visa application. I do not find his explanations for why he failed to refer to these claims, even in a summary way, to be plausible or credible when considered against the record of the arrival interview and the other evidence before me.
23. I also consider the applicant understood his obligations in the arrival interview, the protections in place, and was given a fair opportunity to put forward his claims. I am not satisfied he was fearful of the process or the Vietnamese authorities. In this regard, I give weight to the fact that he still made claims that were against the government. He claimed to be Catholic, he claimed there was no freedom of religion, and that the government suppresses the Catholic

religion. He also claimed that he had personally witnessed the government suppress Catholics. Specifically, he said he saw plainclothes people threaten churchgoers. He also freely claimed he departed the country illegally. I do not consider that his evidence was of a person fearful of the authorities or the process.

24. The applicant was also asked specific questions about his and his family's religious and political involvement in Vietnam. He was asked if he or his family had ever been involved in any political groups. He confirmed they had not. He was asked if he or his family had ever been involved in any protests against the government. He said no. He said that his parents just worked in the local parish. He confirmed he had never been arrested or detained by the police, and that the police and other security bodies did not impact his day to day life in Vietnam.
25. While I accept the applicant was young at the time of the interview, I do not consider that adequately explains the complete omission of his claims as they relate to his own experience and activities, and that of his family. Had the applicant's claims been credible, I consider he could have briefly and unequivocally indicated he and/or his mother were politically active within the Catholic Church, that he and his mother had attended a number of political demonstrations and vigils, that he handed out political leaflets, and that on one occasion he was taken and beaten by the police because of his activities.
26. In terms of his travel and residency status in Vietnam, the applicant was asked specific questions at the arrival interview about his home in Vietnam, and his journey to Australia. The applicant said he had only one address in Vietnam, a village in [Town 2, District 1]. He then clarified that he also spent two weeks in [a town] studying [a course] in November 2012. He was asked when he started making plans to come to Australia. He said he did not know. His brother-in-law called him and they started the journey. He was asked where he was living when he left Vietnam. He confirmed he was living in his home area in [Town 2, District 1]. He was asked when he left his village to come to Australia. He said [in] March 2013. He then travelled to [another town]. He stayed in a safe house for one night. They paid and departed the country [in] March 2013.
27. That account, which was detailed, spontaneous and freely given, contradicted his later account that he left his home after he escaped from the Vietnamese Police, and that he lived in South Vietnam in hiding for four months before leaving for Australia.
28. In his written visa application, the applicant claimed for the first time that he was beaten by the police, and they tried to take him to prison, but he was able to run away. He claimed he went to see his parents, but they could not help him. He asked his friends for help, but they were afraid. He claimed they were scared they would get in trouble with the government. He moved to South Vietnam, but it was still not safe. He claimed the police tried to catch him in a village, and he was lucky to escape.
29. In his visa interview, his account changed again. He claimed he was praying at a church in [Town 1] when he was beaten. He was asked why he came to the attention of the police that day. He said they had their eye on him well before that. He was asked how he escaped. He said that his parents helped him. He said his mother took him to a local person's house. He claims there were many people around to protect him and that night she took him to South Vietnam.
30. The delegate asked the applicant how he escaped from the police beating. He explained that he was bleeding a lot from his injuries. He said the police stopped beating him and he was taken away by his mother and other people from the church. The applicant offered to show

the delegate his injury, but it was not viewed. I note no medical evidence or other supporting evidence of any injury was later provided.

31. The applicant confirmed at the visa interview that there were many people praying at the church. When asked earlier in the visa interview whether he faced any issues at his church/parish, he unequivocally stated that there had been no issues there and nothing had happened. The delegate put to him this inconsistency. The applicant said he meant normally there were no problems, but on this occasion, there was a candlelight vigil about the wrong things the Vietnamese government had been doing. The delegate again put to him that he said he had faced no issues in his local parish. The applicant said that he meant in terms of praying.
32. The delegate put to him that, based on his own evidence, the church in [Town 1] was a registered church, from an authorised religion. He was asked why the authorities would come to his registered church and target and beat him given he was a child. The applicant said he was beaten for what he did. The delegate asked what he did that was different from anyone else. The applicant said he attended the candlelight vigil and prepared for the demonstration.
33. In addition to his attendance and the police beating at [Town 1], the applicant claimed that he attended a prayer service and demonstration against the Vietnamese government's acquisition/theft of land from [Church 1]. He claims he distributed leaflets and spoke about what the government was doing. He confirmed [Church 1] was not his church, but he attended the demonstration because all Christians are considered one. He also claimed to have attended a demonstration against the government for beating people (Catholics) in [Town 3] in Nghe An in June 2012. He claimed Father [name] conducted a mass service. The police came because the mass was given without permission. The applicant was asked if the mass was at a church. He said there was no church in that area.
34. The delegate put to him that if he attended his local church (in [Town 1] parish) and prayed, he would face no issues in the country. The applicant said the police always monitored his movements. He was asked why they would be monitoring his movements. The applicant said because they did not like what he was doing. The delegate put to him that the applicant was only [age] at the time, and that he had gone with his family to a place where people were praying in an area they were not allowed to ([Town 3]). He asked why the police would monitor him because of that. He said because they believed he was not a local person, and he had come there for a different purpose.
35. The applicant was asked if he had other issues. The applicant also claimed he distributed anti-government leaflets given to him by his mother. He was asked if his mother was ever arrested. The applicant said his mother was arrested on one occasion, in around 2016. I consider that further below.
36. The applicant's claims have not been consistent or credible. I found his account at the visa stage of his escape and four months in South Vietnam vague and inconsistent in comparison to his earlier detailed evidence given at the arrival interview. I prefer that earlier evidence, which indicated to me there was no urgency to his departure, and that he had not arranged to leave the country before he was contacted by his brother-in-law. I find the applicant has not been credible or consistent about his claims to have travelled to and stayed (or hidden) in South Vietnam for a period of four months.
37. The applicant was also not consistent or credible in his evidence about his religious/political activities, or the issues he faced at the church. As above, I find the significant discrepancies between his arrival interview and his later claims undermine the credibility and truthfulness of

these claims. I also find that his written application and oral evidence at the visa interview have not been consistent.

38. In his written application, he claimed he was beaten, but managed to escape from police who were trying to take him to prison. He said his friends and family could not help him, so he escaped to South Vietnam. In the visa interview, he claimed his mother was fundamental in helping him escape the police, who had stopped beating him and did not arrest him due to the severity of his injuries. He claims the police did not intervene further due to the large amount of people around, and he was able to avoid arrest. He was taken to a friend's house and his mother took him to South Vietnam that night. I accept he was young at the time, but the inconsistencies in his account, when coupled with his earlier evidence at the arrival interview, lead me to conclude that his claims that he was beaten and avoided arrest are not credible.
39. Beyond the inconsistency and credibility issues between his arrival interview, written and oral evidence, is the plausibility of his claims. The applicant was [age] when he claimed to have attended protests/demonstrations relating to [Church 1] and [Town 3] churches, and then later at the prayer vigil at his own church in [Town 1] parish. Beyond claiming to have handed out leaflets and talked about issues, he did not claim to be a prominent figure in these demonstrations, which appear to have had many people in attendance. I also note he was not arrested, questioned or otherwise approached at the first two events, which further suggests to me he had no prominent role. When asked what he did that was different to anyone else at the third vigil at the church in [Town 1], the applicant said that he attended the candlelit vigil, prayed and prepared for the demonstration. The applicant's claimed attendance appears to be active, but unremarkable. In that context, I consider it far more likely that persons leading or speaking at the vigil, including the parish priest and other parishioners, would have been the participants that would draw the adverse attention of the authorities, not a [age] old boy who was an ordinary attendee, even if he was handing out leaflets. Beyond being vague and inconsistent, I also consider his claim that he was monitored because of his low level attendance at [Church 1] and [Town 3], and/or singled out for targetting at the [Town 1] vigil, to not be plausible.
40. At the visa interview, the applicant was asked if there were any other matters relevant to his claims. The applicant raised for the first time that he had been politically active in Australia. He explained that he would go on Facebook to talk about the Vietnamese government. He was asked what he had done specifically on social media. He said he would broadcast news when his mother would attend a demonstration, or when his mother said the truth. As an example of this, he said that his mother said no one told people to go to demonstrations, and they all attended demonstrations at their own will. He said she said these things at home, on Facebook and Radio Free World.¹ Later in the visa interview, he also appeared to indicate he may have evidence from Facebook of his or his mother's involvement in the demonstrations. The applicant was invited to provide evidence of his or his mother's activities. The applicant provided no evidence of his own political activities post-interview, or content he may have posted on his Facebook account or other social media. After the interview, in July 2017, he did provide three links to videos he claims show his mother being arrested. As discussed above, I have been unable to access these videos and can give them no weight. Beyond the videos, it was within the applicant's control to provide screenshots, printouts or other evidence of his Facebook activity. No such evidence has been provided. In the absence of such evidence, and given my other concerns, I am not satisfied the applicant has been politically active on Facebook or otherwise politically active or outspoken against Vietnam while living in Australia.

¹ I took this to a reference to the 'Radio Free Asia' online news platform.

41. When weighing everything before me, I accept he is a Catholic. Given his failure to provide other identification, corroborative documentation or translations, and given my concerns about his claims related to his religious and political activities, I have doubts about whether he is a member of the parish in [Town 1]. However, I am prepared to accept he is a member of this parish and as such I am satisfied he is a member of a registered church.
42. While I accept his religious background, I find the applicant has not been consistent, credible or plausible in relation to his claimed political or religious activities in support of the Catholic Church, his attendance at protests/demonstrations/vigils in support of [Church 1], [Town 3] or in his home parish in [Town 1], and the adverse profile and mistreatment he claims to have faced from the Vietnamese police or other authorities. It follows that I do not accept he was monitored, targetted, or beaten by the Vietnamese police. I do not consider he was at threat of arrest, and that he avoided the police by escaping to South Vietnam. I do not accept he again escaped the authorities in South Vietnam before leaving for Australia. I do not accept he is or ever was a person of interest to the Vietnamese authorities. I also do not accept he witnessed people being threatened at his church in [Town 1].
43. The applicant has consistently claimed that his family worked in the parish, expanding on that at the visa interview stating that he and his mother would go to hospitals and seek to collect babies that had died – I took this to mean that he and his mother sought to provide proper burials for babies that were not carried to term. I consider that consistent with his and his mother’s claimed religious background. However, the applicant did not claim in his arrival interview or his written application that his parents were politically (religiously) active within the church.
44. In the arrival interview, the applicant gave clear evidence that his family were not politically or religiously active, and they had not attended demonstrations or protests. In the visa interview, the applicant said he and his mother attended three protests. He also distributed anti-government leaflets given to him by his mother. He was asked if his mother was ever arrested. The applicant raised for the first time a claim that his mother was arrested on one occasion, in around 2016. The delegate asked if she went to court. The applicant said she was not because she was rescued. He said the local priest and many local people went to the police station and demanded her release. Initially the authorities did not want to release her, but then the people blocked the highway and they had no choice but to release her. The delegate put to him that they could have just arrested those people as well. The applicant said there were too many people, and the only thing they could do was release his mother.
45. The delegate asked why he would be killed, jailed or tortured for his activities, given that the authorities were prepared to release his mother, who was equally or more politically active than him. The applicant said the authorities only do those things later. When asked whether his mother had faced any other issues in the time he had been outside Vietnam, he said the police always call her, bother her and ask her to come to the police station. He confirmed she does not go. He was asked if they had ever come to collect her from her home. He said they try, but she always escapes.
46. In terms of her escapes from the police, I note the applicant said that his parents no longer work because of their age. On a practical level, given her age, I do not accept that the applicant’s mother would be able to escape the police if they came to arrest or question her, particularly if it happened on more than one occasion. On a broader level, if she was seriously considered by the authorities to be a political activist, outspoken at demonstrations or online, and against state, I do not consider she would have been able to avoid further arrest, charge, interrogation or detention.

47. When the delegate put such concerns to the applicant at the visa interview, he said his parents had moved house – around five minutes from their previous home, and closer to the church. When asked why the authorities would not seek to detain her at church, he said because there were more people there to help her. I do not accept that explanation. While it is plausible that the authorities may not seek to detain her at church given the number of attendees, I consider they could still arrest her as she travels to or from church, and/or identify her residence.
48. The applicant also claimed that his mother was active and outspoken against the government at home, online and in social media. He also claims there is a video of her being arrested on Facebook. Despite being invited to do so, the applicant has provided no evidence of his mother's political activities, whether online or otherwise. In terms of the links to the videos, I again note I have been unable to access the videos and I give them no weight. I am not satisfied his mother has been politically active or outspoken, in public or in social media.
49. Weighing everything before me, I accept his mother is a Catholic. However, I am not satisfied that she has been religiously or politically active. I am also not satisfied and do not accept that his mother was arrested or otherwise harmed. I find instead that the authorities have no interest in his mother, whether because of her religious or political activities. Were it otherwise, I consider she would have been (re)arrested, charged and interrogated. I do not accept she would have been able to avoid arrest or detention by moving house. I do not accept she has been called, harassed or otherwise mistreated by the authorities. I do not accept she is in hiding, or her and her family's identity documents have been taken from them.
50. I find that the applicant, his mother and/or family have not been politically or religiously active in relation to their faith or otherwise, nor have they ever attended demonstrations (or protests or vigils) or been outspoken against the Vietnamese government. I find they are low level Catholics who are not politically active. If the applicant were to return to Vietnam, I find he would not be politically or religiously active, whether in terms of attendance at demonstrations, or being outspoken in public or on social media. I again note that he and his family attended a registered church. I consider he would continue to be active in that church, attending mass and involving himself in the parish community, but not in any political sense. For clarity, I do not consider his activities involve any modification of his behaviour, rather they are a genuine reflection of the low level nature of his religious adherence.
51. There is country information before me about political activity in [Town 1] parish, and clashes between churchgoers from a church in the Van Thai church and sub-parish within [Town 1] and the local authorities. It is not clear to me whether this is the same church as the one the applicant attends, however I accept that a priest and parishioners from that church and/or parish have been politically active and have been involved in serious clashes with the authorities over protests against the government. Significantly, I note these clashes relate to a highly politicised event (the Formosa toxic spill) and the demonstrations and protests did not occur at the church(es) in the parish, but at government offices, and in marches to other provinces.²
52. I am satisfied the applicant, his mother and family have faced no interference in their church attendance or in their works within the parish. Indeed, outside his claim related to the vigil

² Vietnam Human Rights Network, "Nghe An Threatens Outspoken Catholic Priest, Demolishing Followers' Houses", 3 June 2017, CXC90406610221; Reuters, "Amnesty condemns police attack on parishioners in Vietnam", 24 February 2017, CXC9040663386; United States Commission on International Religious Freedom, "Vietnam Chapter - 2017 Annual Report", 26 April 2017, CISED50AD4396; UCA News (UCAN), "Catholic activist arrested in Vietnam, police beat up protesters", 23 May 2017, CXC9040668804; Radio Free Asia, "Vietnam Arrests One Anti-Formosa Activist, Issues Warrant for Another", 15 May 2017, CXC9040669945.

(which I have not accepted) the applicant gave clear evidence that he faced no issues attending his church in [Town 1] parish. The country information above also does not indicate that ordinary non-politically active churchgoers from [Town 1] parish have been prevented from practising their faith, or that they have been otherwise interfered with or harmed while attending church.

53. I accept that certain unregistered churches, and persons involved with politically active religious organisations, have been targetted and harmed by the Vietnamese authorities, including facing arrest, detention, mistreatment and harm when participating in protests.³ Equally, DFAT has observed that Catholics are able to practise freely at registered churches, and even within unregistered churches, DFAT advises of an improvement in Nghe An Province due to the increasing strength of the Catholic community and leadership.⁴ DFAT assesses that religious observance and practice only becomes an issue when it is perceived to challenge the authority or interests of the government or the Communist Party and its policies.
54. I am satisfied the applicant is not involved in an unregistered church. While I accept there is a political element within his current parish, I am satisfied he has not and will not be involved with political activities within his church/parish in the future. I have no reason to consider the applicant will be personally politically active or outspoken on his return to the country. I have not accepted he was politically active in the past. I have not accepted as credible his claims that his mother was politically active during or after his departure from Vietnam. I have not accepted his claims to have been politically active in Australia, and I found his description of the political issues he claimed to have been involved with in Vietnam were very general.
55. The country information before me does not indicate he would be imputed with any adverse political opinion or other profile simply from being a low level adherent and practitioner of the Catholic faith at a registered church, and I am satisfied he would have no adverse profile, as I find was the case for him in the past. I do not consider there is anything about his attendance at a Catholic church in Australia, or any other part of his profile (including his marriage to an Australian citizen and the birth of his Australian citizen child), his illegal departure or asylum claims (considered further below) that would change or increase his political profile on return to the country.
56. Having regard to all the circumstances, I am satisfied that the applicant would not face a real chance of being seriously harmed due to his Catholic religion, his low level religious practice and participation in the [Town 1] parish, any religious or political activities of his family, any actual or imputed political opinion whether related to his faith or not, or any other profile related to these factors.

Claims related to illegal departure

57. I accept he left Vietnam irregularly. As he holds no passport, I accept the Vietnamese authorities would determine that he left the country illegally, and that they may conclude he has applied for protection in Australian given his extended time in the country.
58. I have had regard to relevant DFAT information about illegal departures, asylum claims and other profile factors.⁵ I accept that penalties are in place for Vietnamese nationals that depart the country unlawfully, including those who leave the country without travel documents or on false passports. Fines for departing without a travel document range between VND 2 Million

³ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

⁴ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

⁵ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

and VND 10 Million (AUD 120 to 600). A fine of between VND 20 million and VND 50 million (AUD 1200 to 3000) is specified for leaving Vietnam using a false passport or equivalent.

59. In my assessment above, I have found he does not have a political or other profile with the authorities. Information from DFAT indicates that 'fleeing abroad or defecting to stay overseas with a view to opposing the people's administration' is an offence under Article 91 of the Vietnamese Penal Code. However, DFAT reports that it is unaware of any cases where this provision has been used against asylum seekers.
60. In terms of any profile on return, DFAT advice is that there is no information before it that persons who have sought asylum outside of Vietnam receive different treatment from the government for having done so (or due to an imputed political opinion), although those that have departed unlawfully may be briefly detained and fined for that departure. DFAT assesses that long-term detention, investigation and arrest is conducted only in relation to those suspected of involvement in organising people smuggling operations, and reporting and monitoring is confined to returned political activists, and not those that have only sought asylum in another country. DFAT assesses that persons who paid money to organisers of people smuggling operations are viewed by the government as victims of criminal activity rather than as criminals facing the penalties allowed in the law for departing Vietnam illegally.
61. As noted above, I accept the Vietnamese authorities may have determined that he left the country and applied for protection in Australia. However, I am satisfied he has no adverse profile and the information above indicates that persons who have sought asylum do not receive adverse or different treatment on return. I do not consider his attendance at a church in Australia, or having an Australian family, would give rise to any adverse profile or put him at a chance or risk of harm on return to the country. There is no claim he was involved in people smuggling.
62. Weighing all the information before me, I am satisfied he would not face a real chance of serious harm on the basis that he sought asylum in Australia, or that any additional profile or opinion would be imputed to him that would put him at a real chance of being seriously harmed on his return to the country.
63. As the applicant left the country irregularly and without a valid passport, I find he did so in breach of Vietnamese law. Based on the information before me, I accept he may be briefly detained and interviewed by the authorities, and be liable for a fine given his illegal departure. There is no information before me to suggest the applicant would be unable to pay any fine. The applicant is also a healthy adult, and the information before me does not indicate he has any physical or other vulnerability that would preclude a short detention during processing at the airport. Considering all the circumstances, I am not satisfied that any fine or brief detention at the airport during processing would constitute serious harm. There is no claim or suggestion he was involved in people smuggling or that he used a false passport, and I have found he has no other adverse or higher political opinion or profile. For these reasons, I am satisfied he would face no real chance of any higher penalty, such as a higher fine, additional or extended detention, or mistreatment from the authorities.
64. I accept there are risks for political dissidents and people smugglers on return to the country, but I am satisfied the applicant has no such profile, nor would such a profile or political opinion be imputed to him. I am satisfied there is no real chance of the applicant facing serious harm on return to the country, as an asylum seeker, as a person who left the country illegally, or on the basis of any other profile considered above.

Refugee: conclusion

65. Considering all the circumstances, I find there is no real chance of the applicant facing serious harm on the basis of his religion, his or his family's claimed political or religious activities, as a person who sought asylum in Australia, as a person that left Vietnam illegally, or on the basis of any actual or imputed political opinion or profile related to these factors.
66. 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

67. 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

68. 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.
69. I have found above there is no real chance of the applicant being seriously harmed on the basis of his religion, his or his family's claimed political or religious activities, as a person who sought asylum in Australia, as a person that left Vietnam illegally, or on the basis of any actual or imputed political opinion or profile related to these factors. On the same basis, and for the same reasons, I am also satisfied there is not a real risk the applicant will face significant harm upon return to Vietnam for these reasons.
70. As noted above, based on the information from DFAT, I accept the applicant may be briefly detained and interviewed on arrival and he may be fined for his illegal departure. However, I am not satisfied being briefly detained and interviewed, or fined, would constitute significant harm. It would not involve intentional pain or suffering, cruel or inhuman in nature, or be intended to cause extreme humiliation, or otherwise amount to significant harm. I have also found there is nothing in his profile that would lead him to face any extended detention, higher fine, or other penalty. I am not satisfied he faces a real risk of significant harm on return to Vietnam, whether on the basis of him being a failed asylum seeker, due to his illegal departure, or as a result of any related or other profile.

Complementary protection: conclusion

71. 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

...

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.