



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

MYANMAR

IAA reference: IAA17/03343

Date and time of decision: 24 April 2018 13:57:00

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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Rohingya Muslim from Myanmar. He applied for a protection visa on 12 January 2017. A delegate of the Minister refused to grant the visa on 4 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 submissions contain legal argument responding to the delegate's decision and reassert claims and country information already before the delegate, I am satisfied this does not constitute new information as defined and I have had regard to those matters.
4. The submission contains new general and country information. It refers to three pieces of new information: an IAA decision from 2 June 2016, an IAS GS article from September 2017, and a CBS news report from September 2017.
5. Given the date of the IAA decision, I am not satisfied this information was not, and could not have been, provided to the Minister before the delegate made their decision. There is no suggestion it contained credible personal information. In any event, while I accept the information in that decision would have relevance to this assessment, the IAA is not bound by other decisions made in this jurisdiction. Each matter turns on its particular facts and the information available. Lastly, to the extent this decision is cited in support of his claim that his parents' moved to Yangon from Rakhine when they were young, I do not consider there is anything before me that obviously contradicts those claims. In this regard, I note that I depart from the delegate's assessment in relation to this matter based on the information already before me. Weighing everything, I am not satisfied there are exceptional circumstances to justify consideration of the new information, and I am unable to consider the information pursuant to s.473DD of the Act.
6. In terms of the new articles that postdate the decision, I am not satisfied that recency alone constitutes an exceptional circumstance to justify considering the new information in this instance. To the extent that this information goes to the question of [Relative 1]'s military service, and the delegate's finding that this could not mean he was Rohingya, I note below that I again disagree with the delegate's assessment. In a more general sense, there is adequate country information before me already about the issues in Myanmar, and the serious plight of ethnic Rohingya in the country. The articles contain information not in contention in this decision and I am satisfied a meaningful assessment can be made without its consideration. Weighing everything before me, I am not satisfied there are exceptional circumstances to justify consideration of any of the new information, and I am unable to consider the new information pursuant to s.473DD of the Act.
7. The representative contends that due to errors in the delegate's decision, the IAA should seek further information from the applicant in writing or at an interview, invite the applicant to comment on matters relating to his credibility, and/or that he should be given an opportunity to present his claims in person at an oral hearing.

8. The representative also states that if the IAA seeks to rely on inconsistencies in the applicant's evidence from interviews conducted since the applicant's arrival in Australia, the applicant requests copies of the relevant information and the opportunity to comment.
9. I am not satisfied there is any information that the IAA is obliged to put to the applicant for comment in this matter. I also consider the representative's submission to the IAA addresses the applicant's concerns with the delegate's decision. I am not satisfied an interview or invitation to provide further information is necessary or required in the circumstances, nor are there exceptional circumstances to obtain any new information. In terms of the conditional request for copies of any relevant information, I consider it was open to make a formal request for any documentation to the IAA or the Department. In any event, I note a copy of the protection visa interview was provided to the applicant.

Applicant's claims for protection

10. The applicant's claims can be summarised from his application as follows:
 - He was born in [a particular year] in [a particular township] in Yangon, Myanmar. He does not have identity documents.
 - He fled Myanmar in late 2012 owing to fears of discrimination from the majority Buddhist community and persecution from the Myanmar government. He fears they will harm him if he returns to Myanmar because he is Rohingya and a Muslim.
 - The Myanmar government says that the Rohingya are illegal Bengali immigrants. He has witnessed discrimination, which has resulted in a lack of access to education, health care and employment. Rohingya people are put in refugee camps where they are monitored by the authorities.
 - His family had previously lived in a property [for] approximately 5 to 6 years. His parents had worked very hard to save the money required to purchase the property.
 - In around 2003, the Myanmar police came to their village and to their house. The Myanmar police told them they were living on the government's land. They were given one week to pack their belongings and move out of their home. They were told that if they did not move within one week, they would return and burn their home along with all their belongings.
 - His parents moved to a location that was predominantly for Muslims. His father also had to move his shop.
 - He faced discrimination at school. The other students (predominantly Buddhist) would call the Rohingya students derogatory names (e.g. Kalah). The teachers would tell other students not to make friends or associate with any Rohingya students because they were 'Kalah'. The applicant and the other Rohingya students were outcast in the school.
 - He faced constant bullying from the other students. Students would tell him to 'keep quiet' when they were asked to sing the Myanmar national anthem. He was told that he was not allowed to sing the anthem as Myanmar was not his country. The situation at school became extremely difficult and he did not want to attend school anymore.
 - His parents had to bribe the teachers in order for him to progress through the grades at primary school and high school. His tutors would also charge his parents more because

they were Rohingya. Because of this, he only attended school to [a particular year] and he could not complete his high school [studies].

- At [a particular] age, the applicant applied for a national identity card. However, when he attended the Immigration Centre, he was told by the Immigration officer that he was a 'Kalah' and he could not apply for his national ID. He informed the officer that many generations of his family had been born in Myanmar and some had even served in the army. Despite this, he was told he could not get a national ID card.
- He lived in the capital of Myanmar and left when he was relatively young. As a result, he did not receive many threats. His parents also shielded him from much of the violence, as he was so young.
- However, in 2012, he witnessed his father's friend (a Buddhist officer) warning his family that some Buddhists (the 969 Group or 'Ma Ba Tha') were killing Muslims in the area. The officer told his family not to go outside until the situation had settled. They stayed home for about a week, his father only leaving the house to get supplies.
- [Relative 2]'s house and property were stolen by the Buddhists, and he was killed by them without reason. He was trying to flee his home when a gang of Buddhists caught him and killed him. The area where his [Relative 2]'s house was located faced a lot of violence. Many of his neighbours and the applicant's relatives who were Rohingya were heavily persecuted and faced various acts of violence including burning houses, theft and bashings.
- He left Myanmar without the permission of the authorities. If he returned, he would not be accepted and would continue to face persecution. He would be put in jail. He would also face severe discrimination because he is Muslim. He would be tortured, punished, and possibly killed by the Buddhists if he returned. If the authorities find out that he had left illegally, he is fearful they will torture his family.

Refugee assessment

11. 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

12. 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.
13. The applicant has been consistent about his name, and I found his evidence in relation to his name (Muslim and Burmese) was freely given and consistent with the information before me. I accept he has been credible in relation to this aspect of his identity. I also give weight to his fluency in the Burmese language. Regardless of the assessment of his ethnicity and citizenship, I am satisfied the applicant lived his life in Myanmar, and this is his receiving country for the purposes of this assessment. I am also satisfied the applicant has no right to enter and reside in any third country.
 14. The applicant has provided a copy of his family list (household register) and a translation. The applicant claimed he had a student identification card, but the smuggler threw it away when he was travelling to Australia. He claimed he was never issued a passport. He claims other documents he had were destroyed in a house fire.
 15. In the submission to the IAA, the representative expresses concern about the delegate's finding based on his family list. The delegate finds that the applicant's parents were Burmese, because the document states their ethnicity is 'Bengali Burmese', however he also indicates he is not satisfied the document is a genuine document, noting the prevalence of document fraud in Myanmar.
 16. I accept there is a tension in the delegate's findings, but I note the applicant's submission provides no clarity of his own position as to whether the document is genuine, or was fraudulently obtained. I have proceeded on the basis that the applicant maintains it is a genuine document, apart from a discrepancy in the year of his birth to enable him to attend school, which I accept was a satisfactory explanation.
 17. The country information before me does indicate that document fraud is prevalent in Myanmar, and that Rohingya sometimes procure identity documents either by purchasing fraudulent documents or by obtaining genuine documents supported by fraudulent information and/or the bribing of officials.¹ While I accept that fraudulent documents are common, the information before me is that the family list (household register) is a very common form of official identification in Myanmar. In fact, even persons of Rohingya ethnicity were able to obtain these lists between 1955 and as late as 2005.² There are also legal consequences if a person or family does not have such a document.
 18. In terms of his family list, there are no obvious markers that the document is fraudulent. It is consistent with the applicant's narrative. In the absence of the original document, which I consider reasonable given the short time frames discussed at the visa interview, no document examination has been undertaken. Weighing the limited information before me, I find it is a genuine document. I accept this as clear evidence that the applicant and his family live in Yangon, and I also consider this indicates they were formally recognised by the authorities.
 19. The more significant question is whether this document undermines or supports his claims to be of Rohingya ethnicity. The applicant's family list is issued in 2007, presumably following the birth of his youngest sibling. As noted by the delegate, Rohingya were entitled to obtain

¹ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

² T. Gibson, et al, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535.

household lists from 1955 to 2005, after which no new household lists were issued to them, although they could be updated in case of births and deaths of those in the list.³ The delegate indicated that if the applicant was a Rohingya, he would not have been able to have this family list issued in 2007.

20. It is not clear to me whether this document is the first issuance of the family list, or a reissuance/update following the birth of his youngest sibling. Whatever the case, I note that the applicant and his family are not identified as Rohingya on this document. Instead, their race is recorded as 'Bengali +Burmese'. The column for 'foreigner' is left blank. The column for religion is noted as 'Islam' for all of the applicants. The applicant's mother and father appear to have Islamic names, whereas the children are listed by their Buddhist names. The column for citizen states 'Naing', which has not been translated. References to 'Naing' in the literature before me link it to the term citizenship and the Citizenship Scrutiny Card.⁴ I consider this is some indication that he and his family are registered as citizens on this document.
21. In order to obtain citizenship, a person must belong to one of the 135 officially recognised national ethnic groups. Under the law, the government does not officially recognise Rohingya as an ethnic group and considers them foreigners/stateless. This prevents Rohingya from applying for citizenship and related documentation. The information before me indicates there are a number of Rohingya living outside of Rakhine State, particularly in Yangon. Rohingya outside Rakhine State typically have higher incomes and better access to resources than those in Rakhine State, and are typically able to obtain identity documentation that allows them to live and work without facing the high levels of discrimination otherwise experienced by Rohingya in their day-to-day life. Typically, Rohingya in Yangon are registered as 'Burmese Muslims' on such documentation. Rohingya living elsewhere in the country, such as Yangon, do not publicise their ethnicity.⁵
22. In order for the applicant's parents to have obtained citizenship, they must belong (or have claimed to belong) to one of the 135 officially recognised national ethnic groups.⁶ I consider the fact the family lists indicates they are citizens, Bengali Burmese, Muslims, and not foreigners, undermines his claims to a stateless Rohingya. However, I also accept that some Rohingya in Yangon have registered as 'Burmese Muslims' to obtain citizenship or other documentation. While not advanced by the applicant, I have weighed this possibility when assessing his evidence.
23. Beyond the matters discussed above, there are a number of other factors that support a finding that the applicant has citizenship in Myanmar and is not stateless or Rohingya as claimed. At the visa interview, the applicant was asked by the delegate if he held any of the different types of coloured identification cards used in Myanmar. The applicant claimed he applied for a pink card, but was denied one because they claimed he was ineligible as he was not Burmese. He recounted the day when he intended to apply. He detailed an incident involving a Burmese man in front of him who faced serious barriers to applying for a pink card, and when the applicant eventually got to the front counter, he was told not to bother.
24. The delegate considered the fact that the applicant applied for a pink card undermined his claims to be a stateless Rohingya. The representative has contended that the applicant's

³ T. Gibson, et al, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535.

⁴ T. Gibson, et al, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535.

⁵ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28; T. Gibson, et al, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535.

⁶ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28; T. Gibson, et al, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535.

reference to a 'pink card' was meant more colloquially, not specifically in relation to the pink card that is issued to those with full citizenship.

25. I do not accept that submission. The applicant clearly stated that he had not been issued with any of the other coloured cards, only providing additional evidence when asked about the pink card. The applicant also clearly answered that he had not applied or held any of the other coloured cards, and discussed other types of card, including the older three-fold-card (the NRC). I do not accept there was any confusion about the different categories and colours of card, or that he referred to the 'pink card' colloquially. The applicant's account during the visa interview was unequivocally referring to a Burmese Buddhist who was applying for a pink card, but faced barriers due to his darker skin tone. The applicant's point in relation to this story was that the man spoke in Burmese and recited the Buddhist prayers, and was obviously eligible for the card, yet even he was denied.
26. According to the 1951 Resident Registration Rules, National Registration Cards (NRCs) were provided to every resident except foreigners. Following changes in the citizenship law in the 1980s, the government issued full Myanmar citizens with Citizenship Scrutiny Cards (CSCs, also known as 'pink cards'), naturalised citizens with Naturalised Citizenship Scrutiny Cards (NCSCs or 'green cards'), and associate citizens with Associate Citizenship Scrutiny Cards (ACSCs or 'blue cards'). Non-citizens were typically issued with Foreign Registration Certificates. In 1995, authorities began issuing Rohingya with Temporary Registration Cards (or 'white cards'), which had previously been issued temporarily to people who had lost their NRCs. In 2015, then President Thein Sein declared white cards invalid, thus removing the only formal documentation available to Rohingya.⁷
27. I am satisfied the applicant was applying for a pink card, namely a CSC and a document only issued to eligible citizens of Myanmar. I accept he may have faced barriers in applying for the document. The country information before me confirms widespread corruption throughout Myanmar and credible reports of authorities discriminating against people from Muslim groups, but DFAT assesses that these incidents represent informal, societal discrimination by mostly Bamar⁸ public officials and do not represent official government policy.⁹ I find that if the applicant was denied a pink card, it was because of discrimination and/or corruption, not because he was a stateless Rohingya, or he was otherwise ineligible for the document. I consider his intention to apply for a pink card goes against his claims to be stateless and Rohingya. Were it otherwise, I consider the applicant would not have sought to apply for a CSC, but instead would have sought to apply for an alternative card, or not at all.
28. A further factor in this assessment is the applicant's evidence in relation to his claimed ethnicity and religious background.
29. The applicant spoke about his Islamic faith, discussing the different types of prayer he did at mosque. The applicant volunteered that he is not the most religious person, but claimed that he still attends mosque semi-regularly. When discussing Yangon, the presence of a mosque in his local area was one of the first points of focus for him. I found his evidence was confident and freely given, and I accept he is a Muslim as claimed.
30. In the submission to the IAA, the representative expressed concern about the delegate's assessment of the applicant's ethnicity from his facial features. In terms of the applicant's

⁷ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28; T. Gibson, et al, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535.

⁸ The Burmese-speaking, and principally Buddhist, ethnic majority.

⁹ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

ethnic appearance, I have limited evidence before me beyond the photos on file. Moreover, the evidence before me is that identity in Myanmar is complex, involving elements of race/nationality/ethnicity, religion, language and geographic location. Different members of the same family may identify as belonging to different races, and people's officially recognised race or religion may be different to how they self-identify. Marriages between different ethnic groups are common, particularly between people who are of different ethnicity but share a religion.¹⁰ In that context, I accept that basic physical markers of identity may be helpful in assessing ethnic identity, but I consider such an assessment should be approached with caution. In this case, I have very limited information before me, and I give his appearance no weight in my assessment of his religion, ethnicity or citizenship status.

31. While I give that factor no adverse weight, the applicant's personal evidence in relation to his claimed ethnicity was concerning. A key element in the assessment of the applicant's ethnicity relates to his language ability. The applicant spoke Burmese throughout this process, as well as showing remarkably good English. The applicant grew up in Yangon, and attended school until [a particular year]. Outside of his family, I expect his peer group spoke Burmese, as would he have needed to speak Burmese at school and in everyday life. I consider it understandable that he would be fluent in Burmese and he would have a preference to speak in that language. I draw no adverse conclusion from that finding.
32. However, I have concerns about his second language. The applicant said he could speak Rohingya, but he was not fluent. While his parents could speak Burmese, they were not fluent in the language. He claimed he spoke Rohingya with his parents and he could understand everything his parents say. The delegate asked the applicant to demonstrate his Rohingya language skills. He asked the applicant to say the phrase "What is your name?". The applicant paused for some time, but did not translate the question. Later in the interview, the applicant indicated he was ready to try again. The applicant claimed to have said 'how are you?' and 'what's your name?' in the Rohingya language. The delegate put to him that he had claimed that Rohingya was his second language, but he struggled to speak in the language. The applicant said that he was not used to speaking the language. He claimed he would speak Burmese at school. The delegate put to him that at home he spoke Rohingya with his parents. The applicant confirmed they know Burmese, but they speak Rohingya.
33. The applicant claimed earlier in the visa interview that he continued to speak with his parents weekly, presumably in the Rohingya language. I accept that he may have been nervous and unprepared to speak Rohingya in the visa interview, however given his earlier claims to understand and speak the language at a good level, I found his inability to put forward even basic greetings troubling. In this regard, I note he spoke in English through a significant part of the visa interview, and did so with confidence.
34. The applicant was asked about Rohingya culture. He said there was not much in the way of Rohingya customs. He said Rohingya do not have a traditional dress, but they wore the Burmese traditional dress. He said he did not know what to mention about his culture. He asked about the history of the Rohingya. He said that Rohingya do not come from Bangladesh, but have lived in the country for many generations. He claims even if they show documents, the government does not accept them. He did not know exactly why, but considered it was related to the presence of Rohingya across the border between Myanmar and Bangladesh. He said they had a similar language, but it was in fact very different.

¹⁰ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

35. The applicant provided a reasonable account of the situation faced by Rohingya Muslims in Myanmar. However, his evidence when asked about Rohingya culture was limited – he provided no clear examples of the culture, its dress or its food – simply stating that they dress the same as Burmese. The evidence before me is that Rohingya living in Yangon live discretely without publicising their ethnic identity. As the applicant grew up in Yangon, this could potentially explain his limited evidence. However, while not determinative, I found his lack of any persuasive detail about his ethnic identity concerning, particularly given the prominence of his ethnicity to his claims.
36. However, I consider such concessions cannot be made about his claimed language ability. I consider it reasonable the applicant would prefer to speak Burmese if he grew up in Yangon and was educated in that language. However, he claimed to speak Rohingya at a good level, and with some frequency. He claims he speaks to his parents in the language, and that he spoke to them on a weekly basis. If his evidence about his language ability was true, or had remained untested, it would potentially have been a strong indication that he was ethnically Rohingya. However, the delegate elected to test his skills – in what I consider was a simple, informal and reasonable way. In that context, I find his limited ability to demonstrate he could speak Rohingya, in simple and common forms, undermines his claims to speak the language and his claims to be from a Rohingya family.
37. The applicant claims his family moved from [City 1] in Rakhine when they were young. When asked how they were able to move from [City 1] to Yangon given the restrictions on movement for Rohingya in Rakhine, he said that it was not so strict back then and people could pay (bribes) to move around the country. The applicant also claimed [Relative 1] was Rohingya and had served as a soldier in the Burmese Army, presumably many decades ago. The delegate indicated in his decision that he did not accept either account was plausible given the restrictions on Rohingya owning property, moving and residing in certain townships, or serving as government officials.¹¹ The country information relied on refers to restrictions in place for Rohingya as at 2011/2017, and trace the restrictions in place that arose following the implementation of the citizenship laws in 1982. I note that many Rohingya had citizenship or citizenship certificates prior to the law change, but were forced to reapply after the changes to the law in the 1980s – often fruitlessly. While I accept there would have been historical ethnic tensions when his parents were young, I do not accept the applicant's claims as they pertain to his parents' movements to Yangon, or his [Relative 1]'s service, are necessarily inconsistent with that country information. I consider his responses to the delegate were plausible, and I give these factors no adverse weight.
38. In terms of his past claims related to schooling, the discrimination faced by him and his family, bribery, and religious/ethnic violence in Yangon, [Relative 2]'s death, and his family's past property issues, and while I have some concerns about his claims, I note they are not obviously inconsistent with his claims to be Rohingya. Equally, though, they would also not be inconsistent with him being a non-Rohingya Muslim in Yangon. I give his past claims no adverse weight in the assessment of his ethnicity.
39. While I accept that aspects of his claims are broadly consistent with his claims to be a stateless Rohingya living in Yangon, when weighing all the evidence before me, in particular his evidence as it relates to the information on his family list, his claims to have applied for a pink card (open only to full citizens), his limited knowledge of his Rohingya culture, and his unpersuasive Rohingya language claims, I am not satisfied the applicant is of the Rohingya ethnicity, nor am I satisfied he is stateless. I consider his family list is a genuine document, and

¹¹ Daisuke Yoshimura (ACCORD), "Myanmar: COI Compilation", Red Cross/ACCORD, 1 October 2011, CIS21832.

correctly reflects his and his family's legal status in Myanmar. I am not satisfied the applicant or his family obtained citizenship as Rohingya, whether informally or otherwise. I find instead that they are Burmese Muslims from Yangon, that they are from one of the ethnic groups that is recognised under the law and eligible for citizenship, and that he is a national and citizen of Myanmar.

40. As I do not accept his claims to be a stateless Rohingya, I do not accept any of the harm or discrimination he or his family may have faced in the past was related to that profile. As the Rohingya population in Yangon is discrete, I do not consider there is any basis for him to be imputed with the profile of a stateless Rohingya should he return to this city. I find there is no real chance of the applicant facing serious harm on the basis that he is stateless and/or has no nationality/citizenship, including in his return to the country. As I do not accept his claims to be Rohingya, I find there is no real chance of him facing serious harm on that basis.
41. While I have found the applicant is a national and citizen of Myanmar, that finding does not resolve his claims relating to his religion. In terms of his religious background as a Muslim, I accept there is a high level of anti-Muslim sentiment in Myanmar, but note DFAT assesses this is particularly the case *outside* the major cities. It also confirms, consistent with the applicant's claims, that Buddhist nationalist groups such as Ma Ba Tha and the 969 Movement are vocal and influential advocates of discrimination against Muslims, and have advocated for boycotts on Muslim-run businesses. While there are currently no legal barriers to government employment for non-Buddhist citizens in Myanmar, Muslims and Christians are rarely promoted to senior levels in government, the military or the police. Discrimination is less severe in the professional services. Muslims and Christians occupy senior positions in professional fields such as medicine, finance and legal services.¹²
42. Muslims outside of Rakhine State can generally access a similar level of government services to other ethnic groups. As above, while there are credible reports of authorities discriminating against people from Muslim groups, DFAT assesses that these incidents represent informal, societal discrimination by mostly Bamar public officials and do not represent official government policy. While there have been instances of violence between religious groups in some villages, DFAT advises that societal violence between Muslims and Buddhists has not occurred in every town with a Muslim population in Myanmar, nor does it occur on a daily basis. Credible sources have told DFAT of Muslim and Buddhist communities that are mutually dependent for trade and other livelihood purposes and that generally live together without violence. Muslim communities in major cities generally live peacefully. DFAT assesses that Muslims outside of Rakhine state experience moderate levels of societal discrimination and low levels of official discrimination. DFAT further assesses that Muslims outside of Rakhine state face a low risk of societal violence on a day-to-day basis
43. DFAT advises that some Muslims outside of Rakhine State belong to ethnic groups that are among those recognised under the Constitution. I have found above that this is the case in relation to the applicant. According to DFAT, these groups do not face significant restrictions on access to citizenship, and therefore enjoy a greater level of formal legal protection from discrimination.¹³ I consider this analysis would extend to the applicant's circumstances.
44. The applicant was quite detailed in his evidence about the trouble he faced in school and when dealing with the authorities. I accept the applicant experienced bullying and teasing and was called 'Kalah', that his family had to pay bribes for his schooling, and that Buddhist students

¹² DFAT, "DFAT Country Information Report - Myanmar - January 2017", 10 January 2017, CISED50AD28.

¹³ DFAT, "DFAT Country Information Report - Myanmar - January 2017", 10 January 2017, CISED50AD28.

were given preference in classes and in tutoring. Outside of the school context, I accept he and his family likely faced low or moderate levels of discrimination from local Buddhists or Bamar because of their religious background. I accept he may have faced informal, official discrimination or general corruption from Bamar public officials, for example, when he sought to apply for his identification documents.

45. However, I am satisfied the discrimination he faced in the past, did not prevent him from attending school. I note he completed up until [a particular year], and I consider his family's decision to finish his studies was principally a financial one. Even if it related to bribery and corruption, the information before me indicates this is endemic in the country.¹⁴ I am prepared to accept his family had their property acquired when he was young, but based on his evidence I am also satisfied they found a home in a Muslim township in Yangon, and that his father ran his own business. I am not satisfied that he or his family were prevented from finding work, or having a home. I accept he was prevented from applying for a pink card on one occasion, but I am not satisfied he is ineligible, or that he will be unable to obtain documentation on return to the country. I am satisfied the applicant and his family did not face discrimination, harassment or other harm that would constitute serious harm when he previously lived in Yangon. I consider that is consistent with the country information before me about the situation for Muslims.
46. Given his ties to the city, and the fact that his family continue to live there, I accept the applicant would return to live in Yangon, and that he would seek to find work, study and accommodation in the city. Given the country information before me, I accept the applicant would face a moderate level of societal discrimination and low levels of official discrimination on the basis of his religious background.
47. If he returned to Myanmar, I accept any discrimination he may face would be difficult and a frustration, and that he may not be able to find work in some official positions (e.g. with the government and police). However, based on the reports before me, and having regard to his past experiences, I am not satisfied such discrimination would threaten his ability to find employment overall, that he would be denied access to school and basic services, that it would threaten his capacity to subsist or earn a livelihood in the country, that he would be prevented from practising his faith, or that it would involve discrimination or harassment or other harm that would otherwise constitute serious harm.

In terms of violence towards Muslims, there is evidence of this in the country information, at least in some areas in the country. However, I have concerns about the applicant's evidence as it pertains to Yangon, serious religious violence and the death of [Relative 2]. The applicant claimed in his written statement that [Relative 2] was killed, and that his property was taken. He claims that violence had escalated from a Buddhist extremist group (Movement 969), and they were killing any Muslims in the area. His family was advised not to go outside of their home until the situation had settled, which was around a week. He said he was shielded from the violence by his parents because of his young age. The applicant said that [Relative 2] was killed without reason, while trying to flee his home.

In the visa interview, the applicant made only brief reference to this claim, saying that he saw [Relative 2] die, as well as other Rohingya Muslims. In contrast to his evidence about his schooling and his application for a pink card, his claims about [Relative 2] and violence in his area were not a prominent part of his claims, lacked detail, and what limited information he did provide was inconsistent. He had not previously claimed to have witnessed the death of

¹⁴ DFAT, "DFAT Country Information Report - Myanmar - January 2017", 10 January 2017, CISED50AD28

[Relative 2], or the killing of other Rohingya Muslim men. On the contrary, he had claimed in his application that he was shielded from the violence by his parents.

48. The violence he is describing is more emblematic of that faced by Muslims and Rohingya outside of Yangon, notably in Rakhine State, but also in other areas, such as Meiktila. While the Buddhist extremist groups do exist in Yangon, and serious ethnic and religious violence has arisen in some parts of the country, the information before me does not indicate that the religiously-motivated violence claimed by the applicant has been or is a feature of the security environment in the capital, or that it involves the level of violence or frequency claimed by the applicant.¹⁵ Other advice indicates that non-Rohingya Muslims in Myanmar, specifically in Yangon, generally live in harmony with the Buddhist Myanmar people.¹⁶
49. Given the inconsistency and lack of detail in the applicant's claims about the killing of [Relative 2] and killing of other Rohingya Muslims in Yangon, and the lack of supporting country information, I do not accept [Relative 2] was killed in religious or ethnic violence in Yangon. I consider this is an embellishment of his claims intended to exaggerate the risk to the applicant and his family living in the city. I consider it plausible his family was advised by a Buddhist officer to stay inside during inter-religious clashes in the city back in 2012/2013, but based on the latest information from DFAT, I am not satisfied this reflects the current and ongoing security situation in the city for Muslims.
50. Weighing everything before me, including in a cumulative sense, I consider that any discrimination he may face on the basis of his religious background would not constitute serious harm, and I am satisfied there is not a real chance of him facing serious harm on the basis of his religious profile. In terms of other physical harm from the authorities, the military, and Buddhist extremists, I give weight to DFAT's assessment that Muslims outside of Rakhine state face a low risk of societal violence on a day-to-day basis. I consider the prospect of the applicant facing serious harm on the basis of his religious background cannot be completely discounted, but in the context of his home area in Yangon, and given his otherwise low profile and citizenship status, I consider the chance the applicant would face physical or other serious harm for these reasons is low level and remote. Looking to all the circumstances, I am satisfied the applicant's fear of persecution for these reasons is not well founded.
51. The applicant claims to have left the country illegally and without a passport. I have accepted the claim that the applicant was denied a pink card, at least at some stage, and I accept that he may not have held a passport. I have no reason to doubt that he left the country illegally. If that is the case, I accept he did not hold a passport.
52. In terms of his illegal departure, DFAT confirms that returnees to Myanmar who departed the country illegally are technically subject to up to five years imprisonment for having illegally crossed a border. DFAT understands that this provision has not been enforced in recent years. For example, in March 2015 a large number of migrant workers were returned to Myanmar from Malaysia, some of whom had departed Myanmar illegally. The Myanmar Government reached an agreement with the Malaysian Government to allow their return, and the workers gave their consent. The workers were processed in Yangon, and the government provided them with 10,000 Myanmar Kyat (approximately USD 8) to cover transportation costs back to their homes.¹⁷

¹⁵ U.S. Department of State, "Country Report on Human Rights Practices for 2013: Burma", 1 February 2014, CIS27403; DFAT, "DFAT Country Information Report - Myanmar - January 2017", 10 January 2017, CISED50AD28.

¹⁶ T. Gibson, et al, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535.

¹⁷ DFAT, "DFAT Country Information Report - Myanmar - January 2017", 10 January 2017, CISED50AD28.

53. I have found the applicant is a national of Myanmar. However, I accept he departed the country illegally. However, in view of the country information before me, I am not satisfied there is any real chance of the applicant or his family facing serious harm on return to Myanmar, on the basis that he may have left the country illegally, or on the basis of his claimed profile, which I have not accepted.

Refugee: conclusion

54. 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

55. 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

56. 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.

57. I have accepted the applicant may face low and moderate levels of official and societal discrimination on the basis of his religious profile. I have also found that any discrimination he may face on the basis of this profile would not amount to serious harm. As noted above, the information before me indicates that discrimination is at low and moderate levels, would not involve physical harm, that he would not be threaten his ability to find employment overall, that he would be denied access to school and basic services, that it would threaten his capacity to subsist or earn a livelihood in the country, that he would be prevented from practising his faith, or that it would involve discrimination or harassment or other harm that would otherwise constitute serious harm, or involve serious discrimination or harassment that would amount to serious harm.

58. While I accept that if the applicant were exposed to low or moderate levels of societal or official discrimination it would be challenging and frustrating for him, as I expect it was in the past, I do not accept it would amount to the death penalty, or result in an arbitrary deprivation of life, or torture. Having regard to the applicant's circumstances, including his past experience in living in Yangon, and the prevailing country information, I do not accept that such discrimination would involve pain or suffering that is cruel or inhuman in nature, or severe pain or suffering, or would be intended to cause extreme humiliation, even in a cumulative sense. It

follows that I do not accept that any discrimination he may experience would constitute significant harm.

59. I have found the applicant is not a stateless Rohingya, and would face no chance of harm on the basis of such a profile. Beyond the issue of discrimination, I have found above there is no real chance of the applicant facing serious harm on the basis of his religious profile, because he left the country illegally, or any other related profile. For the same reasons and on the basis of the same information,¹⁸ I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Myanmar, the applicant will face a real risk of significant harm.

Complementary protection: conclusion

60. 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.

¹⁸ *MIAC v SZQRB* (2013) 210 FCR 505

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.