



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH

IAA reference: IAA17/03652

Date and time of decision: 12 June 2018 18:40:00

A Harrison, 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. On 18 May 2016, the referred applicant (the applicant) applied for a Safe Haven Enterprise (subclass 790) Visa (SHEV). The applicant claimed to fear persecution from the Awami League because he refused to join them.
2. On 22 September 2017, a delegate of the Minister for Immigration and Border Protection refused to grant the applicant a SHEV because she found he did not have a well-founded fear of persecution, nor is there a real risk he will suffer significant harm if he is removed to Bangladesh.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 15 October 2017, the IAA received a submission from the applicant and the majority of it addresses the delegate's decision and findings. As such, it may be regarded as argument rather than 'information'. I have had regard to those elements of it.
5. However, the submission also contained new information about the applicant's claimed involvement in Jamaat-e-Islami. The new information expands on the applicant's existing claims about his involvement in, and commitment to, Jamaat-e-Islami, and how the Awami League attacked him because they did not like his activities with Jamaat-e-Islami.
6. I am not satisfied this new information could not have been provided before the delegate made her decision, or that it is credible personal information which was not previously known, and had it been known, may have affected consideration of the applicant's claims. The applicant first raised his claims about his and his father's involvement in Jamaat-e-Islami during the SHEV interview. The applicant was given the opportunity during the SHEV interview held on 28 June 2017, to give information of this type, when he was being assisted by a Bengali interpreter, and being asked questions about his claims involving Jamaat-e-Islami, but he did not do so. The new information he has given includes a statement that he can confirm he has always been an active supporter of Jamaat-e-Islami Bangladesh, he carries Jamaat-e-Islami ideology in his heart so deeply that he cannot realise he is carrying the Jamaat-e-Islami ideology, and he follows the ideology in his everyday life. If this was the case, I expect the applicant's account of his beliefs, his role, and the purpose of Jamaat-e-Islami during the SHEV interview would have reflected these new claims, when asked various questions about it, but the information he gave was superficial. The applicant has not satisfied me that s.473DD(b) is met. It is also not evident that there are any exceptional circumstances to justify considering this new information.
7. I have decided to get new information. The new information is the Department of Foreign Affairs and Trade (DFAT) country information report on Bangladesh, dated 2 February 2018,¹ which was published after the delegate made her decision. This report provides more recent information on the situation in Bangladesh than DFAT's July 2016 report, which the delegate relied upon. I am satisfied that exceptional circumstances exist to justify considering the latest DFAT report.

¹ DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

Applicant's claims for protection

8. The applicant's claims have varied considerably over time. They can be summarised as follows:
- He is from [a town in] Lakshmipur district, Bangladesh. His mother, father [and siblings] live in Bangladesh. One brother is in [another country], [other] brothers are in [another country].
 - His family were not directly involved in politics, never joined any political group, and never supported any specific group.
 - His family is religious, they are Muslim, so they wanted Jamaat-e-Islami to form government, but they did not like politics.
 - His father was [a member of] JI, for as long as he can remember.
 - Before the 2008 election all the political parties wanted them to join their party. They threatened his father when he went to prayer, and sometimes threatened his siblings. Several times his father and all of them were tortured and politically pressured.
 - The Awami League won the 2008 election, and then Awami cadres came to their house and said if they did not join them they would kill them. They went to the police who did not listen to them.
 - They did not join any party, they continuously refused. So they increased their pressure on them.
 - He got involved with Jamaat-e-Islami after the 2008 election. He used to serve visitors from other mosques, help organise people to go to other places, villages and mosques, he distributed money from his father to people for travel and instructed people on how to spend it. He did this until he left Bangladesh.
 - He was involved with the Bangladesh Nationalist Party (BNP) politics. He was the victim of political harassment. He got death threats from local Awami League workers. They tried to destroy all opposition party leaders, active workers and supporters. They tried to kill him several times.
 - In 2012, when returning home from his [workplace], he was kidnapped by a group of cadres and ill-treated. He was released after his mother paid a huge ransom.
 - One night in 2012, when returning home from Lakkhipur Sadar (from a BNP meeting) he was attacked by a group of Awami League cadres who beat him nearly to death and left him on the foot path. He was admitted to a private clinic for seven days. Another time they attacked them during their peaceful party rally, and they beat him and left him on the road.
 - He moved to Dhaka, but some of the Awami League workers there identified him. They started to threaten to kill him.
 - In February 2013, he left Bangladesh for Australia because his father decided he should otherwise he would have to join them, and he did not want to join politics.
 - If he is returned to Bangladesh he will face imprisonment, torture and death. The Awami League is still in power. He will be harmed and mistreated by the Awami League government (which includes politicians, workers and supporters), which has the illegal support of the police. Awami League party members harass opposition party members.

It will be the same as before, he will lead an insecure life, he will be pressured to join them, and if he refuses he might be killed.

- He will not be protected by the state, he cannot relocate to another area of Bangladesh because wherever he goes he will face the same problem.

Factual findings

9. I accept that the applicant is a citizen of Bangladesh based on the identity documents he provided, and that he is a Muslim.
10. There are significant contradictions in the information given by the applicant from the time of his arrival interview on 17 April 2013, and throughout his SHEV application process, from: not being involved in any political group although his family were pressured to join; nothing happening to him personally; to being involved in two different political groups, being kidnapped on one occasion, and beaten and left for dead on another occasion, both times by the Awami League.
11. In April 2013, about a month after he arrived in Australia, the applicant participated in an arrival interview in which he said his family was not involved in any political groups in Bangladesh, although his father was a very religious person. The Awami League tried to force them to join their party, and sometimes the BNP would approach them to join. Three months before the arrival interview, his father was physically assaulted (minor injury) by the Awami League, and his [brother] argued with them and then had to move to Dhaka. His father was too old to be involved in politics, he is a peace loving man, so his father did not join, and he did not want his sons to join politics, so none of them joined. The general political situation in Bangladesh was very bad. His father suggested he leave the country. Nothing ever happened to him specifically, although once, less than three months ago, he was asked by a member of the Awami League to join them, and he said he would decide at the time of the election. Because he is Muslim he would cast his vote for Jamaat-e-Islami because they would make the law according to that party.
12. In May 2016, in his SHEV application, in answer to questions 89 to 96, the applicant stated again that his family never joined any political group, never supported any specific group. He then went on to say that this is why they were always the target of all groups who were threatening them to join their party, and several times his father and all of them were tortured and kept under political pressure. Then the applicant contradicted this statement and said that he was with the BNP politics. He was the victim of political harassment. He got death threats from local Awami League workers. They tried to destroy all opposition party leaders, active workers and supporters. They tried to kill him several times. Once they beat him mercilessly on the way home from a party meeting and another time they attacked them during their peaceful party rally, and beat him and left him on the road.
13. In a statement (undated) emailed to the delegate by the applicant's agent on 26 June 2017, two days before the SHEV interview, the applicant again claimed not to have been involved in politics and that his family did not like politics. In this statement, the applicant said he did not mention previously the claims he made above because he did not understand the criteria for the protection visa, and he was scared to tell the facts. The applicant did not distinguish which claims were new, and it is not clear which was new, or of what he was scared. Notably, he has repeatedly claimed, for three years, not to have been involved in politics. There is no mention in the statement of any involvement by the applicant with the BNP, neither is there any mention of his subsequent claim to be involved with Jamaat-e-Islami.

14. In the SHEV interview the delegate said she received his statement the day before and asked the applicant if it had been read back to him in Bengali, and he said yes. She then asked if his SHEV application, and she referred to relevant pages, had been read to him, and he said this one, maybe not. The delegate said the information was just a little bit different, so the interview was his opportunity to tell her why he wanted to stay in Australia, what his claims for protection were.
15. The delegate asked why he wanted to stay in Australia. The applicant spoke about his father's involvement in Jamaat-e-Islami politics. He said his father goes to the mosque five times a day, he invites other people to go to the mosque, and he was working for Jamaat-e-Islami, which other people did not like and they always clashed with them, and that was the cause of all trouble. At some point, his father gave him responsibility to look after some of his father's political workload to help him, and so he got involved, and during those times there were confrontations, beating and fighting, although he was not involved in the fighting. Later his brother got involved with this fighting. When asked when his father got involved, the applicant referred to his grandfather and Jamaat-e-Islami, his father going to the mosque and recruiting others to go to the mosque. He said he was [a member] of the village for Jamaat-e-Islami, but he took instructions from others in Jamaat-e-Islami, from a bigger unit like a council, they had a leader who instructed his father. He said his father had [a title] as long as he can remember. He worked under his father's instruction, and he became involved with Jamaat-e-Islami, formally speaking, after the 2008 election. He was not much involved in the 2008 election. His role with Jamaat-e-Islami involved serving people who came from other mosques or other places to their place, and helping organise groups of six to ten people to go to other villages and mosques. He would instruct them on who they would be meeting, and distribute money from his father to cover shortfalls in travel expenses. Sometimes he went with them if it was nearby.
16. The delegate asked what the purpose was for bringing these people to the mosque, and the applicant said basically religion, they are teaching religion to the people and the importance of attending the mosque. He said he did this until he left Bangladesh.
17. When asked if he ever had any problems with the BNP, the applicant said there are three groups, and the Awami League and the BNP asked them to join with them. He said they both had camps in the area and would call them and ask them to join them, and they put his name there, and his father strongly instructed him not to go there because those people are involved in politics and they are always involved in criminal activity and violence, which he would not want to get involved in.
18. When asked if he ever had any incident with the Awami League, the applicant said his father was attacked and beaten one day in mid-2012 when he went to the marketplace. His father came home, and he and his brother went to the marketplace and beat the two Awami League members who beat their father. He said the reason his father was beaten was due to a long standing dispute, a feud, they were always calling them, since before the 2008 election, asking him and his father to join them and slowly this dispute grew.
19. He also said he was kidnapped around 10pm one night when walking home after [work], by members of the Awami League, who took him to a small club house and held him for 24 hours and beat him, and released him after his family paid a ransom. When asked why his written statement described this incident as having happened in 2012 and him being held for a week, when he just said 24 hours, the applicant said one week was a mistake, it was 24 hours. He also said it was at the end of 2011 that this happened. After he was released, they continued to pursue and harass his family and there were many confrontations. After he beat

the people who beat his father at the marketplace, he did not live at home for a few months, he lived near his employer, and sometimes he slept in the bush, sometimes at his employers' home. The applicant said incidences with Awami League are ongoing.

20. In the SHEV interview, the applicant did not mention the claims made in his May 2016 SHEV application about his involvement with the BNP, that he was a victim of political harassment, or he got death threats from local Awami League workers. They tried to destroy all opposition party leaders, active workers and supporters. They tried to kill him several times. He did not mention the claim that one night in 2012, when returning home from a BNP meeting he was attacked by a group of Awami League cadres who beat him nearly to death and left him on the foot path, or the claim that another time they attacked them during their peaceful party rally, and they beat him and left him on the road. The applicant did not raise these incidences in connection with the BNP, or otherwise. The applicant's only mention of the BNP during the SHEV interview was in relation to being continuously asked to join them, and he said he had no incidents with them.
21. The applicant said that in 2012 they tried to complain to the police about the Awami League, but the police would not take a formal complaint. A police officer told the applicant and his family that it would be better to go with them, and try to settle things amongst themselves. He said they went many times to the police, once after he was kidnapped. He tried to get his father to get a general diary entry from the police about these matters, to evidence his claims, but the police asked for a vast sum of money, a bribe, to do this. So he does not have any evidence from the police. He said his father has also sold his land to send his brothers overseas to stay safe.
22. In the SHEV interview when asked why he did not give any of this information in his arrival interview, he said those stories are not good stories in a general sense. If he said this kind of thing it could cause him trouble. That was his understanding when he arrived, so he hid all those negative things. The applicant did not state why he believes they might cause him trouble in Australia, where he is seeking protection. I am not satisfied that the significant changes in the applicant's claims are for the reasons he has claimed. In light of the extensive contradictions in claims involving political parties and the harm the applicant claims to have personally experienced, and the unconvincing evidence about his involvement with Jamaat-e-Islami, I am not satisfied the applicant has been honest about his claims for protection.
23. I am not satisfied the applicant was ever involved with the BNP and targeted for harm for this reason.
24. I am also not satisfied the applicant and his father were ever actively involved with Jamaat-e-Islami, although I accept that the applicant's father is a practising Muslim. While the applicant may have cast his vote, or considered to do so, for Jamaat-e-Islami in an election, as the applicant stated when he arrived, I am satisfied that the level of support for Jamaat-e-Islami did not extend beyond voting at an election.
25. I am not satisfied that the applicant was otherwise kidnapped and held for ransom in 2011 or in 2012, or beaten and left for dead in 2012 by members of the Awami League or anyone else. I am also not satisfied he was identified by Awami League members in Dhaka who threatened to kill him.
26. I accept that the applicant's father was involved in a physical confrontation with Awami League members, as stated when the applicant arrived, but I am not satisfied the applicant

was involved in a fight with Awami League members at the marketplace because of the incident with his father.

27. I am satisfied the applicant was being honest when he said that he and his family were not involved in politics, did not join any political groups, and that his father did not want the applicant and his brothers to get involved with politics. I find the applicant experienced requests from political parties to join them, but that he never joined any political parties and he was never harmed by members of the Awami League. I find that when the applicant departed Bangladesh in February 2013 he was not a member of any political groups, he was not politically active, and he was not the subject of targeted violence and threats to his life from political parties.

Refugee assessment

28. 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

29. 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.
30. DFAT country information indicates people have been killed and injured in election-related violence, strikes, blockades and clashes with law enforcement agencies. Members of political parties are at risk of targeted politically-motivated violence in Bangladesh. DFAT also reported that the Awami League won the 2014 national elections and remain in power,² as stated by the applicant.
31. I have found that the applicant experienced requests from political parties to join them, but that he never joined any political parties and he was never harmed by members of the Awami League, nor had his life threatened. There is no evidence before me that the applicant

² DFAT, “DFAT Country Information Report Bangladesh”, 2 February 2018, CIS7B83941169.

has been politically active or joined any political groups since coming to Australia. I am not satisfied there is a real chance the applicant will face any harm from the Awami League or other political parties for an imputed political opinion, for refusing to join the Awami League or any other political party if he returns to Bangladesh.

32. I have also found that the applicant's father was not a member of Jamaat-e-Islami, although he is a practising Muslim, and he had a confrontation with the Awami League before the applicant left Bangladesh. There is no credible information before me that the applicant's father is otherwise politically active. I am not satisfied there is a real chance the applicant will be targeted for any harm because of his father's refusal to join the Awami League or any other political party.
33. The applicant did not claim to fear harm based on his religion, and I have not accepted that he was a member of Jamaat-e-Islami, although I accept he is a Muslim. Information before the delegate indicates that the Bangladesh Constitution holds that Islam is the state religion but commits the state to ensuring equal status and equal rights in the practice of Hindu, Buddhist, Christian and other religions. The country information does not support a finding that there is a real chance the applicant faces any harm because he is a Muslim.
34. The applicant departed Bangladesh in February 2013 by boat, without using a passport, and travelled to Australia via Indonesia. As noted by the delegate, the Emigration Ordinance Act (1982) makes it an offence to depart from Bangladesh other than in accordance with the procedures laid down in the Act, however DFAT is not aware of any cases in which authorities have enforced these provisions. The International Organisation for Migration's Assisted Voluntary Returns and Repatriation program assists Bangladeshi returnees in cooperation with the returning country and the Government of Bangladesh. In 2018 DFAT reported that it has no evidence to suggest that recent returnees from likeminded countries have received adverse attention from authorities or others. DFAT assesses that most returnees, including asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily.³ There is no information in DFAT reporting to indicate that returnees who departed Bangladesh without using a passport, like the applicant, are at all likely to be mistreated on return or that they will be charged with an offence under the Emigration Ordinance Act (1982) and spend any time in prison. I am not satisfied the applicant faces a real chance of any harm as a returning failed asylum seeker who departed the country without using a passport.
35. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

36. 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

37. 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

³ DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.

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

38. 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.

39. I have concluded there is not a real chance the applicant will face any harm from the Awami League or other political parties for an imputed political opinion because he refused to join the Awami League or any other political party, because of his father, because he is a Muslim, and because he will be returning as a failed asylum seeker who departed Bangladesh in February 2013 without using a passport. I am similarly not satisfied that there is a real risk of any harm, including significant harm on these bases.

40. I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there is a real risk he will suffer significant harm.

Complementary protection: conclusion

41. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.