



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

VIETNAM

IAA reference: IAA18/04747

Date and time of decision: 6 July 2018 10:07:00

L Hill, 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 citizen of Vietnam. She arrived in Australia in July 2013 and applied for a Safe Haven Enterprise Visa (protection visa) on 24 July 2017. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 10 April 2018.

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) (the review material).
3. Two Crimtrac reports have been included in the review material. The reports state that as at 20 November 2017, the applicant has no disclosable court outcomes and lists the applicant's address history. Having regard to the contents of this report, it is not apparent that it has any bearing on the assessment of the applicant's claims under s.36(2) of the Act, and I conclude that it is not relevant to this review.
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - The applicant is a citizen of Vietnam born in [District 1], Bà Rịa-Vũng Tàu Province, Vietnam. She is a practising Catholic.
 - The applicant was a political activist and blogger in Vietnam. She was a member of a group which discussed "corruption and legal justice" and spread news against the government. She attended protests and assisted the group by putting Vietnamese Dong (money) in pamphlets. The pamphlets were then handed out at protests.
 - On one occasion when participating in a protest, the applicant was physically assaulted by the police and her shoulder dislocated. She escaped being arrested by the police at the protest however she was later followed and her activities were controlled and monitored. Also, when she returned to her employment as [an occupation] she was told she had to stop participating in protest activities and each week report to the Director of [Organisation 1].
 - Four of the applicant's friends who were also members of the same group have been arrested and two of her friends have been jailed. The applicant feared if she did not escape she would also be arrested and jailed and made arrangements to depart Vietnam.
 - Since the applicant's arrival in Australia, she has posted anti-Vietnamese government information on [social media]. She has also attended an anti-government protest and at this protest was interviewed by a reporter. The police have also visited her family home in Vietnam and sought her whereabouts. Her family members have also been watched and if they want to go anywhere they had to ask for a permit from the police and report where they were traveling to.

- The applicant fears he will be harmed by the Vietnamese authorities because of her past involvement in an anti-government group and activities in Vietnam and Australia, the release of her personal information by the Department on its website in 2014 and her return after applying for asylum.

Refugee assessment

6. 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

7. 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.
8. I accept the applicant’s identity as claimed. I accept the applicant is a female born in [District 1], Bà Rịa–Vũng Tàu Province in Vietnam, and a Vietnamese national. Vietnam is the receiving country for the purpose of this assessment.
9. In the protection visa statement, the applicant claimed that she was a “blogger” in Vietnam. At the protection visa interview, the applicant was asked to explain what she had meant by the term “blogger”. She stated that in 2012 she had met and joined a political group. After joining she assisted the group by putting Vietnamese Dong (money) in pamphlets. The pamphlets were then handed out at protests. She was specifically asked whether she had written articles and posted them on the internet. She stated she had not done that but had protested on the street [and] handed out pamphlets.
10. I understand the term blogging as referring to the uploading or posting of information on the internet. On the evidence before me, the applicant did not post or update any type of information whether by a blog or otherwise on the internet. I do not accept the applicant uploaded or posted any political or anti-government information on the internet or was a blogger in Vietnam.

11. In the protection visa statement, the applicant claimed that she was a “political activist” in Vietnam. She had spread “news against the government” and did this because she wanted to let the public know “what was really going on”. There was a group of “four bloggers” and together they discussed “corruption and legal justice”. She stated that her involvement in the group included attending protests and putting small amounts of money “amongst messages of the protests so that people would be attracted”. On one occasion when participating in a protest about the disputed territories between Vietnam and China she was hit by the police and her shoulder broken. After recovering from her injuries she returned to her employment as [an occupation] at “[Organisation 1]” and was told to stop participating in protest activities.
12. The applicant claimed that her four friends have been arrested and two friends, UPN and KDN had been jailed. KDN remains in jail but UPN and SH had been released after a letter was sent by “Obama” asking the Vietnamese government for their release. After UPN’s release the police have continued to follow and hit UPN and she is unable to study. Her friend’s families have also faced problems from the police.
13. The applicant claimed that arising from her political activist activities and her association with the group of “four bloggers” including UPN and KDN the police had tried to arrest her but she “managed to escape”. She stated if she returns to Vietnam she will be arrested, prosecuted or imprisoned and the police will cause a lot of problems for her family.
14. At the protection visa interview, the applicant was asked to describe her political activist activities in Vietnam. She stated that she had found a group online in 2012. She met the members of the group and decided to join “and after that I assisted by giving out information”. This involved her putting Vietnamese Dong (money) with pamphlets that were then handed out. She was asked what had attracted and made her want to the group. She stated that the focus of the group was on the disputed islands and human rights and they fought against the Vietnamese government and these issues. She said she had met with the group six times at UPN’s apartment and at protests. The delegate asked whether she had been arrested or detained at any of the protests. She stated at the protest on the “13th” they hit her on the shoulder and she was admitted to hospital. After this protest her friends were arrested.
15. The applicant told the delegate that the pamphlets were “about human rights and the fight against the islands and fighting anti-corruptions”. She stated that before the protests she contacted people by phone and told them the time of the protest and made signs with the words “[deleted]”.
16. The applicant stated that because of her role in the protest the police wanted to arrest her. The police attended the protest and physically assaulted her and dislocated her shoulder and when she went to the hospital to have her injuries treated they followed her. She was in hospital for one week and then recovered from her injuries at home for a further week before returning to work at [Organisation 1]. She was asked whether the police issued an arrest warrant or summons in her name. She stated no, but on return to work the Director of [Organisation 1] asked her to report to his office each week. It was put to the applicant that the absence of any arrest warrant or summons may indicate that the police weren’t interested in her as she had claimed. She stated that she would have been arrested had she not travel to Australia and the days after the protest she was followed and her activities were controlled and monitored.
17. The applicant was also asked to explain what she had meant when she had claimed in her protection visa statement that she had spread “news against the government”. She stated we

had “put up signs, like anti-corruption and walked the street and screamed out anti-corruption, anti-corruption”.

18. The applicant’s evidence regarding her involvement in political activist activities in Vietnam has evolved over time. On 19 July 2013, approximately 6 days after her arrival in Australia, the applicant participated in an arrival and induction interview (induction interview) with the Department. The applicant was asked the reasons why she had left Vietnam. She referred to issues arising from her Catholic religion, specifically stating that in order for her to work as [an occupation] in [Organisation 1] she was not allowed to disclose that she was Catholic and had to become a member of the Vietnamese Communist Party. She was specifically asked whether she had been associated or involved with any political groups or organisations or whether she had been involved in any activities or protests against the government, she stated “no”. She was asked whether she belonged to any groups which meet for specific purposes, she stated “no”. She was also asked whether there were any outstanding warrants for her arrests, she stated “no”. She made no mention of any claims regarding her involvement in political groups or activities including any protests which had brought her to the attention of the authorities.
19. At the protection visa interview, the applicant was asked why she had not provided these claims at her induction interview with the Department. She stated that at that time she did not know anything and whether it was better in Australia. She had just “run away” from Vietnam to Australia and didn’t know anything or anyone in Australia. I am unpersuaded by this explanation. At the commencement of the entry interview, the applicant was advised that the interview was her opportunity to provide any reasons why she should not be removed from Australia. The applicant was advised that she was expected to give true and correct answers to the questions asked and she was asked whether she would do that, he stated “yes”. She was also advised that if any information she gave at future interviews was different to what she had provided it could raise doubts about the reliability of what she had said. I am satisfied that the applicant was given the opportunity to provide these claims, and she did not. Furthermore, applicant’s evidence is that for at least 1 year prior to her departure she had been involved in political groups and activities and that these events had been the catalyst for her departure from Vietnam, and I am satisfied that had these claims had any credible basis she would have referred to them at her induction interview with the Department, even if only to briefly indicate her involvement.
20. The applicant’s responses to the questions posed about her understanding of the issues which she had claimed to have protested about were also superficial and unconvincing. The applicant was given two opportunities to describe her understanding of the reasons why the contested islands were an issue for people in Vietnam. Each time she referred to Chinese fishermen having fished in the areas where the islands were and that this had upset the Vietnamese people because the Vietnamese authorities would not do anything about such activities. She was also given two opportunities to demonstrate her understanding of the timeframes regarding the disputed islands when asked what year China taken control of the islands. She provided two different response, she initially stated that it had been one year before the protest and then she stated “no I don’t [know] because when I came here I didn’t have any information from Vietnam at all only from the internet”. I agree with the delegate that the applicant’s responses regarding her understanding of the reasons why she had been participating in political activities regarding the disputed islands were far too general, and not commensurate with her claimed interest and activities.
21. According to the decision record, [SH], [UPN] and [KDN] are well-known democratic activists who were arrested by the Vietnamese authorities in 2013 and later released due to international pressure. However, I am not satisfied that this fact alone, and in light of my

concerns, is sufficient to conclude that the applicant's claims that she was friends with and involved in the same group and activities as these individuals are true. The applicant's evidence is that in 2012 she met these individuals and joined their group, yet her evidence was that it was not until after she came to Australia that the Vietnamese authorities had gathered sufficient evidence of her involvement with these individuals and their political activities. I find such claims to be far-fetched and implausible when considered against the applicant's evidence that at least "four times" over a period of one year she met these individuals and protested with them in public in the streets including at the same event in 2013 after which [UPH] and [KDN] were arrested by the authorities. Furthermore, I find the applicant's evidence that she was able to evade arrest at the 2013 protest by escaping the authorities to be improbable given her evidence that this event occurred approximately four months prior to her departure during which she remained living in the same residence and continued to work as [an occupation] at [Organisation 1].

22. I am not satisfied the applicant has been a truthful witness regarding these aspects of her claims. I do not accept that in the past the applicant has been involved in any political groups or activities nor do I accept she was a political activist in Vietnam. I do not accept the applicant joined a political activist group in 2012. I do not accept the applicant was friends or associated with "four bloggers" or any individuals who on account of their involvement in political activities were arrested and jailed by the Vietnamese authorities. I do not accept the applicant was involved in the compilation or handing out of pamphlets containing political or anti-government information. I do not accept the applicant was involved in any political or anti-government protests. Nor do I accept that arising from her involvement in any political or anti-government activities in Vietnam the applicant was injured, she was asked to regularly report to the Director of [Organisation 1] or that she was of any interest to the Vietnamese authorities and they followed, controlled and monitored her prior to her departure. I am satisfied the applicant has contrived all these claims to enhance her claims for protection.
23. I accept the applicant was employed as [an occupation] at [Organisation 1] in Vietnam between 2010 and her departure from Vietnam in June 2013. The applicant's evidence regarding this aspect of her claims has been consistent throughout her interviews with the Department and her qualification as [an occupation] corroborated by [her professional] certificate bearing her name and photograph.
24. At the protection visa interview, the applicant claimed that after she attended the protest in 2013 when she returned to work the Director of [Organisation 1] asked her to report to his office each week. She stated that the Director told her she had to join the Communist Party of Vietnam or leave. She was also told not to attend anymore protests. She was asked what consequences were there for her when she did not join the CPV. She stated that she was able to keep working but that she was always "under stress" from the Head of the Department and the Director of [Organisation 1] who would come and talk to her and try to find out information about her involvement in political groups and activities.
25. I have rejected the applicant's claims that she had been involved in any political groups or activities or that she was a political activist prior to her departure from Vietnam and it follows that I do not accept that the Head of the Department and/or the Director of [Organisation 1] where she worked spoke to her or asked to her to report to their office on this basis.
26. I accept however when working as [an occupation] at [Organisation 1] the applicant was asked to join the CPV party. The applicant's evidence regarding this aspect of her claims was consistent with her evidence at her induction interview with the Department where she had specifically stated that one of the reasons she had left Vietnam was because she had been told

by the “leadership in [Organisation 1]” where she had been working that she had to be a “member of a political party”.

27. At the induction interview, the applicant claimed that when she refused to become a member of the CPV she was intimidated and told she would not be entitled to permanent employment and/or the same benefits as the other workers. She further stated that if “I did not become a member of a political party I will not continue to work”. At the protection visa interview, the applicant claimed that it was very hard for her to work at [Organisation 1] because she had not joined a political party. She was asked to explain what she meant by “very hard”. She stated she was unable to get a promotion and she kept being tested.
28. In 2016, the US Department of State reported that while unofficial policies of the CPV and the government have hampered advancement of religious adherents within those organisations, membership of a religious group generally did not seriously disadvantage individuals in nongovernmental civil, economic, and secular life. In 2015, DFAT reported that it was not aware of credible claims of societal abuse of systematic discrimination based on religious practices. However in DFAT’s most recent report it stated that the law in Vietnam prohibits discrimination with respect to employment and occupation based on sex, race, disability, social class, marital status, religion, and HIV/AIDS-positive status. It makes no reference to any disadvantage being encountered in the areas of employment merely due to a person’s religion or non-membership of the CPV.
29. I accept that in the past when the applicant refused to join the CPV she was intimidated, underwent additional testing and was told by her employer that she would not be entitled to a promotion or received permanent employments and/or the same benefits as other employees. This aspect of the applicant’s claims is plausible when considered against the information discussed above and the reports of the “hampered advancement” of some who were not members of the CPV within government organisations.
30. I do not accept however that the applicant was told by her employer that if she did not become a member of the CPV she would not be able to continue to work. The applicant’s own evidence in her induction interview was that after she refused to join the CPV she continued to work up until the day before her departure from Vietnam. The information in the referred materials also does not indicate that a person would be dismissed from their employment including any government roles on this basis.
31. As discussed above, I have accepted that in the past the applicant experienced some intimidation and disadvantage when employed as [an occupation] at [Organisation 1]. However, the country information in the most recent DFAT report no longer indicates that a person would be disadvantaged in obtaining or maintaining employment on religious grounds or non-membership of the CPV. Almost five years have passed since the applicant departed Vietnam and I do not accept that there is a real chance the applicant will be prevented from obtaining employment, or limited in her employment opportunities because of her Catholic religion or non-membership of the CPV on return.
32. At the protection visa interview, when the applicant was asked to provide an example of corrupt activity she was protesting against in Vietnam, she stated that she had to pay 100,000 Vietnamese Dong to secure her [position] at [Organisation 1]. The applicant made no mention of this claim at her induction interview or in the protection visa statement however I note that the 2015 and 2017 DFAT reports both indicate that corruption is deeply entrenched in Vietnam. I accept the applicant paid Vietnamese Dong to secure her [position] at [Organisation 1]. However, the applicant has not made any claims of fearing harm on this basis and I am not

satisfied on the information before me that on this basis she will suffer any repercussions on return, or that it would lead to a real chance of harm.

33. At the protection visa interview, the applicant claimed that because of her political activities in Australia she will be identified as a political activist and harmed on return. She was asked to detail what political activities she had undertaken in Australia. She stated she had posted information on [social media] including the reasons why she was in Australia and that she had participated in a protest when the Vietnamese Prime Minister had visited Australia in either 2015 or 2016. She was asked whether she had joined any groups with political or human rights agendas in Australia. She stated she had not.
34. After the protection visa interview, the applicant's representative sent to the Department a link to a [social media] video (video), a translation of the portion of the video where the applicant speaks to a reporter and two still photographs of the applicant also taken from same video. It was contended that the video and photographs corroborate the applicant's evidence that she had attended a political protest in Australia.
35. I accept the applicant attended one anti-Vietnamese government protest in Australia in 2015. I accept that at this protest the applicant was filmed speaking to a reporter. I accept the reporter identified the applicant as an asylum seeker and asked the applicant to provide her thoughts about living freely in a democratic country and in response for approximately eight minutes, the applicant provided anti-Vietnamese government comments. I accept the video was shared publicly via the internet on [social media]. I am satisfied the video, translation and two still photographs depict and evidence the applicant's claim regarding participation in one protest since her arrival in Australia.
36. I do not accept however that the applicant has uploaded any anti-Vietnamese government posts on her [social media] since her arrival in Australia. Unlike the video, there is an absence of any corroborating evidence regarding this aspect of her claims and while I note that on 21 January 2018, the representative emailed to the Department two [social media] posts links, they do not mention or refer to a [social media] profile in the applicant's name. I am not satisfied the applicant has posted such material on her [social media].
37. I have considered whether the applicant's attendance at the protest and her engagement in the interview with the reporter at the same protest were for the purpose otherwise than to strengthen her claims for protection. I do have concerns about the reasons for the applicant's conduct arising from the timing of her statement regarding these activities. The [social media] Video was published [in] March 2015, more than 2 years before she prepared and lodged her protection visa application. She only mentioned her participation at the protest when asked by the delegate if she had been involved in any political activities since her arrival in Australia. However, I have considered the video and the translation of the portion of the video where the applicant speaks to a reporter and while it appears staged based on the content of her response, I am willing to accept that she did not engage in the protest and the interview solely for the purpose of strengthening her claims for protection.
38. Information before the delegate indicates that the government maintains considerable control and restriction on overt political activism in Vietnam, and there is harsh treatment of political and human rights activists in Vietnam. Political and human rights activists who are outspoken in their opposition of the government, the Communist Party of Vietnam ('CPV') and its policies are at high risk of attracting attention from authorities however the treatment from the authorities generally depends on the individual's level of involvement. DFAT assesses that individuals who are known to the authorities as active organisers or leaders of political

opposition are at high risk of being subjected to surveillance, detention, arrest and prosecution. The information does not indicate that ordinary participants who have protested in the same way as many others in their community and whose activities would not be considered to be of the level of an outspoken activist or active organiser would be targeted or of adverse interest to the Vietnamese authorities or at risk of significant harm for those reasons.

39. I have not accepted as credible that in the past the applicant has been involved in any political groups or activities nor have I accepted that she was a political activist in Vietnam. The applicant was a participant in the demonstration and was also interviewed. At the demonstration she was interviewed by a reporter and stood between an Australia and the flag of South Vietnam. Other than the interview there is no suggestion she was an organiser of the protest or affiliated with any group. The applicant's evidence is that she has not joined any groups with political or human rights agendas in Australia. I do not accept that the applicant's activities in Australia would bring her to the adverse attention of the Vietnamese authorities on return. I do not accept because of the applicant's activities in Australia her family has been visited and questioned by the authorities. The interview itself may be viewed as criterial of the Vietnamese government; however when viewed in light of the applicant's otherwise limited participating role in that demonstration and the absence of any political activity in the intervening years, I am not satisfied the applicant will be viewed as having a profile of the type that country information indicates attracts the interest of the Vietnamese government. I am not satisfied that the applicant's activities, in aggregate with the country information, can be equated with that of an activist or active organiser or that she would be perceived as such by the Vietnamese authorities. The applicant has been residing in Australia for almost five years and during this period she has engaged in one anti-Vietnamese government activity. There is also no information before me to indicate she has any intention or desire to participate in any such activities on return. I am not satisfied that as a low level participant in one protest and her engagement in a short interview with a reporter the applicant will face a real chance of harm on this basis on her return to Vietnam now or in the reasonably foreseeable future.
40. In the protection visa statement, the applicant claimed that since her departure from Vietnam the police have visited her family and sought her whereabouts. Her family have not told the police where she is. The police have told her parents to look for her. She also stated that her family members were also watched and if they wanted to go anywhere they had to ask for a permit from the police and report where they were traveling to.
41. At the protection visa interview, the applicant was asked what has happened to her family since her departure. She stated that prior to a year ago they were "not ok" but now they are ok. She was asked to explain what she meant by "not ok". She stated the police had gone to her family home and asked them about her and asked them to get her to return. Her family had told them that they didn't know anything about her as she had been working in Saigon. She was asked when had the police last gone to her family home, she stated "remember it was about a year ago".
42. Information before me indicates that the Vietnamese police requires citizens and foreigners to register when staying overnight in a location outside of their own homes and that this requirement is enforced more strictly in some areas, such as Central and Northern Highlands districts. I accept each time the applicant's family members left their home area they had to register with the authorities, however I am not satisfied that this requirement has any connection to the applicant's past or present circumstances.

43. I have rejected the applicant's claims that she uploaded or posted any political or anti-government information on the internet or that she has been involved in any political groups or activities or was a political activist or blogger in Vietnam. I have also not accepted that the applicant's activities in Australia have led to her family being visited and questioned by the authorities. I have considered whether the inadvertent publication of the applicant's details on the Department of Immigration's website for a short period on 31 January 2014 and the issuance of a laissez-passer document by the Vietnamese government while in immigration detention in 2013. As discussed below, I accept that the Vietnamese authorities would be aware that the applicant had sought asylum in Australia, however DFAT has stated it had no information before it that persons who have sought asylum outside of Vietnam receive different treatment from the government for having done so and I am not satisfied that on this basis the police have attended the applicant's family home. Nor do I accept as plausible that given the issuance of the laissez-passer document by the Vietnamese government in August 2013, approximately one month after her arrival in Australia, the police would go to her family home and ask her family where she was and ask for her to return. More than 4 years have passed since the issuance of the laissez-passer document and data breach, and there is no other credible evidence before me to suggest that the Vietnamese authorities would be interested in seeking the applicant's whereabouts for any other reason.
44. I accept the applicant is Catholic and that she has regularly attended mass and religious ceremonies since her birth in Vietnam. I accept the applicant would continue to practise her faith on return to Vietnam. The applicant's evidence regarding her religion has been one of the few consistent aspects of her claims throughout her interactions with the Department.
45. In 2016, the US Department of State reported that the Vietnamese Constitution provides for freedom of belief and religion; however it also stated that the government maintains significant control over religious practice and permits restrictions on religious freedom in the interests of national security and social unity. In 2017, DFAT reported that some 7% of the Vietnamese population who declare their religion or belief are Catholic. The Catholic Church is a registered church in Vietnam, and is one of 14 distinct religions that hold full government recognition and registration. The situation for Catholics has continued to improve in recent years. DFAT observed that Catholics are able to practise freely at registered churches and assessed that religious observance and practice only becomes an issue when it is perceived to challenge the authority or interests of the Communist Party of Vietnam (CPV) and its policies.
46. Based on the information before me, I am not satisfied the applicant's past and present activities as a practising Catholic, including her activities in Australia would result in the Vietnamese authorities identifying the applicant as a religious or political activist, or someone of interest. As discussed above, I have found that arising from the applicant's activities in Australia the applicant will be not be viewed as having a profile of the type that country information indicates attracts the interest of the Vietnamese government. I am satisfied the applicant would be able to continue to be regular member of the Catholic church and participate in services and religious celebrations on return and would not for that reason be perceived to be a religious activist by the state, or otherwise viewed adversely. I am also satisfied the manner in which the applicant practises her Catholic faith does not involve her curtailing her religious practise or modifying her behaviour to avoid harm.
47. Apart from the matters discussed above, the applicant claimed she would be harmed on return and considered to be anti-government because she left unlawfully and would be returning after seeking asylum in Australia.

48. I accept since the applicant's arrival in Australia she has commenced a relationship with an Australian citizen. I accept in [date] a biological child of this relationship was born. The applicant has not claimed to fear harm on this basis.
49. I accept the applicant left Vietnam unlawfully. I accept she has applied for asylum and would be returning to Vietnam after her asylum application has failed. According to the decision record, the applicant was in immigration detention at the time of the Department's data breach. I accept that on 31 January 2014 some of the applicant's personal information was inadvertently published on the Department's website for a short period of time. This information included: the applicant's name; date of birth; nationality; gender; the reason for and location of his detention; and whether he had any family members in detention.
50. While I note that the applicant has not claimed to fear any harm on the basis I note that a laissez-passer document was issued for her by the Vietnamese government while she was in Australia in August 2013. In the circumstances I accept that the Vietnamese authorities would be aware that the applicant had sought asylum in Australia.
51. DFAT indicates that the Constitution of Vietnam provides for freedom of movement albeit there are penalties for Vietnamese nationals who depart the country unlawfully, including without travel documents. I have found that the applicant did not depart on a travel document and left Vietnam by boat. To depart in the way the applicant did would constitute a breach of Vietnamese law. DFAT advice is that if a person departs Vietnam unlawfully without a travel document, they may be subject to a fine upon return under Article 21 (regarding 'Violations of the regulations on exit, entry and transit') of the Decree on Sanctions against Administrative Violations in the Sector of Security and Social Order. Fines for departing without a travel document range between VND 2 Million and VND 10 Million (AUD \$120 to \$600).
52. I accept the applicant departed Vietnam in violation of Vietnamese law and she may be liable for a fine on that basis. DFAT advice is that there is no information before it that persons who have sought asylum outside of Vietnam receive different treatment from the government for having done so, although those who have departed unlawfully may be briefly detained and fined for that departure.
53. DFAT indicates some returnees may be briefly detained and interviewed, but that long term detention, investigation and arrest is conducted only in relation to those suspected of involvement in organising people smuggling operations and reporting and monitoring is confined to returned political activists and not those who have only sought asylum or spent a prolonged period of time overseas. The reports suggests that people who have used people smugglers are seen as victims of crime, in contrast to the people smugglers, facilitators or people who aid in that crime.
54. The applicant has not claimed to have been involved in people smuggling, nor is there anything in the applicant's history or background that would suggest she would be seen as a people smuggler or otherwise involved in the venture on her return to Vietnam. The applicant has not claimed and I am satisfied on the information before me that she would not be suspected of any such involvement on return.
55. I accept the applicant's personal details have been obtained by the Vietnamese authorities and that she would be identifiable as having sought protection in Australia. However, I am not satisfied the details disclosed on the Department of Immigration's website, even if accessed by the Vietnamese authorities, were any more than those details which resulted in the issuance of a laissez-passer document for the applicant. In 2017, DFAT reported that 'fleeing abroad or

defecting to stay overseas with a view to opposing the people's administration' is an offence under Article 91 of the Penal Code 1999. However, DFAT also stated it had no information before it that persons who have sought asylum outside of Vietnam receive different treatment from the government for having done so.

56. In light of the information before me, I am not satisfied the applicant would face a real chance of serious harm because she sought asylum, or sought asylum unsuccessfully. There is no information before me to indicate that she would be imputed with an adverse opinion or profile by the Vietnamese authorities or that she would be considered to be anti-government on return as a result of the release of her details on the Department's website or the issuance of a laissez-passer document by the Vietnamese government or that such factors would put her at risk of harm on return. I am not satisfied that as a returning asylum seeker who departed Vietnam unlawfully, her disclosure of her details on the Department's website, the details provided to the Vietnamese government for the issuance of a laissez-passer document or that such factors would put her at risk of harm on return. I do not accept that on any of these bases she would be considered to be anti-government or imputed with an adverse opinion or profile by the Vietnamese authorities and harmed on return.
57. I accept that the applicant may be fined under Vietnamese law because she left the country unlawfully and she may be briefly detained and questioned by Immigration officials and police on return. Having regard to the information before me, I am satisfied that the provisions and penalties under Vietnamese law are laws of general application that apply to all Vietnamese equally. The information before me does not indicate the law is discriminatory on its terms, nor is there any country information before me that indicates that the law is applied in a discriminatory manner or that it is selectively enforced.
58. I am satisfied that any process or penalty the applicant may face on return to Vietnam because of her unlawful departure or as a returning asylum seeker would not amount to persecution for the purposes of s.5J(1) and (4) of the Act.
59. I am not satisfied that the applicant faces a real chance of persecution on return as someone who departed Vietnam unlawfully, sought asylum and/or the disclosure of her details on the Department's website.

Refugee: conclusion

60. The applicant does not meet the requirements of the definition of refugee in s.5H(1) of the Act. The applicant does not meet s.36(2)(a) of the Act.

Complementary protection assessment

61. 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

62. 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.

63. I accept that as the applicant left Vietnam unlawfully she may be briefly detained and questioned on arrival at the airport and may be fined for breaching Vietnamese law. However, I am not satisfied that being briefly detained, questioned, and fined, constitutes significant harm as defined. It does not amount to the death penalty, an arbitrary deprivation of life or torture. Further, on the information before me I am not satisfied it amounts to pain or suffering that may be described as cruel or inhuman in nature, severe pain or suffering or extreme humiliation, whether intentionally inflicted or otherwise. The country information does not indicate that there is an intention to inflict pain or suffering that is cruel or inhuman in nature, severe pain or suffering, or an intention to cause extreme humiliation. I have also found there is nothing in the applicant's profile which would result in her experiencing any long-term detention, investigation, arrest, reporting and monitoring or other harm that may amount to significant harm. I am not satisfied the applicant faces a real risk of significant harm on return to Vietnam on the basis of her unlawful departure.

64. I otherwise found the applicant does not face a real chance of any harm on any of the other bases claimed. As 'real risk' involves the same standard as 'real chance', I am also not satisfied that the applicant faces a real risk of significant harm on these bases.

Complementary protection: conclusion

65. 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) of the Act.

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.