



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

MYANMAR

IAA reference: IAA18/05027

Date and time of decision: 29 October 2018 15:36:00

D Hughes, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Rohingya Muslim from Myanmar. He applied for a protection visa on 17 March 2017. A delegate of the Minister for Immigration refused to grant the visa on 23 May 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).
3. The applicant made one submission to the IAA on 19 June 2018. The submission includes new country information and other analysis, including an article about credibility and memory from Dr. Juliet Cohen from 2001, extracts from Hathaway's 'The Law of Refugee Status' from 1991, reference to the AAT's credibility guidelines from July 2015, a report from the Burma Human Rights Network from September 2017, an unreferenced 2017 UK Home Office report, a Daily Sabah article from January 2017, a Burma Human Rights Network article from 1 May 2018, and a UNHCR report from 29 June 2016.
4. The above new information predates the delegate's decision of 23 May 2018, as such I am not satisfied this information was not, and could not have been, provided to the Minister before the delegate made their decision. There is no suggestion it contains personal information, that it is relied on in that sense, or that it is otherwise credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims. I am not satisfied the threshold requirements in s.473DD(b) are satisfied. In addition, while I accept it contains relevant information, the reports are consistent with country information and analysis already before me. I accept that there continue to be concerns for Rohingya and Muslims living in Myanmar, and have weighed those matters in this assessment. In terms of evidence and credibility, I am conscious of the requirements as they are reflected in Australian law and do not consider it necessary to consider additional information relating to such assessments. I do not consider the new information provide would materially alter my assessment. I do not consider the other matters submitted in terms of s.473DD(a), including his disagreement with aspects of the delegate's findings, the focus of the hearing, the limited form of review, the time that has passed since he arrived in Australia, the impacts of those delays, his limited English, and his limited representation, are exceptional circumstances. These matters are not uncommon in this jurisdiction. Weighing everything, I am also not satisfied that there are exceptional circumstances to justify considering the new country information and other analysis.
5. With limited exception, I consider the statutory declaration from the applicant, dated 19 June 2018, does not contain new information. It reiterates the applicant's existing claims. While it does vary in some respects in relation to his oral evidence at the visa interview, these changes are consistent with his earlier written evidence. I find there is no new information in this evidence.
6. The two new aspects of this information relate to his sister's husband and another relative. The applicant contends that a relative of his has been accepted as a refugee and has been granted a visa in Australia. He is also Rohingya. He is the son of one of his father's cousins. The applicant also contends for the first time that his sister's husband was accepted as a

refugee in [Country 1]. The applicant has not given any clear indication as to how these matters are material to his claims. I consider reference to his sister's husband was likely provided as context for her situation, and in my assessment below, I have accepted she has refugee status in [Country 1]. I consider it plausible she is married and her husband may have the same status. In terms of his distant relative in Australia, I accept that he may have been granted a protection visa, but no details of that person's claims have been provided, the basis of the grant, or evidence that this person is of Rohingya ethnicity or related to the applicant. Even if that information were provided, it would be peripheral to the applicant's own claims, unless he could provide clear links as to how those claims or identity details were material to his own circumstances. No such detail was provided. I have weighed the matters above in the submission, including the factors assessed above, and I am not satisfied there are exceptional circumstances to justify considering the new information.

7. To the extent the submissions contain arguments responding to the delegate's decision and reassert claims and country information already before the delegate, I am satisfied these matters do not constitute new information as defined and I have had regard to them in this assessment. I deal with the request for an interview separately below.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - The applicant is a stateless Rohingya Muslim from Myanmar. He was not able to obtain a citizenship identity card or passport because of his ethnicity.
 - As a Rohingya, he could not officially enrol in school. His family had to pay money (bribes) to the school so that he could attend. In the classroom, Burmese students would bully him and call him 'Kalar'. He was able to complete school to year 10, but he did not pass. He did not have any hopes because he was not able to graduate or have a profession because he was a Rohingya.
 - In approximately 2000, when he was [age years old], the applicant and his family were arrested because they were not on the official government list. They could not register to be on the list because only citizens can register. They could not obtain citizenship because of their Rohingya ethnicity. His family was detained for several days, during which time he was beaten and mistreated.
 - As a Muslim, he was not able to worship without fear. Every year, the mosque would be attacked by Buddhists. Local Muslims would seek to protect the mosque, but they would be arrested by the authorities for doing so. He was involved in protecting the mosque a few times, but was never arrested.
 - In around 2001, he walked past a Buddhist temple. Some Burmese Buddhist youth shouted at him and called him 'Kalar'. They chased him, bashed him and threw rocks at him.
 - In 2007, there was a protest between the Burmese monks and the Burmese authorities. His father joined the protests without telling his family. He supported the monks, protesting for democracy. After the protest, the police tried to find his father to question him and arrest him.
 - He cannot return to Myanmar. If he is forced to return, he will be arrested and imprisoned because he is a Rohingya and Muslim. He also fears harm on the basis that he left the country illegally and sought asylum in Australia.

Refugee assessment

9. 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

10. 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.

Identity, ethnicity and citizenship/statelessness

11. The applicant claims to be a stateless Rohingya Muslim from Myanmar. He claims his parents are stateless Rohingya originally from Rakhine State.
12. In his written statement, the applicant claimed he was not able to obtain a citizenship card. He claims he could officially enrol in school. He further claims his parents were issued with Rohingya identity cards in the past, but the government changed the law and cancelled those cards. He also claimed that his family was detained in 2000, when he was around [age years old], because they were not on a household list. He claimed they could not register on the list because of their lack of citizenship due to their ethnicity.
13. As the interview, the applicant initially indicated that he had no identity documentation, claiming the only identity documents he had were from the UNHCR in [Country 2].
14. The applicant was asked whether he had documentation in Myanmar. He said he did not have anything anymore. The delegate asked again whether he had documentation while living in Myanmar. The applicant said he thought he had a birth certificate, but he thought it may have been lost. The delegate stressed that he was not asking about the current situation, but whether he had any documents while he was living in Myanmar. The applicant indicated he might have had a birth certificate. He explained that he had not seen it, but thought his mother may have it. When asked, he indicated he might be able to ask his mother whether she still has it. The applicant again confirmed he had no national identification card or

passport. He claimed he had applied for a national identification card (a pink card) when he was young, but it was not approved because of his ethnicity.

15. The delegate gave adverse weight to the fact that the applicant claimed he applied for a pink card when he was younger. I agree with the submissions that this does not necessarily mean that the applicant was a citizen. Based on the information before me, the Rohingya are or claim to be nationals of Myanmar, and the citizenship law is discriminatory in that it does not allow Rohingya to demonstrate their citizenship in that country. In that context, it is plausible Rohingya would apply to the government for citizenship. I accept the submission and do not give any negative weight to the claim that the applicant may applied for a national ID card (pink card). However, other aspects of his evidence raised other concerns.
16. In the visa interview, the applicant was again asked what identity documents he had while growing up in Myanmar. He confirmed he had nothing. The delegate then showed him a sample of a Burmese family (household) list document and asked if he had seen one before. The applicant said his parents would know, but he did not. The delegate asked him to confirm he had not seen this type of document before. The applicant again said he did not know and that his parents kept such things and only they would know.
17. The delegate then put to him that the sample document was a family household list. He explained to the applicant that every resident and family member living in Myanmar should have a family list. The delegate put to him that it was difficult to understand his evidence that he had not seen a family list. The delegate put to him that it was odd that he was aware of the citizenship pink card, but not the family list, being the basic identity document.
18. The applicant then asked to see the document again. The delegate said he had shown him the document. The applicant then varied his evidence and said he knew what the document was. The delegate asked the applicant why he would say he did not know about the document. The applicant said he did not see it (the sample) clearly.
19. The delegate asked whether he had seen his own family list. The applicant confirmed he had seen it when he was young. He did not know where it was now. When asked how such a document was obtained, the applicant said it was obtained from a particular office. The delegate asked what happened to people who died or went missing. The applicant confirmed that a name would be cut from the document. The applicant asked what his citizenship was on the list. The applicant said it indicated Myanmar nationality. The delegate then asked what his ethnicity and citizenship was on the document. The applicant said the ethnicity would have been Rohingya. The applicant clarified that he thought this was the case, but he did not remember. The delegate asked him to confirm what his citizenship was on the document. The applicant said he thought it would have been Myanmar nationality.
20. In his submission to the IAA, the applicant said he did not know whether his family had a family registration list and that he continued to rely on his earlier statement that the government officials would check each house and check whether people were on the list. He stated that he and his family would have to run and hide. The applicant said he recalled seeing one when he was young, but he cannot remember when he saw it, where he saw it, or what it said, as he was young. He believes the fact that he and his family had to run from government officials meant that they did not have a family list.
21. According to DFAT, it is rare for a citizen of Myanmar who is resident in the country to not be registered on a household list. If a person is found to be unregistered, the penalty is a maximum of seven days' detention at the police station, during which time the person must

prove they belong to a household and have the head of the household come to register them on their household list. It is unclear what would happen if a person were not claimed by a household head, and DFAT states in its report that it does not have any information on how often or how consistently penalties for incorrect registration are applied. While 'spot checks' to monitor people's movements still take place, in recent years these have occurred less frequently than in the past.¹

22. Household registration is required to obtain identification documentation and to gain access to services such as electricity and water. When a baby is born, their birth certificate is required to add them to their household list. Household lists are also used by townships for population estimates. Township Administration Offices administer household lists. As non-citizens, the household list is often the only formal documentation accessible to Rohingya.² According to another report, Rohingya were entitled to obtain household lists from 1955 to 2005 after which no new household lists were issued to them. However, they could be updated in the case of births and deaths of those in the list. Rohingya could also obtain birth certificates for their children from 1955 to 2005, but after that, authorised officers ceased issuing birth certificates for Rohingya children. Rohingya are instead issued delivery certificates. In urban areas, delivery certificates or birth certificates were always needed to enable enrolment at primary as well as secondary school and to be added to household lists.³
23. The applicant contended in his written application that he did not have a household list. His evidence was that in 2000 he and his family were detained because they were not registered during a check of family lists or other records by the authorities. His evidence was that they were unable to register on the lists because only citizens can do so. The applicant changed his evidence during the visa interview when pressed by the delegate. He stated that they had a list, and he believed it included their ethnicity as Rohingya and listed them as nationals of Myanmar. The applicant also confirmed during the visa interview that his family home had water and electricity. The applicant sought to rely on his earlier written evidence in the IAA submission, stating that he was young and does not remember the details.
24. The country information is clear about the ubiquity of the family household list in Myanmar. It also confirms that prior to 2005, Rohingya could obtain birth certificates and family household lists. The applicant's evidence indicates that he was documented. It appears he had a birth certificate, and this would have been necessary to obtain a family household list. This would also have been necessary to enrol the applicant and his sister at school. The applicant's evidence was that his home had running water and electricity, which is a further indication that his family was registered with the authorities.
25. The information does indicate penalties for not possessing a family list, including several days detention. This would potentially be consistent with his claims about the detention in 2000, however I am satisfied that in 2000 there were no discriminatory barriers to Rohingya possessing a family household list. Moreover, those penalties were in place to ensure that families were registered with the authorities. If it was the case that his family was not registered, then the risk of penalty from the authorities could be overcome by registering properly with the authorities. Registering was also essential for schooling and basic utilities. In that context, his claim that his family could not register because of their ethnicity and citizenship status is contradicted by the country information. It is also not credible when viewed against his other claims about his circumstances in Yangon.

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

² DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

³ T Gibson, H James & L Falvey, "Rohingyas - Insecurity and Citizenship in Myanmar", TSU Press, 1 August 2016, CIS38A80121535.

26. Weighing everything, I am satisfied his family would have held a family household list. I am also satisfied the applicant would have held a birth certificate. I consider this was the reason he was able to attend school, and why his family was able to live in Yangon and have basic utilities. It may also explain how his father was able to study in Yangon. While I accept that these documents and services may also be obtained through bribes, the fact that there were no barriers to obtaining these documents during the periods he claims his family were unregistered undermines the contention that these were accessed through bribery.
27. The ability to have birth certificates, family lists, access utilities and attend school does not resolve the question of whether the applicant is a stateless Rohingya. What is significant is that the applicant's family has had documentation in the past (birth certificates and household lists) which could provide evidence of his ethnicity and citizenship status. The applicant did not indicate that his family still had a copy of the household family list, but he did indicate that his mother might have a copy of his birth certificate. He has not updated the IAA as to the status of that document, despite being requested to do so by the delegate.
28. Another consideration here is the refugee status of the applicant's mother and sister. The applicant has asked the IAA to give weight to the fact that his family have been granted visas to live in [Country 1]. The applicant previously provided copies of what appears to be his mother and sister's UNHCR cards, as well as [Country 1] 'permanent residence' cards for his mother and sister. Those cards indicate they have been residents since [2014]. I am prepared to accept that these cards were issued on the basis of refugee status. However, I find it significant that no other supporting documentation in relation to his family's refugee status has been provided that could potentially corroborate the applicant's claims. The limited evidence before me does not indicate on what basis the UNHCR or [Country 1] immigration authorities assessed and/or granted the applicant's mother and sister status as refugees or what claims and documentation they provided in support of those processes. Such information could corroborate his identity, relationship to them, and his substantive claims.
29. In the submission of 19 June 2018, the applicant requested four weeks to obtain further information regarding his mother and sister's refugee status from [Country 1] authorities. The applicant was granted until 27 June 2018 to provide further information. On 2 July 2018, the legal service assisting the applicant on a one-off basis stated that the applicant was still in the process of requesting information from the UNHCR and US authorities, and that any response would be forwarded to the authority as soon as possible. As of the date of this decision, no further contact or correspondence has been provided about those circumstances.
30. Beyond obtaining documentation from those authorities, I consider it was within the applicant's control to obtain documentation and information from his mother and sister living in [Country 1]. In his written statement of 19 June 2018, the applicant states that he does not know the reason his mother and sister were accepted as refugees, but he believes it was because they are Rohingya and that was the reason they face danger in Myanmar. This statement was made almost a month after the delegate's decision, and around six weeks after the visa interview. Yet, even in that context, the applicant had not contacted his family members to obtain further details about his claims or confirm the basis of his family's claims.
31. I consider it was within the applicant's control to obtain, or seek to obtain, information or documentation about the applicant's identity from his family members, which the delegate expressly asked for during the visa interview. I also consider it was within the applicant's control to obtain, or seek to obtain, information or documentation relating to his mother and sister's refugee claims, whether through the UNHCR or [Country 1] authorities, or from his

mother and sister directly. As he has not done so, I give this factor little weight in my assessment of his own claims. It also raises a question as to whether this evidence undermines or contradicts his claims.

32. In his written application, the applicant indicated that he spoke the Rohingya language poorly. At the visa interview, the delegate asked the applicant what language his parents spoke at home. The applicant said they spoke Burmese. The delegate asked the applicant how they learned Burmese. The applicant said he did not know, but his father had gone to school. The delegate put to him that they would have spoken Rohingya if they were Rohingya and born in Rakhine. The applicant indicated that they would not have spoken Rohingya for safety reasons. The delegate asked why they would not speak Rohingya inside their home. The applicant said he could not explain why, but they spoke Burmese and Rakhine in the house.
33. The delegate then tested the applicant's Rohingya language abilities. The applicant was asked to explain why he came to Australia in the Rohingya language. The applicant paused and said he could not speak that fluently. The applicant explained that he could not say much. He could only say such things as "what did you eat?" and "what did you drink?". The delegate put to him that he would expect him to speak more of the language. His parents were Rohingya and one of the distinct features of Rohingya culture was its language. The delegate then asked him to explain why he went to [Country 3] in Rohingya. The interpreter translated that the applicant had said "where did you go [Country 3]?" and that he had not spoken in a complete sentence. The delegate explained to the applicant that the interpreter could speak Rohingya. The interpreter confirmed that the applicant had spoken Rohingya, but it was very partial. The delegate then asked the applicant to ask the delegate "What he was doing currently?" in Rohingya. The applicant paused for some time before attempting to speak. The interpreter said that the applicant was trying to say it, but it was not the correct way.
34. The delegate put to him that he was not speaking the Rohingya language. The applicant responded that he could not speak in long sentences. He said he could only say things such as "what did you eat?" and "what are you doing?". The delegate put to him that these were basic things that he could learn from the internet. The delegate put to him that if he spoke a language, he should at least be able to form a sentence. The delegate then asked the applicant to say "what games can I play?" in Rohingya. The applicant again paused. It appears he attempted to speak, but was unable to do so. The delegate indicated they would move on.
35. In his submission to the IAA, the applicant reiterated that he grew up in Yangon, a Burmese speaking area, and that was why he spoke Burmese. He stated that his parents did not want their children to speak Rohingya so they could pretend to be Burmese Muslims and suffer less discrimination. He said that he can only speak basic Rohingya, and that he can understand more than he can speak.
36. The applicant's representative requested an opportunity for the applicant to give evidence in an interview before the IAA using a qualified Rohingya interpreter. I am not satisfied this is necessary in all the circumstances. The delegate gave the applicant several opportunities to speak Rohingya during the visa interview, and he was unable to do so coherently, even in terms of basic sentences. His contention is that his Rohingya language is limited/poor, and his evidence was consistent with that. I do not see how a further opportunity at interview will advance his case that he speaks very limited Rohingya, or provide clarity in this review. I am

not satisfied that it is reasonable or necessary for the applicant to be invited to give evidence in an interview.

37. I accept the applicant grew up in Yangon speaking Burmese, and this is the language in which he is fluent. That was evident from the visa interview. If the applicant were Rohingya, it is plausible that his parents would have encouraged them to speak Burmese for their safety and to minimise the discrimination that he and his sister would face living and attending school in Yangon. However, given the ethnic background of his parents, and the fact that they are both from Rakhine, I find it difficult to accept that his parents spoke to each other in Burmese within their own home. Indeed, [a Country 1 authority] indicates that ethnic minorities generally used their own languages at home.⁴
38. Even if it was the case that the parents focussed on Burmese for their children, I also find it difficult to accept that they would not have spoken some Rohingya at home, such that the applicant would have acquired at least a basic ability with the language. While not determinative, I consider his inability to form a coherent sentence in Rohingya is a factor that goes against his claims that he and his parents are of Rohingya ethnicity.
39. When weighing everything before me, including the variations in evidence in terms of his substantive claims, the lack of supporting country information in terms of his substantive claims, the lack of supporting country information in terms of his claims to be undocumented and unregistered in Myanmar, his inability to speak Rohingya in even a basic way, his failure to provide any supportive or corroborative information, despite a clear opportunity to do so, collectively lead me to conclude that the applicant has not been credible about his claims to be a stateless and undocumented Rohingya. I do not accept his parents are from Rakhine. I do not accept he is a stateless Rohingya, or that he is undocumented.
40. It follows that I do not accept his family was detained and mistreated in 2000 because they were undocumented and not registered with the authorities. I do not accept they had to hide at the train station to avoid the authorities. I do not accept he was denied a national identification card because he was a Rohingya. I do not accept he was prevented from finishing school for the same reasons. I do not accept he faced discrimination, threat or harm on the basis that he is Rohingya. I do not accept he or his family are or are considered by the Burmese authorities to be undocumented, stateless Rohingya, or that they have faced any harm for those reasons.
41. As discussed below, I have accepted the applicant is a Muslim. Having rejected he is a Rohingya, I consider he is from one of the eight major ethnic groups and 135 recognised ethnic groups that are eligible for citizenship under the Burma Citizenship Law 1982. I am satisfied he is a national of Myanmar, documented and eligible for citizenship documentation.
42. For clarity, I do not accept he would be imputed to be a Rohingya. He speaks fluent Burmese and is unable to speak Rohingya. I am satisfied he has no documentation that would indicate his Rohingya, but instead any documentation he has would confirm his nationality and other ethnicity. I am satisfied he would be seen as a Burmese Muslim, and would not be imputed to be an ethnic Rohingya or stateless non-citizen. If the applicant were to return to live in Myanmar, I find there is no real chance of him facing harm on the basis of any actual or imputed Rohingya ethnicity, and/or any actual or imputed basis that he is stateless or undocumented, or for any related reason.

⁴ US Department of State, "Human Rights Report 2014 Burma", 25 June 2015, OG2B06FAF35.

Father's political activity

43. The applicant claimed in his written statement that the catalyst for his family's departure related to a protest in 2007. The applicant explained that there was a protest between the Burmese monks and the Burmese authorities. The main reason for the protests was that the monks were standing on behalf of all Burmese people (including Rohingya) and asking for democracy. His father joined the protests without telling the family. He supported the monks protesting for democracy.
44. The applicant claimed that the police were looking for his father after the protests to ask him questions and arrest him. They were not home that night, but when they did come home, the neighbours told them the police were looking for his family. His father told them that they would need to leave Myanmar otherwise they would be arrested and he would die in prison. His father told them they would all need to leave because they would arrest the applicant and his mother if his father was not there. The family all decided to leave Myanmar.
45. At the visa interview, the applicant could only speak about the protest in general terms. He did not know what the protest was about or why his father went. He said they did not talk about it at home. The delegate asked him why his father, a Rohingya Muslim, would join in a protest with Buddhist monks in a protest against the government. The applicant said he did not know. The delegate put to him that 11 years had passed since the protests, and his father had since passed away. He asked why he would still be afraid for these reasons. The applicant responded that in religious and business matters, they cannot take things for granted, because discrimination and restrictions for Muslims and Rohingya are still happening. He said they are unable to trust what is happening. There was no law and rights for Muslims over there.
46. It is reasonable that the applicant would not have a great understanding of the protests in 2007, or his father's involvement or interest in those protests. However, it is difficult to accept that his father and family would not discuss the reasons why the threat to them was so significant that they were forced to leave the country. It is also difficult to accept that a claimed undocumented Muslim would have any prominent role in a protest between Burmese Buddhists and the Burmese Government such that he would be targeted by the police in the aftermath of those protests. Equally, if these protests related to democracy, it is plausible that his father was involved. I consider it plausible the authorities may have taken an interest in his father at the time of the protests.
47. What I am not satisfied of is that the applicant, his mother and sister were ever personally at risk from the authorities. They took no active role in the protests, and they were never personally approached, questioned or threatened by the authorities. I am prepared to accept they left Myanmar at the same time as his father, but I am not satisfied this was because they were personally at risk or threat from the authorities.
48. As the delegate noted, over eleven years have passed since the protests. During that time, there has been significant political change in Myanmar, including the easing of military rule in Myanmar and a parliamentary election in 2015 that was generally accepted as credible by the public, parties, candidates and international observers.⁵
49. Given the significant political changes in the country, the death of his father, and my findings that the applicant and his other family members had no adverse profile with the Burmese

⁵ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

authorities, I do not consider the applicant has any active or remaining profile with the authorities in relation to his father's involvement in the 2007 protests. I am satisfied there is no chance of the authorities taking an interest in the applicant in connection with the protests in 2007 or because of his father's involvement. I am satisfied there is no chance of the applicant facing harm from the authorities for these reasons.

50. In terms of the applicant's own profile, I am satisfied the applicant is not politically active. He has not claimed to have been politically active in the past, either in Myanmar or Australia. I have no reason to consider he would be politically active on his return to the country. I accept there are risks in Myanmar for those that are politically active and outspoken persons, however I am satisfied the applicant would face no real chance of harm from the authorities for these or any related reasons.

Assessment of religious and ethnic profile

51. I have not accepted the applicant's claims to be a stateless Rohingya. I have found instead that he is from one of Myanmar's numerous minority ethnic groups that are not prevented from holding citizenship under Burmese law.
52. I do not accept the applicant was prevented from holding citizenship documentation. I do not accept he was prevented from finishing school because he was a Rohingya, stateless or undocumented. However, as an ethnic and religious minority, I am prepared to accept he faced some verbal discrimination at school.
53. The applicant has consistently claimed to be a Sunni Muslim and his claims were often articulated in terms of his religious profile. The applicant's evidence about his religious background was freely given and unequivocal. When asked to recite a Muslim prayer during the visa interview, the applicant appeared to recite the prayer without difficulty. I accept he is a Sunni Muslim as claimed.
54. The applicant claimed he attended mosque from around 8 years of age. He claimed that around once a year, the Buddhists would drive past the mosque and throw rocks and bricks at it. The Muslims would stand outside to defend the mosque, but the police would come and arrest the Muslims/Rohingya for trying to defend the mosque. He claimed he was involved in trying to protect the mosque, but he was never arrested. He claimed he was fearful of attending the mosque because he might be attacked. He was also scared of being arrested by the police and dying in prison.
55. He also claimed that in 2001, which would have been when the applicant was around [age] years old, a group of Burmese youth called him 'Kalar' (a derogatory term for Muslims and some minority ethnic groups) while he was passing a Buddhist temple. He claims he was chased, bashed and had rocks thrown at him.
56. The applicant did not advance these specific claims in his oral evidence, but I consider these claims are plausible. They are consistent with country information before me about tensions between Buddhists and Muslims in Yangon, discrimination between these groups, and occasional flare-ups of violence. I accept those claims.
57. I accept that the applicant has faced discrimination on the basis of his ethnic (minority) and religious profile in the past. I accept he was harassed and beaten by Burmese Buddhist youths on one occasion when he was a teenager. I accept he was at times fearful when practising his faith in Yangon. However, I am satisfied that other than the one occasion when he was

passing a Buddhist pagoda when he was young, he was not directly harmed or threatened on the basis of his religious or ethnic profile, or prevented from practising his religion.

58. Looking to his situation on return to the country, in terms of his ethnic background, I note DFAT's assessment that instances of official discrimination on the basis of ethnicity against people recognised as citizens are rare. In general, DFAT assesses that people in Myanmar, other than those who identify as Rohingya, typically face a low level of official and societal discrimination based on their race or ethnicity. In terms of his religious profile, DFAT assesses that Muslims outside of Rakhine State experience moderate levels of societal discrimination and low levels of official discrimination.⁶
59. According to DFAT, there are currently no legal barriers to government employment for non-Buddhist citizens in Myanmar. However, the evidence also indicates that no Muslim candidates have been elected to the government. While Muslims (and Christians) are rarely promoted to senior levels in government, the military or the police, discrimination is less severe in professional services. Muslims and Christians occupy senior positions in professional fields such as medicine, finance and legal services.⁷
60. Muslims outside of Rakhine State can generally access a similar level of government services to other ethnic groups. As above, while there are credible reports of authorities discriminating against people from Muslim groups, DFAT assesses that these incidents represent informal, societal discrimination by mostly Bamar public officials and do not represent official government policy.⁸
61. I accept there is a high level of anti-Muslim sentiment in Myanmar, particularly outside the major cities, and most significantly within Rakhine State. Buddhist nationalist groups such as Ma Ba Tha and the 969 Movement are vocal and influential advocates of discrimination against Muslims and have advocated boycotts on Muslim-run businesses. Anti-Muslim sentiment applies not just to Rohingya, but also to Muslims of other ethnicities. However, DFAT advises that societal violence between Muslims and Buddhists has not occurred in every town with a Muslim population in Myanmar, nor does it occur on a daily basis. According to DFAT, Muslim and Buddhist communities that are mutually dependent for trade and other livelihood purposes generally live together without violence. Muslim communities in major cities like Yangon generally live peacefully. DFAT assesses that Muslims outside of Rakhine State experience moderate levels of societal discrimination and low levels of official discrimination. DFAT further assesses that Muslims outside of Rakhine State face a low risk of societal violence on a day-to-day basis.⁹
62. In terms of religious or ethnic violence in the country, which has flared up on occasions including in Yangon, I accept he may have been fearful of harm, but other than the one incident when he was a teenager, I find the applicant was not directly harmed or at threat. I accept that violent incidents occur, notably during tensions in 2013, and also after that, however the information before me does not indicate that ethnic or religiously-motivated violence is a recurring feature of the security environment in the capital, or that it involves the level of violence, severity or frequency seen in other parts of the country, such as Rakhine State.¹⁰ I accept DFAT's assessment that Muslims outside of Rakhine ace a low risk of societal

⁶ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

⁷ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

⁸ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

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

¹⁰ US Department of State, "Human Rights Report 2014 Burma", 25 June 2015, OG2B06FAF35; DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

violence on a day-to-day basis. I find there is not a real chance of the applicant facing harm in religious or ethnically motivated violence in his home area of Yangon.

63. I accept that he faced some societal or official discrimination in the past while living in Yangon because of his religious and ethnic profile. I accept those experiences were difficult and caused him frustration, as would be the case if he were to again face such treatment on return to the country. However, I accept DFAT's advice that societal discrimination is moderate, that official discrimination is low level, and that Muslim communities in major cities like Yangon are generally able to live peacefully. The advice before me does not suggest that Muslims in the city are unable to practise their faith in the capital, or that they are unable to do so safely.
64. I consider he would return to live and work in Yangon. While I accept there are barriers to certain employment, I am not satisfied he would be denied access to employment or business opportunities more broadly. I am satisfied he would be able to find work, accommodation, access basic services, practise his faith, and obtain identity documentation. I am not satisfied any societal or official discrimination he may face in Yangon on the basis of his religious and ethnic profile would threaten his capacity to earn a livelihood, that it would cause him significant economic hardship, that he would be denied access to basic services, that it would threaten his capacity to subsist, or otherwise amount to serious harm.
65. I do not accept he ever had to modify his behaviour in the past or act discretely in terms of his faith and ethnicity, and I am satisfied he would not need to do so to avoid persecution or other harm in the future.
66. In view of all the circumstances, I find there is no real chance that the applicant would face serious harm for reasons of his religious, ethnic or any connected profile, from the government, Buddhists or Buddhist nationalists, or any other person or group. I am satisfied the applicant's claims on this basis are not well founded.

Illegal departure

67. I have found the applicant is a national of Myanmar. I accept the applicant has not previously held a passport, and I accept he left the country illegally through the Myanmar-[Country 3] border.
68. I have found above that the applicant has no adverse profile, and I am satisfied he has no ongoing or active profile from his father's claimed activities in the 2007 protests. Nevertheless, given his method of departure, I accept the Burmese authorities would determine that he left the country illegally, and they may conclude that he sought asylum in Australia.
69. In terms of that departure and his claims for asylum in Australia, DFAT confirms that returnees to Myanmar who depart the country illegally are technically subject to up to five years imprisonment for having illegally crossed a border. However, DFAT understands that this provision has not been enforced in recent years. As evidence of this, in March 2015, a large number of migrant workers were returned to Myanmar from [Country 2], some of whom had departed Myanmar illegally. The Myanmar Government reached an agreement with the [Country 2] Government to allow their return, and the workers gave their consent. The workers were processed in Yangon, and the government provided them with 10,000 Myanmar Kyat (approximately USD 8) to cover transportation costs back to their homes. DFAT stated that it was not aware of any credible reports of mistreatment of failed Rohingya

asylum seekers stemming specifically from their having sought asylum overseas.¹¹ Other advice from DFAT does not contradict this.¹²

70. I am satisfied the applicant has not personally had any adverse interactions with the Burmese authorities. I have found the applicant was not politically active, and I am satisfied he has no adverse profile with the Burmese authorities, whether directly or through his father. In terms of his ethnic and religious profile, I have found he would not face a real chance of harm on return to Myanmar for these reasons. I have no reason to consider this would not be the case for the applicant on arrival and return to the country.
71. In view of all the information before me, I am satisfied the applicant is a national of Myanmar. I accept he left the country illegally, but I am satisfied he would face no penalty under the law. I find he has no adverse profile, and would not face any harm or mistreatment for any past profile and/or for having sought asylum in Australia.
72. I find there is no real chance of the applicant facing serious harm on return to Myanmar, because of his illegal departure, the fact that he sought asylum in Australia, his ethnic and religious background, or on the basis of any related profile.

Refugee: conclusion

73. I have accepted the applicant may face low and moderate levels of official and societal discrimination on the basis of his religious and ethnic profile, but I am not satisfied it would constitute serious harm, whether considered separately or cumulatively.
74. In view of all the circumstances, I find there is no real chance of the applicant facing serious harm for reasons of his religious, ethnic or any related profile, for illegally departing the country, for seeking asylum in Australia, because of his father's past political activities, any actual or imputed profile, or on the basis of any related profile.
75. Beyond his religious and ethnic profile, I am not satisfied the applicant has any adverse profile on return to Myanmar. It follows that I do not consider there is any real chance of him facing harm for these reasons, even when considered in a cumulative sense.
76. 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

77. 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

78. Under s.36(2A), a person will suffer 'significant harm' if:

¹¹ DFAT, "DFAT Country Information Report - Myanmar", 10 January 2017, CISED50AD28.

¹² DFAT, "Burma: Country Information Request MMRCI150717155751716 – Returnees to Burma", 2 September 2015, CXBD6A0DE13017.

- 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.
79. I have found the applicant may face low and moderate levels of official and societal discrimination on the basis of his religious and ethnic profile. I have also found that any discrimination he may face on the basis of that profile would not amount to serious harm. As above, the information before me indicates that official and societal discrimination is at low and moderate levels, would not involve violence or other serious harm, would not threaten his ability to find employment or run a business, that he would be denied access to basic services, that it would threaten his capacity to subsist or earn a livelihood in the country, that he would be prevented from practising his faith, or would otherwise constitute serious or significant harm.
80. I accept that if the applicant is exposed to low or moderate levels of official or societal discrimination, it would be challenging and frustrating for him, as I expect it was in the past. However, when having regard to his individual circumstances, including his past experience living in Yangon, and the prevailing country information, I do not accept that such discrimination would involve pain or suffering that is cruel or inhuman in nature, or severe pain or suffering, or would be intended to cause extreme humiliation, or otherwise amount to significant harm as defined, even when considered in a cumulative sense.
81. I have found above there is no real chance of the applicant otherwise facing harm for reasons of his religious, ethnic or any related profile, for illegally departing the country, for seeking asylum in Australia, because of his father's past political activities, any actual or imputed profile, or on the basis of any related profile, even when considered cumulatively. For the same reasons and on the basis of the same information, I am satisfied there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Myanmar, the applicant will face a real risk of significant harm.

Complementary protection: conclusion

82. 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.