



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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VIETNAM

IAA reference: IAA18/05260

Date and time of decision: 4 September 2018 16:06:00

V Price, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Vietnam of Kinh ethnicity and a practising Catholic. He lodged an application for a protection visa with the Department on 21 November 2016.
2. On 29 June 2018 a delegate of the Minister for the Department (the delegate) refused to grant the visa to the applicant

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant's representative provided a submission to the IAA on 1 July 2018 responding to the findings of the delegate. The following new information was given to the IAA; an excerpt from a book (the excerpt); and a new claim that the applicant will be required to proselytise on return to Vietnam as part of his faith (the new claim).

### Excerpt

5. The excerpt was provided to refute the delegate's finding that individuals needed household registration in order to be enrolled in primary school. It provides general information on the education system in the Mekong delta region of Vietnam as it stood in 2003, and it is not apparent that this relates to circumstances in the applicant's home region, or that it applied at the time he was in school between [year] and [year]. This document has little weight in my assessment of the applicant's claims and I am not satisfied in all the circumstances before me that there are exceptional circumstances to justify considering it. I must not consider it.

### New claim

6. The applicant did not take the opportunity to raise the new claim that he will be required to proselytise in the future, in his protection visa application which was prepared with assistance from a solicitor, or in the interview with the delegate, which was conducted with the assistance of an interpreter. He has given detailed evidence to the Department on the manner in which he fulfilled his religious observance in the past, including in Vietnam and in Australia, and this did not include proselytising. His failure to raise the new claim when given the opportunity to do so, combined with the fact that he has not stated he proselytised in the past, raises real questions as to the believability of this new claim and leads me to doubt the he will proselytise in the future. I can give little weight to this evidence in my assessment. Moreover, and in any event, the information in the review material does not indicate that Catholics are required to proselytise, or that those who do so may face any different chance or risk of harm than other Catholics, and nor has any evidence to the contrary been provided in the submission. I have sufficient information in the review material upon which to assess whether the applicant faces harm for reasons of his Catholic faith. The representative has not detailed why this new claim should be considered, and I cannot identify any. I am not satisfied on the evidence before me that there are exceptional circumstances to justify considering this new claim. I must not consider it.

## *Other matters*

7. The IAA submission also included photographs (including screen shots of YouTube videos and Facebook material) depicting the applicant attending protests in [a city], participating in world youth day and one photo of him sitting with members of the Viet-Tan. At the protection visa interview the applicant also presented photographs purported to evidence his participation in the [city] protest and in activities of the Viet-Tan and, from their description in the interview recording, they sound similar to the information now provided to the IAA and appear to relate to the same events. However, at the conclusion of the interview the delegate returned these photographs to the applicant and did not appear to retain copies of this evidence. There were no photographs included in the material given by the Secretary under s.473CB. The decision record broadly referred to photos of the applicant with members of the Viet-Tan but did not describe these photographs or indicate how many were provided. The decision record did not refer to the photographs of the applicant at the [protest] at all and it is not evident the delegate had regard to them in assessing the applicant's claimed political profile. The IAA submission notes that the photographs given to the IAA are 'further photos', suggesting they were additional to those presented to the delegate. However, ultimately it is not clear whether any of the photographs provided to the IAA were among those also submitted to the delegate, or which, if any, constitute new information.
8. I cannot be satisfied on the evidence that this information was known to the delegate or that it was before her at the time of making the decision. It is new information, which I accept is credible personal information not previously known, and had it been so, may have affected consideration of the applicant's claims. Noting that: the photographs are directly relevant to assessing the applicant's claimed political profile as set out in his protection visa application; there was an apparent failure of the delegate to retain and consider evidence presented at the interview, I am satisfied that there are exceptional circumstances to justify considering this information. I am not prevented from considering this new information.
9. I have obtained new information on the past treatment of Catholics in Vietnam, this is relevant to assessing the applicant's claims that Catholics were harassed by the government and were not issued identification and household registration documents in Vietnam in the past.<sup>1</sup> This does not pertain to a new issue or claim but, as noted by the representative in the IAA submission, the delegate's finding on this matter was made without reference to independent information contemporaneous to the period in which the applicant contends he experienced this discrimination. I am satisfied in all the circumstances before me, that there are exceptional circumstances to justify considering this information. Noting that this new information relates to matters of which the applicant is aware and has made submissions on, I am satisfied that I do not need to obtain further information from the applicant on this point.

## **Applicant's claims for protection**

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10. The applicant's claims as set out in the statement accompanying his protection visa application are summarised as follows:
  - In 1956 the applicant's grandfather was killed during a riot protesting the land reform program. At the time his grandfather was executed, his father was [age] years old. He

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), Vietnam Refugee determination: country profile", 1 September 1993, CIS2832; UK Home Office, "Country of Origin Information Report Vietnam April 2003", 1 April 2003, OGC2996EC9.

survived only because the priest hid him. The applicant's parents were also prominent followers of the Catholic faith and attended regular worship vigils. They preached the Catholic religion to others and, like his grandfather, they fought for freedom of religion. They were despised by the local authorities for doing so. They were killed in a car accident in 1983 but the applicant's family believe they were killed by the government.

- The applicant continued to follow his Catholic faith. He attended worships once a week, and mass on Sunday, at the [parish] led by [Priest A] in the [Quynh] Luu District. However, he and his siblings faced discrimination due to their religion and their connection with their prominent parents. The local authorities made life difficult for them, as well as for other Catholics in their village. The government prevented the applicant and his siblings from attending secondary school as it was reserved for the children of communist families. At the age of [age] he was refused identification paperwork due to his Catholic faith. His siblings had not been able to obtain identity documents because the government did not want them to leave the country.
  - In April 2010 the police attended the home of one of the parishioners where their prayer groups were conducted. They were told to end their prayer session and were attacked by the police when they refused. The applicant was attacked with a knife. He was taken to hospital but treatment was delayed by a month because he lacked identity documents. His arm was permanently damaged and scarred as a result. Following this incident, the applicant continued to practice his faith, attending worship at the homes of the parishioners. They were forced to move the location of their worship from one private home to another as the local authorities would find out where they were and harass them.
  - [In] July 2012, the applicant went to the [Commune] in the [District 1] to sell salt and decided to stay for mass. [Priest A] was to attend to celebrate mass. The applicant was one of the many parishioners present in the Chapel before mass was due to begin. Local authorities attended and began yelling at them and trying to push them out of the door. Individuals started to break and smash the furniture in the Chapel, and broke the statue of the Virgin Mary. The priest arrived about 2pm and was beaten when he refused the authorities demands to stop the mass. A confrontation ensued. The police recorded the names of some of the parishioners, including that of the applicant, and threatened to imprison them. The trouble continued until 3-4am. The applicant hid and then snuck out the back to go home. He was pulled up by a policeman but was released when he told them he had no identity documents and was present in the area for work.
  - Three months after the incident in at [District 1], the local authorities attended the applicant's home, harassing the applicant and his family. [In] October 2012, he received a letter from the district police requesting him to attend the station [in] October 2012 to answer questions regarding the incident at [District 1]. Believing he would be imprisoned, he decided to leave Vietnam. On the morning of [a day in] October 2012 he went to Ha Tinh and walked to [one country] and then to [another].
  - He has continued to attend church every Sunday in Australia.
11. He fears he will be harmed on return to Vietnam due to his religion, his association with his parents, and his illegal departure from the country. His agent also contended the applicant faced harm due to his prolonged absence from Vietnam.
12. At interview the applicant raised additional claims to fear harm on the basis of his anti-government political opinion. He has participated in a protest [and] has adopted the views and attending functions of the Viet-Tan.

## **Factual findings**

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### *Identity, citizenship and background*

13. The applicant provided an Australian drivers license and Medicare card to support his identity. He did not provide any Vietnamese documentation to support his identity or citizenship. However, he has provided consistent evidence regarding his citizenship, identity and family composition since his arrival in Australia. He engaged with a Vietnamese interpreter at interview and displayed knowledge about his local area in Vietnam, and I accept on the evidence before me that his identity is as claimed, and that he is a Vietnamese citizen.
14. Apart from brief periods where he resided away from home for the purposes of work, the applicant lived with his family in [Quyng] Luu District in Nghe An province from [date] until his departure for Australia in October 2012. His parents were killed in a car accident when the applicant was young and he and his siblings were cared for by his elder sister. The applicant has stated, and I accept, that he is not in contact with his remaining siblings in Vietnam and is not certain of their current circumstances. However, I nonetheless find that he would return to the area in which he previously lived with his family.
15. At the interview the applicant provided detailed evidence, in a manner suggestive of lived experience, of his belief in, understanding of, and practice of Catholicism in Vietnam. I accept that the applicant and his family are Catholic and that the applicant attended unregistered house churches in Vietnam. A letter supporting the applicant's continued religious observance at [a] Catholic Church in [in] Australia was provided with the visa application.

## **Refugee assessment**

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16. 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**

17. 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.
18. I accept on the applicant's consistent and plausible evidence that his grandfather advocated for religious freedom and was killed during a riot against proposed land reforms in 1956. I do not accept that this resulted in any adverse profile for the applicant given these events occurred about [years] before he was born.
  19. I accept on the detailed and consistent evidence given by the applicant, that: his parents were prominent followers of the Catholic faith; they attended regular worships and vigils; talked to others about the faith; protested for religious freedom; and that they were killed in a car accident when the applicant was young. However, for the following reasons, taken together, I am not satisfied on the evidence that they were killed by the government due to their religious profile as claimed. The applicant did not explain or provide any details as to the manner in which the government killed their parents, or how he and his family came to believe they had in fact been killed by authorities; he did not indicate his parents were killed by authorities when given the opportunity to do so during the arrival and entry interview conducted with the Department in October 2012 (the arrival interview), which was attached to his visa application, stating only that his parents were killed in a traffic accident; and there is nothing in the evidence before me, including the independent evidence, to suggest that historically the government targeted individuals with his parents profile.
  20. I am also not satisfied on the evidence before me that the applicant or his siblings were attributed with an adverse profile or were discriminated against due to their parent's religious activities or their profile. As noted, information does not support that the government historically targeted individuals with his parents' profile, nor does it suggest family members were targeted. The applicant and his siblings were children at the time of their parent's death; they remained residing in the family home without experiencing any harm or attempts to arrest or detain them in the period following their parent's death; the applicant did not himself claim that he had any negative attention from the authorities until April 2010 which was due to his own activities; and on his evidence at interview, at the time of his departure in 2012, his siblings opted to remain in Vietnam and had not been harmed or subject to other adverse police attention. These factors cumulatively indicate the authorities were not interested in them for any reason associated with their parents' activities.
  21. The applicant contended that he and his siblings were denied a proper education as the government prevented them from attending secondary school due to their religion. I accept that the applicant and his siblings attended school up to grade [grade] but that they were then unable to attend secondary school. However, I do not accept this was due to their religion or due to discrimination from the authorities. Education is a universal right for all Vietnamese citizens; and that while primary school is compulsory, attendance at secondary school was often not enforced, particularly in rural areas, where government and family budgets for education were strained and children's contributions as agricultural labourers was valued over continuing education.<sup>2</sup> There is nothing in the material before me to suggest that education was historically denied to children on the basis of their religion or for any other reason, and having regard to this information and to my findings above, I am not satisfied that the applicant or his siblings were unable to access education, or were denied a proper education, due to their religion, because they were not communist, or their association with their parents as claimed.

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<sup>2</sup> UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417.

22. The applicant also claimed that at the age of [age], in about 2001, he was unable to obtain identity documentation or household registration stating the local officers refused to certify any documents upon learning he was Catholic. However, there is nothing in the independent information to indicate that Catholics were refused identity documents or household registration as claimed. Rather, all individuals in Vietnam are and have been required to hold identity documents and household registration, and historically, national ID cards and household registration expressly recorded a person's religion, evidencing they were granted irrespective of an individual's religion.<sup>3</sup> On the evidence before me, I find it more likely that the applicant and his siblings would have had identity documentation and household registration and having regard to all of the evidence before me and to my findings above that they did not have an adverse profile arising from an association with their parents, I do not accept they were refused such documentation due to their religion, or because authorities did not want them to leave the country as contended.
23. I have accepted that the applicant attended unregistered house churches in Vietnam. The applicant claimed that he was harassed during worship and that he came to the adverse attention of the authorities in April 2010 when police raided his church prayer session, and again in July 2012 when he was present at the incident in [District 1]. I note that the applicant's written and oral evidence on these matters was broadly consistent with independent information relating to the treatment of unregistered house churches in Vietnam at that time period, and on the incident at [District 1] itself.<sup>4</sup> However, for the following reasons, I have concerns regarding the applicant's evidence which, when taken cumulatively, lead me to doubt his claims.
24. The applicant did not raise these incidents in his arrival interview, a copy of which was provided to the Department with the visa application, when given express opportunities to do so and nor did he indicate he ever personally experienced any issues during worship at unregistered Churches. In particular, when asked specifically what had happened to him as a result of his religion, he said 'just small things', when asked to clarify, he said he experienced difficulty accessing study and medical treatment and getting identification, and when asked if had participated in any protests against the government or ever been detained or arrested, he said 'no'. I note that the applicant did not have legal representation at this interview, but it was conducted with the assistance of an interpreter and he was expressly advised this was an opportunity to provide evidence on his circumstances. I consider it notable that he raised other matters during that interview which were later reiterated in his visa application (access to education, medical treatment and identity documentation); but that he did not mention the claimed harassment in his house Church, the assault in April 2010 or that was wanted by authorities in connection with his presence at [District 1]. I do not accept these matters would constitute 'small things' and given their significance to his circumstances and reasons for departing Vietnam, I would have expected the applicant to raise these matters at that interview had they occurred.
25. Aspects of the applicant's evidence surrounding the April 2010 incident lacked detail, were implausible or were inconsistent with independent information. At interview the applicant

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<sup>3</sup> DFAT, Vietnam Refugee determination: country profile", 1 September 1993, CIS2832; UK Home Office, "Country of Origin Information Report Vietnam April 2003", 1 April 2003, OGC2996EC9; UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417; and DFAT, "Country Information Report Vietnam, 21 June 2017, CISED50AD4597.

<sup>4</sup> UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417; DFAT, "Country Information Report Vietnam, 21 June 2017, CISED50AD4597; and Democratic Voice of Vietnam, 'Report on Violations of Religious Freedoms in Vinh Diocese - Nghe An - Vietnam. To: Special Rapporteur of the United Nations on Freedoms of Religion or Belief' (Report to UN Special Rapporteur) 2014, CIS2F827D91370.

contended that their prayer sessions were moved to a different location on a weekly basis to avoid detection by the police, but other than stating they lived in a small village, he was unable to detail how the police came to continually learn of the location, dates and times of their prayer sessions, including the one occurring on April 2010; or identify why he and the other practitioners were not arrested or detained on these occasions. He was also unable to explain how or why he came to be stabbed with a knife when others in the gathering were not harmed in that same manner, and nor did he detail why he was taken to a hospital, which on his own evidence, was about 300km away. While the Australian Department of Foreign Affairs and Trade (DFAT) does advise that public facilities may turn away non-life threatening cases if a person is not properly registered, I have not accepted that the applicant did not have household registration, and moreover, information is that even without registration, health care facilities can be accessed anywhere in Vietnam in emergency cases.<sup>5</sup> The applicant's claims that he ultimately paid a bribe to the hospital to obtain the required surgery a month later are also not supported by the independent information before me, which does not indicate that bribes were needed to obtain medical treatment.<sup>6</sup> While I accept that the applicant does have an injury to his arm, this of itself does not corroborate his claims and overall, I am not satisfied that he received the injury in the circumstances he claimed.

26. I noted above the applicant's oral evidence regarding the [District 1] incident itself was consistent with country information. However, overall I consider the details he gave in his written statement and his oral evidence did not go beyond those set out in the article he provided with his visa application<sup>7</sup>, and did not reflect a personal experience of the event. Moreover, I also consider that aspects of the applicant's evidence in his written statement and oral evidence at interview relating to his presence at [District 1] were internally inconsistent. In his written statement he stated the Priest was threatened by police upon arriving at the church before commencing the service, however, at interview he claimed the Priest was in the midst of the ceremony when threatened. He claimed in his written statement that the police took his name along with others and threatened to lock them away during the course of the protests, whereas in his oral evidence he stated he was not rounded up with others and his details were not taken until later when he was alone and on his way home. The applicant also provided different accounts of why the police were after him, in his written statement indicating they wanted to question him about the events at [District 1], and at interview stating they were searching for documents and information on 'their' plans to overthrow the government. When questioned further on this last point, the applicant was unable to indicate on what basis he would have such information given that, at that point, he had not undertaken any other religious protest or political activity in Vietnam.
27. The applicant's evidence was also implausible in certain aspects. In particular, he stated that when pulled up by the police after the [District 1] incident, they believed his story that he was not at the mass and was merely in the area for work and released him. In such circumstances, having accepted his version of events, it is not clear why they would have taken his details, passed them on the local authorities, or then decided to target he and his family three months later as claimed. Further, it is unclear on the applicant's evidence why the police did not detain or arrest him on one of the several occasions he claimed they visited the family home to harass he and his family. I consider the authorities had numerous opportunities to arrest, detain or question the applicant in the three months between the incident at [District 1] and the time he departed the country, had he been of interest to them as claimed.

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<sup>5</sup> DFAT, "Country Information Report Vietnam, 21 June 2017, CISED50AD4597.

<sup>6</sup> Ibid; and UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGCOD145417.

<sup>7</sup> Democratic Voice of Vietnam, Report to UN Special Rapporteur, 2014, CIS2F827D91370.

28. Cumulatively the above matters lead me not to be satisfied that the applicant himself was harassed during worship at unregistered house churches; that he was involved in an incident with the police in April 2010; he was present at the incident at [District 1] in July 2012; that he discussed events with his local Priest who organised a local prayer; or that he was harassed or sought for questioning by the police due to his presence at [District 1], or for any other reason. More broadly, the independent information is that while low level supporters and parishioners were occasionally harmed in the course of protest activity and some church activities, the authorities were more interesting in prosecuting high profile religious leaders and the organisers of such protests,<sup>8</sup> and overall the applicant's accepted religious activities did not place him within these categories, which indicates he would not have been of any interest to the police for any reason.
29. On the totality of the claims and evidence before me, I am not satisfied that the applicant had an adverse profile with the government or the authorities for any reason associated with the past practise of his Catholic religion, or due to his association with his grandfather or parents, and I am not satisfied that he faces a real chance of any harm on return to Vietnam now or in the reasonably foreseeable future for these reasons.
30. In this case, the applicant has practised his Catholic faith in Vietnam and Australia and I accept that he will continue to do so, on return to Vietnam and that he will do so at house churches. I also accept that the applicant was not politically active in the past in Vietnam, but that he has become so since arriving in Australia. I note that Vietnam's Constitution enshrines rights with regard to freedom of belief and religion and states that all people have the right to follow any or no religion.<sup>9</sup> It also enshrines the rights to freedom of speech, assembly, association and demonstration.<sup>10</sup> However, in practice these rights are conditional, with the government maintaining a strong atheist stance, and remaining intolerant of open political expression against the Communist Party of Vietnam (CPV), the government or its policies. There are penalties under the Penal Code for practices that, in the government's view, undermine peace, national independence and unity and these laws are routinely applied to curb political dissent, and to limit religious freedom, particularly in relation to unregistered organisations and unregistered church groups in ethnic minority communities, due to their real or perceived political activism.
31. The Australian Department of Foreign Affairs and Trade (DFAT) has recently advised that the situation for Catholics across Vietnam is improving, with Roman Catholics accounting for approximately 7 per cent of the population and this religion gaining full government recognition and registration.<sup>11</sup> In Nghe An province specifically, pro-government groups reportedly demonstrated against Catholics on several occasions in 2017, however, the reports do not disclose any instances of harm to the parishioners.<sup>12</sup> DFAT and the US State Department have reported on periodic instances of harassment, intimidation and forcible closures of house churches in Nghe An, some of which involved assault against priests and parishioners and damage to church property.<sup>13</sup> However, these do not appear to occur at a level of regularity which indicates there is a real chance of harm for merely worshipping at a house church and overall, DFAT reports the situation has improved in Nghe An province with the increased strength of the Catholic community and leadership and a reported increase in

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<sup>8</sup> UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGC0D145417.

<sup>9</sup> DFAT, "Country Information Report Vietnam, 21 June 2017, CISED50AD4597.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> US Department of State, "International Religious Freedom Report for 2017 - Vietnam", 29 May 2018, OGD95BE927542

<sup>13</sup> Ibid.

the registration of churches.<sup>14</sup> DFAT notes concerns in relation to unregistered church groups in ethnic minority communities and has advised that serious incidents of violence are related to other activities such as protesting against land confiscation and anti-government activities.

32. In relation to such protests and to political dissent more broadly, DFAT advises that those at high risk of being subject to intrusive surveillance, detention, arrest and prosecution are individuals who are known to authorities as active organisers or leaders of political opposition. This includes prominent political, religious and human rights activists, as well as high profile bloggers and former political prisoners of conscience. In contrast, low-level protesters and supporters may be injured in crowd disbursement, may feel intimidated by police and, in some cases, may be detained and released the same day. However the information does not suggest this happens to all low-level supporters, or at a level which rises to a real chance. Information regarding social media, is that Facebook was sporadically blocked in 2016, most notably during the protests over Formosa, however, overall blogs and social media platforms are widely available in Vietnam.<sup>15</sup> Facebook and Instagram are popular amongst citizens as a means of sharing information and organising public events, and it only high-level bloggers who have had their accounts suspended or who have faced adverse attention from the authorities.<sup>16</sup>
33. In this case, the applicant is not a member of an ethnic minority and information indicates an overall improvement in the situation for Catholics in general and for practitioners at house churches in Nghe An province. On the totality of the evidence, including the applicant's particular circumstances and the independent information above, I consider any chance that he will face harm in practising his faith to be remote, and therefore not real. I consider that the applicant can continue to practice his faith on return to Vietnam and am not satisfied that he will face a real chance of harm in doing so.
34. I have not accepted the applicant's claim that he was unable to obtain identification or household registration in the past due to his religion or that he was denied education and health care. The applicant is an adult and he has not claimed he wishes to pursue any further education, and find he will not face any harm for this reason on return to Vietnam.<sup>17</sup> Information before me does not indicate that Catholics face discrimination in non-government employment, and having regard to his employment in Vietnam and Australia, I am not satisfied that he will be unable to find work or accommodation on return to Vietnam. I accept that the applicant may have been removed from his household register given his absence from the country, but information is that it is possible to re-apply for registration and that assistance is provided to returnees from the local authorities, and there is nothing to indicate the applicant will be prevented from doing so for any reason, including his religion.<sup>18</sup> I am not satisfied that he will be undocumented or unable to obtain household registration on return. Further, the current information does not support that the applicant will be unable to obtain access to health care on return to Vietnam, including due to his religion.<sup>19</sup>
35. I accept that the applicant has attended a protest [and] participated in world youth day. I accept that some images have been posted on Facebook and are on YouTube. There is

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<sup>14</sup> DFAT, "Country Information Report Vietnam, 21 June 2017, CISED850AD4597.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid; and UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGCOD145417.

<sup>19</sup> DFAT, "Country Information Report Vietnam, 21 June 2017, CISED850AD4597; and UK Home Office, "Country of Origin Information Report Vietnam 2013", 9 August 2013, OGCOD145417

nothing in the evidence before me to suggest that his attendance at these events or his Facebook posts are known to the Vietnamese authorities or that there is real chance it will become so. In any event, his evidence does not indicate he was an organiser or leader of any of these events and his participation in these activities and his is, at best, that of a low-level supporter. Nor does the level of Facebook activity indicate he is a high profile blogger or activist. Having regard to his particular circumstances and the above information, I am not satisfied he faces a real chance of any harm due to his activities in Australia.

36. I accept that the applicant has attended Viet-Tan activities here in Australia. The applicant's oral evidence at the protection visa interview was that he was not a member of this organisation and was not aware of their policies and beliefs. He indicated an interest in joining, but has not joined despite having the opportunity to do so. I am not satisfied the Vietnamese authorities would consider that he has any current association with the Viet-Tan, and I am not satisfied on the evidence that he will join at any point in the future, including on his return to Vietnam. I am not satisfied he faces a real chance of harm on return to Vietnam due to any association with the Viet-Tan.
37. I accept that the applicant will continue to engage in political activity in Vietnam and will continue to use Facebook. However, having regard to his activities in Australia, I do not accept that he will become a leader or organiser of such activities; rather I find he would continue to participate at the same low-level at which he is currently engaged. I find that at most, he will have a profile as a low-level protester or supporter, that he will not be a high profile blogger or activist, and having regard to his particular circumstances and the above country information, I am not satisfied that he will face a real chance of harm in the process of engaging in any future political activity or Facebook activity in Vietnam.
38. On all the totality of the evidence before me, including the independent information and the applicants particular circumstances and accepted claims, I am not satisfied that he faces a real chance of harm for any reason associated with his Catholic religion or his actual or imputed political opinion if he returns to Vietnam now or in the reasonably foreseeable future.

#### *Harm for other reasons*

39. The applicant has claimed to fear harm as a failed asylum seeker and due to his illegal departure from Vietnam. I accept that the applicant departed Vietnam illegally. I accept that he will be identified as a failed asylum seeker on his entry into Vietnam due to the way manner in which he departed and will be returned.
40. Independent information states that 'fleeing abroad or defecting to stay overseas with a view to opposing the people's administration' is an offence under the Penal Code.<sup>20</sup> However, DFAT has recently advised that they are unaware of any cases where this provision has been used against failed asylum seekers, rather people returned to Vietnam are usually done so on the understanding that they will not face charges as a result of their having made asylum applications. DFAT has no information to suggest that people known or believed to have sought asylum in other countries receive different treatment from the government of Vietnam merely for having sought asylum. There is some information before me, that some individuals have been imprisoned on return to Vietnam from Australia<sup>21</sup>. However, this was not done on the basis of their status as failed asylum seekers but rather because they

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<sup>20</sup> DFAT, "Country Information Report Vietnam, 21 June 2017, CISED50AD4597.

<sup>21</sup> Ibid.

committed criminal offences, such as people smuggling, they were known political or religious dissidents or were members of ethnic minorities.<sup>22</sup> The information does not support that returnees are assumed to hold anti-government views, nor are that individuals who have had a prolonged absence from Vietnam harmed.

41. In this case, I have not accepted that the applicant had an adverse profile for any reason on departing Vietnam. The applicant is not a member of an ethnic minority, and noting my findings above, there is nothing else in his particular circumstances or the evidence before me to suggest that he will otherwise have a profile which would result in a real chance of being harmed for seeking asylum in Australia. I am not satisfied that the applicant faces a real chance of harm on return to Vietnam now or in the reasonably foreseeable future for his prolonged absence from Vietnam, or for any reason associated with seeking asylum in Australia, including as a failed asylum seeker returning from a western country, or imputed anti-government views.
42. I accept that the applicant departed Vietnam illegally. DFAT has advised that Vietnamese nationals who depart the country unlawfully, including without travel documents, may be subject to a fine upon of between VND2 million and VND50 million depending on the circumstances of their departure. Information is that individuals who paid money to organisers of people smuggling operations are viewed as victims of criminal activity, rather than as criminals facing the penalties allowed in the law for illegally departing Vietnam. Independent information from DFAT is that while some returnees can be briefly detained and interviewed, long-term detention, investigation and arrest is conducted only in relation to those suspected of involvement in organising people-smuggling operations. DFAT understands this to be the case in relation to several individuals who were on board vessels returned to Vietnam in 2016.<sup>23</sup> I am not satisfied on the evidence before me that he would be considered a smuggler on return to Vietnam. He did not have an adverse profile on departure from Vietnam and he does not otherwise have a profile which would suggest he would be treated differently on return for the reasons set out above. On the evidence before me, I am not satisfied that he will be placed in long term detention, be imprisoned, investigated or arrested on return to Vietnam.
43. As the applicant departed the country illegally, I accept that he may be briefly detained and interviewed on return to Vietnam and that he may be issued with a fine as set out above. I have not accepted that the applicant had an adverse profile. The applicant is an adult and there is nothing to suggest he has a particular vulnerability, such that he would be unable to face a short period of detention or that he would be seriously harmed during this process. The applicant has attained skills working in Vietnam and in Australia, and there is nothing before me to suggest that he would be unable to pay any fine issued to him. In all the circumstances, I am not satisfied that a brief period of detention and being interviewed on arrival in Vietnam and being issued a small fine constitutes serious harm or that he would face serious harm during this process. I am not satisfied that the applicant faces a real chance of serious harm for any reason associated with his illegal departure from Vietnam if he returns to that country now or in the reasonably foreseeable future.
44. I have had regard to all the information before me, including the applicant's particular circumstances and the independent information. Having regard to these matters, and to his claims individually and cumulatively, I am not satisfied that if he returns to Vietnam now or in the reasonably foreseeable future, there is a real chance he will face serious harm for any

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

reason arising from his illegal departure, or that he faces a real chance harm for any association with grandfather or his parents; any reason associated with his Catholic religion, including the past practice of his faith in Vietnam; for any reason associated with his actual or imputed political opinion, including any association with the Viet-Tan; for his prolonged absence from Vietnam; or any reason associated with seeking asylum in Australia, including as a failed asylum seeker returning from a western country, or imputed anti-government views.

45. The applicant does not have a well-founded fear of persecution.

#### **Refugee: conclusion**

46. 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**

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47. 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**

48. 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.
49. I have not accepted above that the applicant himself was harassed during worship at unregistered house churches in the past; that he was involved in an incident with the police in April 2010; he was present at the incident at [District 1] in July 2012; that he discussed events with his local Priest who organised a local prayer; or that he was harassed or sought for questioning by the police due to his presence at [District 1], or for any other reason.
50. I have not accepted that the applicant was unable to obtain identification or household registration in the past due to his religion or that he was denied education and health care in the past. I have found he will not be unable to access education or health care on return to Vietnam, including due to his religion, and have not accepted that he will be undocumented or that he will be unable to obtain household registration, including due to his religion. I am also not satisfied on the evidence that he will be unable to obtain work and accommodation on return to Vietnam in the future.

51. I have found above that the applicant does not face a real chance of harm on the basis of: any association with his grandfather or his parents; any reason associated with his Catholic faith, including the past practise of his faith in Vietnam; any reason associated with his actual or imputed political opinion, including any association with the Viet-Tan; for his prolonged absence from Vietnam, or any reason associated with seeking asylum in Australia, including as a failed asylum seeker returning from a western country, or imputed anti-government views, if he returns to Vietnam now or in the reasonably foreseeable future. As real chance and real risk involve the same standard,<sup>24</sup> I similarly find, for the same reasons discussed above, that these matters do not give rise to a real risk of any harm to the applicant for the purpose of s.36(2)(aa) of the Act.
52. I have accepted that the applicant departed Vietnam illegally. However, for the reasons set out above, I do not accept that he would be treated as people smuggler on return to Vietnam, or otherwise have any adverse profile on return to Vietnam. I am not satisfied that he will be placed in long-term detention, be imprisoned, investigated or arrested due to his illegal departure or for any other reason. However, I accept that he may face a brief period of detention and an interview on arrival in Vietnam and that he may face a small fine for his illegal departure, however, I find this does not constitute significant harm for the purpose of s.36(2A) of the Act. It would not amount to the death penalty, an arbitrary deprivation of life or torture, and on the evidence before me, including the applicant's particular circumstances discussed above, I am not satisfied that a brief period of detention or questioning, or the imposition of a small fine, would involve pain or suffering that is cruel or inhuman in nature, or involve severe pain or suffering, or that it would be intended to cause extreme humiliation. I am not satisfied on the evidence before me, discussed above, that the applicant would be unable to pay any small fine issued to him. I am not satisfied on the evidence before me, that the applicant faces a real risk of significant harm for the purpose of s.36(2)(aa) arising from his illegal departure.
53. Considering the applicant's claims both individually and cumulatively, I am not satisfied that he faces a real risk of significant harm in Vietnam for the purpose of s.36(2)(aa) of the Act.

#### **Complementary protection: conclusion**

54. 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**

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

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<sup>24</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### ***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.