



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

VIETNAM

IAA reference: IAA18/05392

Date and time of decision: 7 December 2018 09:36:00

S McNeill, 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 national of Vietnam. On 4 March 2016 he lodged an application for a Temporary Protection visa (Protection visa (PV)). The applicant claimed to fear harm from the Vietnamese authorities because of his Catholic religion, his father's leadership role in the [parish leadership] and because of his role in local parish youth group.
2. On 24 June 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted the applicant was Catholic and that he had participated in protests against the government but did not accept he was continually targeted by the Vietnamese authorities because of his father's role, his role in the local parish youth group and his participation in protests.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 10 August 2018 the IAA received a submission from the applicant's representative. The submission addresses the delegate's decision and findings, and to that extent it may be considered as argument rather than information, and which I have noted.
5. The representative has also requested that the IAA exercise its discretion under s.473DC(3) and invite the applicant to comment in an interview or in writing on new information in the following circumstances:
 - a. The IAA makes a finding or findings that are different from the delegate's findings; and
 - b. The IAA makes a finding or findings to consider new information in exceptional circumstances.
6. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. Pursuant to s.473DB(1) of the Act the IAA must review a fast track reviewable decision referred to it under s.473CA by considering the review material provided to the IAA under s.473CB without accepting or requesting new information and without interviewing the referred applicant. If the IAA decides to get or accept new information, it can only consider that information in exceptional circumstances.
7. I have listened to the audio recording of the applicant's PV interview held on 4 July 2018 and I am satisfied the applicant had the opportunity to present his claims for protection in full. The applicant has not otherwise presented any new information and there are no reasons apparent to me why the applicant should be interviewed or that I should obtain or get new information. I have therefore decided not to invite the applicant to give new information either in writing or at an interview under s.473DC(3).

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:

- He was born in [year] in [his home town in] Nghe An Province, Vietnam.
- His family is Catholic and were involved in church activities in [Parish 1].
- In [year] he began [school level], the teachers accused him of being a rebel because he was Catholic and his father was the parish leader. The teachers ignored everything he said, told him to shut up and gave him bad marks. The other students bullied him, at times punching and kicking him, and they did not want to sit next to him. He was not allowed to participate in school activities and school fees and other monetary contributions were not exempted for him. He did not feel comfortable and quit school in February 2010 in year [number].
- [In] January 2010 his parish priest [Leader A] and some parishioners were celebrating mass and praying for the release of Catholic students they considered pro-democracy fighters who had been arrested and imprisoned. The authorities asked them to stop but when they continued the police and the military began shouting, swearing and beating the parishioners. The police focused on his father as [a leader] of the [parish leadership]. He tried to stop them hitting his father and as a result [several] police began hitting him with rubber clubs.
- He woke up in the local hospital with his father and was there [for several] days.
- [In] January 2010 his father was summoned to the police station. His father was beaten and told his family could not participate in mass and parish activities.
- In April 2010 he found a job in a [business]. After three months his employer sacked him after the police told him he was a Catholic trouble maker and he would get into trouble for employing him.
- After this he joined a religious activities group named [Group 1]. Three months later he was nominated assistant leader and a girl named H leader.
- On [an evening in] November 2010 they gathered to pray for parishioners suppressed by the authorities in other parishes. About [number range of] police attacked them destroying the church statues, candles, lights and flowers demanding the leaders. He and H were pulled outside. He was punched and hit with rubber clubs and sticks. Everyone was dispersed and the police told them not to organise any meetings. He was in bed for three days and when he left the house he was followed for six weeks.
- In February 2011 the parish proposed to create a [facility] in front of the church. He participated in the building work because of his father's position. In October 2011 when the project was finished the police suddenly appeared and forced the parishioners to remove all the work done.
- In February 2012 over a hundred police appeared at the church and began smashing things. The priest called for help and many parishioners appeared including himself and his parents. A policeman beat his mother; he tried to protect her but was punched, kicked and crushed on the floor. Parishioners dragged him out. Eventually the police withdrew.
- A few days later he was summoned by the police who interrogated him. They tried to force him to sign a declaration that he followed the parish priest's instructions to

overthrow the government but refused. The police beat him and kept him in jail [for a number] days until his father bailed him out.

- Soon after he received another summons. He was interrogated and beaten again and they forbade him to go to mass.
- On the last week of February 2012 [several] police came to his house and told him he could not go to church or partake in church activities but he continued. He was summoned again and beaten. They said they would put him in jail if he continued.
- He escaped to the south of the country and stayed with his father's cousin in [a named] province. During that time his father was summoned and beaten to disclose his whereabouts but didn't.
- After six months he returned home. About a week later police came to his house with a warrant for his arrest. His father said he wasn't there and they beat him again. He decided he would not be safe in Vietnam and decided to escape. He travelled to [Country 1] then came to [Australia]. He left Vietnam without a passport.
- In Australia he joined the Viet Tan group and protested against the Vietnamese government.

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.
11. Based on the identity documentation provided to the Department, I accept that the applicant's identity is as claimed and that he is a national of Vietnam and no other country. Vietnam is the receiving country for the purposes of this review.

Catholic religion

12. I accept the applicant is a Catholic as claimed. The applicant has consistently stated throughout the protection application process that he is a Catholic. The applicant demonstrated knowledge of his faith at his SHEV interview. Furthermore, country information in the review material indicates Catholics constitute seven percent (approximately 6.7 million) of Vietnam's total population and there is a strong presence in central Vietnam of which Nghe An, the applicant's province, is part of.¹

Past harm due to Catholicism

13. I have considered the applicant's claims carefully however I find him to be lacking in credibility. The applicant participated in an arrival entry (entry) interview on 31 October 2012. At the beginning of this interview the applicant was advised that this was his opportunity to provide any reasons why he should not be removed from Australia and he was expected to give true and correct answers to the questions he was asked and that he should understand that if the information he gave at any future interview was different from what he told now, this could raise doubts as to the reliability of what he had said. The applicant was provided with an interpreter in the Vietnamese language and the applicant replied 'yes' when asked if he understood the interpreter and what was being said to him
14. Whilst the applicant stated in this interview he was a Catholic, the reasons provided in relation to his leaving Vietnam did not include his Catholicism. The applicant said he left Vietnam because the future was 'very dark looking ahead'. Asked what specifically happened to him, the applicant said he was looking for freedom and freedom from religion. Asked again what happened to him, the applicant said freedom to have a better life. The interviewing officer asked the applicant multiple times to give more information; he told the applicant what he was telling him was extremely vague and that he needed to give more information. The applicant was only able to state he wanted freedom and human rights; his human rights were not comfortable. Pressed further the applicant stated work was not comfortable; he had trouble at work and he was not able to work. The interviewing officer pointed out he had just worked for two years prior to coming and the applicant stated work was getting harder. Again the interviewing officer asked him to explain what happened to him.
15. Asked whether he was a member of any particular social or religious group, the applicant stated 'no'. Asked whether he had ever been arrested or detained by the police or security organisations, the applicant said 'no'. Asked whether the police, security or intelligence organisations impacted on his day to day life, the applicant said 'sometimes'. He said they would sometimes come and ask questions about their life and how was their family life. The activities in the family were being restricted. Asked what activities the applicant said a lot of activities. Again the interviewing officer asked for further information. Having listened to the audio recording of this entry interview I am satisfied the applicant was given every opportunity to provide as much detail or reasons why he left his country. There is no indication the applicant did not understand the interpreter or what was being put forward to him or that he was afraid.
16. At his PV interview on 4 July 2018 the delegate put to the applicant that he had told him he had left Vietnam and gone to [Country 1] because he was scared of the police but at his entry interview he told the officer he had gone to [Country 1] for work and he had wanted to work

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597.

there. The applicant said that when he first arrived he was not aware how the (Australian) government worked and if he told the truth they might send him back to Vietnam, then what would happen to his life and he was scared. The delegate noted if he wasn't telling the truth; then how would the officer know he needed protection and the reason he had come to Australia by boat was to seek protection. Again the applicant stated he didn't have any explanation about the Australian government, how he would be treated and he was scared so he only told half the truth.

17. I note the applicant was almost [age] years at the time of this interview. He has studied at school until at least year [number], travelled [to Country 1] then spent six days on a boat to reach Australia because he felt unsafe in his home country. I am not satisfied with the applicant's response that he did not have information about the Australian government and that he was scared. Whilst some caution should be exercised in considering discrepancies between an applicant's entry interview and evidence presented in their protection claims there are other matters of concern which cause me to doubt his overall claims.

Problems at school

18. The applicant claimed he began [school level] in [year] and the teachers bluntly accused him of being a rebel because he was Catholic and they would say he took part in reactionary activities. They said his family members were stupid because they were children of a parish leader. The teachers ignored him and gave him bad marks. The other students bullied him, would not sit by him and kicked and punched him. He was not allowed to partake in activities. School fees and other monetary contributions were never exempted or reduced for him. He quit half way through year [number] in February 2010. I do not find the applicant's evidence persuasive in this regard. Roman Catholics constitute seven percent of Vietnam's total population (approximately 6.7 million) and is one of the 14 distinct religions that hold full government recognition and registration. Nghe An is one of the three provinces in central Vietnam (the other two being Ha Tinh and Quang Binh), which has a strong Catholic presence with approximately 500, 000 followers.² DFAT has observed that Catholics are able to practise freely at registered churches and that Bibles and other religious texts are readily available in cities and towns³. Education in Vietnam is compulsory, theoretically tuition-free (fees exist for textbooks, uniforms etc.) and universal through age 14. Vietnam's General Statistics Office states that 15.5 percent of students aged 5-18 leave school early. Families are required to pay a variety of school fees for textbooks, uniforms and school maintenance services.⁴
19. At his PV interview the applicant stated he was baptised at the [Parish 1] Catholic Church, his local church which was registered. There were around [a number of] people in his parish. Asked how they knew he was Catholic, the applicant said because he attended the church so no one wanted to play with him and they bullied him. Asked whether there were other students who were Catholic, the applicant said 'yes.' His father was the leader of the church and he was affected by that. The other students were bullied but not as badly as he. The applicant is [position in family]. The applicant did not indicate any of his siblings were bullied or discriminated against. Towards the end of the interview the applicant stated when he went to school he had a campaign to raise the issue of the authorities being harsh against ordinary people and treating people like animals and that they wanted to destroy and eradicate religion and Catholicism. Asked what happened when he wrote this at school, the applicant said his friends said he was against the government and the teachers were not

² Ibid 3.9

³ Ibid 3.10.

⁴ Ibid 2.13-2.14.

happy. Asked whether the teachers said anything, the applicant said they discriminated against him as well as his friends because of his opinion; he was [age] at the time in was at [school]. Asked why he hadn't mentioned writing anything at school in his application, the applicant said he had only vocally said something, there was no written story; he had written in his statement all the incidents that happened to him but now that he was being asked he was telling more.

20. At the time he quit school he was [age range]. Whilst it is plausible the applicant may have experienced some discrimination on account of his religion, I consider the applicant has exaggerated his claims with regards to the way he was treated at school. Given the size of his parish and that he lived in an area with a large number of Catholics, that he attended a registered church with other Catholics and nothing apparently happened to his siblings, and that 15.5 per cent of school students leave early I am not satisfied that he was mistreated at school by his teachers or peers. I am not satisfied he was vocally critical at school against the authorities either and his introduction of this claim at his SHEV interview is an attempt to embellish and strengthen his claims. I am more persuaded the applicant finished school in [school year] not because of any mistreatment but that he chose to do so. I find that he does not face a real chance of any harm on account of this claim.

Loss of employment 2010

21. The applicant claimed that after quitting school he began a job in April 2010 in a [business]. The police told his employer he was a Catholic trouble-maker and he would be in trouble if he continued to employ him; he sacked him and told him he would not get a job anywhere else. At his PV interview the applicant said when he was working some people approached the store owner and they talked to him and after they left the employer said he couldn't keep him any longer. Asked whether they were the police, the applicant said they were in civil clothes. Asked why he said it was the police in his statement, the applicant said he thought they were the local police because every day they cheated people. Asked why they would do this, the applicant said because he participated in church activities; he attended mass and activities with the youth group at the church. The delegate pointed out there were [a number of] parishioners and many in the youth group why would they follow him around, the applicant stated it was because of his father's position at the church and because of his activities with the church that they asked some people to follow him.
22. Asked to describe how they followed him, the applicant said that when he was riding a push bike they did not follow him but he could see them following him from behind and wherever he went they followed him. Asked whether it was the same people, the applicant said they changed people and they did not wear a uniform. It wasn't every day but every couple of weeks someone would follow him. His mother, brothers and sisters were also followed. The applicant said his father worked as a coordinator for the priest and helped to organise events and he did this from 2008 until 2014 otherwise he worked as a self-employed [occupation].
23. Again the applicant's evidence in this regard is questionable; his responses to the delegate's questions illogical and unconvincing. The applicant at this stage had no real profile other than his father's had a role as a parish leader. His father who had his own business did not experience interference from the authorities despite allegedly having a higher profile. The applicant's description of being followed is rather fanciful and his narrative is not congruent with country information. I am not satisfied the applicant was sacked from his job in 2010 because of his Catholic religion or that the police told his employer that he was a Catholic trouble maker and not to employ him. I find that he does not face a real chance of any harm on account of this claim.

Incidents at church

24. DFAT in 2015 noted that the Vietnamese government maintained a dedicated police force for monitoring the activities and networks of religious organisations in Vietnam and this force is responsible to the Ministry of Public Security and sets and administers policies for the enforcement of state law against non-religious groups who are perceived by the Vietnamese government to threaten national security. DFAT assesses that as long as religious practice is exercised within state-sanctioned boundaries and does not challenge the interests or authority of the Government of Vietnam—which can be broadly defined and include land use issues—religious adherence in Vietnam is tolerated, even for some religions not officially recognised by the government.⁵ Broadly speaking, DFAT assesses that as long as religious practice is exercised within state-sanctioned boundaries and does not challenge the interests or authority of the Government of Vietnam—which can be broadly defined and include land use issues—religious adherence in Vietnam is tolerated, even for some religions not officially recognised by the government. DFAT assesses that individuals who participate in unregistered religious organisations which are perceived by the state as being opposed to government policy are highly likely to be monitored, harassed, arrested, detained or prosecuted by authorities.⁶ Members of independent Catholic groups opposed to government policies have been subject to harassment by authorities. While exact numbers are unavailable, reliable sources suggest that over 30 activists associated with Catholic churches have been arrested since 2011 (out of an estimated Catholic population of approximately 6.5 million). Catholics who have travelled from other provinces to worship after land and property had been allegedly seized by local authorities can be targeted, but DFAT nonetheless assesses that Catholics in Vietnam who worship quietly and in a manner that conforms to government policies and sensitivities are able to do so with a low risk of official interference.⁷ I note in early January 2013 the New York Times reported of 14 Catholic activists from Nghe An province being convicted of “subversion” with sentences ranging from three to 13 years; they were accused of belonging to a group known as Viet Tan, a non-violent and pro-democracy movement which the authorities classed as a terrorist organisation. Again in September 2013 two parishioners from My Yes, in Nghe An province were arrested; this resulted in hundreds of people demonstrating against their arrest and approximately 1000 police attacked the demonstrators.⁸
25. I accept that the such incidents do occur; however, with regards to the applicant, I am not satisfied that the son of a parish leader of a registered church who did not participate in protests about land or property seizures or protest directly against the government would attract such interest from the authorities as claimed. As discussed below I have a number of concerns regarding the applicant’s claimed incidents which occurred whilst he was at his church.
26. The applicant’s first claimed incident of being attacked whilst at church occurred [in] January 2010 when his parish priest [Leader A] and some parishioners were celebrating mass and praying for some Catholic students who in their opinion were fighting for greater democracy for Vietnam and were in prison. His father was targeted and when he went to assist, the applicant was attacked by [several] police. They were both hospitalised for [several] days. At his PV interview, the applicant’s narrative changed. Whilst the applicant stated the Father

⁵ Department of Foreign Affairs and Trade, "DFAT Vietnam Country Information Report August 2015", 31 August 2015, CISEC96CF13212

⁶ Ibid 3.19-3.21.

⁷ Ibid 3.23-3.24

⁸ Aid to the Church in Need, "Religious Freedom in the World Report - 2014. [Country Report] Vietnam", 4 November 2014, CIS2F827D91496

had organised a mass to pray for people put in custody because they protested and to pray for the other parish that had their land confiscated by the authorities. Further on in his interview, asked whether he had protested against the government in Vietnam, the applicant said he had protested against the government when they took land and church land illegally. Asked his role in the protest, the applicant said he held up banners and shouted out to raise his voice to protest the government taking their land illegally.

27. There is no mention in his written claims of any involvement in active protests about land confiscations or against the government and I find his sudden introduction at his PV interview of the claim dubious and further evidence of the applicant's propensity to embellish his claims.
28. Whilst the applicant has claimed he and his father were hospitalised because of their injuries; the applicant has provided no supporting evidence in the way of documentation or photographs. Were it just one incident of being attacked by the authorities a lack of evidence might be plausible; however, the applicant claimed that after their release from hospital his father was summoned to the police station and beaten with clubs and then after this time he was summoned every one to two weeks and would return home with more injuries. Again when the applicant was attacked [in] November 2010 and again in February 2012 there is no supporting evidence of these attacks. Following the incident in February 2012 he was arrested and detained, beaten then bailed and this purportedly occurred on two more occasions. Despite this the applicant has provided no evidence that either his father or he were similarly summons and beaten by the authorities on a number of occasions.
29. I am similarly unconvinced the authorities would target the [Group 1] youth group which the applicant claimed to have joined in approximately mid-2010 and which was set up to create activities for youth aimed at alleviating anti-social behaviour among the local youth and help them learn about the Bible and Jesus every [week]. They would meet share the word of God, play community games, pray and sing Catholic hymns. After three months he was nominated assistant leader.
30. At his PV interview the applicant stated there were about 200 members in the group and they had activities [weekly]. There was an evening when they burned candles and prayed for those young people oppressed by the authorities and suddenly a group of police and gangsters came and started to attack and beat them. Asked if they beat all students or just him, the applicant stated whoever raised their voice and then they started to beat indiscriminately. The police and the gangsters accused them that when they gathered together like this they have an intention to fight the authorities and eradicate them. I consider this implausible. As already noted the applicant is from a registered church, they had only gone there to pray and were not involved in any land or property protests. His narrative also changed, initially it was [number range] police who were looking for the leaders and he and H were targeted but at his PV interview it was both the police and gangsters indiscriminately targeting anyone who was outspoken.
31. Whilst I note the applicant claims of an incident in October 2011 when the police forced the parishioners to remove all the work done creating a [facility] in front of the church, the applicant did not claim to have been harmed on this occasion or to have come to the attention of the authorities. I find that he does not face a real chance of any harm on account of this claim.
32. Lastly, there is the incident in February 2012 when over one hundred police attacked the church. The applicant in his written claims provides no reason why the police would suddenly

attack the church and its parishioners. The applicant claimed he tried to defend his mother when he saw a policeman beating her and then he was punched. The applicant claimed the police withdrew when parishioners came in greater numbers and the applicant was summoned to the police station a few days later. The applicant provided a certificate and English translation from the Liturgical Council of the [Parish 1] of the [named] Diocese signed by its Parish Priest [Leader A] dated [in] February 2012 certifying the applicant has completed his '[specified training]'. I note this is dated around the alleged events of February 2012 and find it strange the applicant has received this at a time he was being targeted by the authorities.

33. At his PV interview when asked what the police wanted, the applicant said they accused him of being the son of the leader of the parish; that he always participated in mass and church parish activities and events against the authorities. I do not find the applicant's explanation compelling in this regard. The authorities showed no interest in his father despite he was at the mass and he was in the higher profile position and his father continued to maintain this position until 2014. The authorities had no reason to attack the church on this day; the parishioners were not purportedly protesting about land or property confiscation or otherwise being political active. I find it implausible the authorities would interrogate him, release him then summon him again only to interrogate him and release him and then forbid him to go to mass and participate in church activities.
34. I also find it implausible the applicant having recently been detained on three occasions, beaten and interrogated would then escape for six months and then make the decision to return to his village despite multiple beatings by the authorities.
35. Taking everything into consideration, the applicant's failure to state any of these claimed incidents in his entry interview despite being offered the opportunity to do so, his unimpressive evidence and propensity to aggrandise and inflate his claims and the lack of supporting country information, I am of the view the applicant has fabricated his claims of his father being a parish leader and the subsequent attention he and his family received in there entirety. Whilst I accept the applicant is a Catholic I am not satisfied the applicant's father was a parish leader or that the applicant was consequently targeted at school by both teachers and his peers because of this. I do not accept the authorities pressured his employer to sack him from his [job] in 2010 because of his Catholic religion and that he was identified as a Catholic trouble-maker. I do not accept the applicant was nominated as an assistant leader of [Group 1] group or that he was targeted because of this. I do not accept the applicant was ever targeted at church in 2010 or 2012 or that he was summoned to the police, interrogated and beaten multiple and that a warrant for arrest has ever been issued in his name. I am not satisfied that these events have occurred as claimed. I find that the applicant departed Vietnam in 2012 to travel to [Country 1] for work purposes. I find the applicant at the time he departed Vietnam was of no interest to the Vietnamese authorities. I find that he does not face a real chance of any harm on account of these claims.

Political opinion – Involvement with the Viet Tan in Australia

36. At his PV interview the applicant claimed to have joined the Viet Tan group two months prior. His said he joined the group because they were against the Vietnamese Communist Party and he wanted to be part of the group to help collapse the government. Asked why he had not joined the earlier, the applicant said when he was released and after he settled down he tried to find out what groups were suitable and he was not aware of this group and had not heard of it prior to coming to Australia. The applicant stated the name of Viet Tan's founder, its year of foundation and that it was established to help ordinary people to raise their voice against

the Vietnamese Communist Party and eradicate it so Vietnam can have more democracy and freedom.

37. The applicant presented the delegate with a letter dated 31 May 2018 from [an office] of the Australian Division of the Vietnam Reform Party (Viet Tan). This letter states the applicant is an active member of their [local group] and has been 'involved in numerous projects and grass roots activities in promoting internet freedom, human rights and pro-democracy in Vietnam. His views and activities will be subject to severe persecutions should he returns (*sic*) to Vietnam.' Asked about these activities and grass roots projects, the applicant stated one ongoing project every month was selling [products] to help the people back in Vietnam. Also he helped campaign to introduce the Viet Tan group to the community and their main policy was to rally against the Communist Party of Vietnam. They had regular activities every month to raise the issues of violence and the oppression.
38. Also included are a number of photos of the applicant in protests with the Viet Tan. The applicant said these photos demonstrated he participated in activities here in Australia; he attended the rallies to accuse the communists of corruption, violence and illegally imprisoning people. Recently the Vietnamese prime minister arrived in Australia and the community rallied and protested his presence in [a city].
39. The applicant arrived in Australia in October 2012 and according to his PV application he has been living in the community since October 2014. He lodged his PV application in March 2016 but it was not until approximately May 2018 that he made contact with the Viet Tan. I place little weight on the letter they have provided given they would have known the applicant for approximately one month. Whilst the applicant claimed to have been involved in monthly activities with the Viet Tan he would only have participated approximately twice. That his involvement with the Viet Tan commenced only two months before his PV interview is highly questionable given he had lived in the Australian community for over three and a half years.
40. Given my findings in relation to the applicant's overall credibility, the timing of his sur place activity in the context of his PV application and interview, his weak evidence presented regarding his association with the Viet Tan; the applicant has not satisfied me that he has engaged in this conduct for a purpose other than for strengthening his claim to be a refugee. As per s.5J(6) of the Act I am required to disregard this conduct for the purpose of determining whether the applicant has a well-founded fear of persecution.
41. Whilst I am not satisfied the applicant was of interest to the authorities when he departed Vietnam, I have accepted that the applicant is Catholic who attended [Parish 1], a registered church in Nghe An province. The applicant has continued to practise and worship as a Catholic in Australia and I accept that he will continue to practise his religion on return to Vietnam. In 2017, the US Department of State reported that the Vietnamese Constitution states that all people have freedom of belief and religion. Current law, however, provides for significant government control over religious practices and includes vague provisions that permit restrictions on religious freedom in the stated interest of national security and social unity.⁹ DFAT notes the situation for Catholics has continued to improve in recent years. In 2015 the Government approved the establishment of the Vietnamese Catholic institute, the first faith-based educational institution in Vietnam and in 2016 the institute officially opened offering a Masters theological course to 23 selected priests from dioceses across the country.¹⁰ DFAT has observed that Catholics are able to practise freely at registered churches and that Bibles and

⁹ US Department of State, "International Religious Freedom Report for 2017 - Vietnam", 29 May 2018, OGD95BE927542.

¹⁰ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597, 3.9.

other religious texts are readily available in cities and towns. DFAT assesses that religious observance and practice only becomes an issue when it is perceived to challenge the authority or interests of the Communist Party of Vietnam (CPV) and its policies.¹¹

42. Whilst 22 unregistered Catholic house churches were scheduled for demolition in the Central highlands in 2015, this was halted following the involvement of church leaders in dialogue with the authorities.¹² Whilst DFAT is aware of more serious incidents of violence, such as local authorities beating citizens; however, this generally appears to be related to other activities such as protesting against land confiscation and anti-government activities rather than merely due to a person's religion.¹³ In Nghe An province, which is one of three provinces that constitutes the Diocese of Vinh, credible contacts reported a slight improvement compared to previous years due to the increasing strength of the Catholic community and leadership. Local and provincial authorities reportedly continued to harass and forcibly close known house churches; however, in-country contacts reported an increase in registered churches with the exception of a few in ethnic minority dominated areas.¹⁴ DFAT assess that Catholics in remote areas who practise at unregistered churches can be subject to periodic incidents of harassment and intimidation. DFAT is aware of more serious incidents of violence, such as local authorities beating citizens; however, this generally appears to be related to other activities such as protesting against land confiscation and anti-government activities rather than merely due to a person's religion.¹⁵
43. The applicant has not claimed to be part of an unregistered church or to have participated in protests against land confiscation or anti-government activities whilst he was in Vietnam. He is also not from an ethnic minority. I am not satisfied that on his return to Vietnam he will engage in political activities likely to come to adverse attention of the Vietnamese authorities. Based on the information before me, the country information, the applicant's open practise of his Catholic faith as a regular member of the Catholic church, a recognised religion in Vietnam, I am not satisfied the applicant would be forced to stop practising his Catholic faith or that he faces a real chance of any harm on return to Vietnam on the basis of his Catholic religion.

Departure from Vietnam/Returning as a Failed Asylum Seeker

44. The applicant claimed to have departed Vietnam without a passport. I accept the applicant departed Vietnam illegally [to Country 1] from where he got on a boat to Australia. Whilst the applicant did not claim to fear harm because of his illegal departure from Vietnam and the fact he has sought asylum in Australia, the matter was considered by the delegate and so have I. The delegate noted there was country information indicating asylum seekers have been detained and harmed by the authorities on their return to Vietnam but those who had faced harm were known dissidents, activists and members of ethnic minorities.¹⁶ The applicant does not fit this profile.
45. I accept the applicant has applied for asylum in Australia where he has resided for over six years. I accept he would be returning to Vietnam after his asylum application has failed. The Vietnamese Constitution provides for freedom of movement albeit there are penalties for

¹¹ Ibid 3.10.

¹² Ibid 3.10.

¹³ Ibid 3.13.

¹⁴ Ibid 3.12.

¹⁵ Ibid 3.13.

¹⁶ Campaign to Abolish Torture in Vietnam, "Vietnam, Torture and Abuse of Political and Religious Prisoners", 21 January 2014, CIS2F827D92389, p. 93-97.

Vietnamese nationals that depart the country unlawfully.¹⁷ DFAT has no information to suggest that people known or believed to have sought asylum in other countries are mistreated on return by the Vietnamese Government.¹⁸ 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.¹⁹ While the country information indicates some returnees may be briefly detained and interviewed, DFAT assesses that long term detention, investigation and arrest is conducted only in relation to those suspected of involvement in organising people smuggling operations and reporting and monitoring is confined to returned political activists.²⁰ I also note DFAT advice is that there is no differential treatment applied by the Vietnamese authorities to returnees that are known to be Catholics.²¹ He has not claimed to have been involved in people smuggling, nor is there anything in the applicant's history or background that would suggest he would be seen as a people smuggler by the Vietnamese authorities on his return to Vietnam. The applicant has not claimed and I am satisfied on the information before me that he would not be suspected of any such involvement on return.

46. I have found the applicant departed Vietnam without a passport. According to DFAT Vietnamese nationals who depart the country unlawfully, including without travel documents, may be subject to a fine upon return under Article 21 of the Decree on Sanctions against Administrative Violations in the Sector of Security and Social Order. A fine of between VND2 million and VND10 million (approximately 120-600) is specified for leaving Vietnam without a passport or equivalent, departing without undergoing official exit procedures, or departing using another person's document.²² I note the applicant has been working since approximately June 2014 as [an occupation]. The applicant has his family also in Vietnam who he maintains contact with. As the applicant departed the country illegally I accept he may be briefly detained and interviewed on return to Vietnam and may be issued with a fine. There is no information before me that the applicant has any particular vulnerability such that he would suffer harm as a result of a short period of detention, even taking into account the country information reports that prison conditions in Vietnam are harsh,²³ nor that he would be unable to pay any small fine that may be issued to him. I am not satisfied a brief period of detention, being interviewed on arrival in Vietnam, and being issued a fine constitutes serious harm in this case. I am not satisfied the applicant faces a real chance of serious harm if he returns to Vietnam, on the basis of his illegal departure, now or in the reasonably foreseeable future. In any event, any punishment received as a result of his illegal departure would be the consequence of the application of a law that the evidence indicates is non-discriminatory on its face and its application and enforcement. It is not persecution as defined.

47. On the basis of the information before me, I am not satisfied the applicant would face a real chance of harm because of being identified as having departed unlawfully, sought asylum, or sought asylum unsuccessfully. I have also found the applicant, a Catholic, does not have any adverse political profile and I am not satisfied he would be perceived to be a political activist upon return. There is no information before me to indicate that he would be imputed with an adverse opinion or profile by the Vietnamese authorities on his return after a prolonged period of time away from Vietnam, I am not satisfied that the applicant faces a real chance of harm on

¹⁷ DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597, 5.16 and 5.18.

¹⁸ Ibid 5.21.

¹⁹ Ibid 5.15.

²⁰ Ibid 5.17

²¹ "Treatment of failed asylum seekers on return to Vietnam", Australia: Department of Foreign Affairs and Trade (DFAT), 24 July 2013, CX311927.

²² DFAT, "DFAT Country Information Report Vietnam", 21 June 2017, CISED50AD4597, 5.16.

²³ Ibid 5.10.

return for any of the reasons he has claimed, either now or in the reasonably foreseeable future, if he returns to Vietnam. I do not accept that on any of these bases he would be considered to be anti-government or imputed with an adverse opinion or profile by the Vietnamese authorities and harmed on return.

Refugee: conclusion

48. 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

49. 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

50. 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.

51. I have concluded that the applicant does not face a real chance of serious harm resulting from claimed incidents between himself and the authorities because of his Catholic religion, his association with his [Parish 1], his involvement with the [Group 1] youth group or because of his father's role as parish leader, or that he was discriminated against at school or sacked from his employment in 2010, as I have rejected these claims in their entirety. Given 'real chance' and 'real risk' involve the same standard, I am not satisfied he faces a real risk of harm on these bases.

52. I have accepted the applicant joined the Viet Tan party in approximately May 2018 and that he participated in a couple of protests in Australia. The applicant has a very low level of engagement with political activities in Australia for a short period of time. The information before me does not suggest that the Vietnamese authorities would be aware of his membership with the Viet Tan Party in Australia, or that any association with the Viet Tan would be apparent to them as a consequence of him being removed from Australia. I do not accept that, as a result of his very limited involvement in political activity in Australia, that he has an adverse profile with Vietnamese authorities as an anti-government dissident; either on account of his actual or imputed views. Having found that the applicant has engaged in political activities for the purpose of strengthening his claim to be a refugee, I am not satisfied that he would engage in similar conduct on his return to Vietnam. I am not satisfied that, as a result of his political activities in Australia, that as a necessary and foreseeable

consequence of being returned to Vietnam, that there is a real risk that the applicant will suffer significant harm.

53. As noted above, based on the information from DFAT, I accept there is a real chance, and therefore a real risk, that the applicant as a returnee to Vietnam may be detained briefly and interviewed on arrival and be required to pay a fine. However, on the basis of that information, I am not satisfied being briefly detained and interviewed, or possibly fined, constitutes significant harm as defined. I have also found there is nothing in the applicant's profile which would lead him to face any extended detention or other harm that would amount to significant harm during this process. He will not be arbitrarily deprived of his life or subject to the death penalty. He will not be subject to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment.

54. I have concluded above that the applicant does not otherwise face a real chance of harm on the basis of the applicant's religion, as an asylum seekers returning from Australia who departed Vietnam illegally, or as a result of a combination of any of these factors. As 'real risk' and 'real chance' involve the application of the same standard, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) for these reasons, including when considered cumulatively.

Complementary protection: conclusion

55. 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.