



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

BANGLADESH
IAA reference: IAA18/05715

Date and time of decision: 20 November 2018 11:49:00
A Wilson, 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 Muslim of Bengali ethnicity from Bangladesh. He arrived in Australia [in] June 2013. On 12 September 2016 he lodged an application for a safe haven enterprise visa (SHEV).
2. On 17 September 2018 a delegate of the Minister for Immigration and Border Protection refused to grant the visa. The delegate accepted the applicant's family's [business] was the subject of criminal extortion and that the applicant may be regarded as a failed asylum seeker if he returns to Bangladesh. However the delegate did not accept that the applicant's father was politically active in Bangladesh, that the applicant assisted his father with his political activities, or that the applicant's membership of the Bangladesh National Party (BNP) in Australia was for the purpose of genuine political expression.

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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - His father has been the acting BNP [office holder] of the [Subdistrict 1] since 2002 and is a prominent local BNP activist / member.
 - Prior to that his father was involved with the Jammāt-e-Islami (JI).
 - Because of his father's BNP affiliation he became a BNP supporter / member and during the 2008 election he assisted his father with [campaigning] for the BNP.
 - On around [number] occasions during 2012 AL criminals came to the [business] he and his father operated. They broke items and extorted around [amount] taka from him. They also extorted an unknown sum of money from his father and threatened to kill the applicant.
 - Fearing the extortion was escalating his father sent him to [Country 1] in early 2013.
 - In 2014 he joined the BNP in Australia and attended BNP meetings to hear speakers. In 2016 he attended a BNP [event], and in 2018 he attended several BNP protests when the Awami League (AL) leader visited Australia.
 - He fears if he returns to Bangladesh that AL supporters and criminals will abduct him, extort money from him and kill him.

Refugee assessment

6. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

7. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
8. On the basis of the applicant’s documentary and oral evidence I accept: that he is Muslim and of Bengali ethnicity; that he was born and lived most of his life in [Upazila 1] in the Dhaka Division of Bangladesh; that he completed compulsory primary education, some high school education and vocational [education]; and that he is single.
9. On the basis of a copy of an English translation of a Bangladeshi birth certificate provided by the applicant I accept that his name is as claimed and that he is a national of Bangladesh. Although the applicant spent several months in [Country 1], there is no other evidence before me to suggest that he has a right to enter and reside in any other country apart from Bangladesh. I find that Bangladesh is his receiving country for the purpose of this review.
10. In the SHEV application the applicant claimed he cannot go back to Bangladesh because he will be targeted, arrested, tortured and killed by AL supporters due to his political opinion and activities. His father is a well-known local level BNP activist and member. As result of his father's political affiliation with the BNP, he also started supporting the BNP. His family are business owners and used to provide money for BNP political activities and AL members and supporters, along with their criminal gang members, used to target them to extort money from them. Because he is the only son in the family the AL criminal members harassed and intimidated his father and warned they would kill him if his father failed to provide money to them. As a result his father started to worry about him and paid small amounts to the AL

criminal gang to avoid any problems. However the AL members started asking for more money and said they would kill him. His father decided to send him out of Bangladesh to [Country 1]. He fears if he goes back to Bangladesh he will be abducted and subjected to extortion and killed due to his and his father's BNP affiliation. He fears he cannot get adequate protection in Bangladesh because the police and Rapid Action Battalion (RAB) act under the instruction of the AL which is the government party. He fears even if he moves to other parts of Bangladesh he will be targeted due to his political affiliation with the BNP because he will continue to engage with political activities. Even after coming to Australia he has continued to be involved with the BNP here.

11. In a 100 page pre-interview submission dated 9 September 2016 the applicant's representative provided hyperlinks to and extracts from country information concerning the 2014 Bangladesh election; the political situation in Bangladesh; attacks on opposition party members, activists and supporters, particularly BNP members and activists; and RRT decisions. In the same submission the applicant's representative contended the applicant is a supporter and member of the BNP; that he fears he will be seriously harmed if he returns to Bangladesh because he holds and supports the political ideologies of the BNP; that ongoing human rights problems and political instability involving attacks on AL opponents mean there is no meaningful option for relocation or obtaining effective protection from Bangladesh authorities.
12. In additional pre-interview submissions made in May 2018 the applicant's representative argued that after coming to Australia the applicant has been involved with the BNP in Australia and has attended programs and political events organised by them. He also submitted the applicant fears if he goes back to Bangladesh he will be targeted and killed because he holds, or is perceived to hold, a political opinion supporting the BNP; because he holds, or is perceived to hold, a political opinion against the AL and its leader; because he is perceived to be wealthy he will be targeted for extortion; he will be considered a failed asylum seeker and it will be perceived he had provided evidence against the AL to the Australian authorities; that he cannot get protection from the Bangladeshi authorities due to his political opinion, and even if he moves to another part of Bangladesh he will continue to face harm due to his active political opinion.
13. Appended to one of the additional submissions was a signed statutory declaration by the applicant dated 4 May 2018 in which he claimed he cannot go back to Bangladesh because he will be targeted, arrested, tortured and killed by the AL supporters because of his political opinion and activities. He also claimed his father is a well-known local level BNP activist and has been [an office holder] of [Upazila 1] since 2002; that his father is very good friends with the local [President]; that as a result of his father's BNP affiliation he also started supporting the BNP; that the JI and BNP are in coalition and work together to oust the AL; that he used to go with his father when he was undertaking his political activities; that during the 2008 election they supported [a named person] against the AL [candidate]; and that he and his father undertook [political campaigning]. He further claimed they are business people and used to provide money for the BNP political activities and as a result AL members and supporters, along with their criminal gang members, used to target them and extort money from them; that because he is the only son in the family the AL criminal members harassed and intimidated his father and warned they would kill him if his father failed to provide money to them. His father paid small amounts to the AL criminals to avoid any problems.

However the AL members started asking for more money and said they would kill him so his father decided to send him outside Bangladesh. He fears if he goes back to Bangladesh he will be abducted, subjected to extortion, and killed due to his and his father's BNP affiliation.

14. In support of these claims the applicant provided a letter in Bangla, and an English translation, dated [in] May 2018 stating the applicant's father has been acting as [an office holder] of the BNP [Subdistrict 1] branch since 2002; a membership receipt for the BNP (Australia) dated [in] May 2014; a reference letter from the BNP (Australia) dated [in] May 2018; two sets of the same photographs, one of which includes hand written annotations claiming they depict the applicant attending [an event] for the [BNP] in [Australian City 1] [in] August 2016, and depict him participating in anti-Bangladesh government rallies in [Australian City 1] [in] April [2018]. He also provided a GP mental health plan dated [in] April 2018 that states the applicant's 'problem' is 'anxiety – PTSD', that he will be referred for 'psychologist review' on an unspecified date, that suggests he receive psycho-education and cognitive behavioural therapy, and schedules him for review [in] July 2018.
15. In a post-interview submission dated 22 May 2018 his representative provided hyperlinks to and extracts from recent country information on continuing human rights violations against BNP members and activist, including local level members, spanning the period 2016 to 2018 and RRT decisions from 2016 and 2017. On the basis of the country information the applicant's representative submitted the applicant holds views antithetic to the Bangladesh government and will be considered as an enemy of the AL government; he will be perceived as a BNP supporter who was involved in anti-government and anti-AL activities; and he will be targeted and harmed due to his political opinion. His representative reiterated that internal relocation is not an option for him; that he is active in relation to his political opinion and has provided corroborative documentary evidence to confirm that. His representative also submitted that due to his activities and political opinion, particularly in in Australia, he will be perceived as a person holding (or who is believed to hold) views antithetic to the government and may be regarded as an enemy of the state.
16. Appended to the submission was an undated statement by the applicant addressing concerns raised by the delegate during the SHEV interview. In the statement he claimed there is no inconsistency in his evidence concerning his passport. He gave an agent in [Country 1] his passport which was never returned to him, and he gave another agent on the boat from [Country 1] to [another country] a copy of his passport and his bag and he was unable to retrieve them.
17. In a response to a s.57 letter dated 27 August 2018 the applicant claimed there had been a misunderstanding between him and the delegate. He stated the [work] he referred to in his arrival interview was vocational training. He was not given proper training, he was used as a [occupation], and it was voluntary. That is why at the SHEV interview he stated he did not work anywhere apart from his [business]. In response to what the delegate considered were inconsistencies between his evidence in the arrival and SHEV interviews concerning his family's political activities, he stated he cannot go back to Bangladesh because he fears for his life. He will be taken as a political prisoner for torture and bodily harm. His father was a member of JI but in 2001 the BNP was a very big party and it was in coalition with JI in his district and the JI decided to support BNP candidates in the election. His father had to campaign for BNP candidates therefore he was given a district [post] by the BNP for electoral purposes. He also stated that he meant to say at the SHEV interview that between the years

2001 and 2008 the AL was the opposition party. In response to the delegate's suggestion that the document he provided to prove his father's position was bogus, he stated when his father asked him to carry posters etc to various places he used to help him by providing physical assistance and he attended those rallies in that capacity only because his father had asked him to help him. The BNP is in opposition and its workers live under constant fear of violence and that is why they do not release much information online. Also the internet connection in his district is not very well developed and infrastructure for online updates is unavailable and for that reason not much information is available online. The certificate is not a bogus document and it is the only information he could gather relating to his father's political activities with the BNP.

18. I am willing to accept the applicant's explanation concerning the circumstances surrounding the loss of his passport during his journey to Australia. I do not draw any adverse inference from it concerning his credibility. I also do not consider it to be material to his claims for protection.
19. I accept that in April 2018 a GP considered the applicant may be suffering from anxiety and PTSD and referred him to a psychologist for review. However there is no evidence before me that the applicant ever saw the psychologist; or whether he continues to suffer symptoms of anxiety or PTSD. I note the applicant has not claimed that mental health issues have impacted on his ability to articulate his claims for protection. Nor has he indicated mental health is the basis for any claim for protection. And I further note that he was assisted by a registered migration agent to lodge his SHEV application, and that same agent has represented him before both the Department of Home Affairs (the Department) and the IAA. I have listened to the audio recording of the SHEV interview. In my view the applicant sounds as though he comprehends the questions he is being asked and answers them intelligibly. I consider that the applicant has had a meaningful opportunity to express his claims for protection and participate in the protection process.
20. I do not accept that the applicant's father has been the acting BNP [senior office holder] in their local sub-district since 2002; or that he is a long term BNP activist, member or supporter; or that he made donations to the BNP. The applicant lived in the same village as his father his whole life and operated a [business] with him for a number of years. He said he had observed his father's political activities from childhood and did not depart Bangladesh until he was around [age] years old. He said he had assisted his father during the 2008 election campaign. Despite this, when questioned at the SHEV interview about his father's purported lengthy political activism he spoke vaguely and in brief generalities. For example, when asked at the SHEV interview about his father's political duties he said he had meetings, he was called to bigger meetings, and he organised people from their area to go to meetings. When asked several more times if there was anything else he could recall about his father's activism which his application indicated has spanned decades, he stated that was all he could remember. Additionally the date he nominated at the SHEV interview for when his father became BNP [senior office holder] differed by a year from the date indicated on the document from the BNP concerning his father's political office. I also note in the arrival interview he referred to his father working for JI, and said that his father was involved with JI from 1991 until now (that is 2013). However he did not mention that his father had any association with the BNP, or that he had held an office with the BNP for over a decade at that time. I have considered but am not convinced by the applicant's clarification that JI joined the

BNP in a coalition in 2001, and that this somehow explains his omission of any mention of his father's involvement with the BNP during the arrival interview. While I accept that country information confirms the JI has been politically allied with the BNP, and other parties at various times¹, I consider that the BNP and JI are separate political parties with distinct ideologies and histories, and I consider it highly unlikely that the applicant would have neglected to mention earlier that his father was a long term office holder in the BNP if it were true.

21. The letter from the BNP, purportedly confirming that the applicant's father's has been acting as the BNP [office holder] of their local sub-district branch since 2002, does not overcome my concerns about the credibility of the claims relating to his father's political allegiances and profile. Country information indicates that there is a high prevalence of document fraud in Bangladesh.² I also note the national identity card numbers on the BNP letter and the translation do not match, and consider it is highly likely that the letter does not relate to the applicant's father. Accordingly I place no weight on the letter or translation. I have considered but am not persuaded by the applicant's explanation that he was not able to provide any other evidence about his father's claimed lengthy political career because of the unreliability of internet services in his local area. I note the applicant's own evidence at the SHEV interview that his father is a businessman who divides his time between their home village and the capital Dhaka where he has run a new business since 2014. Even if internet services are less accessible and reliable in rural areas like his home district, I am of the view that his father could have sent the information electronically to the applicant when he was in the capital. Alternatively other evidence of his father's political profile could have been posted to the applicant. I note that the applicant managed to successfully obtain his birth certificate from Bangladesh.
22. As I have not accepted that the applicant's father was a BNP office holder, activist, member or supporter, and as the applicant claimed his attachment to the BNP was inspired by his father's BNP allegiances, it follows that I do not accept that the applicant was a BNP supporter or member while he was in Bangladesh. I also note that this claim is contradicted by the evidence he gave in the arrival interview, where he stated his father was involved in political activities but that he was not.
23. I am willing to accept that local AL thugs may have visited the applicant and his father's [business], damaged some goods and extorted money from the applicant in 2012, and from his father at an unspecified time. Country information indicates that some individuals involved with the AL, particularly from student groups, act like criminal gangs and extort local businesses³. However given my findings above, I do not accept that any extortion was politically motivated but rather was for financial gain. I also note the applicant's evidence at the SHEV interview that the family closed the [business] in 2012, and that since about 2014 his father has operated a [another] business in the capital Dhaka. The applicant has not

¹ Asian Research Consortium, "Religion and Politics: A Study of Bangladesh Jamaat-e-Islami", 1 May 2017, CISED850AD9152. "God Willing": The Politics and Ideology of Islamism in Bangladesh", Comparative Studies of South Asia, Africa and the Middle East, 1 January 2003, CIS14659.

² The Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169. DFAT, "Country Information Report – Bangladesh", 5 July 2016, CIS38A80121206.

³ European Asylum Support Office, "Country of Origin Information Report - Bangladesh Country Overview", 20 December 2017, CISED850AD8029. DFAT, "Country Information Report – Bangladesh", 5 July 2016, CIS38A80121206. International Crisis Group, "Political Conflict, Extremism and Criminal Justice in Bangladesh", 11 April 2016.

claimed that his father has been subjected to extortion by the AL or anyone else in relation to his current business either while he has been living in Dhaka or residing in their home district of [District 1], although the AL continues to be in power in Bangladesh. In these circumstances if the applicant were to return to Bangladesh I am not satisfied there is a real chance he will suffer extortion by the AL or its criminal associates now or in the reasonably foreseeable future.

24. I do not accept the applicant has been a member of the BNP in Australia since 2014. The BNP membership receipt dated May 2014 that the applicant provided lists his address at that time as being in the suburb of [Suburb 1]. However according to the applicant's SHEV application he did not move to the [Suburb 1] address until December 2015, and that prior to that date he lived at an address in [Suburb 2]. I consider it highly likely that the membership receipt has been backdated to make it appear that the applicant has been a member of the BNP in Australia for a number of years. I place no weight on the membership document. I also place no weight on the personal reference for the applicant provided by the Member Secretary of the BNP in Australia. The information contained in that letter appears to differ from the applicant's evidence in several material aspects. The letter states the applicant has been working with the BNP in Australia as an activist, although it does not specify what it is he has done. The applicant has not however claimed that he himself is a BNP activist. He has claimed that he has attended around [number] BNP events. Also the arrival date for the applicant cited in the letter differs from that provided by the applicant in his SHEV application.
25. Nevertheless I accept the applicant has been associated with some BNP related activities in Australia. While I have some concern that the applicant may have been motivated, at least in part, to participate in BNP activities in Australia for the purposes of strengthening his claims to be a refugee, in addition to the activities providing an opportunity to socialise with other Bangladeshis, and note there is nothing on the face of the photos to confirm the [BNP events] occurred in 2016 or that it was a public event, I am willing to set those concerns aside, and on the basis of the documentary evidence provided by the applicant, accept that he attended and participated in a minor way in around [number] activities conducted by the BNP in Australia over the period 2016 to 2018. However given the applicant's sparse involvement with the BNP's Australia branch in the five or so years he has resided here, and as I have not accepted that his father was a BNP office holder, activist, member of supporter or that he was a BNP supporter or member prior to departing Bangladesh, I do not accept that the applicant will seek to support the BNP or participate in BNP activities if he were to return to Bangladesh. And I am not satisfied that if he returns to Bangladesh there is a real chance he will suffer harm from the AL government or the AL because of his sporadic, low level support for the BNP in Australia between 2016 and 2018. The country information before me indicates only high profile individuals who have been politically active overseas, including those convicted of war crimes in absentia, are likely to be of interest to the authorities on return to Bangladesh⁴.
26. The applicant claimed that he departed Bangladesh legally. He also claimed that if he is forced to return to Bangladesh he will be considered to be a failed asylum seeker; it will be perceived he had provided evidence against the AL to the Australian authorities; and he will be perceived to be wealthy and targeted for extortion.

⁴ DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169. IAA18/05715

27. I accept the applicant departed Bangladesh legally. I also accept that if he returns to Bangladesh it may become known or be suspected that he sought asylum overseas. However apart from the applicant's assertion, the information before me does not suggest that returnees are perceived to have testified to Australian authorities about the AL or that they are necessarily perceived to be wealthy. DFAT reporting has indicated it has no evidence to suggest that recent returnees to Bangladesh have received adverse attention from authorities or others, and DFAT has assessed that most returnees, including failed asylum seekers, are unlikely to face adverse attention regardless of whether they have returned voluntarily or involuntarily⁵. Other credible sources indicate that international non-government organisations oversee and facilitate the return of many asylum seekers to Bangladesh and provide re-integration assistance to them⁶. In these circumstances I am not satisfied there is a real chance the applicant will suffer harm because he is a failed asylum seeker.

Refugee: conclusion

28. 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

29. 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

30. 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.

31. I have concluded that the applicant does not face a real chance of harm from the AL, or associated criminals, because he and his father suffered extortion in the course of operating their [business]; because he attended a handful of BNP events in Australia; or as a returnee or asylum seeker. As 'real risk' and 'real chance' involve the application of the same

⁵ DFAT, "DFAT Country Information Report Bangladesh", 2 February 2018, CIS7B83941169.2016?

⁶ "Bangladesh", International Organisation for Migration, 1 August 2014, CIS29397. IAA18/05715

standard⁷, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

32. 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.

⁷ *MIAC v SZQRB* (2013) 210 FCR 505.
IAA18/05715

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.