



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05897

Date and time of decision: 1 February 2019 11:35:00

S Mansour, 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 of Kurdish ethnicity and from Iran. On 19 June 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 27 October 2018 a delegate of the Minister of Immigration (delegate) refused to grant the applicant a SHEV. In summary, the delegate accepted that in Iran the applicant was convicted, lashed and imprisoned for an alcohol related offence, detained multiple times for contravening Islamic moral codes and on one occasion beaten by police, deserted military service, and departed on a fraudulently obtained passport. The delegate concluded that the applicant did not have a well-founded fear of persecution or face a real risk of significant harm.

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:
 - He is of Kurdish ethnicity. He believes in god but does not practise any religion.
 - From around the age of [age], he faced multiple encounters with the Iranian authorities for spending time with girls. On one occasion he was stopped by the authorities due to his dress code.
 - At around the age of [age], the police caught him eating during Ramadan. They arrested him, beat him, and had him sign an undertaking.
 - He would express his views on Islam and the Iranian regime to family and friends in Iran.
 - In around 2011, Basij officers arrested him and he was sentenced to [number] lashes, a fine and 6 months imprisonment for an alcohol related offence.
 - In around [year], he completed three months of military service training. Afterwards, he deserted the military, and fraudulently obtained a genuine passport in somebody else's name. He departed Iran by air using this passport.
 - While in Australia, he attended protests and posted social media material against the Iranian government.
 - He fears returning to Iran because he is a person who refuses to comply with social and religious laws and regulations, is a military deserter, exited Iran illegally, and as a failed asylum seeker. He fears an increased risk of danger if members of the Iranian government accessed his information due to the 2014 data breach by the then Department of Immigration and Border Protection (Department). He fears based on the culmination of his past and present profile.
6. At the Protection Visa (PV) interview, the applicant indicated he had not faced any problems in Iran for reason of his Kurdish ethnicity nor did he claim to fear harm on this basis.

Factual findings

Identity

7. The applicant claims to be an Iranian national. On arrival to Australia, he provided an Iranian passport bearing his photo but the bio data details he said were of another individual. Since his arrival, he has maintained that this was a 'fake' passport and consistently provided what he claimed were his true bio data details. On 28 June 2017 the Department requested the applicant provide documentary evidence of his identity, nationality or citizenship under s.91W(1) of the Act (Identity request). At the PV interview, he presented an original of an Iranian National Identity Card (NIC) and Birth Certificate (*shenasnameh*). He has also provided a copy of his Iranian driver's licence but no English translation.
8. According to the Department of Foreign Affairs and Trade (DFAT), from mid-2008, the NIC became compulsory for obtaining a passport, driver's licence and opening bank accounts. Features of the NIC include the bearer's *shenasnameh* number. Country information from the Immigration and Refugee Board of Canada (IRBC) indicates that 'smart' NICs, with chips containing biometric information began to be issued from 2011 and that new *shenasnamehs* began to include national identity numbers as the primary identification number during 2010, 2011 or 2012. Older *shenasnamehs* do not include the national identity number of the holder. Country information from DFAT and also that referred to by the Department from the Embassy of the Islamic Republic of Iran in The Hague consistently indicates that the NIC is valid for seven years.
9. The applicant's current NIC expires in late 2019, indicating it was likely issued sometime in late 2012. The applicant's NIC does not indicate his *shenasnameh* number in the relevant field (which states 'Birth Certificate No') and instead indicates '0' in that field. The applicant's *shenasnameh*, indicates it was 'first issued' in 1993. It indicates the applicant's national identity number and the document serial number. There is no indication of the reissuance date, if any. I note that country information also indicates that the *shenasnameh* has not had a uniform format over time. However, the applicant has provided an incomplete English translation of his *shenasnameh* in which the translator had indicated that the biological pages of the birth certificate have been translated but the marriage, children and remarks page were not assigned for translation. The applicant was well on notice since the Identity request of his responsibility to provide documentary evidence of his identity. In light of this and the country information cited, I have considerable concerns regarding the format and content of the applicant's identity documentation. For all these reasons, I have concerns regarding whether the applicant has been fully forthcoming regarding his claims and possibly identity. I am not satisfied that the applicant fraudulently obtained a genuine passport as claimed (and as further discussed below). Given the applicant's lack of credibility regarding the claimed circumstances of him obtaining this document and the concerns I have regarding his current identity documentation, I am not satisfied that his true bio data details are as now claimed. However, on the available evidence, I am prepared to accept that he is an Iranian national, and that Iran is the receiving country for the purpose of this review. Given my findings below, it is not necessary for me to consider s.91W.
10. Since his Arrival Interview, the applicant has consistently identified as Kurdish and indicated he speaks Farsi and Kurdish. The applicant was born into a Shia Muslim family. On the evidence, I accept that he is Kurdish.

11. The applicant's Statement of Claims included in the updated 2017 version of his PV application (Statement) refers to his poor memory and that he struggles to recollect specific details including precise dates at different addresses and the details of all addresses lived at while in Iran. He has not supported these assertions with any further evidence or reasons why this may be the case. I am not satisfied that he faced any issues in providing his claims.

Beliefs

12. The applicant claims he has not believed in Islam from a young age, he believes in god but does not practise any religion. He identified as a Shia Muslim at his brief Arrival Interview. In his Statement, he said he did so because Shia Islam was the religion that had been allocated to him. He referred to examples of aspects of Islam he disagreed with. He said his parents were Muslim but that his mother was the only strict Muslim in his family. At the PV interview, he said that he believed in god and that someone created the world. He went to church a few times in Australia, had read a few pages of the bible but he did not practise any religion in Australia and wanted to read the rest of the bible and then make up his mind. Country information from the Boston Review indicates a largely young population in Iran, who are increasingly disinterested in religion, particularly Shia Islam. I accept that the applicant does not identify as a Shia Muslim, believes in god, and is not affiliated with any particular religion. I accept that he may be considered a non-practising Muslim on return to Iran.
13. The post-PV interview submission submits that the applicant would face risk in Iran on account of his current religious beliefs. It refers to country information regarding apostasy and conversion from Islam to another religion including Christianity in Iran. The applicant himself has not detailed any such claims when the issue of religion/his beliefs was discussed at the PV interview or in his Statement. His comments at the PV interview were vague. He has not provided any persuasive evidence of his church attendance, interest in Christianity or in support of his claim that he read a few pages of the bible and is interested in further reading the bible. This is comparable to his detailed and convincing statements over time regarding why he does not identify as a Shia Muslim. I do not accept he has an interest in Christianity or in converting to another religion. I do not accept that he attended church or read the bible while in Australia or that he has any current interest in any religion.

Encounters with Iranian authorities

14. The applicant claims he fears returning to Iran as a person who refuses to comply with social and religious laws and rules. He claims that from around the age of [age], he faced multiple encounters with the authorities for spending time with girls. His Statement indicates he was arrested many times, in different areas of Tehran and was not always taken to the same police station or stopped by the same police officers. His Statement indicates he was arrested for spending time with women from age [age] until he fled Iran. At around [age] years old, while out in Tehran, the moral police stopped him and his girlfriend and questioned them on their relationship. The moral police arrested them, put them into two separate cars, took them to the police station, made them perform many squats as punishment, kicked them and then made them sign an undertaking not to repeat the behaviour before releasing them. He referred to similar scenarios arising when he went out with his sister or relatives. He said they would have to produce their birth certificates to prove the nature of their relationship. At the PV interview, he said this occurred three times with his sister but he was vague in describing any particular incidents and did not refer to being physically harmed during such encounters. In his Statement, he said he did not stop spending time with women as he decided it was his luck if he was arrested or not and because he did not agree with any rules against men and

women being segregated or that he had to be married or engaged to be with a woman in public.

15. The Statement refers to one occasion when the applicant was stopped by the authorities due to his dress code. He said he had torn jeans and had put product in his hair to style it. The moral police approached him, and took him to the police van, along with four or five other people. A woman asked them to give her their phones and passcodes, this woman extracted all the information from the phone then returned the phones and released them. He said he does not agree with the dress code enforced in Iran. At the PV interview, he spoke more generally regarding the situation of enforcement of dress codes in Iran and did not specify any detail regarding this claim that he was made to hand over his phone.
16. The applicant claims that at around the age of [age], the police caught him eating during Ramadan. They arrested him, beat him, and had him sign an undertaking. In his Statement, he stated he was in a shop and a few police at the shopping complex saw him eating, took him to a police booth next to the shopping complex, beat him for around ten minutes, kicked him, that their beating left marks on his body, that they kept him for around one and a half hours and then made him sign an undertaking not to repeat the behaviour. At the PV interview his account differed and was vaguer. He said he was eating inside the shop that he worked in and that the authorities arrested him and closed the shop. They asked him to give a written statement at the police station and insulted him.
17. DFAT has reported that the Iranian authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including Islamic dress and public appearances with non-family members of the opposite sex. DFAT indicated that enforcement can be unpredictable and related to the prevailing political atmosphere of the time. It was also relatively common for youth that did not wear traditional Islamic dress to experience some form of low-level harassment from security authorities, such as being subjected to searches, car checks and verbal warnings for dress or behaviour. I accept that the applicant may have faced low-level harassment in the nature of questioning, verbal warnings, and requiring him to briefly attend a police station and sign undertakings not to repeat the behaviour from the Iranian authorities due to spending time with women in public and dress code issues. I am not satisfied that he was physically harmed or faced more than low-level harassment during these incidences. Due to inconsistencies and the vague account given at the PV interview, I do not accept the Ramadan incident.
18. The applicant also claims that in around 2011, Basij officers arrested and imprisoned him for an alcohol related offence. According to his Statement, he was with friends in a theme park, and was drinking alcohol when a fight (that he was not involved in) broke out between people. The police approached him, said he smelled of alcohol, and initially arrested and detained him for one night. At the PV interview, he instead said he had consumed alcohol inside the house and then had gone out in the street and was walking past the fight. Basij officers caught him and contacted their main station. In his Statement, the applicant said he then signed an undertaking, having been told he would then be released, but was instead taken to [Prison 1] and held there for [period] in a public cell with 10 or 15 other people. After [that period], he was taken to [Prison 2] where he spent two weeks inside a public jail and then was taken to the main prison and locked in a small room with about 18 people in it. However, at the PV interview he only referred to [Prison 1] Prison and being told he would be sent to court after this. In his Statement, he referred to the poor living conditions while at [Prison 2] including the sleeping conditions, lack of hygiene, and that he was beaten by other cell mates. He said that after around five months, the authorities contacted his family requesting bond money for his release, his mother came to the prison and he was taken to court with other prisoners. He

signed a document at court, and was taken to [a section] of the courtroom where he was told he would be summoned to receive his punishment of [number] lashes. Around one week later, he returned to the [that section] of the court, three officers took his clothes off down to his underwear, made him go on a high single bed face down and lashed his back. He said the pain was so excruciating that he passed out, he was released and his mother took him to hospital where he received medical care. After discharge from hospital, he spent around two to three weeks at home recovering. His statements at the PV interview were much less detailed and unpersuasive.

19. At the PV interview, the applicant presented supporting documentation regarding his sentencing including a Court Verdict and two execution orders. He has not indicated why these documents were not submitted earlier. The Court Verdict document, dated [in] October 2011, refers to the applicant being sentenced to six months imprisonment, [number] lashes and payment of [amount] Rials of cash under articles [numbered] and 701 of the Iranian Penal Code (Code). The Execution Order document dated [in] October 2011 states the applicant received [number] lashes in the order execution chamber by the conscript soldier and the verdict had been executed. The Execution Order document dated [in] April 2012 states that the applicant was taken to [Prison 2] after the lashing [in] October 2011 and was released [in] March 2012 upon serving his conviction term.
20. Country information regarding the Code indicates that under article 701, anybody who publically consumes alcoholic beverages receives both a *hadd* punishment (a punishment that is governed by shari'a law) and two to six months imprisonment. DFAT indicates that article 265 of the new Code clearly states that the punishment for alcohol consumption is [number] lashes, regardless of whether consumption caused drunkenness or not. However, the court documents contradict the applicant's claims in his Statement that indicate that it was after being held at [Prison 1] for around [period] and being held at [Prison 2] for around five months and two weeks, that his mother came to the prison and then he went to court and soon after received his lashing punishment. The court documents indicate to the contrary that he received his punishment of lashing prior to being imprisoned. On the evidence, there is no convincing explanation for this significant discrepancy in the sequence of events, relative to other events, particularly considering the short time frame between the preparation of the applicant's Statement in late 2017 and the PV interview of June 2018. At the PV interview, the delegate requested the applicant to provide the English translation of the court documents and made him aware that he would wait for the translations and at the close of the interview indicated that information provided would all be taken into account. The delegate also referred to the applicant's PV application evidence throughout the PV interview. The applicant, who was represented, was on notice that the information in his PV application and court evidence was relevant and may be drawn upon in the assessment of his claims for protection. In 2013, DFAT indicated credible reports of bribery and endemic corruption in the Iranian judicial system. Country information from the Danish Immigration Service (DIS) in a joint report with the Danish Refugee Council (DRC) in 2018 indicates that there is a high prevalence of corruption in the Iranian judicial system and false court documents are possible to obtain. Overall, I am not satisfied of the authenticity of these documents.
21. In his PV application, under Character questions, the applicant referred to being in detention for two weeks for being charged with drinking alcohol rather than the long term imprisonment referred to in his Statement, documents and at PV interview. At the PV interview, when asked whether his time in prison was really straightforward, he said he did his time, laughed and said it was very difficult. He said it was very hard, there was fighting and bashing every day. He said 'they' were the bosses and referred to him and the other cellmates being the 'slaves.' He said it was terrible and 'they' would do anything they wanted, even in front of the guards. He did not

offer any level of detail comparable to that provided in his recent Statement and I am not persuaded by his vague evidence at the PV interview. Due also to the multiple discrepancies outlined above, I do not accept the alcohol related incident occurred.

Political views and activities

22. The applicant claims that while in Iran, he would express his views on Islam and the Iranian government to his family and friends. He has not claimed or evidenced that he came to adverse attention or harm for reason of such exchanges. His Statement states that those he spoke with agreed with his views and were similarly angry about the lack of freedom in Iran. He said he was cautious with speaking with anyone he did not completely trust as it was dangerous to openly speak one's mind in Iran to people one was not sure were loyal. He said he did not attend protests or demonstrations in Iran as his life would be in danger in doing so and he feared he could disappear. In Iran he started researching on the internet about the conditions in other countries. He learnt about the freedoms enjoyed by persons outside Iran such as in European countries. He learnt that other Muslim countries had some freedoms unlike Iran. He said that finding out about the freedoms that citizens of other countries enjoyed only strengthened his contempt for the Iranian government. He said that after receiving lashes this made him hate the Iranian government even more but I do not accept the alcohol incident and therefore do not accept he received lashes. He referred to fearing that if he expressed his political opinions in Iran he would be seriously harmed again.
23. At the PV interview, asked what he meant by his political opinion, the applicant referred to his political opinion being 'very obvious.' He spoke vaguely of the activities of the Iranian authorities in Iran that he was against such as that 'they kill people without any reason,' 'they kill people for a small gathering, demonstration' and he said that what was happening in his country was important to him and if he was in Iran, he would have taken part in demonstrations. He did not provide any detailed information which is comparable to that which was included in his Statement such as his research of country conditions outside Iran or other specific reasons for his political views or contempt towards the Iranian government. The contexts against which he provided his claims in his written Statement and at the PV interview differ. I note he was made aware that it was very important that he put forward all of his claims for protection at the PV interview, was represented, and was given ample opportunity to elaborate on his claims. He did not indicate any specific forum or activities he wished to express his political views through apart from vague reference to attending protests/demonstrations in Iran. When asked by the delegate whether he was saying he would express his political opinion publically if he were to return to Iran, he said if he did so they would kill him. When asked whether he would have attended demonstrations if still in Iran, he said yes, because the demonstrations were now occurring. He said he would participate in them if he could stay alive. At the PV interview, the applicant confirmed that neither he nor family members were politically active while he was in Iran.
24. On the evidence, I accept that the applicant may hold some low level anti-Iranian government views. Country information from DFAT indicates that as a theocracy, religion and the state are mixed in Iran. Country information, including from the Boston Review, Qantara and the Economist, indicates the growing discontent of young persons in Iran towards the Iranian state and its' religious values. However, apart from low level harassment the applicant may have faced due to contraventions of dress or moral codes, I am not satisfied he otherwise came to the adverse attention of the Iranian government and or its' organs or anybody else for reason of or relating to his views, political or otherwise, or due to any other outward expression of such views.

25. I am also not satisfied that he has any genuine wish to engage in political activities or public expression of his views in Iran or that his not doing so would be due to a fear of harm. At the PV interview, the applicant said he is not a member of any Iranian social group or political organisation in Australia. The post-PV interview submission refers to the applicant's involvement in demonstrations in 2009 and the investigation of his friends in October 2012. This information has otherwise not been raised by the applicant or his representatives and I am not satisfied it relates to the applicant. I note that the applicant's views towards the Iranian government are, according to country information before me, similarly held by a large proportion of the mostly young Iranian population. However, the applicant in particular is not affiliated with any political associations in Iran nor indicated an interest in becoming affiliated with such associations in Iran in future, even at a low level. He is not affiliated with any political associations in Australia despite his extended stay and the freedoms he enjoys to more publically promote any politically held views while here. He has not provided any detailed evidence of his participation in demonstrations while in Australia. He has provided photographs (published to his [social media account]) of what are said to be attendance at a demonstration in Australia. I accept he was present at a rally of some sort but I am not satisfied he was a genuine participant. Despite claiming the importance to him of what was happening in Iran, he has not supported such vague assertion with any convincing, specific details or evidence to satisfy me that he would seek to or desire to undertake any overt displays of his views in Iran apart from those relating to dress code behaviour or public appearances with women.

Military service, passport and departure from Iran

26. The applicant claims to fear harm in Iran on the basis of his status as a military deserter. He has provided inconsistent claims about his military service. In his Statement, he said that upon being released from prison, he lived discretely to avoid attracting adverse attention for avoiding military service. I do not accept he was imprisoned. He said he did not complete military service as he could not cope with the idea of serving in the military for two years, and did not agree with the actions of military personnel. He said that he was afraid of being considered a deserter because he had left Iran illegally and without registering for his term of compulsory military service. In his PV application, he responded 'no', to Question 27 of Part C of Form 790, on whether he had undertaken any military service in Iran including military training. In response to Question 28, regarding whether he still had military service obligations in his home country, he stated that he would be required to undertake compulsory military service in Iran and be penalised for evading military service. During the PV interview, the applicant's representative indicated that the applicant said he escaped from the (military) base in his Statement. However, the Statement does not reflect this. At the PV interview, the applicant said he started military service three months and two weeks before obtaining his passport and this was when he was told he had to go to war to different countries as if not, those countries would come to Iran. He said that after undertaking three months of military training, he had two or three days of leave and never returned. He said that he mentioned undertaking military service in his Statement but again, the Statement does not indicate this is the case.

27. During the PV interview, asked what he had learnt during his three months with the military, the applicant said he was taken somewhere, taught to shoot for one month, some martial arts and personal defense. He said he escaped as they were going to send him off to war and he would be stationed at Iraq, Syria or Lebanon. He said they were just 200 and they were also told there was a possibility they would stay in Iran in case of civil riots. The applicant's representative submitted that the applicant objects to being sent to areas of conflict or

engaging in behaviour like policing riots and therefore could be forced to engage in actions he does not wish to do. The discrepancies between the information provided in the applicant's PV application including his Statement, where he indicated he was a military evader and had not undertaken any military service and at PV interview, where he indicated he was a military deserter and had undertaken a three month training period, are significant. I am not convinced of the applicant's claim at PV interview that he was a military deserter. I place weight on the PV application form, prepared with migration legal assistance, which indicates clearly that the applicant was concerned about being a military evader and had not commenced any military service. I also place weight on his otherwise detailed Statement which makes no mention of undertaking military training. Moreover, the PV application form indicates that the applicant's Statement was read back to him in his own language. In his PV application address history details, the applicant also did not indicate any period of time spent residing at a possible military training area.

28. Furthermore, the applicant was vague when stating how he spent his three months military training period. He has not provided any convincing, spontaneous or specific details regarding his claimed military training period, in particular that which would be commensurate with his claimed actions of abruptly deciding to desert from the military, obtain a fake passport and flee Iran soon after. Country information from the United Kingdom Home Office (UKHO) in 2016 indicated that there was no evidence that those completing their military service had been deployed to Syria, though it was important to note that members of Iran's armed forces had been deployed there in support of President Bashar al-Assad. The overall UKHO report includes various sources, including those dating back to 2012 and 2013. There is no other evidence before me to suggest otherwise and the applicant was vague and provided generalised statements regarding the possibility he would be sent to one of three countries including Syria. I do not consider the applicant's claimed military desertion circumstances to be plausible. Moreover, I note consistent country information including from DFAT which indicates that the *shenasnameh* also records military service. I note the applicant's English translation of his *shenasnameh* indicates that only the 'biological pages' of the birth certificate were translated (other pages including the 'remarks page' were 'not assigned for translation') and therefore this document also does not yield any further clarity on this issue. Moreover, country information indicates likely enrolment in military service by age 18 or 19. The applicant claims he commenced military service training in [year] (around [older age]) and when asked by the delegate at the PV interview why he did not register immediately after turning 18, and why he did so later in his life or at the time he did, the applicant's response was again vague. He spoke generally that one did not need to go exactly at age 18 and that one could be given time, a period of time before going and introducing themselves. He has not otherwise detailed the specifics of what he went through and how he came to enrol at a later date. Overall, I am not satisfied that the applicant is a military deserter or undertook any military service training in Iran. I also consider that the applicant's change of his claims regarding military service reflects poorly on his overall credibility as a witness.
29. Owing to the applicant's poor credibility, additional credibility concerns and country information, I am not satisfied he was even a draft evader while in Iran. I note he has not provided any detailed evidence or information regarding the manner in which and timing of him being called up for military service. The applicant claimed he completed high school and did not undertake any tertiary education. In his Statement, he claimed that on release from prison (a claim I have not accepted) he had to live discreetly to avoid attracting adverse attention for avoiding military service. He has not detailed how he lived discreetly and this is contradicted by his employment history details provided which indicates engagement in some form of ongoing employment in Iran since finishing school and that one of these roles was in a [business]. He has not claimed that he faced any difficulties in his right to work or in publically

engaging in work (and has consistently indicated he worked for several years from around age [age]), or in his right to further education, nor does the evidence indicate that in coming to the attention of the authorities for violating moral codes (which in his Statement, he indicates took place up until the time he departed Iran), that he faced any issues which may suggest that the Iranian authorities were aware he was a draft evader.

30. Country information from DFAT indicates that wealthy families can purchase military exemptions for their sons through paying absence fines and that this practice is common. The UKHO also refers to the possibility of payment in lieu of military service. According to Radio Zamaneh in 2015, Iran's Conscription Organisation reported that 280, 000 people had registered to make a fine payment in lieu of serving their obligatory military service. I note the applicant has claimed that he paid a significant fee (of the equivalent of approximately USD [amount]) to secure a fake passport, and DFAT and the UKHO suggest that military absence fines may range from USD 6,000 to over USD 13, 000. Some country information before me including from the UKHO indicates that more recently the 'buy out' option may no longer exist. However, according to Radio Zamaneh in March 2015, in the latest budget, the administration proposed that those who had defaulted on their service for more than eight years could pay a fine to buy out their military service and that fines differed based on level of education, with higher education demanding higher fines. Moreover in June 2016 Middle East Eye reported that Iran's chief conscription officer stated that more than 10, 000 people had applied to pay absence fines since the start of that Iranian month. The overall country information indicates the ongoing possibility of applying for absence fines. The applicant was around [age] years old when he fled Iran. Moreover, the UKHO refers to country information from the Iran Human Rights Documentation Centre (IHDC) which indicates that students in secondary school or university are exempt from military service as long as they are attending classes and to Jane Sentinel's Security Assessment which indicated in 2016 that young men enrolling in university may defer their military service until after graduation. The evidence before me therefore indicates that there are a range of acceptable possibilities for how the applicant may have avoided military service while in Iran without actually becoming a draft evader or being considered to be so by the Iranian authorities.
31. The applicant claims he fears being imprisoned for eight to ten years including for reason of exiting Iran on fraudulent documents. In his Statement, he said that he was unable to depart Iran earlier because he could not obtain a genuine passport for reason of not having completed his military service. He said he had to spend time organising for a fake passport. One of his friends knew someone who could arrange this for him. He had to pay [amount] Toman, provide his photograph and he then received a passport bearing his photograph but a different name. In his Statement, he said that another one of his friends in Iran told him about and put him in contact with a smuggler in Iran who assisted people to travel to [a transit country] and then Australia. He referred to flying out of Imam Khomeini International Airport (IKIA) where officials stamped his fake passport and he boarded his flight without any issues. At the PV interview, he said he escaped for one week after three months of military training, that it was the intention to send him to war that made him want to flee the military camp, that he went to the north of Iran, spoke to the same person who organised his brother's passport and it took around four days to obtain the passport. He said he departed Iran the same day he obtained the passport. I do not accept the applicant went to military training and in the absence of any further convincing evidence to indicate he was compelled to suddenly obtain the passport within days of departing Iran, I do not accept such circumstances of him obtaining the passport in a rush to leave the country.
32. I have other concerns regarding the claimed circumstances of the applicant's departure from Iran with this passport and the claim that the passport was fraudulently obtained. At the PV

interview, the applicant referred to his brother and brother's family departing Iran [time period] prior to him and that he and his brother used the same people smuggler. His brother similarly fraudulently obtained a passport. He did not refer to these details in his Statement. The Document Examination Report (DER) indicates that the individual the applicant claims to be his brother had a passport that was issued around [time period] prior to the applicant's. When asked by the delegate whether it was a coincidence that he and his brother wished to leave Iran at the same time, he responded that it was not a coincidence; they had planned for it due to the things that had happened because of his military service. He has not provided any details regarding why his brother departed Iran soon before him and the circumstances that led his brother to leave Iran and I have not accepted the applicant's military service circumstances and therefore do not accept this had any connection to his claim regarding his brother's departure. The applicant's claimed departure around the same period as his brother raises further doubts about the circumstances of his departure. This is particularly so considering the large sum of money he claims he paid to fraudulently obtain a passport in somebody else's name. He has not explained how he or his family members raised this sum of substantial money including for his brother. Moreover, when the delegate put to the applicant at the PV interview that he understood he and his brother were planning and organising their documents and the process for exiting Iran together, the applicant said his brother's was a 'long time prior' to his own. Moreover, the applicant has not provided any documentary evidence of his claimed familial connection to the individual he claims to be his brother and there is no convincing evidence before me to persuade me that this individual is indeed the applicant's brother or has the identity claimed by the applicant. He has been vague when discussing his brother's departure circumstances and not provided any convincing evidence that this individual is his brother. Overall, I am satisfied that the circumstances of the applicant's flight from Iran indicate he carefully planned these travels well ahead of travel dates and such travels were not a spontaneous reaction to events of the days or weeks prior.

33. According to the DER, the applicant and his claimed brother's passports are nonetheless genuine documents. I note that both he and this individual arrived to Australia with these original passports, both allegedly bearing false identities. I am not satisfied of his claims regarding the circumstances in which he was required to use a fraudulently obtained genuine passport to exit IKIA. DFAT indicates that all Iranian passports have been biometric since February 2011. The passport the applicant presented on arrival to Australia was issued in 2013. In February 2013, the DRC, DIS and Land Info joint report indicated that the Iranian authorities collect lots of information on citizens that they store in the system and by knowing a person's ID card they had access to a lot of information about that person. In 2013 DFAT indicated it might be possible to obtain a genuine identification document with the intention of impersonating another person, but sophisticated border control procedures would make it difficult to use in order to leave Iran. DFAT indicates that all passports include the holder's national ID number and that a NIC is compulsory for obtaining a passport. The country information indicates there is a clear link in information between the NIC and passport and that the Iranian authorities access a lot of information through the NIC. The country information indicates that it would be very difficult for an individual to be able to depart Iran on a genuine but fraudulently obtained passport, particularly one that is linked to the NIC and therefore bio data details of a different person, without coming to any adverse attention. The difficulty of doing so raises further doubt as to the applicant's claim to have departed in such a manner.
34. The joint DIS, DRC and Land Info report indicates that according to a western embassy employee most Iranians who end up as illegal migrants have left Iran with their original documents either by obtaining a genuine or forged visa. Moreover, many travel to Turkey where they do not face visa requirements and from there they travel onwards using forged

documentation. The source did not consider it possible to exit IKIA with a forged passport but would not rule out the possibility of one being able to bribe their way out. However, the price for such bribery could be as high as 8, 000 -10, 000 Euros. There were examples of people having left on foreign forged passports, although there were easier ways to leave Iran illegally such as through the land border with Turkey. Moreover, Amnesty International's International Secretariat (AIS) indicated that the borders to Turkey and Iraq are porous and there were well-established smugglers' routes. Many people had been able to leave Iran illegally. Reference was also made to a case where a person had left Iran illegally but later managed to obtain a forged Turkish entry stamp in his passport as well as get his details put into the Turkish system, thus facilitating a normal exit. AIS had no information regarding the frequency of such incidents, although such high cost deals were presumably out of reach of people without sufficient financial resources.

35. Furthermore, a Western embassy stated it was possible to buy legal documents in Iran and obtain genuine documents in a fraudulent manner. The source distinguished between genuine documents with false information and forged documents. In 2012, the then Department of Immigration and Citizenship indicated that the detection of fraudulent Iranian documents by Iranian nationals inbound from a port in Iran to the United Arab Emirates (UAE) was rare due to the high capabilities of the Iranian immigration to detect fraudulent passports at their own ports and that the consequences for passengers in Dubai being subsequently returned to Iran as a result of possessing fraudulent Iranian travel documentation would be severe. In 2013, DFAT indicated that key Iranian identification documents were safeguarded by sophisticated security features and would be difficult to manufacture for fraudulent use. DFAT assessed it was possible to leave Iran to flee arrest warrants or charges but this was usually accomplished overland rather than through the main airports, and passport control checks were sophisticated in Iran. The applicant indicated he travelled to the north of Iran for one week during his arrangements for exiting Iran. I consider it implausible that he would choose to obtain and use a fraudulently obtained passport to depart via an international airport given the serious risks involved, the possible penalties on return which he indicated he is aware of, and country information indicating other available options for departure that may not attract the same level of risk or financial burden. There is no credible evidence before me to indicate the Iranian authorities have taken an interest in his military service status while in Iran or since his departure. I note that the applicant's claim of possession of a fraudulently obtained passport on one view may suggest he has a reason to flee Iran such as owing to military service issues, as claimed. However, considering the cheaper and lower risk options for avoiding or obtaining an exemption from military service, I am not satisfied he obtained any passport for reasons relating to military service. Considering the evidence overall, I am also not convinced that the applicant was a draft evader when he left Iran or has since become a draft evader or been labelled or perceived as one.
36. I also do not accept he was required to use a fraudulently obtained passport to leave Iran. Overall, on all the evidence, I am not satisfied that the applicant departed IKIA using a fraudulently obtained passport. I am satisfied he departed on his own genuinely issued passport.
37. According to country information referred to by the UKHO in October 2016, military service is mandatory for Iranian men starting at the age of 18 and all Iranians are required to report as late as 19 though sources indicate that the age of reporting may be dependent on the type of enrolment. The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), referring to the Netherlands Ministry of Foreign Affairs in its December 2013 General Official Report on Iran (Netherlands report) states that all men, upon reaching the age of 18, are called up as part of their military service. They must report to the military authorities

within one month after the start of the Iranian calendar year in which they turn 18. Announcements are made through the media calling upon men born in a given year to report to the local conscription bureau. Those who fail to report are considered as draft evaders. It is not possible to opt to do military service in the regular army or Revolutionary Guards unless the conscript was already working for a particular organisation prior to the draft. It is not possible for young men of military age to depart Iran before completing military service; unless a deposit of around USD 15 000 is paid. ACCORD indicates that evasion of military service is punishable under Article 40 of the Armed Forces Penal Law by imprisonment of six months to two years, or an extension of the service. Draft evaders may also be divested of social and civic rights including their right to work, to education or to set up their own business. In June 2016, the Middle East Eye reported that according to the chief conscription officer, between 30 000 and 35 000 people had already been arrested that year for attempting to dodge military service and that the process of identifying and arresting fugitives would be intensified that year. As outlined above, it is possible for men of military service age to obtain a military service exemption, apply for a 'buy out' from military service or otherwise delay or avoid military service. In this case, I am satisfied the applicant departed Iran on a genuinely obtained passport through legal means, and consistent with country information, I am not satisfied that he had any outstanding military service obligations at that time. Owing to the applicant's poor credibility regarding his claimed military service circumstances and his true identity, on the evidence and given country information, I am satisfied that the applicant does not have any outstanding military service obligation in Iran, whether due to obtaining an exemption, applying for a 'buy out' or other reasons.

Time in Australia

38. In his Statement, the applicant claimed he also feared that as a failed asylum seeker, he could be accused of being a political dissident on return to Iran as he attempted to escape the regime. He said accusations of this type could result in indefinite imprisonment in Iran. He referred to the public disclosure of some of his personal information on the Department's website in February 2014 (Data Breach). He said he was concerned that if members of the Iranian government acquired access to this information, then he would be under increased risk if forced to return to Iran and that this would be on the basis that he has sought asylum in Australia. As summarised in the PV decision, the Data Breach resulted in the applicant's name, date of birth, nationality, status as an Irregular Maritime Arrival and detainee being briefly accessible on the Department's website. The post-PV interview submissions add that the applicant fears return to Iran due to his potential status as a returned asylum seeker who sought protection in a Western country and had spent significant time in a Western country. I have not accepted the applicant held any adverse profile with the Iranian authorities prior to his departure. There is no evidence to indicate the Data Breach resulted in the applicant's details coming to the adverse attention of the Iranian authorities or anybody else in Iran or otherwise has elevated or may elevate his profile in Iran or cause him to face a heightened risk in Iran. Nonetheless, I accept that the applicant may be viewed as a failed asylum seeking, returning from a Western country, specifically Australia, after having spent significant time there, on initial re-entry to Iran or afterwards.
39. At the PV interview, when asked about political activities, the applicant said he took part in demonstrations. He said he participated in four in [City 1] and also attended in front of [a location] in [City 1]. He said the purpose was to show support for the people in Iran as 27 people had been killed. The applicant only raised these claims at the PV interview. He has provided little detail regarding the timing and nature of his involvement in these demonstrations. When asked by the delegate which ones and where the demonstrations were,

he said there was one in the city ‘a while ago’ regarding the riots that were happening ‘a while ago’ in Iran. At the PV interview, when asked what his online activities in Australia were like, he said he posted content online about the demonstrations, and about people being killed and bashed by the police and about the Supreme Leader of Iran. I note that the applicant otherwise did not volunteer details of this claim during his PV process. I do not consider the applicant’s statements at the PV interview to indicate any substantive or genuine engagement in political or social media activities while in Australia.

40. His representative submitted that in the last two years, Iran had been cracking down on social media accounts for most Iranians within Iran and referred to persons with no prior political profiles being targeted with regards to anti-regime or Supreme Leader social media posts. Following the PV interview, the applicant submitted evidence of social media posts. He provided evidence of him [contributing] material publically to [social media site] on [dates in] January and [April]. The year is not specified but on the material but it appears to have been published in 2018. These include sharing a video shared by somebody else which appears to be in Farsi, sharing [an entry] by somebody else in English regarding and speaking out against the treatment of the Iranian police towards Iranian citizens and sharing an Australian news story regarding the death of at least 20 persons during protests in Iran. He also provided four screenshots from his [different social media] account, three of which are dated in January and one which does not indicate the date. They relate to Persian news stories, English news stories, and photos of protests in [City 1], possibly those which the applicant claimed he participated in. I note his [social media entries] attracted between [number range] views. There is no evidence to indicate his [social media entries] attracted any significant public attention. The applicant did not raise any specific details regarding the level of his participation or involvement in the protests. I am not satisfied that he is clearly visible in the photographs of demonstrations on his [social media] page, whether owing to his lack of presence or due to the lack of facial image clarity in these photos. There is no evidence to indicate the Iranian authorities are aware of any of his activities engaged in while in Australia. I am prepared to accept that the applicant engaged in some low level anti-Iranian government activity while in Australia through posting material to his social media accounts for a short duration of time and possible presence at a rally of some sort but I am not satisfied he was a genuine participant. I am not satisfied of any other or genuine engagement with the same. For the purposes of s.5J(6) of the Act, I am not satisfied that the applicant’s conduct of possible presence at a rally and posting social media content against the Iranian government in Australia was otherwise than for the purpose of strengthening his claims for protection.
41. I am prepared to accept the applicant’s consistent explanations for making a voluntary repatriation request in August 2017, which he shortly afterwards cancelled and I have not drawn any adverse inferences from this in the assessment of his claims for protection.

Refugee assessment

42. 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

43. 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.

44. I accept that the applicant is Kurdish. He has indicated he has not faced any problems in Iran on account of his ethnicity or claimed any fear of persecution on this basis. However, the delegate considered this matter, as will I. In February 2018, a joint report of the DIS and the DRC indicated that Kurds asserting their ethnic and religious identity were a target, as well as those engaging in or associated with political activities. In March 2018, the Centre for Civilian Rights, Centre for Supporters of Human Rights and Minority Rights Group International jointly reported on the arbitrary arrest and detention of ethnic and religious minorities (generally) in connection with a range of peaceful activities such as advocating for linguistic freedom, protest related activity, and affiliation with oppositional parties. They reported that Kurds were often detained for mere membership in Kurdish political parties. According to DFAT, all Iranian citizens are entitled to basic health care coverage provided by the government and the Constitution commits the government to providing all citizens with free education to secondary level. The evidence before me does not indicate that the applicant, as a Kurd, faces a real chance of being deprived of access to any essential services or of threats to his subsistence in Iran, nor has the applicant claimed so. The applicant has not been politically engaged in any Kurdish or other groups in Iran. He has not claimed to have been engaged in any Kurdish related political activity or groups while in Australia or that he would wish to become engaged in the same on return to Iran. Overall, I am not satisfied the applicant faces a real chance of any harm on return to Iran on account of his ethnicity.

45. I accept that the applicant does not identify as a Shia Muslim, believes in god, and is not affiliated with any particular religion. I accept that he may be considered a non-practising Muslim on return to Iran. The post-PV interview submission states that the applicant has already demonstrated his commitment to his current religious beliefs. It refers to country information including regarding the situation for apostates and Christian converts in Iran. There is no credible evidence to indicate the applicant's lack of belief in Islam or a particular religion, came to the attention of the Iranian authorities while he was in Iran or afterwards or that he practised or wished to practise, vocalise, or otherwise publicise his beliefs while in Iran in any manner. There is no credible evidence to indicate the applicant engaged in any religious activities or promoted or sought to promote his beliefs while in Australia. He has not indicated he wishes to convert to Christianity or any other religion. There is no credible evidence to indicate he currently wishes to or may in future wish to, explore Christianity in Australia or on return to Iran nor has he detailed whether or how he may plan to do so in Iran. Overall, I am

not satisfied the applicant would attend any Christian or Christian related events or activities or churches in Iran. In 2016, DFAT considered it unlikely that the government would monitor religious observance by Iranians, for example, whether or not a person regularly attended mosque or participated in religious occasions, and therefore it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. The other country information and evidence before me does not indicate otherwise. I am not satisfied that the applicant faces a real chance of any harm on account of his beliefs.

46. I accept that the applicant may have faced low-level harassment from the Iranian authorities due to spending time with women in public and dress code violations. I accept that the applicant may engage in the same behaviour on return to Iran. DFAT reported in 2016 that authorities could take a heavy handed approach when periodically enforcing standards of Islamic conduct in the community including regarding Islamic dress and public displays of affection with non-family members of the opposite sex. The applicant has not claimed he engaged in public displays of affection. More recently, in 2018, DFAT reported that international and domestic observers agreed that dress codes imposed far more on women than men in Iran and that authorities were far more likely to target women than men for dress code violations. DFAT was aware that some men had claimed to have been discriminated against on the basis of their dress, for example, for having 'Western-style' hairstyles or clothing styles, visible tattoos or visible hair removal. However, it was common to see young men fitting these descriptions on Iranian streets, particularly in larger cities such as Tehran. DFAT assessed that where there had been incidents of harassment of men for dress code violations, these were likely the result of over-zealous enforcement by individual security authorities in particular locations (particularly outside major cities) or because the individual had come to the attention of authorities for separate activities, particularly political activism. DFAT assessed that dress code restrictions on men did not amount to discrimination. The applicant claims to be from Tehran. While I accept the applicant may face low level harassment by the authorities in the form of brief questioning, verbal warnings and requests to stop violating dress and moral codes, I am not satisfied that this treatment amounts to serious harm or would involve systematic and discriminatory conduct.
47. I do not accept that the applicant is a military deserter or draft evader. I am not satisfied that he faces a real chance of any harm in Iran on these bases. I am not satisfied that he has any outstanding military service obligations in Iran or that he faces a real chance of any harm on this basis.
48. I am not satisfied that the applicant departed Iran using a fraudulently obtained passport and therefore am not satisfied that he faces a real chance of any harm on this basis. I accept that the applicant may be viewed as a failed asylum seeker, returning from a Western country, having spent significant time there, in particular from Australia, on re-entry to Iran or afterwards. According to DFAT, Iran has historically refused the issuance of travel documents for the facilitation of involuntary returns of its citizens from abroad, but on 19 March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters including an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. The applicant is subject to this MOU, having arrived before March 2018. I accept that the applicant is not in possession of a passport and if he is to return to Iran he will require travel documents which are issued only to voluntary returnees. If the applicant returns to Iran I am satisfied it will only be as a voluntary returnee.
49. Country information from DFAT indicates that the Iranian authorities would usually question a voluntary returnee only if the individual has already come to the official attention of the government, such as committing a crime in Iran before departing. Apart from violating dress

code and for spending time with women in public, I have not accepted that the applicant otherwise came to any adverse attention of the authorities prior to or after departing Iran. There is no credible evidence to indicate he has any ongoing record or profile with the Iranian authorities or has been convicted of any crime. DFAT indicates that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Since the 1979 revolution, Iranians have departed Iran in large masses and the authorities accept that Iranians will seek to live and work abroad for economic reasons. The Iranian authorities have little interest in prosecuting failed asylum seekers for activities engaged in abroad, including activities relating to protection claims. Persons with existing high profiles may face a higher risk of coming to official attention on return, particularly political activists, but the applicant does not hold such profile. I am not satisfied the applicant faces a real chance of any harm on this basis.

Refugee: conclusion

50. 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

51. 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

52. 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.

53. I accept the applicant may face low level harassment on return to Iran for reason of his dress code and/or public appearances with women. On the country information outlined above, I am not satisfied that such treatment would involve pain or suffering that could reasonably be regarded as cruel or inhuman in nature, severe pain or suffering or extreme humiliation. It does not amount to the death penalty, arbitrary deprivation of life or torture. I am not satisfied that there is a real risk the applicant will face significant harm in Iran on this basis.

54. I accept that the applicant engaged in some low level anti-Iranian government activity while in Australia through posting material to his social media accounts for a short duration of time and possible presence at a rally of some sort but I am not satisfied he was a genuine participant. I am not satisfied of any other or genuine engagement with the same. I am not satisfied he was or is involved in any ongoing, political engagement or holds any genuine interest in ongoing engagement in such activities including should he return to Iran. While I accept he may

continue to violate dress codes and publically appear with women on return to Iran, I am not satisfied there is a real risk he would wish to engage in any other activities that may attract adverse attention on return to Iran. On the evidence, I am not satisfied that, apart from possibly contravening dress codes and publically appearing with women, that there is a real risk the applicant would engage in any other activities which would draw the adverse attention of the Iranian authorities in the foreseeable future. In 2018 DFAT indicated that international observers reported that Iranian authorities had little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including posting social media comments critical of the government. The other country information before me also does not indicate the applicant's minimal anti-Iranian government activity engaged in in Australia would attract any adverse attention on return to Iran. I am not satisfied he faces a real risk of significant harm on account of the limited activity he engaged in in Australia or for reason of his low level anti-government views, on return to Iran.

55. In relation to the remainder of the applicant's claims, I have found there is not a real chance the applicant will be harmed in Iran. The same standard applies in assessing real chance and real risk.¹ Based on the factual findings and country information outlined above, I find that the applicant will not face a real risk of significant harm in Iran.

Complementary protection: conclusion

56. 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.

¹ *MIAC v SZQRB* (2013) 210 FCR 505.

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.

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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