



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06386

Date and time of decision: 15 March 2019 11:27:00

I Sheck, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- The referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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 is a citizen of Iran. He left Iran on [in] June 2013 and arrived in Australia [in] July 2013. On 24 February 2017 he lodged an application for a protection visa (PV).
2. On 14 February 2019 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate did not accept that the applicant was a genuine convert to Christianity who would seek to practise on return to Iran. He was not satisfied that the Iranian authorities were aware of the applicant's baptism or church attendance in Australia. The delegate concluded that the applicant would not face serious harm in Iran for this or any other reason.

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) (the review material). On 13 March 2019, the IAA received letters on behalf of the applicant and a further statement from the applicant.
4. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. The letters are written by [Minister 1], Minister of [Church1] and [Minister 2], Minister of [Church 2]. They are dated [date] March 2019 and [date] March 2019 respectively. The statement of the applicant is dated 13 March 2019. Both of the letters and the applicant's statement address the delegate's decision and findings. As such, these elements may be regarded as argument rather than new information and I have had regard to them.

Applicant's claims for protection

5. After his arrival at the applicant was interviewed by an officer of the Department [in] July 2013. Together with his PV application the applicant provided a statutory declaration dated 1 February 2016 (but should be 2017). On 22 January 2019 he attended an interview ("the PV interview") with the delegate at which his then representative was present. The applicant claims:
 - He was raised as a Muslim but became increasingly disenfranchised with religion and ceased practising after the death of his father when he was [specific] years of age. He was unsuccessful in applications for employment as his knowledge of Islam was considered insufficient;
 - After arriving in Australia a friend took him to [Church 1] and he was baptised as a Christian the following year. He is now a practising Christian. He attends church weekly and undertakes various Christian community activities. If he returned to Iran he could be imprisoned or killed because of his religious beliefs, which would be considered to be apostasy and proselytising by the Iranian authorities.

Factual findings

6. Based on the information provided in his visa application and identity documents, I accept that the applicant's background is as follows: he was born on [date] in Tehran and is an Iranian national. He is of [Country 1] ethnicity. His father passed away in 1999; his mother resides in Tehran. He has [specified family members]. He was exempt from undertaking military service in Iran as he was considered to be the guardian of the family. He has never married. He holidayed in [Country 2] in 2005 and [Country 1] in 2007. The applicant was employed in Australia [in a certain industry].
7. The applicant has consistently claimed that he departed Iran because he was uncomfortable with the emphasis on religious beliefs in the theocracy. He has stated that he was denied employment due to his own lack of religious beliefs. Turning first to the applicant's education and employment history, in his arrival interview in 2013 it is recorded on the "Irregular Maritime Arrival and Induction Interview" form that he attended school for [number] years, ceasing his studies in 2001. He worked for [the employer] installing and repairing [specific products] from 2003 until 2010. This was the only job he had; from 2010 until his departure three years later he could not obtain any work and "I lived by renting out my house". In his PV application and statutory declaration the applicant's stated history is very different. He states that he left school in [year] without completing [grade], this was because his father [died]. He then commenced work with [Employer 1] and remained there until 2010. He then had some difficulty obtaining employment. After a period of unemployment he worked as a [Occupation 1]. As the earnings were low he rented out his house and went to live with his mother.
8. At his PV interview the applicant again outlined his history. He told the delegate that he completed his secondary schooling and received a certificate of completion of his schooling. He said that his father died when he was [age] and he left school at that time and started work in [Occupation 2]. He said his father died in [year] (which is the year commencing [date], at which time the applicant was [age]). He worked for a [Occupation 2] firm for one year from [specific years] then opened his own business in this field [specific years]. The business did not do well and he was forced to close it. He then worked [Occupation 1] for the next [number] years until his departure from Iran. This evidence is both internally inconsistent and markedly different from the two versions previously provided. This causes concerns as to the applicant's credibility.
9. The applicant has however consistently stated that he applied for a job [in the public sector] in Tehran but his application was unsuccessful because he failed the religious component of his interview. The delegate did not accept that this had occurred however country information confirms that applicants for public sector employment must undertake a test or interview known as the "Gozinesh review", in which they are tested on their adherence to, and knowledge of, Islam and loyalty to the Islamic republic.¹ I accept as plausible that the applicant was refused public sector employment as he did not pass his Gozinesh review. There is no indication in the review material that private sector employers have such requirements. I am not satisfied on the evidence before me that the applicant was denied all employment on the basis of his lack of adherence to or knowledge of Islam.
10. The applicant has stated that he was raised a Muslim; his father insisted that he participate in daily prayers however it does not appear that the applicant attended mosque or took part in

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; p.5

Islamic observances such as Ashura. He has stated that he ceased practising Islam once his father passed away and I accept he did. The applicant notes in his statutory declaration that the "Irregular Maritime Arrival and Induction Interview" form lists him as an atheist on arrival in Australia but that was not correct: he had always believed in God. He considered himself to be a non-practising Muslim when he left Iran. I accept that this is the case.

11. The applicant now claims that he follows the Christian faith. He has stated that he was a substance abuser for several years in Iran before coming clean in 2012 with the help of Narcotics Anonymous (NA). He was introduced to NA by a friend, H, who he had known since childhood. H revealed to the applicant at one point that he had changed his religion and become a Christian and invited the applicant to join him at a house church. The applicant declined and H gave him some pamphlets on Christianity, which did not particularly interest the applicant at the time. After coming to Australia the applicant attended church with a friend. That was [Church 1]. He attended that church until 2017, when he moved to [State 1] and since then has attended [Church 2].
12. The applicant provided little information about his Christian practice in his statutory declaration, other than to state that he attended services on Sundays and bible study during the week. In his PV interview he outlined his Christian activities, including attending Sunday services and bible studies, as well as community activities such as camps and singing in the church choir. The delegate noted that the applicant had been baptised and asked what it meant to him to be baptised. The applicant responded that baptism was a new life. "It feels like I have been born again". When asked why he had wanted to be baptised the applicant responded that he wanted to be born again. The applicant initially indicated that there was no preparation required in order to be baptised but later stated that there were "subjects to read". In answer to the delegate's specific questions, the applicant outlined two of his favourite passages from the bible, recited part of the Lord's Prayer and named three important Christian festivals which were relayed by the Farsi interpreter as "Christmas, Pentecost and Resurrection".
13. The delegate then asked the applicant what was the function of "Easter" (the interpreter used the English word) and the applicant stated that he did not know. The delegate gave this response some weight in his Reasons for Decision and noted that "I would also expect an applicant that genuinely converted to Christianity be able to explain what was significant about Easter. I find the applicant's lack of knowledge on the subject to further indicate his lack of genuine conversion". This point was addressed by [Reverend A], Minister of [Church 1], in his letter to the IAA. The applicant was a member of [Reverend A's] congregation for some four years before relocating to [State 1]. [Reverend A] points out that English is not the applicant's first language and that the applicant had in fact referred to "resurrection", which is the significance of Easter. He contends that the applicant's apparent ignorance of the English word "Easter" points to a language issue, not a faith issue, and suggests that "a more helpful line of questioning would have been to ask him to elaborate on what he understood by "resurrection"." I agree.
14. The applicant, it must be said, was an unimpressive witness during his PV interview. He was not forthcoming with information and many of his answers appeared formulaic, such as wanting to be "born again", without any explanation of what he actually meant by that. [Reverend A] and [Reverend B] have both attested to the genuineness of the applicant's faith in their letters to the IAA and the applicant states, relevantly, "my faith in Christ was not founded in what I have read or what is written on the pages of the Bible, my faith in Christ was encouraged and grew through my interactions with an honest, God loving, helpful and embracing Christian community who accepted me as a member of what I now call my church

family". I note that the applicant also provided letters of support to the delegate from [Reverend A] and [Reverend B], as well as from other members of his church. I find these letters and the applicant's written evidence regarding his conversion and beliefs persuasive.

15. Country information notes that converts present a baptism certificate both to try to form a part of a Christian community in Iran or to claim political asylum abroad, based on persecution for their religion. Lately, a recognized Church has questioned the process and the quality of preparation Muslim Iranians undergo, before receiving baptism in Europe or elsewhere.² In many instances before the IAA, applicants undergo baptism without having had much if any prior interaction with the relevant church and some have no interaction other than the provision of their certificate, which they then present as solid evidence of their claimed conversion. In this case, I place weight on the fact that the applicant attended the [Church 1] for many months before seeking to be baptised. [Reverend A] notes "I judged [the applicant's] readiness for baptism not on his answers to general knowledge questions, but on his commitment to being part of the church community, sharing in worship, prayer, and bible study, and living the kind of life to which Jesus calls his followers (i.e. loving one's neighbour as oneself)."
16. Despite my concerns regarding his credibility, I am of the view that the applicant's Christian activities over the last five or so years have not been solely undertaken for the purpose of furthering his protection claims. I find that his activities of baptism, church attendance, Bible study and participation in Christian community events have been undertaken because he is a genuine convert to Christianity and seeks to be a contributing member of his Christian community or family.
17. In assessing whether the applicant faces harm in Iran due to his new faith, it is important to consider whether he would continue to practise his faith in Iran, if so, how and if not, why not. The delegate did not ask these fundamental questions. When asked however what he feared if returned to Iran the applicant stated that he feared he would not be able to practise his faith. He also stated this in his statutory declaration. When asked how anyone in Iran would know that he was a Christian the applicant responded that he wears a cross around his neck and he had posted Christian posts on his [social media] page. He has provided no evidence of online activity, or what name his [social media] page is in, so I give this little weight. He has also however stated that he discussed Christianity and his conversion with members of his family. He stated that his mother was initially angry but has now accepted it. The delegate has noted that "the applicant was asked if his family in Iran had any issues while he had been in Australia. The applicant stated they had not." This is incorrect. Early in the PV interview the applicant indicated that he had proselytised to his [sibling] (he does not state which one). He stated that "I talked to her and she became Christian she had to leave the country so she left for [Country 2]". The delegate did not seek any further information from the applicant on this key point. I accept that it occurred.
18. On the basis of his actions in Australia I conclude that, were he to return to Iran, the applicant would seek to become a member of a Christian community, likely by joining a house church. I also conclude that he would talk about Christianity and his beliefs to family and friends.

² Danish Refugee Council and the Danish Immigration Service, "Iran: House Churches and Converts", February 2018, CIS7B83941873; p.15

Refugee assessment

19. 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

20. 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.

21. I have found that the applicant is an Iranian national. It follows that Iran is his receiving country. I have found that the applicant's conversion to Christianity in Australia is genuine and am satisfied it was not for the sole purpose of strengthening his claims for protection. I have found that the applicant's ongoing involvement in Christian worship and community activities is based on a genuine commitment to Christianity. I have found that the applicant will continue to practise his beliefs on return to Iran.

22. None of the three recognised minority religions in Iran (Christian, Jewish, and Zoroastrian) proselytises or accepts converts as members. Strict instructions not to minister to Iranians apply to the small number of Latin Catholic and Protestant churches in Tehran and elsewhere. Security officials reportedly monitor registered congregation centres to verify that services are not conducted in Farsi, and perform identity checks on worshippers to confirm that non-Christians or converts do not participate in services.³ As a result of these prohibitions, Iranian Christians who are not members of the recognised ethnic minority churches generally practise in underground 'house churches'.⁴ By law, non-Muslims may not engage in public religious expression, persuasion, or conversion of Muslims. Conversion of Muslims or proselytizing is a capital crime.⁵ The applicant has discussed Christianity and his conversion with his family and I have found that he would continue to do so to family and friends, were he to return to Iran.

³ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 3.30

⁴ Ibid; 3.31

⁵ Ibid; 3.30

23. Recent country information indicates that there has been a change in the way the Iranian authorities look at Christians in general. The change started after the green revolution in 2009, as Christians are perceived to bring ideas of freedom.⁶ In May 2017, four evangelical Christians, three of them Azerbaijani citizens, were sentenced to 10 years in prison each for house church activities and evangelism.⁷ In the past year, religious freedom in Iran continued to deteriorate for both recognized and unrecognized religious groups, with the government targeting Baha'is and Christian converts in particular.⁸ In considering what penalties a Christian convert may face, DFAT notes that under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy, which can carry the death sentence.⁹ Perceived apostates are however only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants.¹⁰ I have found that the applicant would seek to become part of a Christian community such as those which attend house churches and that he would proselytise to family and friends. There is a real chance that such activities would bring him to the attention of the Iranian authorities.
24. Country information also indicates that Christian converts are typically not charged with apostasy; convert cases are usually considered as national security matters which are handled by the Revolutionary Court. The authorities perceive activities related to conversion as political activities. Death penalty in cases related to conversion is not a common punishment. A Western embassy noted that there has not been issued a death sentence for conversion the last 10 years.¹¹ I am not satisfied on the evidence before me that there is a real chance that the applicant would be subject to the death penalty due solely to his conversion to Christianity. Taking into account the whole of the review material, in particular the more recent reports, I am however satisfied that the applicant will face a real chance of being subject to monitoring, arrest, being charged and detained for a period of time, for reasons of his beliefs and for the public manifestation or expression of those beliefs.
25. Country information indicates that arbitrary arrest, torture and ill treatment in detention in Iran is common. Individuals under arrest often remain in detention facilities for long periods without charge.¹² Human rights organisations report that torture and other ill-treatment of detainees remains common in Iranian detention facilities, especially as a means to force confessions during interrogation. International sources report that commonly reported methods of torture and abuse include prolonged solitary confinement, threats of execution or rape, forced virginity tests, sexual humiliation, sleep deprivation, electroshock, burnings, the use of pressure positions, severe and repeated beatings, and the denial of medical care.¹³ Human rights organisations have reported that authorities have systematically failed to investigate allegations of torture and other ill-treatment, and have sometimes threatened to subject complainants to further torture and long sentences.¹⁴ I am satisfied that the harm the applicant may face is serious harm, I am also satisfied that the essential and significant reason for the harm is his religion, and that it involves systematic and discriminatory conduct.

⁶ Danish Refugee Council and the Danish Immigration Service, "Iran: House Churches and Converts", February 2018, CIS7B83941873; p.6

⁷ US Commission on International Religious Freedom, "United States Commission on International Religious Freedom Annual Report 2018", 25 April 2018, CIS7B83941863; p.48

⁸ Ibid; p.45

⁹ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 3.41

¹⁰ DFAT "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; 3.55

¹¹ Danish Refugee Council and the Danish Immigration Service, "Iran: House Churches and Converts", February 2018, CIS7B83941873; p.9

¹² DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 4.15

¹³ Ibid; 4.10

¹⁴ Ibid; 4.11

26. The harm that the applicant fears emanates from the Iranian authorities operating under laws which apply throughout Iran. As such, I find that the real chance of persecution relates to all areas of Iran. I am satisfied he has a well-founded fear of persecution for the purposes of s.5J(1).
27. As the Iranian government is the agent of harm and maintains control throughout the country, I am satisfied that effective protection measures are not available to the applicant in Iran and s.5J(2) does not apply.
28. The applicant can avoid a real chance of persecution by not practising his faith or concealing his faith but this would involve an impermissible modification of behaviour. I find that s.5J(3) does not apply. I consider that requiring the applicant to modify his behaviour, either by concealing his Christian beliefs, by renouncing his Christian faith or by ceasing to be involved in the practice of that faith including talking about Christianity to others falls within a kind of modification that an applicant cannot be required to make in s.5J(3)(c)(i).
29. Accordingly I am satisfied the applicant has a well-founded fear of persecution in Iran for reason of his religion.

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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

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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.

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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.