



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06493

Date and time of decision: 18 April 2019 09:42:00

C Wilson, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be from Iran. He arrived in Australia in June 2013 as an unauthorised maritime arrival. On 31 March 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. A delegate of the Minister for Home Affairs (the delegate) refused the application on 22 March 2019. The delegate did not accept the applicant was a vocal opponent of the government or vocal against Islam or otherwise of adverse interest to the authorities.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - His family are devout Muslims but he had doubts about Islam from [a certain age] and became an atheist.
 - In 2006 he was stopped by police when out with his girlfriend. He was detained for 2 months, and was mistreated during detention. He was sentenced to a fine and lashes. His father paid the fine and he was released.
 - He participated in the Green Movement protests in 2009.
 - He befriended a political activist [Mr A]. In 2010-2011 they held sessions for their community where they talked against the Islamic regime in Iran and promoted atheism. [Mr A] was imprisoned for 2 years whilst the applicant has been in Australia.
 - In 2013 he was arrested after being falsely accused on setting fire to bins as a political protest during the Charshanbe Suri festival. He was beaten whilst detained and ordered to report to the police station every Saturday.
 - He opposed his [lecturer] in class, when the lecturer was promoting Islamic thought. He received a call from the Herasat, the intelligence body in the university, asking him to come see them. He stopped attending university.
 - He fears harm in Iran from the authorities because he will be perceived as a political dissident and apostate.

Refugee assessment

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

outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

7. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
8. I accept the applicant is a citizen of Iran, based on the identity documents he provided to the Department. He is from Tehran and his family continue to live there. I find Iran is his receiving country and Tehran is his home area and the area he would return to.
9. The applicant claims he will be targeted by the authorities if he is returned to Iran because he has rejected Islam, is an atheist, is a friend of a known activist, and was of interest to the authorities because of his arrests in 2006 and 2013.
10. The applicant departed Iran in May 2013 on his own passport, issued a week before he departed. The applicant claimed at the SHEV interview that he paid someone in the passport office to issue his passport, as he wasn't sure if he was on a blacklist. There was no mention of this in his Entry Interview or in the statement of claims in his SHEV application. He has not provided any detail about how much he paid. This passport was presumably the applicant's second passport at least, as he disclosed he had travelled out of Iran in 2008 for a week's holiday. If he paid a fee to an officer for his passport to be issued I consider it more likely it was to extrajudicially issue the passport, which he got within a week, rather than because he was on any blacklist. I make this finding because of the lateness in raising the claim and because there is no evidence he was on a blacklist, and the speed with which he got the passport and the ease in leaving the country indicates he was not. DFAT advises the Iranian authorities routinely impose travel bans on citizens due to security concerns, debts, outstanding taxes, crimes committed abroad, and outstanding sentences. Civil and political activists are particularly likely to face travel bans.¹ The applicant had no problems exiting the Imam Khomeini International Airport in Tehran, and there was no claim he paid any bribe at the airport to do so. Although the applicant claimed to fear he may be blacklisted, his representative submitted in post-interview submissions that there was no need to put the applicant on a blacklist because he was complying with the order that he report to the police station on a weekly basis. I consider that someone under such an order would be the type to be put on such a list, but in any event for reasons given later I do not accept he was under

¹ DFAT *Country Information Report Iran*, 7 June 2018, CIS7B839411226, p.48 (DFAT report).

such an order. I find the applicant departed Iran without problems and without needing to pay a bribe and this indicates he was not of adverse interest to the Iranian authorities at that time.

11. The applicant claims to have first been arrested in 2006. He says he was out with a girlfriend when they were stopped by police. He told his girlfriend to say they didn't know each other and that he was harassing and following her, so that she would not be detained and harmed. He claims he was arrested and detained for two months. He was eventually sentenced to a fine and lashes, but as his father paid the fine the lashes sentence was not carried out. The applicant does not claim to have suffered any ongoing consequences as a result of this incident. It did not cause any issues for him in gaining employment or completing military service. Indeed I note he claims he did his military service with *Sepah*, the Islamic Revolutionary Guard Corp (IRGC). If he was of concern to the authorities I have doubts about whether he would have been posted to the IRGC. If the incident in 2006 occurred I consider it a one-off case of harassment for violating Iran's moral code. I do not accept the applicant faces a real chance of harm in the reasonably foreseeable future for the incident in 2006.
12. The applicant claims he was raised in a devout Muslim family, but from [a certain age] he began to question Islam. He came to consider himself an atheist. The delegate noted the applicant had described himself as Shia Muslim in the Entry Interview and had made no mention of questioning religion or promoting atheist views in Iran. The applicant says he did not feel comfortable disclosing information in that interview and that he was not in a proper mental state to participate in an interview after his traumatic journey to Australia. I have listened to the recording of the Entry Interview. He appears able to answer questions and does not indicate he is too traumatised to do so. He gave full details of his family composition, past addresses, education and work history, and his journey to Australia. I acknowledge at one point the applicant did ask the interviewer for an assurance that what he was telling her would be kept confidential from the Iranian authorities². He asked this in response to a question about whether he had been involved in political protests, and he admitted to taking part in the Green Movement protests. I consider it is plausible he was not willing to disclose all of his claims at that time and may have said he was Shia out of a fear that to say otherwise would get back to the Iran authorities.
13. I accept the applicant does not follow Islam, and may not have since he was a teenager. He claims his parents are devout in their beliefs, but there was no claim or evidence he suffered any harm from his parents when he stopped following their religion. He continued to live at home until coming to Australia, and worked for his father for [number] years. Both of these factors indicate he maintained a good relationship with his parents despite not following their religion. There is nothing before me to indicate the applicant has any chance of harm from his family for his decision to be atheist.
14. According to DFAT approximately 98 per cent of Iranians are identified as Muslim.³ A Muslim who leaves the faith can be charged with apostasy. Although the criminal code does not criminalise apostasy, *sharia* applies to situations where the law is silent. Most Islamic judges in Iran agree apostasy is a capital crime but actual death sentences are rare.⁴ The last known execution for apostasy was in 1990.⁵ Although Iran is a theocracy with government policy and legislation heavily favouring the majority Shia population⁶, county information indicates

² At 53:48 in the recording.

³ DFAT report p.19.

⁴ DFAT report p.24-25.

⁵ DFAT *Country Information Report Iran*, 21 April 2016, CIS38A8012677, p.14.

⁶ DFAT report p.20.

that in practice many Iranians do not attend mosques⁷ and many are moving away from institutionalised religion⁸. An academic from the US, specialising in Iran, reported that many Iranians express atheistic ideas.⁹ Non-practising Muslims are said to make up a large part of the population of Iran's cities. They lead normal lives, are rarely called upon to answer direct questions about Muslim religious practices, and rarely pressured to observe Muslim precepts.¹⁰ As noted above, the applicant served his military service in the IRGC, which is responsible for the protection and survival of the Islamic Republic.¹¹ His lack of practice of Islam and rejection of that religion appears not to have caused him any issues during military service, as no claim has been put forward on this basis. I am not satisfied the applicant faces a real chance of harm because he has rejected Islam or considers himself atheist.

15. At the SHEV interview the applicant claimed for the first time that in addition to his private beliefs regarding Islam, he was active in participating in sessions in Iran in 2010 and 2011 with his friend [Mr A] to promote atheism. There was no mention of this activity in the statement of claims provided with the SHEV application. His description of these sessions was unconvincing, and was only raised late in the SHEV interview. I consider it was an embellishment and not a true account.
16. I also have doubts about the applicant's claimed connection to [Mr A]. In his statement of claims he says he befriended [Mr A] and other dissidents when participating in the Green Movement in 2009. However at the SHEV interview he claims to have gone to high school with [Mr A], to be close, and to have lived [a few] streets from him. No supporting evidence was provided to show he knows [Mr A], such as any photographs of them together or any messages they may have exchanged by email or social media, or any supporting statement from [Mr A]. I acknowledge country information indicates [Mr A] was imprisoned for [number] years, but he was released in [2017], which is prior to the SHEV application being lodged and 2 years prior to the SHEV interview. [Mr A] was released from prison prior to the applicant's statement being completed yet the applicant states in February 2017 that he only '*recently discovered [[Mr A]] was incarcerated for his dissidence around two years ago*'. He makes no mention in that statement that [Mr A] was in fact freed at that point, and provides no explanation as to how he only recently discovered he was imprisoned at all. Given his claims at the SHEV interview that they had been to school together, lived close by, and undertook dissident activities together, if that were true I would have expected a family member or friend would have mentioned [Mr A's] arrest to the applicant. Taking into account the inconsistency in his claims as to how he knew [Mr A], his lack of knowledge earlier of [Mr A's] imprisonment, and the lack of supporting evidence to show he and [Mr A] were friends or knew each other, I am not satisfied he does personally know [Mr A]. Accordingly I am not satisfied he participated in sessions with [Mr A] where they promoted atheism or criticised the regime. I find he does not face a real chance of harm for being associated with [Mr A], because I find he and [Mr A] are not in fact personally known to each other.
17. The applicant also claimed for the first time at the SHEV interview that he had been forced to leave university because he openly challenged a [lecturer] on religion. He claimed to have received a call from the Herasat, the intelligence body at the university, after being vocal in class. This scared him into no longer attending. In support of this he provided a copy of his

⁷ "Religion: Take it or leave it", The Economist, 1 November 2014, CX1B9ECAB7499.

⁸ Update on the Situation for Christian Converts in Iran: Danish Immigration Service, June 2014, CIS28931.

⁹ Iran: Treatment of atheists by State and non-State actors, ACCORD, 12 June 2017, CX82EDE9415499, p.2.

¹⁰ Iran: Freedom of Religion; Treatment of Religions and Ethnic Minorities, September 2015, Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 1 September 2015, CISEC96CF13622, p.31.

¹¹ DFAT report p.44.

academic transcript which showed he had been dismissed from the course and did not receive any marks for most of his subjects in the second semester. But the applicant has also said he stopped going to university and made plans to leave Iran at this time. It is not surprising in such circumstances that he received no marks for that semester and was dismissed from the course. That the institution was willing to provide him with an official transcript in March 2018 seems to suggest he was an ordinary student who did not complete a course; not a known activist who was forced to leave because of threats from the Herasat. There was also no consequence from the Herasat taking an adverse interest in him. He was not visited at home, he was not prevented from applying for a passport, and he was not prevented from leaving Iran. Given the lateness of the claim and the lack of consequences, I am not satisfied the applicant was outspoken or an activist at university and I am not satisfied he was of interest to the Herasat. It follows I do not accept he faces a real chance of harm in the foreseeable future for being outspoken or an activist at university, because I do not accept that he was.

18. The applicant claims that in March 2013 he was arrested during the Chaharshanbe Suri Festival. This is a pagan spring festival held annually before the Persian new year in which Iranians traditionally leap over bonfires and set off fireworks. The applicant claims he came out to the street to put out a fire in a bin in front of his house, and local police arrested him because they thought he had started the fire and was doing so as a political protest.
19. I acknowledge there were reports of an official clamp down on the Chaharshanbe Suri Festival in 2011.¹² I accept it is possible the authorities may still have been vigilant in 2013 at the time of the festival to ensure it wasn't being used for protest activity. However I am not satisfied on the information before me that the festival has become synonymous with political protest. The applicant said at the SHEV interview he had YouTube videos showing the festival was now associated with protests, and was invited to submit those, and the agent said he would provide country information to support the applicant's claim. However, no such information was provided post interview.
20. I consider the applicant's description of the incident in March 2013 lacks credibility. On his account he had either just come out of his house, in which case the local police would have seen him do so, or he would have been in the process of trying to put it out when they came across him. If they had seen him attempting to put the fire out that would seem an unlikely protest. If they thought he had lit the fire, gone back inside, and then come out again, that would seem an underwhelming protest and would appear as just a standard bonfire lit in a bin as per the custom of the festival. There were no reported signs or other political paraphernalia at the scene. In his statement he says he was arrested that night and required to attend at the police station 'for the next few weeks until the point that I fled Iran'. However it was around 2 months before he left Iran, which is more than a few weeks. There is no country information before me of a clampdown on the festival in 2013. The applicant answered 'no' to questions in his SHEV application about whether he had been charged or convicted of any offence. He obtained a passport and departed Iran without issue. I accept it is possible the applicant may have been questioned in his street about a burning bin by local police who may have been patrolling the streets on the night of the festival. However I find his claim that he was arrested and required to attend weekly at the police station from that time is a fabrication or embellishment. I do not accept he was of ongoing interest to the authorities in relation to any incident during the Chaharshanbe Suri Festival in March 2013,

¹² "Iran Clamps Down on Ancient Spring Festival Fearing it Could Spark Off Political Protests", Telegraph Group – United Kingdom, 14 March 2011, CX269254.

and I do not accept he faces a real chance of harm for possibly being questioned in the street in March 2013.

21. The applicant claims he participated in the Green Movement protests. The Green Movement started when supporters of the reformist candidate Mir Hossein Mousavi took to the streets of Tehran to protest the June 2009 presidential election results. The protests movement evolved from a mass of angry voters to a nation-wide force demanding democratic rights. The authorities responded by despatching the security forces, with snipers killing dozens of people, thousands being beaten, and hundreds arrested.¹³ The applicant does not claim to have been arrested, questioned, beaten, or otherwise harassed by the authorities in relation to his attendance at the protests. According to DFAT the end of the Ahmadinejad presidency in 2013 took away much of the Green Movement's purpose and momentum. It did not play an active role in subsequent elections. DFAT assesses those with a higher profile for having an active organisational role in the movement are more likely to face continuing official attention and possible harassment.¹⁴ In its 2018 report DFAT is silent on the risks faced by ordinary Iranians who attended the protests, but given the passage of time and lack of information that such people are targeted, I consider there is no risk to report on. The applicant did not claim to have an organisational role in the Green Movement. I consider that as he was not arrested or questioned about his participation in the Green Movement between 2009 and his departure in 2013, and he was able to obtain a passport and depart Iran, he is not known for or of interest for having attended protests during the Green Movement. I find he does not face a real chance of harm for having attended protests during the Green Movement.
22. I have considered whether the applicant's past activities have given him a profile as a political dissident. I accept he took part in the Green Movement protests, but I do not accept he had any leadership role. I have not accepted he was outspoken at university or was friends with a known political dissident [Mr A]. I have not accepted he was detained for lighting a fire during Chaharshanbe Suri Festival in 2013. I accept that his personal beliefs are anti-regime, but apart from taking part in the Green Movement protest I do not accept he has a profile as being anti-regime. I do not accept he has any profile as a political dissident. I find he does not face a real chance of harm as a political dissident.
23. The applicant claimed in his statement of claims to have proselytised in Australia for "a better informed lifestyle". He has not provided any examples or supporting evidence of what he means by this. There is no evidence before me of any proselytising in person or online. I do not accept he has proselytised or been outspoken as an atheist in Australia. That he has not done so in Australia, where he had the freedom to do so, indicates he has no intention or interest in doing so. I do not accept he would be an outspoken atheist in Iran.
24. I have considered whether the applicant would need to modify his behaviour to avoid a real chance of persecution for reason of his rejection of Islam or as an atheist. The applicant stated at the SHEV interview that he had ceased to practice Islam as a teenager. There were no consequences for having done so. It does not appear to have affected his ability to gain employment. There is no claim it caused any issues during his military service. For the reasons given above, I do not accept the applicant was active in putting on sessions promoting atheism in Iran, nor do I accept he was openly challenging a university lecturer on religion. I find the applicant has not been promoting atheism or an activist against Islam in Iran or Australia. That he has not done so in Australia, where there would be no adverse

¹³ DFAT report p.26.

¹⁴ DFAT report p.28.

consequences for doing so, indicates his lack of activism in Iran was not due to a fear of persecution but for other reasons. I find he would not need to modify his behaviour and could continue to act in the same way, that is, be an atheist and hold anti-Islamic views, but not be outspoken in public about this.

25. I have considered whether the applicant would face a real chance of harm for returning as a failed asylum seeker who spent time in a western country. DFAT reports that many millions of Iranians travel to and from Iran each year, including Iranians with residency in western countries. There is nothing before me to indicate merely living or spending time in a western country would give rise to real chance of harm on return to Iran.
26. Iran claims not to accept involuntary returnees, and will not issue travel documents to Iranians abroad whom a foreign government is attempting to return involuntarily. However the authorities will provide assistance to Iranians who wish to return. The applicant has expressed no intention of returning to Iran, but has also not positively stated that he would not go voluntarily if he has no visa to remain in Australia. DFAT's anecdotal observation is that returnees do not attract much interest from authorities amongst the large number of international movements of Iranians. Returnees may only be questioned if they had done something to attract the attention of the authorities.¹⁵ It is not an offense in Iran for an Iranian to seek asylum in another country.¹⁶ There are reports of asylum seeking Iranians being arrested on return, but they are of persons involved in anti-regime activities, either before departing or whilst overseas.¹⁷ Apart from attending protests during the Green Movement in 2009, the applicant has not involved himself in any political or anti-Islamic activity either in Iran or in Australia. I do not accept his time in Australia or his having sought asylum here would be of interest to the Iranian authorities. I do not accept he has a real chance of harm for having sought asylum and spent time in a western country.
27. I have also considered the applicant's claims cumulatively. That is, whether he faces a real chance of harm because he is an atheist who participated in the Green Movement protest, was detained in 2006, and has sought asylum in a Western country. For the reasons given above I do not accept his detention in 2006 had any ongoing consequences or is of any interest to the authorities. I do not accept he is known for participating in the Green Movement. I do not accept his time spent in the West, even seeking asylum, is of interest to the authorities. I consider the chance of the authorities becoming aware of his rejection of Islam, his anti-regime views, and his participation in the Green Movement, is remote. In any event, these factors did not cause him any difficulty when he lived in Iran and did not prevent him from departing lawfully. I consider even with the additional factor of having spent time in the West and seeking asylum, his chance of harm for his religious and anti-regime views and personal history is too remote to amount to a real chance.

Refugee: conclusion

28. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

¹⁵ DFAT report

¹⁶ "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", *Danish Refugee Council, Landinfo and Danish Immigration Service*, 01 February 2013, CIS25114

¹⁷ For example: "IRAN The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail", *Iran Human Rights*, 19 June 2011, CX274950; "AMNESTY INTERNATIONAL - URGENT ACTION UA 125/11 Student activists held in Iran", *Amnesty International*, 06 May 2011, CX264288.

Complementary protection assessment

29. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

30. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
31. I have found the applicant does not face a real chance of harm in relation to his claimed association with [Mr A] or holding sessions promoting atheism or being under order to report to the police following the Chaharshanbe Suri Festival or being outspoken or an activist at university, because I have found these events did not occur. It follows that I find he does not face a real risk of significant harm for these reasons.
32. I have found the applicant does not face a real chance of harm in Iran for reason of his religious or political views, for seeking asylum in the West or being detained in 2006 and possibly questioned in 2013. 'Real chance' and 'real risk' has been found to equate to the same threshold. For the same reasons given above I find the applicant will not face a real risk of significant harm for reason of his religious or political views, for seeking asylum in the West or being detained in 2006 and possibly questioned in 2013, or for any other reason.

Complementary protection: conclusion

33. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.