



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA19/06615

Date and time of decision: 3 June 2019 12:09:00
R Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. On 25 May 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 7 May 2019 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa.

Information before the IAA

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

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He never enjoyed life as a young person in Iran. He was stopped and detained by the authorities on two occasions as he was with his female friend in public.
 - He was born into a Muslim family and always believed in God but did not consider himself a practising Muslim.
 - In his application for protection he claimed that he had converted to Christianity in Australia and was baptised in 2017 and raised claims of fear of harm in Iran as a Christian convert. However, at the protection visa interview he claimed that he was no longer a Christian.
 - He has tattoos.
 - He left Iran due to the break-up of a relationship and he still does not have the mental state of mind to return.

Refugee assessment

5. 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

6. 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.
7. The applicant has provided a number of identity documents from Iran which confirm his identity. I am satisfied he is a national of Iran and that Iran is the receiving country for the purpose of this assessment.

Christian Conversion

8. In the applicant's statement attached to the application for protection, he claimed that he grew up in a Muslim family and always believed in God but never considered himself a practising Muslim. He claimed that, when he came to Australia, he got to know somebody who introduced him to Christianity and invited him to attend a church in [Suburb 1]. He claimed he found the service enjoyable and interesting and he was encouraged to learn more about Jesus because of the kindness, warmth and hospitality of his followers and he was struggling to integrate into the community. Going to church helped him find friends and practise English. However, later he realised that he could not make a connection with people in the church and he was uncomfortable. Another friend then introduced him to a church in [Suburb 2]. He has not completed reading the Bible but he has read enough to trust and believe in Jesus as his Lord. He attends Sunday services and Bible study on Thursdays on a regular basis in the [Suburb 2] church and was "evangelised" in that church and baptised in February 2017. He raised claims of fear of harm from his family and the Iranian authorities as a result of his conversion to Christianity. The applicant provided a copy of his baptism certificate which indicates that he was baptised [in] February 2017 at [a named church] in [Suburb 2] by [Pastor A].
9. During the protection visa interview held on 9 April 2019, the applicant stated that things had changed since he lodged his application for protection and he was no longer a Christian and he would definitely not practise Christianity if he were to return to Iran. I note that during the protection visa interview he could not recall the name of the church where he had been baptised and stated that he only attended church three or four times and attended approximately ten Bible study classes in 2017 but did not continue to attend church after 2017.
10. I consider it plausible that the applicant initially attended church to assist in integration and make friends and practise his English and for this reason I am satisfied the applicant attended church in Australia otherwise than for the purpose of strengthening his claims to be a refugee. However, the applicant has indicated that he does not practise Christianity and did not attend church services regularly and has not attended church at all after 2017 (the year in which he was baptised) and appeared to know little detail about which church he was baptised in. On the evidence before me, I am not satisfied that the applicant was baptised in Australia otherwise than for the purpose of strengthening his claims to be a refugee and I have disregarded this conduct in determining whether he has a well-founded fear of persecution pursuant to s.5J(6) of the Act.

11. Further, on the evidence before me, I am not satisfied that the applicant's family or the Iranian authorities are aware of his church attendance in Australia or that there is a real chance they will become aware in the reasonable foreseeable future. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities, or any group or person in Iran on the basis of his church attendance in Australia.
12. The applicant has consistently claimed that he never considered himself a practising Muslim. During the protection visa interview, he also noted that his family were not fully practising Muslims. I accept that the applicant is a non-practising Muslim.
13. Country information sources that were before the delegate indicate that, although the official religion of Iran is Shia Islam, many Iranians in Iran do not attend mosque regularly and do not practise Islam.¹ In its 2016 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT) assessed that it is highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram.² I have also considered that, when discussing his non-practise of Islam, in his statement and during the protection visa interview the applicant did not claim to have previously come to adverse attention of the community or the authorities for this reason nor did he claim a fear of harm in Iran on this basis during the protection visa interview. I am not satisfied on the evidence that there is a real chance applicant will promote his religious views in public in Iran and I am satisfied he will not do so due to a fear of persecution. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities or any other group or person because he is a non-practising Muslim.

Moral Offences

14. In his statement the applicant has claimed that he never enjoyed the freedom of his life as a young person in Iran. DFAT has stated that youth can 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 and enforcement can be unpredictable and relating to the prevailing political atmosphere at the time.³ The applicant has claimed that he was detained on two occasions by the Iranian authorities because he was found in public with a female friend. He claimed that he was questioned and released after signing a guarantee on each occasion. He was not charged with any offence nor did he have to attend court. I accept that these incidents occurred though I am not satisfied on the evidence that they were related to each other. I am also not satisfied that the applicant remained of adverse interest to the authorities as result of these incidents. I also note the applicant did not claim any fear of harm on return to Iran as a result of these events when questioned by the delegate during the protection visa interview and acknowledged that he was not of any adverse interest to the authorities when he departed Iran. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities or any other group or person as a result of these incidents, individually or cumulatively. Other than this incident the applicant has provided little other detail about how he never enjoyed the freedom of his life as a young person in Iran. Even if he

¹ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931; "Young Iranians affected by the embargo, tired of political Islam", Asia News IT, 1 April 2015, CXBD6A0DE4714; P. Abdolmohammadi, "The Revival of Nationalism and Secularism in Modern Iran", 1 November 2015, CISEC96CF14725; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

² Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

³ Ibid.

were to be subject to low-level harassment as described by DFAT above, as a young person, I am not satisfied the harassment such as searches, car checks and verbal warnings, questioning and short periods of detention, amount to serious harm, individually or cumulatively.

Political Opinion

15. In the applicant's statement he claimed that all aspects of his life were controlled and negatively impacted by the government. During his Irregular Maritime Arrival and Induction interview held in June 2013 he also stated that there was no human value and no free talk of personal freedom in Iran. I am satisfied the applicant has a political opinion against the Iranian government. However, I am not satisfied on the evidence that the applicant has publicly promoted that opinion in Iran or in Australia and I am not satisfied there is a real chance he would do so if he were to return to Iran and I am not satisfied this will be due to a fear of persecution. I am not satisfied the applicant will face a real chance of harm in Iran from the Iranian authorities or any of the group or person as a result of his political opinion.

Tattoos

16. During the protection visa interview the applicant indicated that he had tattoos on his body. Although he has not provided supporting evidence of the tattoos I am willing to accept that he does have tattoos. The applicant claimed he was able to obtain a medical exemption from compulsory military service as a result of his tattoos but has not claimed that he was of adverse interest to the Iranian authorities as a result of his tattoos. Country information before me indicates that although the Iranian government denounces tattoos, tattoos in Iran are increasingly common. In 2016, DFAT noted that is unaware of any recent, specific report of people being targeted by security forces solely for having a tattoo but it is possible that a person with a visible tattoo could come to the attention of security forces and result in low-level harassment which will likely result in a warning or fine. DFAT believes it unlikely that authorities would maintain an interest in someone who had previously come to their attention for having a tattoo, unless the tattoo gave evidence of another crime.⁴ In 2018 DFAT noted that where there have been incidents of harassment of men for violating the dress code (including tattoos), it is likely to have been the result of either over-zealous enforcement by individual security authorities in particular locations (particularly outside of major cities), or because the individual has come to the attention of authorities for separate activities.⁵ In the absence of further evidence of the applicant's actual tattoos I cannot be satisfied they are visible to the public. The above country information indicates that, even if they do come to the attention of the authorities, the applicant may be subject to a fine or warning which I do not consider to, individually or cumulatively, amount to serious harm. I am not satisfied the applicant will face a real chance of serious harm in Iran from the Iranian authorities or any other group or person as a result of his tattoos.

Previous Relationship

17. During the protection visa interview the applicant claimed he left Iran due to personal reasons and explained that he was in a relationship with someone for three years which ended and that caused him emotional stress and mental problems. He indicated he may not be able to live in Iran and does not have the mental state of mind to return to Iran for this reason. I note the applicant did not provide any medical evidence in relation to his "mental problems" nor did he

⁴ "Working underground: the life of an Iranian tattoo artist", France 24 International News, 1 July 2013, CIS26056; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

⁵ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

claim he could not receive appropriate mental health services in Iran for these problems. Although I accept he left Iran as a result of his relationship with someone ending, I am not satisfied that the mental stress he may suffer on return to Iran in connection with this previous relationship amounts to a well-founded fear of persecution as I am not satisfied this amounts to serious harm or will be for one of the reasons stated in s.5J(1)(a) of the Act.

Failed asylum seeker

18. The delegate also assessed whether the applicant would be harmed in Iran as a failed asylum seeker from a western country. In his statement the applicant claimed that the intelligence service in the Iranian government has a strong controlling system and have accessed all personal information of individuals especially those who have sought asylum in western countries.
19. The applicant has claimed that he departed Iran legally on his own passport but then disposed of it on his way to Australia as directed by the people smugglers. I accept these claims.
20. Country information indicates that Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran.⁶ In its 2018 report, DFAT indicated that it reached an agreement with the Iranian government to facilitate the return of Iranians who arrived after 19 March 2018,⁷ however the applicant does not fall within this category. If the applicant were to return to Iran, I am satisfied it would only be on a voluntary basis.
21. Country information before me indicates that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country and the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.⁸ I am also not satisfied that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government or Islam.
22. In its 2018 report, DFAT stated that, according to international observers, the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Authorities will usually question them on return only if they have already come to official attention, such as by committing a crime in Iran before departing.⁹ As already noted, the applicant indicated during the protection visa interview that he was not of any adverse interest to the Iranian authorities when he departed Iran.
23. There are few very recent reports before me that allege mistreatment of failed asylum seekers on return to Iran. There are two 2017 articles before me which refers to the sentencing to prison of an Arab asylum seeker on return to Iran but it notes that he had been arrested for an offence prior to his departure from Iran and was related to a political activist with little other detail about the case provided. There is also a 2017 report by "Iran Human Rights" about a

⁶ Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 1 April 2009, CIS17329; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

⁷ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

⁸ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

⁹ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

returned asylum seeker who was flogged after her return but this was due to a previous sentence for drinking alcohol for which she had sought asylum in Norway. A 2015 article by the Guardian before me also refers to the return of two Iranian asylum seekers from Papua New Guinea who, after return, were reportedly forced to surrender their documents and were told to report to police though no further details about their circumstances were provided. Other more recent articles (of which there are a relatively small number) refer to the arrest of returning political activists, artists, PHD students, and journalists. I am not satisfied the applicant has a profile such that there is a real chance he will attract the adverse attention of the Iranian authorities on his return for any reason. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities or any other group or person due to being a failed asylum seeker from a western country.

Refugee: conclusion

24. 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

25. 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

26. 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.

27. I accept that the applicant has attended church and was baptised in Australia in February 2017. The applicant has indicated that he only attended church on only a few occasions in 2017 and that he attended approximately ten Bible study classes that year but has not attended church since then and now does not consider himself to be a Christian nor will he practise Christianity on return to Iran. During the protection visa interview he also indicated that he had not told his parents about his baptism and I am not satisfied on the evidence that they are aware of his church attendance. On the evidence before me I am not satisfied the applicant's family or the Iranian authorities are aware of his church attendance and baptism in Australia nor am I satisfied there is a real risk they will find out. I am not satisfied there is a real risk applicant will practise Christianity or identify as a Christian on return to Iran. I am not satisfied the applicant will face a real risk of significant harm from the Iranian authorities or any other group or person in Iran as a result of his church attendance and baptism in Australia.

28. I have accepted that the applicant has tattoos. The applicant has not claimed to have come to the adverse attention of the authorities because of his tattoos but that he merely obtained a military service exemption for this reason. The country information before me indicates that if he were come to the attention of the Iranian authorities because of his tattoos he may be subject to a warning or fine but the authorities do not maintain an interest in such people. I do not consider a warning or fine, individually or cumulatively, amounts to significant harm as I am not satisfied it amounts to the arbitrary deprivation of his life, torture, the death penalty or cruel or inhuman or degrading treatment or punishment. I am not satisfied the applicant will face a real risk of significant harm in Iran from the Iranian authorities or any other group or person because of his tattoos.
29. For reasons already stated I have not found the applicant will face a real chance of harm in Iran because of his political opinion, religious opinion, previous detention for being with a female in public, or as a failed asylum seeker from a western country. As real chance equals real risk¹⁰ I am also not satisfied the applicant will face a real risk of significant harm from the Iranian authorities or any other group or person in Iran for these reasons.
30. Even if the applicant were to be subject to low-level harassment from the Iranian authorities as a young person, I am not satisfied the harassment such as searches, car checks and verbal warnings, questioning and short periods of detention will amount to significant harm, individually or cumulatively as it will not involve the arbitrary deprivation of his life, the death penalty, torture or cruel or inhuman or degrading treatment or punishment as defined in s5(1) of the Act.
31. The applicant has claimed that he left Iran after ending a relationship with someone and this caused him mental and emotional stress and he still does not have the mental state of mind to return to Iran. Even if he were to suffer some mental and emotional stress in relation to this previous relationship and as a result of returning to Iran, I am not satisfied this will amount to significant harm as it does not involve him being arbitrarily deprived of his life, being subject to the death penalty, to torture or the intentional infliction of cruel or inhuman or degrading treatment or punishment.

Complementary protection: conclusion

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

Decision

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

¹⁰ *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.