



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/06798

Date and time of decision: 2 August 2019 15:16:00
M Brereton, 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 Shi'a and a Turi from Parachinar in the Kurram Agency, Pakistan. He departed Pakistan in June 2013 and arrived [in Australia] [in] July 2013. On 7 April 2017, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 1 July 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visa.
2. The applicant claimed to fear harm from the Taliban and Sunni extremists because he is a Shi'a, a Pashtun and a Turi from Parachinar. He claimed to have been personally threatened in the past. He also claimed that he cannot relocate to anywhere else in Pakistan because he will be readily identified as a Shi'a from Parachinar and will be unable to support himself.
3. The delegate accepted the applicant's claims as to identity and origin. The delegate found the applicant to be a credible witness and generally accepted the applicant's claims to fear harm, but found that the applicant could relocate to Islamabad where he would not face a real chance or a real risk of relevant harm, and that it would be reasonable for him to relocate.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
5. On 22 July 2019, the applicant provided a written statement to the IAA which he said contained his reasons for disagreeing with the delegate's decision. This statement sets out the reasons why he says he cannot relocate to Islamabad. These reasons were discussed with the delegate and I am satisfied that they are not new information. The statement also refers to two reports from the Australian Department of Foreign Affairs and Trade (DFAT)¹ which were before the delegate and I am satisfied are not new information.
6. The statement refers to a report from the South Asia Terrorism Portal (SATP) for the period 2000-2015, a decision of the Refugee Review Tribunal dated June 2015, and media reports about the security situation throughout Pakistan, including in the Kurram Agency, dating between 2011 and 2018. None of these documents are attached to the statement. The applicant has quoted from these reports and provided hyperlinks to most of them. This does not comply with the IAA Practice Direction for Applicants, Representatives and Authorised Recipients (issued 17 December 2018), but in any event all of these reports pre-date the delegate's decision and the issues that they are said to address (the security situation in Kurram Agency and Pakistan generally, as well as the situation for Shi'as relocating to Islamabad) were squarely raised with the applicant and his agent at the interview with the delegate on 14 June 2019 (the interview). The applicant has not explained why this new information was not, and could not, have been given to the Minister before the delegate made the decision. I take into account that the applicant was assisted by an agent at the interview and that, as noted above, these issues were raised and discussed. The agent also provided a written post-interview submission. The new information is general country information, or media reporting that refers mostly to the general situation. While there are

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

some references to other individuals, these persons are not said to have any relationship to the applicant or to his claims. The applicant has not claimed that the new information gives rise to new claims, or identified any issues in it that were not considered by the delegate. I also note that there is more recent information, from a variety of sources, about the situation in Pakistan before me. Having regard to all of the above, the applicant has not satisfied me as to the matters in s.473DD(b), nor am I satisfied that there are exceptional circumstances to justify considering this new information.

7. The delegate concluded that the applicant faced a real chance of harm in Parachinar and then considered whether the applicant could safely and reasonably relocate. Based on the material before me, including the applicant's claims and evidence as to why he fears harm in Parachinar, as well as the recent country information, I have reached a different conclusion, and have found it unnecessary to consider the question of relocation.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - He is a Shi'a, a Pashtun and a Turi from a village about [distance] away from Parachinar in Pakistan.
 - Shi'as have been, and continue to be, persecuted in Parachinar by extremists including the Taliban. The Pakistani authorities do not protect Shi'as.
 - When he worked in Parachinar as [an occupation] there were several bomb blasts near where he was working.
 - In 2010, some of his relatives were killed or injured when the Taliban attacked a convoy of Shi'a worshippers returning from pilgrimage.
 - In 2012 or 2013, his cousin and other relatives were injured in a bomb blast near their minibus. The applicant went to the scene and insisted that his cousin be taken to Peshawar for medical treatment. A masked man came up and asked the applicant if he was "HRH's" nephew. The applicant said yes and the man said that he will deal with the applicant as a threat.
 - The applicant is readily identifiable as a Shi'a from Parachinar and there is nowhere in Pakistan where he could relocate safely.
 - Shi'as have difficulty obtaining housing and employment in Pakistan.
 - Islamabad is very expensive and he could not afford to live there.
 - Even though the situation has improved, he will still receive threats and warnings.

Refugee assessment

9. 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

10. 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.
11. The applicant claims to be a Shi'a, a Pashtun and a Turi who originates from a village near Parachinar in Pakistan. He has provided a copy of his Pakistani passport and Pakistani identity card as proof of his identity. I am satisfied that the applicant is a Shi'a, a Pashtun and a Turi from this part of Pakistan and that Pakistan is the receiving country for the purpose of this review.
12. At the interview the applicant referred to conflict between Shi'as and Sunnis in and around Parachinar prior to when he left Pakistan in 2013. The delegate said that this was broadly consistent with country reporting and that he (the delegate) accepted this part of the applicant's claims, but also noted other information that indicates that the situation in Parachinar has improved since 2013. The applicant's post-interview submission refers to a bomb blast in Parachinar in June 2019, the killing of a person with an axe, and a missile attack. He did not provide any media or other reporting in relation to these three events or identify the perpetrators, victims or reasons behind these incidents.
13. The applicant claims in his statement of claims that when he worked as [an occupation] in Parachinar, there were several bomb blasts near the sites where he was working. He has not claimed that these blasts were targeted at him or his fellow-workers, or that they were targeted specifically at Shi'as or any other groups or persons. He has not provided any further information as to when and where these blasts occurred or who was behind them.
14. The applicant claims that in about March 2010, two of his aunties were killed and an uncle was badly injured when a convoy was attacked on the road between Peshawar and Parachinar. The convoy was full of people coming back from a Shi'a pilgrimage to Iran and it was targeted by the Taliban. 18 people were killed and 30 were injured.
15. The incident that the applicant claims to have experienced in 2012 or 2013 occurred about [distance] outside Parachinar (on the road to Peshawar). His cousin (the son of HRH) and other members of his cousin's family were travelling by minibus from Parachinar to Peshawar. A bomb exploded in the vicinity of the bus and the applicant's relatives were injured. The cousin called the applicant and the applicant came to the scene. People at the scene wanted to send the injured back to Parachinar but the applicant caused a scene because Parachinar did not have appropriate medical facilities. The cousin was ultimately

sent to Peshawar for treatment but as this was happening, a masked man came up to the applicant and asked him if he was HRH's nephew. When the applicant said yes, the man said that he would deal with the applicant as a threat. The applicant told the delegate that nothing happened to him because he returned to Parachinar, and then shortly afterwards left Pakistan.

16. The United Nations High Commissioner for Refugees (UNHCR)² reported in 2017 that Shi'as form the largest minority group in Pakistan. While that are not subject to the formal legal discriminatory framework that affects non-Muslims, they are reportedly the main targets of sectarian attacks. The Pakistani government has been criticised in the past for failing to protect Shi'as and for allowing militant organisations to operate with impunity. UNHCR referred to an increase in attacks on Shi'as since 2012, many of which targeted ordinary Shi'a individuals. It also noted that extremist groups have used methods to instil fear in Shi'as to force them to flee from areas. UNHCR considered that, in its opinion, Shi'as may, depending on individual circumstances, be in need of refugee protection on account of their religion, ethnicity, (imputed) political opinion and/or other relevant grounds.
17. According to DFAT, Parachinar is the largest town in the Kurram Agency within what was formerly the Federally Administered Tribal Areas (FATA) but which is now part of Khyber Pakhtunkhwa. Shi'as make up around 80 per cent of the Kurram Agency's population. Shi'as living in the Kurram Agency are predominantly Pashtun Turi or Bangash tribespeople. The Kurram Agency (which is located alongside Pakistan's north-western border with Afghanistan) has been the site of decades of sectarian tension between Sunnis and Shi'as and these tensions have periodically erupted into intense fighting. The arrival of the pro-Taliban Pakistani militias in 2007 triggered a particularly violent period, featuring significant fighting between Sunni and Shi'a militia groups. This violence began to decline in 2016 and DFAT assessed in 2017 that the security situation in the FATA had improved significantly as a result of the Pakistan Armed Forces' continuous counter-terrorism operations that commenced in 2014. Nevertheless, violence across the region was still prevalent and according to sources quoted by DFAT, the FATA had the third highest number of deaths from terrorism related incidents across all regions of Pakistan in 2016.³
18. During 2017, militants carried out mass-casualty attacks in Parachinar, including three bombings in Shi'a areas. Sunni extremist groups claimed responsibility and said that they had deliberately targeted Shi'as.⁴ The European Asylum Support Agency (EASO) also reported that 2017 saw a 'significant' increase in violent incidents in the Kurram Agency compared to 2016 and a very high increase was observed in the number of casualties. The majority of these casualties were civilians (138 deaths and 437 injured). Militants carried out 11 terrorism-related attacks, causing the most casualties in the FATA. EASO also noted that on 30 January 2018, an improvised explosive device (IED) explosion killed six people and injured one.
19. In 2018, the Asylum Research Consultancy⁵ quoted 2017 reports that the FATA and Khyber Pakhtunkhwa had faced an insurgency waged mainly by the Pakistan Taliban. These reports

² United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines Assess Protection Religion Minorities PAK", 1 January 2017, UNAEEA5947.

³ DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

⁴ European Asylum Support Office (EASO), "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560; Pakistan Institute for Conflict and Security Studies (PICSS), "Journal for Conflict and Security Studies (PICSS) Pakistan Security Assessment 2017", 1 February 2018, CIS7B83941229; United States Department of State, "Country Reports on Terrorism 2017", 1 September 2018, OGD95BE927706.

⁵ Asylum Research Consultancy (ARC), "Pakistan: Country Report", 18 June 2018, CIS7B839411561.

note that the group has been greatly weakened by "Zarb-e-Azb", a comprehensive military operation by the Pakistani armed forces, which has been ongoing in the area since 2014. The operation is (as at September 2017) out of the main combat phase and the Pakistani military is now clearing pockets of insurgency. After a wave of terrorist attacks around the country in the second half of February 2017, including four attacks in the FATA and Khyber Pakhtunkhwa that killed at least 12 people, the Pakistani army launched another operation, "Radd-ul Fasaad". That operation sought to eliminate the "residual/latent threat of terrorism". Despite the success of the military operations however, the numbers of civilians killed in the FATA in 2017 increased to levels not seen since 2013. The worst attack in the FATA in 2017 saw back-to-back bomb explosions in the Turi Bazaar area of Parachinar that killed 67 people and wounded more than 200. This attack was claimed by the Sunni extremist group Lashkar-e-Jhangvi.

20. The most recent 2019 DFAT report notes that Khyber Pakhtunkhwa, including the former FATA, reported the highest number of terrorist attacks in Pakistan in 2018 and assesses that despite an overall reduction in levels of violence, sporadic large-scale terrorist attacks are likely to occur, against a background of ongoing smaller-scale attacks (albeit at a reduced rate). DFAT also reports that the Taliban and Al-Qaeda have gained significant ground in the former FATA, killing many Shi'as, especially in Parachinar. This reporting appears to be a reference to the mass casualty attacks in the first half of 2017. DFAT reports that Shi'a tribes in the former FATA are among the most vulnerable groups in Pakistan and its current assessment is that the risk of sectarian violence for civilians in the Kurram Agency, particularly Parachinar, is higher than for civilians in other parts of the former FATA.
21. DFAT has also reported that there have been significant attacks on Turis in the past, but military and security operations, together with associated counter-terrorism activities significantly decreased the number and severity of such attacks. In the first quarter of 2018, the Turi community reported two attacks, including one involving an improvised explosive device that targeted women and children. This compares to community estimates that 200 Turis were killed and 1000 injured in 2017, although DFAT states that it is unable to verify these claims. DFAT also notes that Turis reported significantly fewer road attacks in 2018, as military operations have forced militants into the mountains. This has restored confidence within the community for individuals (although not large groups) to travel on the Tall-Parachinar road, although only between dawn and dusk. While DFAT notes a trend of decreased reports of attacks against Turis in 2018 due to the improved security situation in Parachinar and Kurram Agency, and opines that this trend is likely to continue in 2019, it also notes that attacks and violence against Turis can, and may still occur. As such, DFAT assesses Turis in Kurram Agency still face a moderate risk of sectarian violence from militant groups, because of their Shi'a faith. DFAT defines a moderate risk as one where DFAT is aware of sufficient incidents to suggest a pattern of behaviour.
22. Much of the assessment of risk from sectarian violence in Parachinar and the Kurram Agency dates from 2017 and is influenced by large-scale and mass-casualty attacks in the first half of 2017. Although DFAT assessed in 2017, and repeated this assessment in 2019, that the risk to civilians from sectarian violence is higher in the Kurram Agency, and particularly Parachinar, than other parts of the former FATA, the information before me (apart from the applicant's unverified assertions) does not report any increase in violence, or any ongoing or systematic attacks against Shi'as, Pashtuns or Turis in Parachinar or the Kurram Agency through 2018 and the first part of 2019. Although that does not of itself mean that the area is now free of insurgency or may be considered free from violence, it is nevertheless an area that has not reported systematic or frequent attacks on Shi'as, Pashtuns or Turis for over a year.

23. I am prepared to accept that some of the applicant's relatives were killed or injured in 2010. The applicant has not claimed that these relatives were targeted for any reason other than being Shi'as returning as part of a group pilgrimage. I consider that in those circumstances the group was readily identifiable as being Shi'as and it is plausible that it was targeted by Sunni extremists for that reason. While I accept that this was an incident of religiously motivated violence, and that it would have been distressing for the applicant, I am not satisfied that the applicant's relatives were personally identified and/or targeted, or that the applicant or his family had, or would now have, any adverse profile with extremist groups (other than being Shi'as) arising from this incident.
24. I am also prepared to accept that the applicant's cousin and other relatives were injured in a bomb blast in around 2012. Although the applicant claims that this was a remote bomb detonated by the Taliban, he has not provided any information as to how he knows this to be the case. He has not claimed that the cousin or any other relatives (including HRH) have been personally targeted by the Taliban or other extremist groups in the past, nor has he given any reason why the family was of interest to any such groups. He has not claimed that his cousin or his cousin's family have suffered further attacks since this incident. The DFAT and EASO reports I have cited above refer to incidents of violence, including improvised explosive devices (IED) and explosive remnants of war, on the roads in Parachinar. Ultimately, while I accept that there was a bomb blast, I am not satisfied that the applicant's relatives were personally targeted in this attack.
25. In relation to the claim that the applicant was threatened with harm because he was related to HRH, his explanation of this incident indicates that he was refusing to allow his injured relatives to be taken back to Parachinar because the medical facilities in Peshawar were better. I am prepared to accept that there may have been heated words exchanged in this context but I am not satisfied on the evidence before me that HRH or his family had any personal profiles which would have led in turn to the applicant being identified and threatened. I do not accept that he was identified and threatened for being related to HRH. I find that the explosion was an incident of random violence and although it would have been distressing for the applicant, it does not indicate that he was, or will now be, of adverse personal interest to any extremist group or any other person. I am not satisfied that he will receive threats or warnings for any reason related to his family, cousin or HRH.
26. While I cannot discount that he may receive general threats as a Shi'a or a Turi, he has not claimed to have been threatened or warned in the past (other than the incident with his cousin discussed above), nor has he claimed that any member of his family has suffered general threats or warnings, either before or since he left Pakistan. He has not claimed to have any other profile (apart from his relationship to HRH) which would make him stand out as any more than a Shi'a Turi civilian. On the evidence before me, I am not satisfied that he faces any more than a remote chance of receiving threats or warnings.
27. In relation to the claims of bomb blasts near his work sites, I consider that it is at least plausible that there may have been bomb attacks in or around the areas where the applicant was working in the past. As noted earlier, he has not provided any further information as to the timing, targets, reasons or perpetrators. He has not claimed that he, any member of his family, or any of his co-workers were harmed or otherwise affected by these bomb blasts. He has not otherwise claimed to have suffered any past incidents of religious, ethnic or generalised violence, nor has he claimed that his family in the Kurram Agency has been affected by such incidents (other than those I have already considered).

28. Although I note the information before me as to the ongoing conflict and fluid situation in the Kurram Agency, I have already noted that the information before me does not indicate any verified reports of ongoing attacks targeting Shi'as or Turis in Parachinar or the broader Kurram Agency by the Taliban or any other extremist groups since early 2018. DFAT has reported ongoing and successful military operations in the former FATA and neighbouring areas which has reduced the levels of violence and the information before me does not indicate that the Pakistani government intends to withdraw or decrease this military presence in the foreseeable future.
29. I accept that civilians have been killed and injured as bystanders or as a result of generalised violence but the evidence before me does not indicate that such incidents are currently routine or common, or that the incidence of such violence is increasing. I also note the information referred to above that violence within the Kurram Agency has been decreasing. Although I cannot discount completely the chance that the applicant may experience violent incidents in the future, including as a bystander, I am not satisfied on the evidence before me that this chance is more than remote.
30. I have also considered the DFAT assessment that there is a moderate level of criminal violence across the former FATA⁶, but I am not satisfied on the information before me that Shi'as or Shi'a Turis who have no other profiles (such as being wealthy businessmen, or being active in inter or intra tribal conflicts) have been, or are now being, specifically targeted by criminal groups. The applicant has not claimed to have any profile that would lead to him being targeted for criminal violence. He has not claimed that he or any member of his family has been affected by criminal violence in the past, or that he fears harm from such violence should he return to Parachinar.
31. Having regard to all of the above, I am not satisfied on the evidence before me that the applicant faces any more than a remote chance of being harmed in criminal or generalised violence should he return to Parachinar.
32. There is information before me that refers to Pashtuns being harmed by the Pakistani police or security forces because of being suspected of terrorist activities.⁷ This information indicates that the support base for the Taliban in Pakistan is largely Pashtun and DFAT assesses that Pashtuns face a medium risk of official discrimination in the form of terrorism-related profiling. However, the applicant is a Shi'a and a member of the Turi tribe which DFAT notes has been a particular target of the Taliban in the past. I am not satisfied that the applicant, as a Pashtun who is also a Shi'a and a Turi, would be imputed with supporting the Taliban and face a real chance of harm from the Pakistani authorities as result.
33. Ultimately, while I accept that the situation in Pakistan is fluid, I am not satisfied that the applicant faces a more than remote chance of being harmed by any extremists or militias in Parachinar because he is a Shi'a or a Turi. I am not satisfied that he faces a real chance of harm as a Pashtun in Parachinar. I am not satisfied that he faces more than a remote chance of harm from criminal or generalised violence in Parachinar.
34. The applicant has not claimed to have experienced official or societal discrimination in Parachinar, or to fear such discrimination should he return. He said that Shi'as have difficulty

⁶ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

⁷ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515; Human Rights Watch (HRW), "Listen to Pakistan's Marginalized Pashtuns", 13 March 2018, CXBB8A1DA28119.

obtaining housing and employment in Pakistan, but he has not claimed that he himself or his family have experienced any such difficulties. He told the delegate that his parents and one brother continue to live in the same village. He has not claimed that he would be unable to return to his family home should he return to Parachinar, or that he will be unable to, or prevented from, obtaining employment if he was to return to Parachinar.

35. I have referred above to reports of violence, including IED, on the roads into Parachinar. While I accept that some travellers have been harmed by incidents and explosions in this area in the past, the low number of such reported incidents and the improved security situation indicates that this is not a frequent occurrence and although I cannot altogether discount this risk, I am not satisfied that it is more than remote. I am not satisfied on the evidence before me that the applicant faces a real chance of harm for any reason when accessing Parachinar.
36. Having regard to all of the above, I am not satisfied that the applicant faces a real chance of harm in Parachinar, or in accessing Parachinar, for any of the claimed reasons. I am not satisfied that he has a well-founded fear of persecution in Pakistan.

Refugee: conclusion

37. 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

38. 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

39. 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.
40. I have found above the applicant does not face a real chance of harm in Pakistan for any of the claimed reasons. As 'real chance' and 'real risk' equate to the same threshold,⁸ and for the same reasons as given above, I am not satisfied that the applicant will face a real risk of significant harm for any, or any combination, of the claimed reasons should he return to Pakistan.

⁸ *MIAC v SZQRB* (2013) 210 FCR 505

Complementary protection: conclusion

41. 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.