



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/06811

Date and time of decision: 1 August 2019 15:57:00

S Mansour, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 26 November 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 4 July 2019 a delegate of the Minister for Immigration (delegate) refused to grant the applicant a SHEV. In summary, the delegate accepted that the applicant has tattoos and is an atheist but did not accept a claimed work related altercation. The delegate ultimately found that the applicant was not a person in respect of whom Australia had protection obligations.

### 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

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5. The applicant's claims can be summarised as follows:
  - He is of Persian ethnicity and from Yazd Province, Iran. He did not believe in Islam from a young age and identifies as an atheist.
  - He has tattoos [that] are religious and western.
  - He worked as a [occupation] in Iran, initially mostly for his father but also offering his services to different companies on a casual basis.
  - Due to his beliefs, his father did not allow him to work with him and compelled him to work with people he disliked.
  - During a work related verbal and physical altercation, he made controversial comments about Islam. He thereafter was refused work by some companies. A court summons and then arrest warrant were issued against him.
  - He will be arrested, taken to court, accused of being an apostate, imprisoned, tortured and killed due to non-compliance with the summons.

### Refugee assessment

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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. The applicant claims to be an Iranian national and has provided copies of his identity documents in support. I accept that he is a national of Iran and that Iran is the receiving country for the purpose of this review. On the basis of his consistent evidence, I also accept that he is of Persian ethnicity and was born and resided in Yazd, Iran, for the majority of his life prior to his journey to Australia.
9. The applicant claimed that from a young age in Iran he did not believe in Islam and refused to obey Islamic rules. He claimed that Yazd is a highly religious province and his family are very religious Shia Muslims. At the Protection Visa (PV) interview he claimed he currently identifies as an atheist but was not an atheist while living with his family including his particularly religious father in Iran. His PV application includes written claims in direct response to the questions on reasons for claiming protection and separately attached a statement of claims. Both of these indicate that as Iran is a Muslim country, the applicant would be unable to practise his Christian faith there without being subject to severe hardship and risk to his life. At the PV interview, the delegate asked the applicant whether this claim was incorrect. The applicant responded he was just indicating that there was difficulty in practising as a Christian but had not intended to express that he was interested in doing so. I am prepared to accept that this statement about Christianity may have been incorrectly worded in his PV application. He has not otherwise raised any other errors in his PV application, including when given a direct opportunity by the delegate to rectify or change any such information and I am not satisfied of any further errors. Given he was otherwise consistent about his claimed disengagement with Islam, I am prepared to accept that the applicant was disinterested in Islam in Iran, did not believe in Islam and increasingly disengaged with religious practices. I am prepared to accept that he identifies as an atheist.
10. The applicant consistently claimed his most recent occupation while in Iran was as a [occupation]. He claimed to have mostly worked with his father but also for other companies on a casual basis. I accept these claims.
11. The applicant claimed he obtained his tattoos in [Country] on an earlier holiday prior to his most recent departure from Iran. The delegate requested that he provide photos of his tattoos, but the applicant did not do so. According to the delegate's observations, one tattoo [appears] to be foreign script. The applicant stated it was in [language]. The other tattoo

[was] initially a drawing that the applicant claimed he had covered up with another tattoo. The delegate indicated he could see [deleted] on that tattoo. The delegate observed that the tattoos were somewhat faded. The applicant was unable to explain what it was about his tattoos that would be deemed religious or western. He stated that the very fact of having a tattoo is 'disturbing'. I accept that the applicant has tattoos [but] I am not satisfied they are religious or western in nature or would be perceived as such.

12. The applicant claimed he faced a verbal and physical work-related altercation about 10 days prior to starting his journey from Iran to Australia. His evidence about this claim was largely unclear, vague and unconvincing. At the PV interview he said he had expected to obtain a job from a friend's company but lost the job as they found out about his way of thinking and behaviour. However, his written and oral evidence also suggested he had already lost the job for other reasons, prior to the confrontation that led to him expressing apparently controversial views. For instance, his application indicated he was in a queue at the [workplace] waiting to [perform a task] when [details deleted], leading to an altercation, and him being beaten. He was also unable to meaningfully detail the nature of the alleged confrontation. Despite repeated follow up questions by the delegate and a request that he be more specific, the applicant failed to provide any compelling evidence on the nature of the confrontation. He spoke vaguely about what it was that he stated during the verbal exchange. For instance, he said there was a 'sort of debate going on' and that he was 'pushed' to express 'certain things about their beliefs' including that the deeds they did was not according to their beliefs. The incident is said to have taken place several years ago, and I accept that the passage of time can account for lapses in memory. Nevertheless, I consider it highly doubtful that the applicant would not recall any specifics or more meaningful information about an incident that he claimed triggered his final decision to depart Iran indefinitely.
13. His written claims, prepared in 2017, do to some extent provide greater clarity about the verbal exchange. For instance, he indicated he complained to the company and they told him it was not his right to [complain]. He claimed he told them 'if this is justice and this is your religion then stuff you.' He claimed they had made a big deal out of his tattoos which they said was a sign of him worshipping the devil and being anti-Islam. However, even when separately asked again during the PV interview about what he had actually said, he again made vague statements including 'I must have said more than that' and 'I must have said something serious.'
14. During the PV interview, the applicant was similarly unable to provide any concrete information on what he meant by the incident becoming physical. First, he said a few workers tried to throw him out of the company, leading to a struggle or a fight between them. He then said it was a very serious confrontation. Asked specifically by the delegate whether it was a fight, a fist fight, or whether he had just been physically removed, he again gave no direct response. He responded it was 'sort of an argument and fight, a combination of argument and fight and they threw me out of the company.' After repeated questions on the same topic, he claimed somebody slapped the back of his head and it led to him being beaten by them. I do not consider his evidence at all compelling. The applicant was similarly very superficial in his responses when asked by the delegate whether the specific persons involved in the altercation would cause him any harm in future, given the passage of time and the relatively minor nature of the issue. He turned to different topics and made further vague statements such as if one were to check the news, they would see such quarrels were always a big issue that landed people in jail. He later claimed that the company, his city and the people (he had quarrelled with) who also had people across his town, would cause problems for him.

15. The applicant also provided differing evidence on the timing of the issuance of the summons to him that he claimed his family received after the alleged work-related confrontation. His application states that it was twenty days after departing Iran that his family told him the summons had been received at their house and then a subsequent summons was sent. He also said that he hoped to obtain that summons prior to the PV interview, but did not provide it at the interview. At the PV interview he said the first summons was issued around one to two days *prior* to his departure from Iran. He referred to an arrest warrant that was subsequently issued. When asked by the delegate about the different statements he had made regarding the timing of the first summons, he was unable to clarify and referred first to forgetting the date and later said he did not know and was under a lot of stress. Additionally, he told the delegate he could provide the summons to him, and that his brother had sent him scanned copies. However, he failed to provide any such evidence after the PV interview and instead stated both he and his family could not find the 'warning letter.'
16. For all these reasons, I do not accept that the applicant was involved in any work related verbal and physical altercation or that he made any controversial comments about Islam or has ever had a court summons or arrest warrant issued against him.
17. In relation to the broader consequences of his lack of religious belief/practise while in Iran, the applicant claimed that during his last five years in Iran, he attended religious events to the degree of accompanying his friends. He claimed that particularly during his last three years in Iran, his attendance further declined and his family were aware of this. He claimed he had daily issues during his last three to five years in Iran due to his lack of religious practise/beliefs. However, despite repeated follow up questions by the delegate about what these issues entailed, the applicant was unable to elaborate in any material sense on this assertion. His responses were evasive and would shift the focus to different topics. He initially referred to difficulties with securing employment, particularly with his father. When queried further, he instead spoke impersonally and generally about applying for jobs to other companies and that even if he had a tattoo a company would not be willing to grant him a job. When asked again about the claimed difficulties with his father, he referred to the small size of his town and that not appearing in meetings would make it very difficult to be accepted or 'ease' finding a job. He claimed his difficulties were especially work related but in 'any other area too.' Asked what those other areas were, he paused and said he did not know what to say, and then confirmed the main issue to be work. Despite many opportunities, the applicant failed to provide any concrete or convincing illustrations of issues he faced as a result of his religious beliefs or lack of religious practice in Iran. He had a tendency to make embellished statements that he was unable to support with meaningful detail.
18. In relation to his activities or practise of his beliefs while in Australia, the applicant told the delegate that he only shared things on social media with his friends but otherwise did 'nothing specific.' The delegate invited the applicant to provide evidence of the same if he wished to do so. However, the applicant did not provide any such evidence to the delegate and I am not satisfied of any social media activities or other public manifestations of his religious beliefs during his time in Australia.
19. During the PV interview, the applicant also appeared to raise a separate but related claim about his broader freedom to express himself and his beliefs as a non-Muslim and/or atheist in Iran and that he would not be able to do so without serious repercussions. He claimed that wherever he went and whatever job he did, if he were to honestly express himself, he would face the same problems as the past claimed work incident. I have not accepted such incident. He similarly was unable to meaningfully expand on this claim and made repetitive, vague statements. At no point did he specifically articulate his beliefs in any depth or detail the

contents of what it was he wished to express. Asked further by the delegate about what way and in regards to what he wanted to express himself through, he was vague. He referred to being able to criticise or say something when seeing some lies or 'anything you correct' and that if it were 'against their religion' it would cause problems. Prompted further by the delegate, he eventually gave the example of a job application that includes a religion section and that not identifying as a Muslim would cause problems. However, he did not indicate that this ever happened to him in the past. The applicant also claimed he had only learnt to express himself freely in Australia although, as outlined, there is no credible evidence to support that he has at all done so in any noticeable way. When asked by the delegate what things he expressed about himself that his father or others in Iran may not like, he said 'simply, I am an atheist.'

20. The applicant's claims that he was restricted in employment by companies or denied employment largely stem from the claimed workplace altercation, which I do not accept. Regardless, his written claims also indicated that he was eventually able to continue his work. Moreover, his PV application indicated his ongoing employment in Iran in different industries from September 2004 until August 2011, soon before he departed Iran. I do not accept that the applicant suffered a reduced or lack of work opportunities. I am also not satisfied that due to his beliefs, the applicant's father did not allow him to work with him and compelled him to work with people he did not like. His evidence indicates he resided in his family's home in Yazd for most of his life in Iran and this included the period during which his religious practise continued declining, albeit while also briefly residing elsewhere for mostly work and holiday purposes as claimed. In his PV application and during the PV interview, he indicated he remained in contact with his family members. When he left Iran for Australia, he noted he spent around ten months in [Country], during which he relied on his own savings and money sent to him from his [siblings]. Overall, I am not satisfied he faces a real chance of any harm including in connection with access to employment or threats to his subsistence, in Iran, for any reason.
21. At the PV interview, the applicant also briefly referred to being arrested by the Basij in Iran and although unclear seemed to indicate this was in relation to talking to a member of the opposite sex. He claimed they kept him for two days prior to having him take a written undertaking and releasing him. His arrival interview record also refers to an arrest in 2006 and Basij encounters. He has not raised any further concerns about this in future and confirmed he was not charged with any crime or taken to court. I accept he may have faced incidents of this nature that are now distant in time. I am not satisfied he faces a real chance of any harm in Iran for this reason.
22. I am also not satisfied on the evidence that the applicant has otherwise come to any adverse attention in Iran, including due to his tattoos or his beliefs or for any other reason. He left Iran in late 2011 and there is no credible evidence he has since come to any adverse attention to anybody there.
23. On the evidence, I am also not satisfied the applicant would publically manifest his beliefs in Iran in the reasonably foreseeable future or that not doing so would be due to any fear rather than a lack of genuine interest in engaging publically about any held beliefs. According to an Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) Country of Origin Information (COI) Compilation in 2015, a research fellow in Iranian studies at a university in Germany was of the view that atheists usually did not express their views in public and were thus able to lead normal lives in Iran without facing any further restrictions. The Department of Foreign Affairs and Trade (DFAT) indicates that under Iranian law a Muslim who leaves his or her faith can be charged with apostasy and although the Koran

does not explicitly say that apostasy should be penalised, most Islamic judges in Iran agree that apostasy should be a capital crime. DFAT also indicates that although a Muslim who leaves Islam to practise atheism can be charged with apostasy, atheists are unlikely to come to official attention unless they seek to publicise their views. DFAT also considered it highly unlikely that the government would monitor religious observance by Iranians such as whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram. DFAT thus indicated it would also generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Nor is there any credible evidence that the applicant came to any adverse attention or faced any adverse consequences from his family or anybody else, in relation to his beliefs, or his lack of religious practise, while in Iran. I am not satisfied the applicant faces a real chance of any harm in Iran as a non-practising Muslim, as an atheist or otherwise in connection with his beliefs.

24. DFAT has consistently reported that tattoos are common in Iran and that it has regularly observed male Iranians with visible tattoos. In 2016, DFAT was unaware of any recent, specific report of people being targeted by security forces solely for having a tattoo but said it was possible that a person with a visible tattoo could come to the attention of security forces and result in low-level harassment. In 2018, DFAT reported that incidents of harassment towards men including on the basis of visible tattoos were 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 had come to the attention of authorities for separate activities. The other country information before me including from Independent Australia, Agence France Presse (AFP) and The Guardian indicates instances of higher profile individuals coming to attention due to their tattoos such as famous football players and overall suggests that while there are no specific laws against tattoos and they are not strictly forbidden in Shia Islam, the Iranian authorities have outlawed them and reject them primarily as a western phenomenon. I am not satisfied that there is anything western, religious or otherwise sensitive about the applicant's tattoos, real or perceived. Nor is there any credible evidence of any adverse attention by the Iranian authorities or others due to his tattoos while he was in Iran. At most I accept the applicant may face low level harassment in connection with his tattoos on return to Iran. However, I am not satisfied that such treatment reaches the threshold required to establish serious harm.
25. I am not satisfied that the applicant has a well-founded fear of persecution in Iran for any of the outlined reasons.

#### **Refugee: conclusion**

26. 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**

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27. 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**

28. 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.
29. I accept that the applicant may face low level harassment in connection with his tattoos in Iran. However, I am not satisfied this reaches the threshold required to establish significant harm. I am not satisfied this would involve an act or omission that could reasonably be regarded as cruel or inhuman in nature, severe pain or suffering or extreme humiliation, as required by the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. It does not amount to the death penalty or arbitrary deprivation of life. I am not satisfied that there is a real risk the applicant will face significant harm on return to Iran for this reason.
30. In relation to the remainder of the applicant's claims, I have found there is not a real chance the applicant will face any harm in Iran. The same standard applies in assessing real chance and real risk. Based on the factual findings and country information outlined above, I find that the applicant will not face a real risk of significant harm in Iran.

### **Complementary protection: conclusion**

31. 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**

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



## Applicable law

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### ***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.