



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07440

Date and time of decision: 10 December 2019 11:43:00

M Oakman, 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 citizen. He arrived in Australia [in] July 2013 and lodged an application for a Temporary Protection visa (TPV) (XD-785) on 11 August 2017. On 29 October 2019 a delegate of the Minister (the delegate) refused to grant 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). No further information has been obtained or received.

### Applicant's claims for protection

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3. The applicant's claims can be summarised as follows:
  - He fears that if he is forced to return to Iran he would be considered an apostate as he has converted to Christianity and apostasy is punishable by death in Iran;
  - He would not be able to practice his faith freely and meet with other Christians to worship God freely, but he would be subject to severe punishment and even death; and
  - His fear of harm in Iran is on the basis of his conversion from Islam to Christianity and on the basis of his religion being Christian.

### Factual findings

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#### Receiving country

4. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Iran. I find that the applicant's receiving country is Iran.

#### Background

5. The applicant was born in Tehran in [year] and lived in Tehran, at one address until 2007 and then at a second address until he left in 2013 (see his TPV application). He is not married. His parents live in Tehran. He has two sisters who also live in Tehran and he had a brother who died in [year]. He attended school from [year] to [year], up to Grade 10. He has worked in Iran [in a position], buying and selling [items], and in [a specific] industry, and at other times he was supported by his father. In Australia he has worked as a self-employed [position] since 2015. He speaks, reads and writes Persian as well as English (limited) and speaks Turkish (limited).

#### Problems in Iran and activities in Australia

6. The applicant provided details of his claims for protection in his arrival interview (July 2013), his TPV application and statement (August 2017), and his TPV interview (September 2019). In summary, the applicant says that he was born into a Shia Muslim family. His family would

attend mosque every day, sometimes three times a day, with his father making the family attend including his two sisters. His father, who he described as very religious, tried to make him go but he stopped attending mosque and stopped practicing the Shia religion after he was about [age] or [age] years old. He first thought about leaving Iran in 2010 because his life was very difficult and he could not get along with his family and the government or connect to things that they wanted him to connect to like religion. Like others he had no control over the religion he was born into and he had many questions. He asked questions and was always made to believe that Islam was above all other religions, but at the same time he could not understand why there was all the killing, why women did not have the same rights as men, the lack of animal rights, and many other unanswered questioned.

7. He had problems with the government in Iran because he did not cast his vote, he did not attend elections and that was an issue. The authorities also took him once to the police station because someone in the neighbourhood, which was very religious, complained to them that the applicant was a convert to and promoting Christianity. He had been talking to people around his age that he had grown up with about Christianity, although he did not have a lot of knowledge about it. What he knew about Christianity he had learned from one of his mother's cousins from [country] and a friend of his mother's from Australia who visited Iran every year. The authorities at the police station looked at his identity documents and they asked him why he did not vote and why he did not believe in Islam. The authorities knew his father, and that he was a religious man, so they let the applicant go. The applicant also had two friends in Iran who were Christian. His decision to leave Iran was not a sudden one.
8. He left Iran [in] May 2013 to fly to [Country 1] via [Country 2], using his own passport. He left [Country 1] [in] July 2013 to travel to Australia by boat. When he came to Australia he actively studied the Baha'i faith, even attending meetings [in a suburb], for about two years. He came to the conclusion that the Baha'l faith was a modern or newer version of Islam, with nothing to attract him to their faith.
9. After a while the applicant became friends with a Christian convert named [Mr A]. [Mr A] introduced him to [Pastor B], who introduced him to Christ, patiently answered his questions and fully explained the answers. He became interested and attended Bible classes; he attended church [in a suburb] with [Pastor B] on Sundays; and he knew he had chosen his path and after six months he was ready to accept Christ as his saviour. [In] July 2017, with a full understanding of the Christian faith, he was baptised by the pastor at [Church 1] in [Suburb 1]. He did not continue at [Pastor B's] church for long after his baptism, because he wanted to study the Bible and achieve things himself, and it was difficult to attend the church because he went to [City 1] for four months for work. At the time of the TPV interview (September 2019) he said: his father had stopped talking to him some two years ago because of his conversion and said that if the government does not do it then he would kill the applicant for converting if he ever returned to Iran; his sister stopped talking to him some five years ago because of his conversion; and the applicant had been attending a church [in Suburb 2] for five or six months. [Suburb 2] church is not as active as [Pastor B's] church. He also, once in a while, attends a church [in Suburb 3] where there are other Iranians and the leader of the church is an Iranian. In 2018 he joined a group of other Iranians who were proselytising [by] handing out brochures. He considers it his duty as a Christian to evangelise to people in Iran. A woman in Iran sent him a message on [Social Media 1] asking how she can convert to Christianity. He provided her with his contact number so she could ask him her questions securely.
10. He provided the Department with a baptism certificate dated [July] 2017 from [Church 1] at [Suburb 1], signed by [Pastor B], together with a number of photos of his baptism ceremony.

He also supplied some [Social Media 1] posts that show pictures of his baptism, loaded the same day as his baptism (posted on [July] 2017) and a post in which he shared the link to an untranslated article apparently about the arrest of some Christian converts in Iran (posted on [July] 2017). He also provided to the Department copies of media articles about the re-arrest of a Christian pastor who had previously been sentenced to death (dated 14 May 2016) and the Iranian police beating and arresting Christian converts on a raid on a house church (dated 18 August 2015).

11. There are a number of difficulties with the applicant's evidence, including credibility issues in relation to his claims about being taken to the police station while he was in Iran and in relation to his conversion to Christianity.
12. The applicant first mentioned in his TPV interview that he was taken to the police station while in Iran; that he started to learn about Christianity and speak to other people in Iran about Christianity; and his father threatened to kill him if he returned to Iran because of his conversion. I do not consider it credible that, if true, the applicant did not mention such significant matters prior to his TPV interview. In particular, his failure to mention these claims in his TPV application and statement, where he set out his other claims for protection in some detail, reflects very poorly on his overall credibility. Additionally, given that voting is not compulsory in Iran and the delegate was unable to locate any other country information to suggest that failure to vote would lead to prosecution or other adverse consequences from the authorities in Iran,<sup>1</sup> I do not consider it credible that he would in any event be questioned by the police about not voting.
13. The applicant claims his father is very religious and, after learning about his conversion to Christianity, has not spoken to him for two years. His father also told him that if he returned to Iran, and the government did not kill him for converting, then his father would kill the applicant for converting. However, the applicant also claims that he stopped going to mosque when he was about [age] or [age] years old. I do not consider it credible that, if his father was very religious, he would have allowed the applicant to stop going to mosque when he was about [age] or [age] years old. Similarly, as his father did not take action against the applicant in Iran to ensure he continued to attend mosque while he was a child, I consider it simply unbelievable that his father would threaten to kill him for converting if he returned to Iran. The applicant claims the police who questioned him knew his father and that his father was a religious man. If his father was so very religious as claimed then I do not consider it credible that (if the claim were true) the applicant could have been questioned by police for talking about Christianity in Iran without his father, first, being told about it by those police and, secondly, without his father taking some action against the applicant in Iran as a result. Conversely, if his father was not very religious, the applicant's claim that the police let him go because they knew his father was a religious man is not credible. He also claimed at the TPV interview that five years ago (making it around September 2014) one of his sisters stopped talking to him because of his conversion. However, that timing is not compatible with either his claimed conversion to Christianity in Australia in July 2017 or to his claim of speaking to people in Iran about Christianity (at an unspecified date but no later than May 2013 when he left Iran).
14. At the TPV interview the delegate discussed at some length with the applicant his journey from Islam to the Baha'i faith to Christianity, including his church attendance and Bible studies in Australia. The applicant's evidence about what aspects of Islam he did not like was very general and I do not consider it credible that someone would take two years of

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<sup>1</sup> Protection decision record, 29 October 2019, page 8 and footnotes 30 and 31.

involvement with the Baha'i faith to reach the conclusion that, as the applicant says he did, it was just a newer version of Islam. The applicant's knowledge of Christianity was not deep, but was consistent with someone who had attended Bible studies and church services on a number of occasions. His supporting evidence corroborates his being baptised by [Pastor B] in July 2017. However, the rest of his evidence about his observance of his Christianity, including his church attendance, was vague and unconvincing. In particular, I do not consider it credible that he could not name either of the churches in [Suburb 2] and [Suburb 3] that he says he attended, during the five to six months prior to the TPV interview, or the name of the minister/priest at [Suburb 2] church who he claimed knew him very well. His church attendance after his baptism, even if it is accepted that he did attend [Suburb 2] and [Suburb 3] churches as he claimed, has been very limited. Although his working in [City 1] for four months after his baptism would explain why he did not immediately continue to attend [Pastor B's] church services or Bible studies after his baptism, it does not explain why he did not seek to attend church while in [City 1] or in [another city] once he returned from [City 1] in late 2017 until some five or six months before the TPV interview (making it around March/April 2019). His claim at the TPV interview that he also wanted to study the Bible and achieve things himself was unconvincing. In the TPV application and statement he suggests he attended Bible study with [Pastor B] three times a week and it took him six months to decide he was ready for baptism, however at the TPV interview he suggested he had attended Bible study with [Pastor B] about 12 or 13 times, a significant discrepancy. He posted photos of his baptism on his [Social Media 1] account on the day of his baptism and about a week later he posted a link to an article apparently about the arrest of Christian converts. While not everyone who converts to a new religion would be minded to share their new faith on social media, I do not consider it credible that the applicant would do so in two posts on and around the time of his baptism but then fail to make any posts related to his claimed Christianity after July 2017. I do not consider his claim that he was proselytising [in] 2018 to be credible on the basis that it was a one-off incident that occurred at a time when he does not appear to have otherwise been engaged in any other Christian related activities; and although he claims his friend told him the event was posted on You-Tube, the applicant was unable to locate the clip. The applicant also claims he was recently (in relation to the TPV interview) contacted by a woman in Iran who wanted to learn about converting to Christianity. I do not consider the timing of this claimed contact – just before his TPV interview – to be coincidental. I also do not consider it credible that he said at the TPV interview that he had screenshots of his and her messages, but he has not provided the claimed screenshots to the delegate or the IAA.

15. In assessing the applicant's evidence I have taken into account the difficulties often faced by applicants for protection, particularly those for who some period has passed since they departed their country of origin. However, the issues identified above go beyond minor errors and discrepancies that could be attributed to factors such as recall problems, misunderstandings in interpreted material, cultural communication issues, or a lack of cohesive narration due to trauma, and show significant credibility problems in the applicant's evidence. I do not consider the applicant to be a credible or reliable witness. I am satisfied he has exaggerated and fabricated his evidence in order to boost his claim to protection. I reject his claim that he has genuinely converted to Christianity or otherwise renounced Islam and I find that, albeit he may be non-practising, he is a Shia Muslim like his family in Iran. I reject his claims that while in Iran he started to learn about and speak to people about Christianity; and that he was taken to the police station and questioned about why he did not vote in elections, his Christian conversion or any other matter, and that he was subsequently released because the authorities knew his father and that his father was very religious. It follows from rejecting these claims that I am not satisfied that the applicant was of any adverse interest to the Iranian authorities, or anyone else, at the time he left Iran. I also

reject his claims that since he has been in Australia he developed an interest in the Baha'i faith for a time; his father threatened to kill him and stopped speaking to him because he converted to Christianity; one of his sisters stopped speaking to him because he converted to Christianity; a woman contacted him on [Social Media 1] wanting to learn about converting to Christianity; that he was proselytising [in] 2018; and he attended churches in [Suburb 2] and [Suburb 3] for about five to six months before his TPV interview. Having regard to the baptism certificate, the photos of his baptism and copies of [Social Media 1] posts, I accept that the applicant attended church and Bible studies with [Pastor B] during a period of up to six months prior to his baptism [in] July 2017 and that he posted photos of his baptism, and a link to an article about the arrest of Christian converts, on [Social Media 1] page. However, given that I reject his claim that he has in fact converted to Christianity, I am not satisfied that his attendance at the church and Bible studies, his baptism and his subsequent [Social Media 1] postings were otherwise than for the purpose of strengthening his claims to be a refugee.

### **Asylum Seeker**

16. The applicant claims, and I accept, that he left Iran using his own passport in May 2013 to travel by plane, via [Country 2], to [Country 1]. He subsequently left [Country 1] to travel to Australia in a boat organised by smugglers. I find that, if he were to return to Iran, he may be considered a returned asylum seeker by the Iranian authorities. The applicant lost his passport coming to Australia.

### **Refugee assessment**

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17. 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**

18. 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.
19. As discussed above, I am not satisfied that the applicant was of any adverse interest to the Iranian authorities, or anyone else, at the time he left Iran in May 2013. I accept that the

applicant has attended church and Bible studies, and was baptised in July 2017, in Australia. I also accept that in July 2017 he posted material to [Social Media 1] account about his baptism and a link to an article about the arrest of Christian converts. However, as I am not satisfied that he was baptised, went to Bible studies, attended church and made the posts on [Social Media 1] otherwise than for the purpose of strengthening his claims to be a refugee, I disregard this conduct in accordance with s.5J(6) of the Act.

20. Country information indicates that Muslims in Iran who leave their faith or convert to another religion may face apostasy charges.<sup>2</sup> However the Department of Foreign Affairs and Trade (DFAT) does not suggest that the government monitors religious observance by Iranians, and indicates that apostasy charges are no longer an everyday occurrence in Iran, and when used, religiously based charges often have clear political overtones (and are often coupled with national security charges), or where proselytising is involved.<sup>3</sup> Other country information also indicates there is a significant level of non-attendance at mosques, non-practising Muslims form a large part of the population, and that non-participation in Muslim rituals and non-attendance at mosque does not necessarily arouse suspicion in Iran.<sup>4</sup> Based on the country information I am not satisfied that there is more than a remote chance that the applicant's status as a non-practising Shia Muslim would come to the attention of the Iranian authorities or be of concern for that reason, or that he would otherwise suffer any harm as a result.
21. I accept that, if returned to Iran, the applicant may be considered a returning asylum seeker from Australia, where he has resided for over six years.
22. Country information indicates there have been occasions when failed asylum seekers have been arrested on their return to Iran.<sup>5</sup> However, those cases generally appear to involve people with pre-existing profiles in Iran or who have a profile involving anti-Iranian regime activities while living abroad. DFAT does not suggest that returnees are harmed for reason only of having sought asylum in another country.<sup>6</sup> The applicant, on my findings, was not of adverse interest when he left Iran, and he has not been involved in any anti-Iranian regime protests or activities in, or on his way to, Australia.
23. DFAT's 2018 report<sup>7</sup> indicates that Iran did not permit the involuntary return of its citizens from Australia, but after the signing of memorandum of understanding with Australia on 19

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<sup>2</sup> Including UK Home Office (UKHO), "Country Policy and Information Note Iran - Christians and Christian converts", 31 May 2019, 20190531161542; 'A Group of Christian Converts Arrested in South-Western Iran', Mohabat News, 21 October 2017, CXC90406616018; 'Another Christian Convert Arrested in South-Western Iran', Mohabat News, 23 October 2017, CXC90406616168; 'Iran: Christian convert arrested in Dezful', Iran Human Rights Monitor (United States), 24 October 2017, CXC90406616372; 'Another Christian Prisoner Temporarily Released on Bail in South-Western Iran', Mohabat News, 30 November 2017, CXC90406618801; 'Christian Prisoner Mohammad Ali Torabi Temporarily Released on Bail', Mohabat News, 27 November 2017, CXC90406618800; and the articles supplied by the applicant in his TPV application.

<sup>3</sup> DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

<sup>4</sup> "Iran's Other Religion", Boston Review (United States), 1 June 2003, CX82EDE9415499; Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931; and Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Treatment of atheists by State and non-State actors", 12 June 2017, CISED50AD4616.

<sup>5</sup> Including Amnesty International, "AMNESTY INTERNATIONAL - URGENT ACTION UA 125/11 Student activists held in Iran", 6 May 2011, CX264288; "An Arab Asylum Seeker Sentenced to Jail after Returning to Iran", Human Rights Activists News Agency (United States), 30 May 2017, CXC9040668619; "Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway", Iran Human Rights (Norway), 20 September 2017, CXC90406614387; National Council of Resistance of Iran, "6 Years of Imprisonment for a Refugee, After Returning to Iran From the Netherlands", 4 March 2017, CXC9040668613; and "Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran", Center for Human Rights in Iran (United States), 18 October 2017, CXC90406615858.

<sup>6</sup> DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

<sup>7</sup> Ibid.

March 2018 Iran agreed to facilitate the return of Iranians who have no legal right to remain in Australia and who arrived after that date. The applicant arrived in Australia in July 2013 and I am satisfied that if he was to return to Iran it would only be on a voluntary basis. As the applicant's passport was lost while travelling to Australia, the DFAT 2018 report indicates that he will require a temporary travel document issued by Iranian overseas diplomatic representatives to return to Iran. DFAT also indicates that authorities at the airport in Iran will be forewarned about the return of a person on a temporary travel document because of their sophisticated systems.

24. The DFAT 2018 report states that the Iranian authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as committing a crime before departing. The applicant is not such a person. DFAT is not aware of any barriers to voluntary returnees finding work or shelter in Iran, or returning to their home region. The Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including critical social media posts, converting to Christianity, and LGBTI activities.<sup>8</sup>
25. I am not satisfied that the applicant faces a real chance of harm as a returning asylum seeker from Australia, now or in the reasonably foreseeable future.
26. Considering the applicant's circumstances and profile as a whole, in the context of the country conditions in Iran I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

27. 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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28. 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**

29. 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.

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<sup>8</sup> Ibid.



30. I accept that while in Australia the applicant attended church and Bible studies for a period, was baptised in July 2017, and made some Christian related posts on [Social Media 1] account in July 2017, although I am not satisfied that he has any genuine interest in Christianity or in engaging in Christianity in the foreseeable future. The country information indicates that the Iranian authorities take little interest in the activities of failed asylum seekers outside of Iran, including critical social media posts and Christian conversion.<sup>9</sup> I am not satisfied that the applicant's Christian activities in Australia and his small number of Christian posts on [Social Media 1] in July 2017, even if it became known, would place him at real risk of significant harm, if he returned to Iran.
31. I have found that the applicant does not otherwise face a real chance of harm in relation to his claims or profile. As 'real risk' and 'real chance' involve the application of the same standard,<sup>10</sup> he also does not face a real risk of any harm in Iran. I am not satisfied that the applicant faces a real risk of significant harm in Iran.

### **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**

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

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<sup>9</sup> Ibid.

<sup>10</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## 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.