



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07682

IRAN

IAA reference: IAA19/07684

IRAN

IAA reference: IAA19/07685

IRAN

IAA reference: IAA19/07683

Date and time of decision: 16 January 2020 12:50:00

S Kamandi, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

*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 applicants (the applicants) are a family from Iran and consist of a husband (the applicant), his wife and their son and daughter. The applicants arrived in Australia [in] April 2013 and on 9 May 2017 lodged a combined application for Temporary Protection Visas (TPV).
2. On 18 December 2019, a delegate of the Minister for Immigration (the delegate) refused to grant them visas on the basis that the applicants were not persons in respect of whom Australia owed protection obligations. The delegate found that the applicant was not of any interest to the Iranian authorities at the time of the applicants' departure from Iran. While the delegate accepted that the applicant was an atheist and posted some anti-regime or anti-religious posts on [Social media 1], the delegate was not satisfied he faced a real chance of serious harm or was at risk of significant harm as an atheist or for reasons of his social media posts or as a returned asylum seeker from a western country.

### 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. On 9 January 2020, the IAA received an email attaching a submission from the applicant. The submission outlines the applicants' disagreement with the delegate's decision and makes with specific references to the delegate's findings and country information cited in the delegate's decision. It also reiterates claims and evidence that were presented to the delegate at the TPV interview. I do not consider the submission to be new information and have had regard to it in assessing the applicant's claims.

### Applicants' claims for protection

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5. Only the applicant made claims for protection. His wife, son and daughter have not raised their own claims in their TPV application and are relying on the family unit criteria. At the TPV interview the applicant confirmed that his son, who is [age] years of age, is living with the family and relies on him for financial support. At the TPV interview, the applicant also raised claims on behalf of his wife and children as outlined in the summary below.
6. The claims for protection can be summarised as follows:
  - The applicant was born in Ahwaz city in Iran and is of Persian ethnicity. He does not practise Islam and is an atheist.
  - His father is not religious and never asked the applicant to pray or attend religious gatherings. However, the applicant's mother is religious and forced the applicant and his siblings to pray. When the applicant turned 11 years old, his mother forced him to fast during Ramadan.
  - The applicant went to school when the revolution started and had to attend compulsory Islamic classes. Women had to cover their bodies and there were dramatic changes in the country.

- When the applicant was in grade [number], the war between Iran and Iraq started and his family lost their home and moved to Shiraz. The applicant was abused and bullied by teachers and students at school because he was from Ahwaz.
- In around 1982 or 1983, the applicant and his family moved back to Ahwaz. The area was controlled by the army and people were encouraged to take part in fighting from a very young age. After the war ended, the Iranian regime got stronger and engaged in propaganda. However, the applicant listened to international news and became aware of the Iranian government executing people and a massacre at the university that killed thousands. The applicant got access to prohibited books through friends or the black market.
- The applicant went to [a] University and studied [subject] for four years. He was young and ambitious and spoke up about his thoughts and views on politics and other public topics. He was monitored by the government and was interviewed many times by the Basij.
- The applicant wanted to get a good job in [an industry] and undertook more courses to gain the knowledge needed. After he graduated from University, he failed to get a job for nearly two years due to corruption in the country. He got married and was dependant on his parents financially. He did get some casual jobs in [other sectors].
- In 2009, around the time of the elections in Iran, the applicant was working for consulting company on [a] project. The company was secured by guards appointed by the Basij. They started to put up religious signs and asked people to pray. The applicant never practised the religion and could not work under that sort of pressure and asked to be transferred to another city. He was transferred to another city and was asked to sign and alter documents. He asked to be transferred back to Ahwaz, but couldn't work under pressure and decided to leave his job. The applicant commenced working with a company he worked on a prior occasion. After completion of a project, he got another job for six months through connections.
- The applicant was constantly questioned by members of the Basij about his faith. On one occasion he was asked about one of his colleagues that he shared information with. On another occasion, while driving with his wife, his car was stopped and his wife was asked to remove her lipstick.
- The applicant was asked to attend his daughter's school and was asked why his daughter, who was six or seven years old, was not wearing the hijab. The applicant was also called in by his son's high school principal about his son not participating in prayers and religious classes.
- The applicant is a member of an Iranian atheist group and has shared anti-religious posts on [Social media 1] while in Australia.
- The applicant's wife is in need of hearing aids which she may not be able to access in Iran due to Iran's economic sanctions. His wife is also under pressure from her and the applicant's family because of not wearing the hijab and not disciplining their daughter to be a Muslim. His wife now has similar religious views as the applicant.
- The applicant fears that he would be arrested and harmed for reasons of his atheism, social media activities and as a returnee from a western country.

## Refugee assessment

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7. 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

8. 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.
9. The applicant, his wife and children arrived in Australia in April 2013 and have consistently claimed to be nationals of Iran. The applicant provided the delegate with originals of his and his family member’s birth certificates and his marriage certificate at the TPV interview. The applicant’s TPV application also includes the biodata pages of his and his family member’s passports. I accept that the applicants are nationals of Iran and that Iran is the receiving country for the purposes of this review.
10. The applicant claims that he is of Persian ethnicity. At the TPV interview, the applicant confirmed that although he was born and resided in Ahwaz, he is not an Arab and is of Persian ethnicity. The applicant has not raised any claims on the basis of his ethnicity or area of origin.
11. Although the applicants’ TPV application indicates their religion as Shia Muslim, at the TPV interview the applicant confirmed that he did not have a religion and identifies himself as an atheist. In his TPV statement, the applicant indicates that his father was not religious and never asked him to pray or attend religious gatherings. However, his mother was religious and forced the applicant and his siblings to pray but they had no passion and love for the religion. The applicant also states that as he went to school after the Iranian revolution in 1979, he witnessed changes in his country, including women being forced to cover their bodies and having to attend compulsory religious classes while at school. Country information<sup>1</sup> before me indicates that the 1979 revolution which established the Islamic Republic of Iran, transformed

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT) “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226; DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677; US Department of State, “International Religious Freedom Report for 2017 – Iran”, 29 May 2018, OGD95BE927512.

Iran. Shortly after the revolution both men and women of all religions were required to adhere to conservative dress codes in public; opposition political organisations were systematically dismantled; law enforcement and security organisations were established to defend the Islamic republic and the revolution; all schools, public and private, were required to include a course on Shia Islamic teachings; and that all pupils must pass the course to advance to the next educational level. I accept that the applicant did not have any passion for religion, but was forced to pray and fast by his mother and had to attend compulsory religious classes at school. The applicant's evidence does not suggest that he came to any adverse attention for reasons of his religious belief or lack of commitment to Islam during his schooling.

12. In September 1980, Iraq invaded Iran, resulting in the eight year Iran-Iraq war which resulted in significant casualties and displacement of people.<sup>2</sup> I accept the applicant's evidence that his family lost their home and moved to Shiraz. Given the ongoing war between Iran and Iraq at the time, I accept that the applicant may have been bullied by teachers and students while attending school in Shiraz for reasons of originating from Ahwaz, an Arab majority area, although he himself did not identify as an Arab. The applicant claims and I accept, that his family returned to Ahwaz in around 1982 or 1983, and given the ongoing war, I also accept that the applicant's area was controlled by the army and that people were encouraged to take part in fighting in the war. However, the applicant's evidence does not suggest that either he or any member of his family participated in the war or that they were otherwise harassed or harmed. The applicant's TPV application indicates that he completed secondary school in Ahwaz.
13. The applicant claims that he and his father listened to International news and he became aware of the Iranian government's execution of its people and started to develop views about the government. Although in his TPV statement, the applicant states that he also "started to get access to some prohibited books either through friends or through black market" his evidence does not suggest that he came to the attention of the authorities or experienced any harassment or attention as a result. The applicant's evidence is that after completing high school in [year], he went to [a] University and studies [subject] for four years. As he was passionate about getting a job in the [specified] industry, he also undertook additional courses to gain the knowledge required. While the applicant's TPV statement indicates that he was closely monitored by the Basij and was "called many times" and interviewed by the Basij, his statement does not provide any specific details of the timing or reason for why he was monitored or interviewed. At the TPV interview, while the applicant made general assertions about having been under pressure and being monitored by the Basij and the Sepah while working in Iran, he did not provide any details of ever coming into adverse attention while at University for reasons of expressing his anti-government views, possessing or sharing forbidden books or for any other reason. I note that the applicant was able to complete his studies in [subject] and undertake additional courses.
14. The applicant claims that after he graduated from University, for nearly two years, he was not able to obtain a job. In his TPV statement, the applicant attributes his failure to obtain a job mainly to corruption in the country, but also states that he "failed to get any job maybe because of his appearance". I note that the applicant has not made any claims regarding his ethnicity, place or origin or that he was discriminated against due to his appearance in the years following the initial two years of his unemployment. I do not accept that the applicant's assertion that he may not have secured employment because of his appearance during that time as it is merely speculation on his part. However, I note country information<sup>3</sup> that despite

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<sup>2</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

<sup>3</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

Iran's strong legal framework and regular calls by the authorities to tackle corruption, international observers report that corruption has remained endemic in all sectors of the Iranian economy and society. I also note the applicant's evidence that it is common to obtain employment through connections, which he also benefited from in obtaining the last position with [Company 1] in the years prior to his departure. While, I accept that the applicant was unable to secure employment in the two years after his graduation in [year], his evidence does not suggest that this was due to his religious or political views and as noted below, the applicant was able to secure continues employment with various [companies] up until his departure from Iran in 2013.

15. The applicant's TPV application includes information about his employment while in Iran and in Australia. The information indicates that the applicant worked in retail from 1999 to 2000; he then obtained a position as a self-employed contractor in "[work sectors]" from 2000 to 2002; following which he was employed in [companies] from the end of 2002 until March 2013 when he departed Iran. In his TPV statement, the applicant states that around the time of the 2009 election he was working for [Company 2], a consulting [sector] company, which was a secured place with security guards appointed by the Basij guarding the entrance of the company. The applicant states that "they" started to ask people about praying and put up special religious signs "targeting people like me as I never practiced religion". He states that they pressured him and because of the constant abuse he requested of his manager to be transferred to another city, which was granted. His statement seems to suggest that once he was transferred, he was asked to alter some documents and as he couldn't work in such environment he requested to be transferred back to Ahwaz, which was granted. However, "he couldn't cope with the pressure" and decided to leave his job. He asked [Company 3], a company for which had work for on a prior occasion to take him back and they did. He worked on a project with the company for seven months and at the completion of the project managed to get a job with [Company 1].
16. In his TPV statement, the applicant also claims that members of the Basij were constantly questioning him about his faith in Islam. As a subcontractor, he had to work on Fridays, a day that not many people worked, and he was questioned about this. One day they asked him questions about one of his colleagues N and whether he had shared any information with him. The applicant states that he told them that he had given N the book called "Satanic verses". The applicant claims that they asked whether he read any books that were against the religion which he did not respond to. After he became agitated, they gave him a warning and told him that they were monitoring him and had his phone and could come again if necessary.
17. At the TPV interview, the applicant was asked about his problems in Iran. He recounted his evidence about being forced to learn about Islam as school, the change in his views regarding Islam and the government of Iran, his inability to obtain a position after graduating from University and that after he found a job, he noticed that "they" were monitoring him and putting him under pressure and watching him. He then stated that once "they" took him and questioned him. When asked who took him and questioned him, the applicant stated the Basij and the Sepah. When asked whether this was on separate occasions, the applicant stated that he was questioned on at least two occasions. He then continued to state that they asked him about what sort of books he was reading and sharing with people, and that the applicant thought that they had found out that he was sharing books with his friends. The applicant continued to state that while working on a project, with Sepah as the contractor, he was being forced to sign documents that were not real and he was threatened that if he refused his life would be in danger. When asked if he was asked to commit company fraud, the applicant stated "yes sort of company fraud". He stated that for this reason he changed his job and didn't feel safe. When asked if he was ever accused of being anti-religion or an atheist, the

applicant stated that they asked him whether he performed his obligatory prayers and he tried to avoid answering the question and stated that he couldn't pray in this environment but prayed when he went home. He was always under pressure to pretend to be a Muslim. When asked if he was ever arrested, the applicant stated that after being questioned and interviewed, he couldn't wait for the result, they may have arrested him. At the conclusion of the interview, the applicant stated that he forgot to mention that he heard that his colleague N, who they accused him of having shared information with, was arrested in about 2008 or 2009.

18. While the applicant claims that he was a person of interest to the Basij and the Sepah and was pressured, monitored, watched and constantly questioned by the Basij, his evidence in support of these general assertions set out above was in part contradictory, lacked specific details, was presented in a vague and general manner and was overall all very unconvincing. While the applicant claims that he was constantly questioned about his faith, when specifically asked about how many occasions these incidents occurred, the applicant stated that he was questioned on at least two occasions but provided no details of when these occurred. In his TPV statement the applicant claims that he was questioned about sharing information with his colleague N and told them that he had given N the book called "Satanic verses", while at the TPV interview the applicant stated that when he was questioned he thought that they had found out about him sharing books with his friends. He did not mention having given N any books nor made any reference to the Satanic Verses. He also gave evidence that his colleague N was arrested in 2008 or 2009, information that he did not present in his TPV statement prepared in 2017. Further, while the applicant gave evidence at the TPV interview that he is the sort of person that likes to express his views and ideas which caused him problems, he also gave evidence that he avoided answering questions about whether he performed his obligatory prayers and told them he prays at home and did not respond to questions about whether he read any books that were against the religion.
19. Country information<sup>4</sup> outlines Iran's censorship and control over approval and publications of books, such as the Ministry of Education's role in approving textbooks use, including religious books, in coursework; the Ministry of Culture and Islamic Guidance's review of books and exhibitions to ensure adherence to Islamic values; the arrest and prosecution of individuals who write content that is deemed illegal or inappropriate and the banning of books deemed as inappropriate or against the Islamic values. Given this information I consider it highly unlikely that the applicant would not have been dealt harshly by the Basij, as indicated below by organisations tasked to monitor and enforce Islamic religious values and seen to at time take action in an arbitrary and heavy handed manner, if the Basij or the Sepah had information or suspected that the applicant read or shared information considered as anti-religion, or that he gave the book, the Satanic Verses to his colleague. Further, it is also difficult to accept the applicant's claim that while N was arrested in 2008 or 2009, the applicant managed to avoid being arrested even though he claims to have given N the book and told the authorities that he had done so. This is particularly so given the applicant's claim that he was under the watchful eyes of the Basij and the Sepah for a significant period of time and as early as when he was studying at [University].
20. The Basij, a volunteer paramilitary organisation which was established shortly after the revolution operates under the command of the Islamic Revolutionary Guards Corp (IRGC). Its duties include internal security, law enforcement and moral policing. The government has

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<sup>4</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; UK Home Office, "Country Policy and Information Note – Iran: Journalists and Internet-based media", 25 October 2016, OGD7C848D83.

mobilised the Basij on occasions to suppress anti-government protests. The Basij can patrol streets and conduct checkpoints, particularly at times of heightened security atmosphere or large events. Basij members are also responsible for enforcement of the Islamic code of conduct in public and can impose fines or arrest members of the public, and are seen as a scourge for urban women, usually from wealthier social groups who try to push the boundaries of the dress code. Although women who appear in public without a proper hijab may be imprisoned or required to pay a fine, these penalties are very rare. It is more likely that women accused of having bad hijab be escorted to a police station and asked to have a family member bring acceptable hijab, after which they can leave without sanctions.<sup>5</sup>

21. I am willing to accept that the applicant may have been questioned by the Basij about his adherence to the Islamic faith and why he was working on Fridays, which is a holiday during which Mosques conduct Friday prayers; and that people at the applicant's workplace talked about the religion and the Basij displayed information about religious events in the applicant's workplaces. Given the endemic corruption in Iran, I also accept that the applicant may have been asked to sign documents which he was not willing to do. However, I am not satisfied that he was under constant pressure or was constantly questioned, interviewed or monitored by the Basij or the authorities for reasons of his non-adherence to Islam, anti-religious or anti-government views or that he that he changed jobs because of such pressures. The applicant's evidence does not support that he was ever arrested, accused of being anti-religion or anti-government by the Basij or any other person nor that his employment was terminated by his employers, including employment where he claims the Sepah were the contractors and asked him to sign false documents. I am also not satisfied that the applicant obtained or shared anti-religious books or information with his colleagues in Iran or that his colleagues N's arrest, if true, had any connections with the applicant.
22. Given the Basij's role in moral policing, I am willing to accept that on one occasion, the applicant's wife was asked to remove her lipstick. Again the applicant's evidence does not suggest that his wife was arrested, fined or encountered any further repercussions as a result of this incident. The applicant has not outlined any further incidents encountered by him or his wife in relation to this incident. Given Iran's Islamic and religious education system, I also consider it as plausible that the applicant may have been called into his daughter's and son's schools for reasons of his daughter's non-adherence to Islamic dress code or his son's lack of participation in religious classes. However, the applicant's evidence does not suggest that either he or his children came to any further adverse attention or were harmed as a result. It appears that his children continued with their education up until their departure from Iran.
23. In addition to the above, the applicant gave evidence that he and his family members departed Iran using their own legally obtained passports. At the TPV interview the applicant suggested that the reason he was told by his smuggler that using his passport would not be a problem may have been because the smuggler had connections. DFAT reports<sup>6</sup> that the authorities routinely impose travel bans on citizens for reasons of security concerns and that political activists are likely to face travel bans. The IRGC are also able to impose travel bans without recourse to judiciary. Iranians under travel bans are often unaware of their status until the reach the passport control at the airport and prohibited from leaving. Security organisations are present in all Iranian airports with sophisticated passport control checks. This suggests that if the applicant was of any real interest to the authorities he would not have been able to

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<sup>5</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>6</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.



depart the country using his own passport without encountering any difficulties at the airport. I do not accept the applicant's speculative assertion that the people smuggler who arranged for his journey to Australia may have had connections and that is why his departure from Iran was uneventful. In considering the applicant's evidence, I am not satisfied that he was of a person of interest to the authorities for any reason at the time of his departure. I am not satisfied that he was known to the authorities for reasons of anti-religion or anti-government views or that he had an adverse profile with the authorities.

24. I do not accept the applicant's evidence at the TPV interview that his family members in Iran were questioned about his whereabouts shortly after his departure from Iran. The applicant did not present this information in his TPV statement made in 2017, some four years after his arrival in Australia. He only raised this in response to the delegate's question about whether his family have been presented with any court orders or summonses against the applicant. Given my finding about the lack of any adverse profile with the authorities, I am not satisfied that the applicant was pursued or that his family were asked about his whereabouts after his departure from Iran. I note the applicant's evidence that his parents and brother remain in Iran; that his older brother is a government officer and his other two brothers work in the private sector. Beyond the applicant's assertion that one of his brothers was asked about the applicant by people who claimed to be from the Department of Jobs, which I do not accept, the applicant's evidence does not suggest that his remaining family members have come to adverse attention of the authorities or have been harassed for any reason.
25. I accept that, apart from being forced by his mother to pray and fast when he was young and compulsory religious classes at school, the applicant did not practise Islam in Iran. Although the applicants' TPV application notes their religion as Shia Muslim, at the TPV interview, after having been prompted by his migration agent, the applicant stated that he was an atheist. Given the applicant's evidence about his views about Islam and the Islamic government of Iran and his evidence that he did not practise any religion in Iran or in Australia, I am willing to accept that the applicant considers himself to be an atheist and does not practise any religion.
26. At the TPV interview, the applicant claimed that he is a member of the Iranian atheist group and has shared anti-religious posts on [Social media 1] while in Australia. When asked if he had an online profile, the applicant stated that he is on [Social media 1] and [Social media 2] and has shared posts that he considers interesting or that align with his views. He confirmed that the posts shared are anti-religious and agreed to provide the delegate with evidence of his online activities. The delegate informed him, in presence of his migration agent, that any information submitted is to be translated in English.
27. On 11 November 2019, the applicant's migration agent provided the delegate with two emails with attachments. The first email attached snapshots of what appears to be the applicant's [communication] account profile and indicates that he joined [the communication app] in September 2011. Apart from his profile noting his religious views as atheist, there is no other information provided nor any details of any messages or communication to others via [communication app]. The second email attached snapshots of the applicant's [Social media 1] activities in 2016 and 2017. Most of the posts included in the snapshots appear to be in Persian language with no English translation of the content provided. However, there are two posts which shows that the applicant liked the [Name] Organisation [Social media 1] and another which shows that the applicant shared a post by this organisation in October 2016. There are also a couple of posts with religious content which appears to have been shared by the applicant in late 2016 and 2017. There is no evidence provided of any online activity in the past two years or so. While I accept that the applicant liked and shared posts in 2016 and 2017 on [Social media 1], some of which appears to be material posted by the [Name] community

organisation, I am not satisfied that the applicant is an active member of this organisation or taken part in this organisation's activities. At the TPV interview, the applicant confirmed that has not attended any anti-regime or anti-religious protests while in Australia. The applicant has also not provided any evidence of any ongoing social media activism beyond his very limited activities as evidenced by the snapshots provided to the delegate.

28. While the applicant claims that his social media activities and his atheism have come to the attention of the authorities in Iran and he will be harmed on return, I do not accept this to be the case.
29. Country information before me indicates that the official religion of Iran is Shia Muslim and that a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. However, it is noted that Iran is one of the least religious countries in the Middle East and while Iranians see Islam as part of their identity, many have moved from institutionalised religion. It is unlikely that individuals will be prosecuted for apostasy and highly unlikely that the government would monitor religious observance by Iranians. It is rare that Iranians are called upon to answer direct questions about religious practices or pressured to observe religious practices, with the exception of when applying for certain jobs such as public media or military, or observance of fasting during Ramadan. Whether or not a person regularly attends mosques or participates in religious occasions such as Ashura or Muharram or that a person is no longer faithful to Shia Islam is unlikely to come to the attention of the authorities.<sup>7</sup> The 2018 DFAT<sup>8</sup> report does not suggest that monitoring of religious practices by the authorities have increased in the recent years.
30. In relation to apostates and atheists, the country information indicates that perceived apostates are only likely to come to the attention of the Iranian authorities through public manifestations of a new faith, attempts at proselytization, attendance at house churches or via informants. There is also more and more atheist in Iran and that atheists are unlikely to come to the attention of the authorities unless they seek to publicise their views.<sup>9</sup>
31. In relation to monitoring of social media activities, country information before me indicates that although the Iranian government cannot effectively monitor [Social media 1] activities of its citizens, there are instances of arrest that indicate that Iranian authorities are keeping a close eye on [Social media 1] activities and have at times blocked or filtered websites they consider objectionable, including International social media sites such as [Social media 1]. However, on the information before me it appears that people arrested are primarily journalists and/or bloggers, administrators of social media pages and individuals who are running popular groups or chat apps. Although it appears that there have been some instances of ordinary individuals also coming to the attention of the authorities for engaging in publishing information that is perceived to be insulting to Islam or waging propaganda against

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<sup>7</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

<sup>8</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>9</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; The Economist, "Religion: Take it or leave it", 1 November 2014, CX1B9ECAB7499; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation", 28 September 2015, CISEC96CF13622; Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', June 2014, CIS28931; ACCORD, "Iran: Treatment of Atheists by State and non-State actors", 12 June 2017, CISED50AD4616.

the state, frequent harassment is directed at journalists, bloggers and other media professionals to ensure they do not cross these known red lines.<sup>10</sup>

32. In light of country information before me, while there are instances of arrest of those who have openly expressed their religious views or anti-regime views in public or using online platforms, the information does not indicate that the authorities routinely monitor religious observance by Iranians or conduct widespread monitoring of individuals' [Social media 1] activities, especially of those individuals, such as the applicant, who do not have an adverse profile with the authorities and have not posted material that may be perceived as insulting to Islam or waging propaganda against the State. As indicated above, apart from very limited questioning by the Basij about his religious adherence and working on Fridays, the applicant did not encounter any other repercussions for not practising Islam in Iran and was not accused of being an apostate or an atheist by the authorities. I have found that he had no adverse profile with the authorities at the time of his departure and I consider it very remote that the applicant's very minimal [Social media 1] activities or his [Communications app] profile to have been monitored or come to the attention of the authorities in Iran. While the applicant claims that he has expressed his views on his [Social media 1] profile and that given that Iran is "in high alert now" this would have come to the attention of the authorities, the applicant has not provided any tangible evidence in support of this assertion. While I accept that he has shared some religious posts in 2016 and 2017, there is no evidence of his ongoing activism or that Iran is on high alert about the activities of individuals such as the applicant and has become aware of the applicant's [Social media] posts. The applicant submits that there is "no evidence that my family members would be harassed or not". As indicated above, I have not accepted the applicant's claim that his brother was asked about him shortly after his departure from Iran, and the applicant's evidence does not suggest that his family have been approached in the recent years or asked about him or his [Social media 1] activities in 2016 and 2017.
33. In relation to his religious and anti-regime views, the applicant claims that he should be able to express his views and not have to modify his behaviour. As indicated above, the applicant's evidence does not suggest that beyond his very limited and now somewhat dated online activity on [Social media 1], he has expressed his views about Islam or the Iranian regime to anyone in the past. I have rejected his claim that he informed the authorities about sharing a book with N and his evidence also suggests that when asked about adherence to obligatory prayer and sharing of information, he either avoided answering such questions or informed the authorities that he prays at home. Although I accept that he has not practised any religion in Australia his evidence is that apart from very minimal [Social media 1] posts in 2016 and 2017 and his [communication] profile indicating his religious views as atheism, the applicant has not partaken in any anti-religious or anti-regime activities while in Australia and I do not accept that he is an active member of the [Name] organisation. The applicant has not presented any evidence of ongoing or recent online activity of this nature and I consider this to be telling of his commitment or desire to engage in activities to express his views. I am not satisfied that the applicant has publicly expressed his views or ideas about religion or the Iranian regime in Iran or that he has any desire or intention to express his views in the future at all or more broadly than he has in the past. I consider the chances of him coming to the adverse attention of the authorities for any future similar social media activities to be no more than remote.
34. In considering the applicant's claims and evidence in the context of country information before me, I consider the chances of the applicant facing any harm due to his social media

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<sup>10</sup> Freedom House, "Freedom on the Net 2017 – Iran", 14 November 2017, NG2A465F5221; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

activities, being an atheist or for reasons of his religious or political views in the foreseeable future to be no more than remote.

35. I have accepted that while residing Iran, on one occasion the applicant's car was stopped by the Basij and his wife was asked to remove her lipstick. I have also accepted that the applicant was called in by his children's schools about his daughter not wearing the hijab and his son not participating in prayers and religious classes. As indicated above, the applicant's evidence does not suggest that either he or any of his family members faced any further repercussions due to these incidents. Given the country information cited above about the role of the Basij and moral policing in Iran and compulsory religious classes at all schools, I also accept that it is possible the applicant's wife or daughter may in the future experience similar attention from the Basij for reasons of their appearance or clothing and that the applicant's daughter will be required to wear the Hijab and attend compulsory religious classes. However, noting the applicant's past experiences and the country information about repercussions faced by Iranians due to non-adherence to Iran's Islamic dress code, I am not satisfied that there is a real chance the applicant's wife or children will encounter anything beyond what they have experienced in the past. I do not consider the low level of harassment and attention that they may face in the future, or having to adhere to Islamic dress code of the country and the applicant's daughter having to attend compulsory Islamic classes at school amounts to serious harm.
36. The applicant claims that his children have grown up and follow his ideas and are accustomed to Australian culture. His daughter was [age] years old when she left Iran and is now [age] years of age. She has "grown up with Australian values and gender equality" and if returned she will be harassed and mistreated for having different views. I note that the applicant's children went to school while in Iran and the applicants' TPV application indicates that they can speak, read and write Persian. The applicant's claim that his children follow his ideas suggests that they may not believe in or practise any religion. It is also true that they have lived in Australia for a period of over six years, have attended school in Australia and may have become acculturated to Australian culture and way of living. However, the applicant's evidence does not suggest that his children would not comply with the acceptable religious and cultural norms in Iran as they have in the past. While I accept that the applicant was informed of his daughter's lack of compliance with the Hijab when she was young and of his son's non-participation in religious classes, the applicant's evidence does not suggest that they faced further adverse attention or repercussions as a result. It appears that they continued to attend school until their departure from the country. I also note country information<sup>11</sup> which indicates that despite strict censorship, Iran has a vibrant cultural scene and most citizens aspire to and try to live what could be called a modern lifestyle. Its majority youth population push boundaries by listening to banned western music and are attracted to western style clothing and hairstyles and that they are unlikely to come to adverse interest of the authorities for these reasons alone. In light of these matters, I am not satisfied that the applicant's children will not reintegrate within the Iranian society or would be at a real risk of any harm for the reasons claimed.
37. The applicant also claims that his wife now has the same ideas as him. At the TPV interview, the applicant stated that his wife is under pressure from her and the applicant's family about not wearing the Hijab and not disciplining their daughter to be a Muslim. He stated that he could show the delegate with messages that "they" send his wife. The delegate was provided with snapshots of messages in Persian. The date of the communication is not evident and the

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<sup>11</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

content is not translated in English. While, I accept that the applicant's wife has not worn the hijab and may not be practising Islam while in Australia, on the evidence provided, I am not satisfied that the applicant's wife "has the same ideas" as the applicant or has been pressured by their families for not wearing the Hijab or not disciplining their daughter or that she would be at risk of any harm for these reasons at the hands of their family members in Iran. I note that she was wearing the Hijab while in Iran as evidenced by her passport photo and that she was only stopped by the Basij on one occasion in relation to wearing lipstick. The applicant has not claimed that his wife will not be wearing the Hijab or will not adhere to Islamic dress code in Iran and on the evidence before me, I am not satisfied that the applicant's wife will face any harm for reasons of her conduct in Australia, her religious views or not practising Islam or any other religion.

38. At the TPV interview, the applicant claimed that his wife needs hearing aids and because of sanctions on Iran, he fears that her condition will get worse. The applicant has not provided any evidence of his wife's hearing condition or any associated medical needs. Country information<sup>12</sup> before me indicates that the Constitution states that every Iranian has the right to enjoy the highest attainable level of health. Health care and public health services are delivered through nation-wide networks. While the government remains the main provider of primary health care services, private sector also plays a significant role with 90 per cent of Iranian having health insurance. While it is reported that the imposition of sanctions on Iran has constrained the ability of Iran to finance humanitarian imports, including medicine, and Iranians with rare diseases/conditions that require specialised treatment have been impacted, it is noted that Iranian citizens covered by some form of basic health insurance are offered subsidized medications for most diseases and covered for the cost of treatment for rare diseases. In absence of any evidence about the applicant's wife's medical condition or her need for treatment, I am not satisfied that the applicant's wife is suffering from a rare disease or condition. Even accepting that she may need hearing aids, I am not satisfied that there is a real chance she would be adversely impacted by the sanctions imposed on Iran, or face any harm for reasons of her health condition or any treatment required.
39. The applicants claim that they are not in possession of valid Iranian passports and I accept that to be the case. In absence of valid passports, the applicants will require travel documents issued by Iranian diplomatic representatives to return to Iran. Historically Iran did not issue travel documents to involuntary returnees. On 19 March 2018, Iran and Australia signed a Memorandum of Understanding that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia.<sup>13</sup> However, as the applicants arrived in Australia prior to 19 March 2018, I find that if they were to return to Iran, it would necessarily be on voluntary basis. Further, where temporary travel documents are issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about the person's return.<sup>14</sup> I accept that if the applicants did voluntarily return, this may lead Iranian authorities to infer that the applicants sought asylum in Australia.
40. However, DFAT advises that voluntary returnees do not attract much interest amongst the large regular international movements of Iranians and that they will generally move quickly through airports. Further, where temporary travel documents are issued by Iranian diplomatic representatives overseas, while the authorities at the airport will be forewarned about the person's return, they will only question returnee if they had done something to attract the

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<sup>12</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; Human Rights Watch, "Maximum Pressure – US Economic Sanctions Harm Iranians Rights to Health", 30 October 2019, 20191030091324.

<sup>13</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>14</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

specific attention of the authorities.<sup>15</sup> International observers have reported that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims. This includes posting on social media, converting to Christianity, and DFAT advises that unless the person has an existing profile with the authorities, the risk profile for the individuals will be the same as for any other person in Iran within that category.<sup>16</sup>

41. Although there are reports of persons being arrested on return to Iran, these reports refer to cases involving individuals with pre-existing profiles in Iran or individuals engaged in activities abroad that is considered against the Iranian regime.<sup>17</sup> The evidence before me does not suggest that the authorities in Iran impute adverse political views to Iranians returning from the west, including those who have sought asylum and there is no indication that persons with the applicants' profiles who departed the country legally will be of adverse interest to the authorities on return to Iran. Given my findings above, I find the chance of the applicants being identified as a persons of interest or imputed with any adverse political or other profile, or being the subject of any harm, to be remote. I am not satisfied that the applicants face a real chance of any harm in this regard.
42. In considering the applicant's circumstances as a whole and in light of what I have accepted of his claims, I am not satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J of the Act

#### **Refugee: conclusion**

43. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

#### **Complementary protection assessment**

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44. Under s.36(2)(aa) of the Act, 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**

45. Under s.36(2A), a person will suffer 'significant harm' if:
  - the person will be arbitrarily deprived of his or her life

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<sup>15</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>16</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>17</sup> Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, "Jailing of returning journalists called part of anti-Rohani plan", 31 July 2014, CX324017; Committee to Protect Journalists, "Rouhani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970; Radio Zamaneh, "Mousavi's campaign worker arrested upon return to Iran", 16 February 2014, CX318168; Amnesty International, "'We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, p.56, CIS22610; Amnesty International, "Amnesty International - Urgent Action: UA 125/11: Student activists held in Iran", 6 May 2011, CX264288.

- 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.

46. I accept that the applicant's wife and children attract some attention or harassment for reasons of non-compliance with the Islamic dress code or non-adherence to strict religious norms as they have in the past. As noted above, the applicant's wife was asked by the Basij to remove her lipstick and the applicant was called in by his children's schools about his daughter's non-compliance with the Islamic dress code and his son's non-participation in religious classes. However, I do not consider that any consequences that they may face would involve significant harm. I am not satisfied that any attention or low level harassment that they may face or having to adhere to compulsory Islamic dress code and religious classes at school amounts to pain or suffering that can reasonably be regarded as cruel and inhuman in nature, severe pain or suffering or extreme humiliation such as to meet the definitions of torture or cruel or inhumane treatment or punishment or degrading treatment or punishment. I am also not satisfied that the applicants will face a real risk of being arbitrarily deprived of their lives, or be subject to the death penalty. I am not satisfied that the applicants face a real risk of significant harm as defined.

47. I have found above that the applicants do not face a real chance of harm in Iran for any of the other claimed reasons. The Federal Court held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicants do not face a real risk of significant harm.

48. I am not satisfied that there is a real risk that the applicants will suffer significant harm in Iran

#### **Complementary protection: conclusion**

49. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

#### **Member of same family unit**

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50. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include spouse and dependant children.

51. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

## **Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.



## 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.