



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA20/08222

IRAN
IAA reference: IAA20/08225

IRAN
IAA reference: IAA20/08223

IRAN
IAA reference: IAA20/08224

Date and time of decision: 22 May 2020 15:38:00
S Kamandi, Reviewer

Decision

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

Visa application

1. The referred applicants (the applicants) are a family from Iran and consist of a husband (the applicant), his wife (the applicant wife) and their two children. The applicant's son was born in Australia on [date]. On 23 September 2017, the family lodged a combined application for Safe Haven Enterprise Visas (SHEV).
2. On 9 April 2020, 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 accepted that the applicants were of Kurdish ethnicity with Kowli ancestry but was not satisfied that they would face persecution on this basis. The delegate did not accept the applicants' conversion to Christianity as genuine and found that the applicants did not face a real chance of harm or were at a real risk of significant harm for any of the claimed reason.

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 5 May 2020, the Immigration Assessment Authority (the IAA) received an email from Mr [A] attaching a letter in support of the applicants review before the IAA. The email indicates that the letter was not available at the time of the delegate's decision. The letter was not before the delegate and is new information.
5. The letter from Mr [A] (Minister of the [Church 1]) dated 5 May 2020 post-dates the delegate's decision and corroborates the applicant and applicant wife's evidence about their Church attendance and baptism at the [Church 1]. I am satisfied that the letter could not have been provided to the delegate prior to the delegate's decision and that there are exceptional circumstances to justify considering it.
6. The delegate considered the 2018 Department of Foreign Affairs and Trade (DFAT) report¹ which was current at the time. Since the delegate's decision made on 9 April 2020, DFAT published an updated report on Iran, namely the "DFAT Country Information Report - Iran" dated 14 April 2020.² As the 2020 DFAT report updates the 2018 DFAT report and given that DFAT reports are prepared specifically for the purpose of assisting in the determination of protection status, I am satisfied that there are exceptional circumstances to justify considering the 2020 DFAT report.

Applicants' claims for protection

7. The applicants' claims can be summarised as follows:
 - They are Iranian citizens. The applicant and applicant wife were born in Ilam Province in Iran and are of Kurdish ethnicity. They were born to gypsy families known as Kowli. Kowli people do not practise Islam, have the lowest status in society, and do not have any rights

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

² DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

and are not entitled to own land. They have a distinct accent and facial features which allows others to identify them as Kowlis.

- The applicant and applicant wife's families experienced ongoing verbal harassment and discrimination due to their Kowli ethnicity. They moved around and subsisted from earnings of mostly manual farm labour.
- When the applicant was young, his father paid someone to arrange to have some of their documents changed. Kowli people have no religion and are atheist. The applicant's father added the prefix [Name 1] to the names of the male members of the family and the suffix of [Name 2] to his sister's names, to show that they are descendants of Mohammad and to be seen as religious. His father also added their religion as Shia Muslim on their birth certificates.
- While at school the applicant was forced to attend mosque but he did not otherwise practise Islam. It became evident to his friends that he was not a practising Muslim and when he was in middle and high school, he was excluded from student life and was physically and verbally abused because he was a Kowli.
- In 1991, the applicant's mother was verbally threatened by a local person in the village and was told that her sort was not welcomed in the village. The applicant's mother was pregnant at the time and suffered a miscarriage.
- In around 1994, the applicant went to work on a farm in a neighbouring village. Two masked men attacked him by throwing rocks at him. The applicant was hit [and] suffered great pain. He escaped and attended a doctor who arranged an x-ray and prescribed medication. The applicant recovered a couple of days later.
- In about 1985, the applicant's brother was hit by rocks thrown by neighbours. He was injured and taken to hospital for treatment.
- The applicant and his wife are cousins. Their marriage was registered in April 2005. In 2007, the applicant wife together with the applicant and his family moved to Tehran and had their wedding ceremony in Tehran.
- Between 2007 and 2010, the applicant was employed by a [company]. It was a type of job offered to minorities and he had to work nightshifts. He would usually finish work [in] the morning when the Sepah and the Basij were patrolling the streets. They would recognise him as a Kowli due to his accent and threatened to arrest him unless he gave them his daily wage. This happened several times a week and affected the applicant's ability to pay rent and to subsist.
- The community was also verbally harassing the applicant and his family and asking them to leave. They would not greet them on the streets and made derogatory comments. The applicant and his wife moved three times during the five or six years that they lived in Tehran.
- In 2010, the applicant decided to find work in the [Workplace 1] to avoid being stopped by the Sepah and the Basij during the night. While working in the [Workplace 1], the applicant was harassed by other workers who made derogatory comments. The applicant contacted the police, but was told there was nothing they could do and that he had to move elsewhere.
- Around the same time, the applicant was exposed to Christianity by a couple of colleagues at the [Workplace 1] who had converted in secret. The applicant and applicant wife talked about religion and Christianity but knew they could not convert.

- In 2013, the applicant's wife and daughter were verbally abused by two women. The applicant's wife was shaken and frightened for their daughter's future and in May 2013, the applicant and applicant wife decided to leave Iran.
- While living in [Victoria], the applicant and applicant wife became friends with local Christian families and were invited to attend the nearby [Church 2]. They attended the Church every Sunday and enjoyed the companionship and open kindness of Christians. They asked to be baptised, but were informed that the Church could not baptise them or assist them with conversion to Christianity.
- After their move to [Suburb 1], the applicants started attending [Church 1] every Sunday. They were given documents in Farsi to learn about Christian way of life, which they decided they wanted to live. The priest guided them through the process of conversion and they were baptised [in] August 2017.
- The applicants fear harm for reasons of their religious beliefs and conversion to Christianity, their Kowli ethnicity and as returned asylum seekers.

Refugee assessment

8. 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

9. 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.
10. The applicant, applicant wife and their daughter arrived in Australia in April 2013. They have consistently claimed to be nationals of Iran and have provided documentary evidence in support. The applicant and applicant wife's son was born in Australia on [date] and his Australian birth certificate notes the applicant and the applicant wife as the parents. Their son is included in the family's combined SHEV applicant and his nationality is noted as Iranian. I

accept that the applicants are nationals of Iran and that Iran is the receiving country for the purposes of this review.

11. The applicant and applicant wife have consistently claimed, and I accept, that they were born and lived in Ilam province until 2007, when they moved to Tehran.
12. The applicant's and applicant wife's SHEV statements indicate that they were born into gypsy families known as Kowli in Persian. They refer to their grandfather being of Kowli ethnicity and that Kowli people are a minority and are seen as outcasts in the community. Their statements also indicate that their families experienced ongoing verbal harassment due to their ethnicity. The applicant's SHEV statement includes information about his father having experienced persecution and harassment and prevented from having a good education and finding work due to his Kowli ethnicity. At the SHEV interview, the applicant stated that Kowlis are easily identified by their obvious accent and appearance. He stated that while living in their village, other villagers who were Kurds, were against them and excluded them from celebrations and ceremonies due to their Kowli background.
13. Despite the evidence in the applicant's and applicant wife's SHEV statements that applicant wife was also born into a gypsy family and her family experienced harassment due to their Kowli ethnicity, at the SHEV interview, the applicant confirmed that applicant wife is his cousin and explained that applicant wife's mother is the sister of the applicant's father. He explained that as the applicant wife's father is not a Kowli, the applicant wife is also not a Kowli and did not experience any problems because she was not identified as a Kowli. During her SHEV interview, applicant wife referred to the applicant's problems due to his Kowli ethnicity and confirmed that she is not a Kowli and did not experience any problems.
14. The applicant's SHEV statement also indicates that Kowli people do not have a religion and they are atheists. He claims that when he was young his father paid someone to arrange to have some of their documents changed to hide their Kowli heritage. His father added the prefix of [Name 1] to the names of all males in the family to show that they are descendants of Mohammad and are religious. His father also included their religion as Shia Muslim on their birth certificates.
15. Country information³ indicates that the word Kowli refers to an ethnic group known pejoratively as "gypsies" and that most Iranian gypsies lead a more or less nomadic form of life and earn their living by begging, carpentry, fortune-telling, metalwork and singing. Kowlis are noted to be culturally and linguistically distinct and live on the periphery and margins in poor neighbourhoods. The information also indicates that as Kowlis do not have a permanent place of residence, are not included in the official statistics and are denied education due to not having identity cards. They suffer from stigma and exclusion, which limits their access to medical care. They marry within their social groups, with families deciding their children's marriage, usually without consulting them, and that their marriage is not registered. In relation to Kowlis' religious beliefs, the information provides that Kowlis are nominally Muslims and have some common practices with Iranian Muslim Shias.
16. I accept that Kowlis are a minority nomadic ethnic group in Iran and that they referred to as gypsies and suffer from stigma and social exclusion and have no or limited access to education and healthcare. In considering the applicant's and applicant wife's consistent evidence, I accept that their grandfather was of Kowli heritage and moved to Ilam province, where he remained

³ Country of Origin Information Services Section (COISS), "Iran – 20200219171017 – Kowli", 25 February 2020, 20200225150751.

and the applicant's father and applicant wife's mother, who are siblings, were born and resided. I accept the applicant's evidence that his father married his mother who is not from a Kowli family and that his two uncles gave his father land to work on. I also accept that the applicant and applicant wife's evidence that due to applicant wife's father not being a Kowli, she is not considered a Kowli. However, on the evidence before me, I have a number of concerns about the applicant's evidence that he and his family were identified and persecuted for reasons of their Kowli heritage in Iran and was not considered a Muslim and that the applicant, applicant wife and their daughter continued to face harassment and abuse after their move to Tehran in 2007 due to his Kowli heritage and that they left Iran due to these problems.

17. The applicant did not mention his Kowli heritage or his claimed problems due to his Kowli heritage at his arrival interview. The applicant and applicant wife's SHEV statements indicate that they did not share their reasons for leaving Iran on arrival because there were many other Iranians seeking asylum and they were worried that their information would be shared with the Iranian authorities. At the SHEV interview, the delegate asked the applicant why he did not mention having problems as a Kowli during his arrival interview. The applicant stated that he was afraid and that at the "camp" they used to live with other Iranians and he did not mention being a Kowli. The delegate then read out the applicant's response to the question of why he departed Iran as given at his arrival interview, namely that he left Iran because he could not continue his studies because of his father's bad financial situation. The applicant responded that he was frightened and scared and that there were lots of interpreters at camp that used to come and talk to people and that is why he didn't mention his problems due to his Kowli ethnicity. When asked why he didn't want others to know he was Kowli, the applicant stated that he was afraid as other Iranians don't socialise or talk to Kowli people. When reminded of his earlier evidence that Kowlis are distinguished due to their facial features and accent, which means that others would have been able to identify him as a Kowli, the applicant stated that they were in the camp for only two months and did not socialise with others.
18. I am not convinced of the applicant's explanation that he did not disclose his Kowli heritage or the problems that he claims to have faced in Iran due to his Kowli ethnicity at his arrival interview because he was afraid or frightened that other Iranians would find out or that their information may have been shared with the Iranian authorities. As noted by the delegate, the applicant's evidence that Kowlis are easily identified by their facial features and accent suggests that he would have been identified as a Kowli by other Iranians, whether he did or did not disclose this information at his arrival interview. I consider the applicant's evidence that he did not disclose that he was a Kowli at his arrival interview because if other Iranians found out they would stop talking or socialising with them, to be at odds with his evidence that he did not socialise with other Iranians anyway in order to avoid being identified as a Kowli. The applicant has not detailed what caused him to believe that information he shared with the Australian authorities would have been disclosed to other Iranians or the Iranian authorities. I consider his failure to mention the problems that he claims he and his family encountered throughout their lives in Iran and was the main reason for his departure from Iran, to detract from the credibility of his claimed suffering due to his Kowli heritage.
19. A number of aspects of the applicant's evidence in relation to Kowlis are not supported by country information cited above. I note that the country information indicates that Kowlis marry within their social groups, which is not consistent with the applicant and applicant wife's evidence that the applicant's mother and applicant wife's father are not of Kowli heritage or ethnicity. At the SHEV interview, the delegate observed that the applicant's evidence that Kowlis have distinguished facial features which allows others to identify them is not supported by country information. The applicant responded by referring to Kowlis having a district accent

but offered no further response nor provided the delegate with any evidence to support his assertion. At the SHEV interview, the delegate also observed that country information indicates that Kowlis are considered to be Muslims in Iran and that she could not locate any information suggesting that Kowlis are not considered as Muslims. The applicant vaguely stated that “they” didn’t tell “us” these sorts of things, “they” didn’t allow “us” to attend celebrations and gatherings and that “this is what other people would say”. When asked why others would say that Kowlis are not Muslims, the applicant stated that he did not know why, they would just say that Kowlis were not clean and were “haram”.

20. The applicant claims that when he was young, his father added the prefix of [Name 1] to the names of all males in the family to show that they are descendants of Mohammad and included their religion as Shia Muslim on their birth certificates. I note that the applicant’s father’s name as noted in the applicant’s National Identity card also includes the prefix of [Name 1], which suggests that the applicant’s father’s identity documents would have also included the prefix [Name 1]. In addition, the applicant has not provided any evidence and there is no evidence suggesting that the applicant’s National Identity card or his birth certificate issued in [year] have been amended or re-issued at any point.
21. As noted above, due to lack of permanent residential address nomadic Kowlis are unable to obtain national identity cards. Given that the applicant’s father was able to obtain national identity cards and birth certificates for his children, the applicant and applicant’s wife’s ability to register their marriage, and the applicant’s evidence in his SHEV statement that both him and one of his brothers were able to obtain medical treatment while living in their village, further suggests that they were not known as or lived as nomadic Kowlis as claimed.
22. While I accept that the applicant and applicant wife’s grandfather was of Kowli heritage, in considering the applicant’s evidence in the context of country information before me, I am not satisfied that the applicant or his family were identified or known as Kowlis or that they lived a Kowli nomadic life as claimed.
23. While the applicant’s SHEV statement details some incidents that he claims he and his family members suffered at the hands of others in their village due to their Kowli ethnicity, his evidence at the SHEV interview did not refer to these incidents and was presented in a rather vague and general manner. The applicant’s SHEV statement refers to an incident in 1985 when one of his brothers was injured by rocks thrown over their fence by neighbours, an incident in 1991 when the applicant’s mother was approached and verbally threatened by a local which caused her to suffer a miscarriage, an incident around 1994 when two masked men threw rocks at the applicant at a neighbouring village and that he was the subject of physical and verbal abuse while in middle and high school. At the SHEV interview, the applicant confirmed that other villagers were Kurdish and that the main problems they faced were at the hands of the villagers. He stated that as soon as they found out that the applicant’s family were Kowli, they would change their behaviour. When asked who were specifically attacking his family, the applicant stated that it was night time, their house didn’t have fences and they used to throw stones at them. The applicant’s family did not know who the people were, but they were afraid and his father decided for them to move to Tehran. Even in accepting that these claimed incidents occurred, which I note are said to have taken place over ten years prior to the applicant and his family’s decision to depart their village for Tehran in 2007, I am not satisfied that the applicant and his family were known or identified as Kowlis, targeted for reasons of their Kowli heritage or that they were the subject of ongoing harassment for reasons of their Kowli heritage. The applicant’s SHEV application lists his place of residence from birth to 2007 as Ilam province and indicates that he worked in [Field 1] for the period between 1999 and 2001 in Ilam city and then in agriculture for the period between 2001 and 2007 when he

departed for Tehran. I am not satisfied that the applicant and his family moved from village to village during their residence in Ilam province or that they were the subject of ongoing harassment and discrimination for reasons of their Kowli heritage. I also note that he completed his high school diploma in Ilam province and his military service in Tehran. The applicant did not refer to having been abused at school during his SHEV interview, as indicated above I do not accept that the applicant was identified as a Kowli by others due to his facial features and I am not satisfied that he was the subject of abuse while attending school for reasons of his Kowli heritage.

24. The applicant and applicant wife's SHEV statements indicate that after their move to Tehran, they had their marriage ceremony and moved in together. They claim that they faced verbal harassment in Tehran and were verbally abused by those who knew that they were Kowlis. Their community and neighbours would not greet them and made derogatory remarks. Between 2007 and 2010, the applicant worked for a [company]. He worked nightshifts and was regularly stopped by the Sepah and Basij on his way home and if they recognised him as a Kowli, they threatened to arrest him unless he handed over his daily wage. Due to the problem with the Basij and Sepah, the applicant decided to leave his job with the company and found work at [Workplace 1], but he still faced intimidation and harassment by other workers and was labelled as "the kowli" and told to go elsewhere.
25. At the SHEV interview, the applicant was asked if he experienced any issues in Tehran. The applicant stated that "they" persecuted them everywhere and that in Tehran when "they" found out that the applicant and his family were Kowlis they insulted and harassed them. When asked how people harassed them, the applicant referred to his work with the [company] and stated that when he asked his boss to give him dayshifts, he was told that he couldn't work during the day because people would see him and he would be recognised due to his race. When asked if he had any problems with the authorities, the applicant stated that police used to stop him after his nightshift and would ask him what he was doing out at that time. He had to explain to them that he was a Kowli and the problems that he faced and that they would take money from him. The applicant wife's evidence at the SHEV interview was that she did not face any issues in Tehran as she was at home and did not face the society. Her husband had problems because he is a Kowli, and that about six months prior to their departure a neighbour took their daughter's earning causing injury to her ear and that this frightened them.
26. I have a number of difficulties with the applicant's evidence in this regard. As I have indicated above, I do not accept the applicant's evidence that Kowlis are easily identified due to their distinct facial features and as such I do not accept his evidence that he was asked by his employer to work nightshifts to avoid being identified. In addition, if the reason for the applicant to work nightshift was to prevent him from being identified which placed him at risk of harm, I find it equally difficult to accept that he would have asked his employer to allow him to work during the day. The applicant's evidence in his SHEV statement which suggests that the Basij and Sepah would recognise him as a Kowli and ask for his daily wage is at odds with his evidence at the SHEV interview that he was stopped by the police and asked what he was doing out during night and had to explain to them that he was a Kowli and faced problems. I find it difficult to accept that if the applicant was easily identified as Kowli and was trying to hide his Kowli ethnicity that he would reveal that information to the police in explaining why he was out during the night. I am not convinced that the applicant worked nightshifts to hide his Kowli ethnicity or that he was stopped by the police, the Basij or the Sepah and had to hand over his daily wage because he was identified and targeted as a Kowli. I also do not accept the applicant's evidence that he was intimidated and called derogatory names while working at [Workplace 1] or that the applicant wife and their daughter were abused six months prior to their departure from Iran because of the applicant's Kowli heritage.

27. Overall I found the applicant and applicant wife's evidence in relation to having been harassed and intimidated by their neighbourhood and community unconvincing. Their evidence at the SHEV interview was presented in general terms, without reference to many incidents outlined in their SHEV statements, and lacked details that one would expect of someone describing genuine lived experiences. I am not satisfied that the applicant was identified as Kowli or considered a non-Muslim in Iran or that the applicant, applicant wife or their daughter suffered harassment, intimidation or any harm at hands of the community, their neighbours, the authorities or any other person.
28. The applicant and applicant wife have also consistently claimed that they are of Kurdish ethnicity and I accept that the applicants are of Kurdish ethnicity. Country information before indicates that Kurds in Iran are concentrated in the northwest of Iran in the provinces such as Kurdistan and Ilam. Most are Sunni Muslims and therefore face intersectional discrimination on the basis of both sect and ethnicity. There is discrimination against Kurds and Kurds asserting their ethnic and religious identity are a target, as well as those associated or engaged with political activities.⁴ While DFAT⁵ assesses that members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside, it reports that most Iranian Kurds either do not come to the attention of the authorities, are not specifically targeted for discrimination on the basis of their ethnicity or religion, including in their ability to access government services, and only Kurds who are politically active are likely to attract adverse attention from the authorities. Apart from the applicant and applicant wife's claims in relation to the applicant's Kowli heritage which I have dealt with above, the applicants have not raised any claims to fear harm with respect to their Kurdish ethnicity. I note that the applicant and applicant wife completed their high school diplomas in Ilam. The applicant wife gave evidence that she also completed pre-university studies. They have also been able to secure employment, with the applicant working in Ilam in [Field 1] and agriculture and then securing employment with a [company] and [Field 1] in Tehran, which he maintained until their departure in 2013. They have not detailed any instances of discrimination or harm in education, employment or otherwise based on their Kurdish ethnicity. While, the applicant referred to having attended a protest in Iran in 1380 and attempting to attend a protest in Australia, which he was unable to locate and did not attend, both the applicant and applicant wife confirmed that they were not politically active in Iran or Australia. The applicant's evidence does not suggest that he came to the attention of the authorities for attending the one protest that he only referred to during his SHEV interview. The applicant also confirmed that he was of no interest to the Iranian authorities, and apart from the claimed incidents with the Basij/Sepah/police in relation to his Kowli ethnicity which I have dealt with above, he confirmed to have had no further interactions with the authorities for any reason. While, I accept that Kurds who engage in political activism and have a political profile are likely to attract the attention of the authorities, I am not satisfied that the applicant or applicant wife have such profile.
29. On the applicant and applicant wife's evidence, I am not satisfied that they had any adverse profile for any reason with the authorities or any other person at the time of their departure

⁴ Danish Immigration Service and Danish Refugee Council, "Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", 1 February 2018, CIS7B83941872; *Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights*, "Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441.

⁵ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, p.10, CIS38A8012677; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

from Iran in 2013. I consider the chances of the applicants facing any harm for reasons of the applicant's Kowli heritage or their Kurdish ethnicity to be no more than remote.

30. In his statement, the applicant claims that while he working at the [Workplace 1] in Tehran, he was exposed to Christianity, as a couple of his colleagues at the [Workplace 1] had converted to Christianity in secret. He states that he enjoyed his conversations with them, but knew that he could not convert in Iran. The applicant wife's statement also refers to the applicant's colleagues having converted to Christianity in secret and that she and the applicant talked about religion, in particular Christianity which they wanted to explore further, but it was too dangerous to do so. At the SHEV interview, in response to the delegate's reference to his claim about being exposed to Christianity in Iran, the applicant stated that he read some books about Christianity and knew of a couple of friends that liked Christianity. When asked what books he read, the applicant stated that they were Farsi books about different messengers such as Jesus, Moses and Noah and that everyone in Iran had these books. When asked to explain what he meant by everyone having these books, the applicant stated that although people could not get access to a Bible in Iran, they had access to these books and that he got the books from the library in Tehran. I note that the applicant and applicant wife's evidence in their SHEV statements only refer to the applicant knowing of two colleagues that converted to Christianity in secret and that the applicant was exposed to Christianity through talking to his colleagues. There is no mention of the applicant having read any material or books. Their evidence is that they wanted to explore Christianity but knew that it was too dangerous to do so. When asked about the journey towards Christianity at the SHEV interview, neither the applicant or applicant wife made reference to their exposure or discussions about Christianity in Iran and the applicant only talked about borrowing books from the library after he was specifically referred to his claim in his SHEV statement about being exposed to Christianity through colleagues in Iran. I am not convinced of the credibility of the applicant's claim that he knew of people who had secretly converted to Christianity in Iran, that he had any conversations about Christianity with others, borrowed books from the library or that that he and applicant wife talked or contemplated exploring Christianity while in Iran.
31. The applicants claim that they converted to Christianity in Australia and are practising Christians. The applicant and applicant wife's SHEV statements indicate that while living [in] [Suburb 1], they befriended some local Christians who attended the nearby [Church 2] and were invited to attend the Church. They claim that they attended the Church every Sunday and enjoyed the companionship and kindness that their Christian friends showed. In 2016, they moved to [Suburb 1], and commenced attending the [Church 1] every Sunday. They asked the priest and other Church members to come to their house and provide them with some face to face discussions and lessons. They were given some documents in Farsi to learn more about Christianity and that the applicant, applicant wife and their children were baptised [in] August 2017. The applicants' SHEV application includes copies of their baptism certificates.
32. The applicant and applicant wife were questioned about their journey towards and conversion to Christianity in Australia. They were asked when they first started attending Church in Australia and the name and denomination of the Church they attended. While they both stated that the Church was near their house while they lived in [Suburb 1], they were unable to provide the name of the Church, could not recall the denomination of the Church, and gave conflicting evidence as to when they commenced attending the Church. While the applicant stated that they attended the Church from sometime in 2014 until the moved to [Suburb 1] in 2017, the applicant wife stated that they commenced attending the Church in around 2017 and could not remember attending any Church prior to 2017. The applicant was referred to his evidence in his SHEV statement that the Church he first attended was [Church 2], to which he responded that his English was very poor at the time and that he could not even read the name

of the Church, but when he went to see his lawyer they searched the Church and found out that it was [Church 2]. Given the applicant's evidence that he attended this Church from around 2014, and in accordance to his evidence he attended Church about two to three times a month, he was asked if he knew the main beliefs of the Church. The applicant stated that their English was not good, they were given books and told to ask questions, but were unable to do so due to their poor English language abilities and that all he knew was that they talked about God. He stated that he told them that they loved Christianity and asked if they could baptise them. They were told that the Church could not do that for them. When asked to elaborate on that, the applicant stated that they were told that they just don't do this sort of stuff. When asked why they wanted to be baptised given that they didn't understand English at the time and couldn't read the bible, the applicant stated that they suffered a lot in Iran and when they came here Christians helped them and they wanted to be Christians. The applicant wife's evidence was that she could not recall how long they attended [Church 2], it may have been about eight months or less than a year and that they attended services where a priest would give a speech, they also watched videos about Jesus Christ and that this occurred during Easter celebrations. The applicant and applicant wife were asked if the reason they changed from [Church 2] to [another] Church was because [Church 2] would not baptise them. While the applicant hesitated to answer and reiterated that they asked to be baptised and were told that the Church could convert or baptise them, the applicant wife confirmed that the reason they changed their Church to [another] Church was because [Church 2] would not baptise them.

33. As set out above and noted in the delegate's decision, the applicant and applicant wife gave conflicting evidence about their initial Church attendance in Australia. Despite their conflicting evidence, while I am willing to accept that they may have been introduced to [Church 2] near their residence, I am not convinced that they attended Church two or three times a month as claimed by the applicant, or that they attended the Church for a period of years or even months, particularly given their evidence that their English language abilities were poor at the time and they were unable to read and understand the material that they were given nor were able to ask questions to further their understanding of the religion. In considering the applicant and applicant wife's consistent evidence that they asked to be baptised but were told that the Church could not assist them, I accept that they approached [Church 2] and asked to be baptised and find that the Church's inability to baptise them influenced their decision to attend and approach another Church.
34. While the applicant and applicant wife's SHEV statements and their application indicates that they moved to [Suburb 1] in February 2016, their evidence at the SHEV interview was that they moved in 2017 and commenced attending the [Church 1]. The letter from [Church 1] also indicates that the family commenced attending the Church in early 2017.
35. At the SHEV interview, the applicant was asked what made him choose the [Church 1]. The applicant stated that he felt comfortable attending the Church, they have material in Farsi which they read and understand. When asked about how often he attends the Church, the applicant stated about four times a month, unless something happens. He indicated that he had been attending this Church since 2017, but was unable to go for a period of about two or three months due to his wife's illness, but after his wife recovered, they recommenced attending on a regular basis. Despite his claim that apart from a period of a few months, he has been attending the Church on a regular basis since 2017, he was unsure of the priest's surname and in response to questions about the main beliefs of the Church and why he wanted to be baptised, the applicant's evidence was that they talk about Jesus Christ and Christianity. He was hesitant in his answers around Christian beliefs and celebrations and only could provide very basic information incommensurate to the level of knowledge that one would expect of someone who claims to have attended Church and wanted to convert to Christianity for a

significant period of time. In addition his answers to questions about why it was important for him to be baptised centred on love and kindness of Christians and was less than compelling. The applicant wife was also unable to recall the priest's full name and her answers in response to questions about the main beliefs of Christianity and Christian celebrations were equally superficial and less than compelling. For instance, when asked what the main beliefs of Christianity were, she referred to being baptised, kindness and sacrifice for humanity. While I recognise that a person's reasons for engaging in religion are very personal and not something that can be measured against abstract standards, I consider the applicant and applicant wife's discussion about their journey to Christianity and engagement with the religion very superficial, even though they were asked numerous questions in this regard and were pressed for details.

36. In relation to the applicant's baptism in August 2017, the applicant and applicant wife both confirmed that they did not attend any Bible study classes prior to being baptised and the applicant wife indicated that they were baptised about one or two months after they started attending the [Church 1]. They both stated that they only attended Church on Sundays and did not have any responsibilities nor participated in any community services within the Church. While, I note that the applicant's SHEV statement indicates that the priest, along with other Church members, attended their home to provide them with face to face discussions and lessons, neither applicant or the applicant wife referred to this during their SHEV interviews.
37. The IAA was provided with a letter of support from the Minister of the [Church 1], [Mr A], dated 5 May 2020. The letter corroborates the applicants' claim that commenced attending this Church in 2017 and were baptised [in] August 2017. While letter also refers to a "series of meetings" held at the applicants home prior to their baptism, as noted above the applicant and applicant wife did not mention this during their SHEV interviews and the applicant wife stated that they were baptised about a month or two after they commenced attending the Church. The letter also indicates that the applicants have become well regarded and valued members of the congregation and are regular attendees, without providing any details about their attendance or engagement with the congregation.
38. During their SHEV interviews, the applicant and applicant wife were asked about whether they have informed their family and friends in Iran about their conversion to Christianity and how would they practise the religion if returned to Iran. The applicant stated that he has not told anyone in Iran about his conversion, but that he has shared some posts about Jesus Christ on social media. When asked when he did this, he stated that he thought it was last year and went on to state that when they were baptised people took photos. When asked if he posted any photos of their baptism on social media, he responded in the negative. In relation to how he would practise Christianity on return, the applicant stated if he were to return to Iran he would practise the religion in his heart. Towards the conclusion of the SHEV interview, the delegate expressed her concerns regarding the genuineness of the applicant's conversion to Christianity and stated that on the applicant's evidence it did not appear that anyone in Iran has any knowledge of his Christian activities in Australia. The applicant again referred to having shared posts about Christianity on [social media], but expressed that he did not know if anyone was aware of his posts. The applicant wife stated that she has told her family in Iran about their conversion and that some were surprised and other objected. In relation to how would she practise Christianity if returned to Iran, she stated that she could never go back and had not thought about how she would practise Christianity in Iran.
39. While the applicant claims that he has shared some posts about Christianity on social media sometime last year, he did not provide any evidence of his social media activities to the delegate. The applicant was advised that any further information provided to the delegate

prior to the decision being made would be considered and I note that there was a six week period between the applicant's SHEV interview and the delegate's decision.

40. I accept that the applicants commenced attending the [Church 1] in 2017 and have attended some Church services over the past few years. I accept that they were baptised [in] August 2017, about two months prior to the SHEV application. However, in light of what is set out above, I am not satisfied that the applicants' conversion to Christianity is genuine. I am not satisfied that they have a genuine commitment to Christianity or have any intention or desire to practise Christianity if returned to Iran. I do not accept that the applicant has posted any Christian material on social media or that they have discussed with or informed anyone in Iran about their Christian activities in Australia. I am not satisfied that the applicants attended Church or were baptised because of their genuine belief in Christianity or that they engaged in all of their Christian activities, including their baptism, otherwise than for the purpose of strengthening their claim to be refugees. In accordance with s.5J(6) of the Act I am required to disregard all of the applicants' Christian activities in Australia when determining whether they have a well-founded fear of persecution.
41. At the SHEV interview the applicant was asked what his religion was when he first arrived in Australia. The applicant stated that in Iran they had to be Shia Muslims. When asked if he practised Shia Islam while in Iran, the applicant stated "not much" and that at school he had to attend obligatory prayers and attended mosque by force. In her SHEV interview, the applicant wife stated that she was a Shia Muslim when she first arrived in Australia and that she practised the religion while in Iran. When asked how she practised the religion, she stated that she did all the things that Muslims do, but didn't perform the obligatory prayer much. The applicant and applicant wife's evidence seems to suggest that they were not practising Islam on a regular basis and the applicant seems to have only prayed or went to mosque while at school. Their evidence also seems to suggest that they have not practised Islam in Australia. On that basis, I accept that the applicants have not practised Islam for some years and are not intending to practise Islam if returned to Iran.
42. 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.⁶ The 2018 and 2020 DFAT reports⁷ do not suggest that monitoring of religious practices by the authorities have increased in the recent years.

⁶ 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.

⁷ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

43. On the applicant's evidence, apart from religious activities while at school, he did not practise Islam while in Iran. Apart from his claim that he was perceived as a non-Muslim due to his Kowli ethnicity which I do not accept, the applicant has not claimed that he had come to the attention of the authorities or any other person for non-practise of Islam. Given the country information set out above, I am not satisfied that the applicants' non-practise of Islam would come to the attention of the authorities. I am also not satisfied that the applicants have in the past or would in the future communicate their non-practise of Islam to others nor am I satisfied that they would refrain from this for fear of persecution. Given the applicants lack of any profile, religious or otherwise with the authorities, I am not satisfied that they face a real chance of harm for reasons of their non-practice of Islam or religious views if returned to Iran.
44. The applicants claim that they also fear harm for reasons of being identified as returned asylum seekers. I accept that the applicants are no longer in possession of their genuine Iranian passports that they used to depart Iran. DFAT reports that Iran does not permit the involuntary return of Iranians from Australia unless they arrived in Australia after 19 March 2018, the date on which 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.⁸ 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. DFAT⁹ also reports that persons, such as the applicants, who do not have a valid Iranian passport require temporary travel documents issued by Iranian diplomatic representatives overseas to facilitate their return and that the authorities at the airport will be forewarned about such persons' return.¹⁰ As the applicants return will necessarily be on voluntary basis, they may be able to obtain passports. In the event that they don't and return to Iran on temporary travel documents, the 2020 DFAT report¹¹ indicates that they may be questioned by immigration police about the circumstances of their departure and why they are travelling on temporary travel documents. I consider that this may lead the authorities to infer that the applicants have sought asylum while in Australia. The DFAT report¹² also indicates that the questioning is usually for a short period of between 30 minutes to an hour, but may take longer where returnees is considered evasive in their answers or have a suspected criminal history. Arrest and mistreatment are not common during this process.
45. Other than the possible questioning on arrival, DFAT¹³ 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. International observers have reported that the Iranian authorities pay little attention to returned 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, protesting outside an Iranian diplomatic mission and converting to Christianity. Unless returnees have an existing profile or were the subject of adverse official attention prior to departing Iran, they are unlikely to attract attention from the authorities.

⁸ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

⁹ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

¹⁰ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

¹¹ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

¹² DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

¹³ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

46. Given the applicants' lack of any adverse profile with the Iranian authorities or criminal history, I do not consider that apart from being questioned on arrival, that they would attract any form of adverse attention from the authorities. I do not consider that being questioned on arrival for a short period of time amounts to harm nor am I satisfied that they would otherwise face a real chance of any harm during questioning.
47. In considering the applicants' circumstances as a whole and in light of what I have accepted of the applicant's claims, I am not satisfied that the applicants face a real chance of harm for any of the claimed reasons, including for reasons of applicant's Kowli background/heritage, the applicants' Kurdish ethnicity, their religious views or non-practise of Islam or returning from Australia after having sought asylum. I am not satisfied that the applicants have a well-founded fear of persecution within the meaning of s.5J of the Act.

Refugee: conclusion

48. 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

49. 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

50. 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.
51. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
52. I accept that the applicants have attended Church in Australia and have been baptised. I do not accept that the applicants' conversion to Christianity is genuine or that they have informed anyone in Iran about their Christian activities in Australia. The information before me does not support that the applicants' activities in Australia have been monitored by the authorities or any other person in Iran or that the Iranian authorities pay attention to returnees' activities abroad. As I do not accept that the applicants conversion to Christianity is genuine, I am not satisfied that they have any intention or desire to practise or promote the religion if returned to Iran or that they would communicate any information about their religious activities that

they have engaged in while in Australia to others. I am not satisfied that the applicants face a real risk of significant harm, as defined in ss.36(2A) and 5J(1) of the Act, in Iran for reasons of their Christian activities in Australia.

53. 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 Court¹⁴ 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 on those grounds, should they return to Iran.

Complementary protection: conclusion

54. 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

55. 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 dependent children.
56. 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

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

¹⁴ MIAC v SZQRB (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
 - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (c) for the purpose of intimidating or coercing the person or a third person; or
 - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
 - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.