



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08779

Date and time of decision: 19 January 2021 12:45:00

G Deal, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The applicant (the applicant) claims to be from Tehran, Iran. [In] May 2013 he arrived by boat in Australia. On 10 July 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (protection visa application) with the then Department of Immigration, now part of the Department of Home Affairs (the Department).
2. On 25 November 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate accepted the applicant did not have a good relationship with his father-in-law in Iran who was a member of the Sepah-e-Pasdaran. The delegate also accepted that since being in Australia the applicant had attended protests and shared content critical of the Iranian Regime on [Social media], however, the delegate found the applicant lacked credibility and that he engaged in these activities solely for the purposes of strengthening his claims for protection. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm, and was not a person in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. By several emails dated 21 December 2020 the applicant's migration agent provided the IAA with a written submission, an email containing details regarding a support letter provided by the [Organisation] and copies of several articles in support of these submissions. These include information that was before the delegate as well as arguments, to which I have had regard. They also contain new information, which is discussed below.
5. The applicant claims to be outspoken about his strongly held views against the Islamic Republic, to have been engaged in political activities critical of the Iranian regime in Australia and to be a devoted and committed member of the [Organisation]. He provided the delegate with a copy of a support letter from the [Organisation] in support of these claims. In the applicant's visa interview the applicant's migration agent said he would provide the delegate with the original email forwarding this support letter to the applicant to prove its veracity. None was provided to the delegate before he made his decision. The applicant has now provided what he claims to be the original email, which is new information. By way of explanation the submission appears to state it was not provided earlier because the applicant, rather than the migration agent, was in possession of the email. I do not find this explanation adequate as both the applicant and migration agent participated in the visa interview when the delegate requested the email. The applicant has been represented by the same migration agent at both the primary and review stages. I am not satisfied this information could not have been provided to the delegate before his decision was made. The email is provided in support of the applicant's claims regarding his political activism in Australia and on its face appears to have some corroborative value in this regard. I am satisfied that the information is credible personal information, in the relevant sense, and that had it been known it may have affected consideration of the referred applicant's claims. I am also satisfied exceptional circumstances exist to justify considering the information.
6. The applicant has provided copies of Freedom House's March 2020 report, a Human Rights Watch 2019 publication reporting on conditions in Iran in 2018, a 2019 article by Reuters, a 2012

article by the Guardian, an August 2020 publication by the Iran Human Rights Watch, a July 2020 article by Michael Lipin and Sayran Sharafi, a 12 December ABC publication and a February 2020 publication by Human Rights Watch. The applicant referred to most of these in his written submissions to the IAA in relation to his claimed political activism. This is new information. These were all published before the delegate made his decision. Some of the publications are quite dated. The applicant has not explained why they are only being provided now. Nor is this apparent to me. The applicant's claimed political activism was squarely at issue in the visa interview. I have other up to date and detailed country information before me about the conditions in Iran, including in relation to the treatment of political activists. I am not satisfied this information could not have been provided to the delegate before his decision was made. Being general country information, I am also not satisfied the information is credible personal information in the relevant sense. I am not satisfied as to the matters in s.473DD(b). I am also not satisfied there are exceptional circumstances to justify considering the information.

7. The applicant provided the delegate with screenshots from his [Social media] profile showing, among other things, stills from what appear to be videos of him being interviewed at protests in Australia. The applicant told the delegate that international media outlets such as [Media outlet 1] and [Media outlet 2] broadcast these interviews. At the visa interview the applicant indicated he could provide copies of these videos although the delegate told him not to, stating he could look at them on the applicant's [Social media] profile instead. In his decision the delegate accepted the applicant may have been interviewed at protests. There were no videos in the review material. When these were requested from the Department the Department provided the screenshots of the applicant's [Social media] profile showing stills from the claimed videos which were already in the review material. On 6 January 2021 the IAA requested copies of these videos, or working links, and evidence of their claimed broadcast, from the applicant and his migration agent. Following an extension of time and correspondence between the IAA and the migration agent regarding links that were not working, the migration agent provided several working links to the videos requested. This appears to be new information.
8. The applicant was constructively obstructed from providing this information to the delegate. To the extent it is new information I am satisfied the information could not have been provided to the delegate before his decision was made. The information shows video footage of the applicant at protests and being interviewed. To the extent it is new information I am satisfied the information contains credible personal information which had it been known may have affected consideration of the applicant's claims. The information has probative value in relation to the applicant's claimed activities in Australia. To the extent the information is new information I am satisfied there are exceptional circumstances to justify considering the information.

Applicant's claims for protection

9. The applicant's claims can be summarised as follows:
 - He is an Iranian national from Tehran, Iran. After finishing up at school he worked as [an Occupation] in Iran. His mother and several brothers and sisters reside in Tehran.
 - He was born into a strict and conservative Muslim family but was not interested in the faith.
 - He married in 2011. His father-in-law was a conservative member of the Sepah-e-Pasdaran. On account of his political and religious views his father-in-law did not approve

of him, harassed and assaulted him and made his life difficult. He had no choice but to flee Iran legally at the airport in fear of his safety in April 2013.

- Since being in Australia he has been outspoken about his strongly held political views which friends and family are aware of. He has shared material critical of the Iranian Regime and government on his social media account, attended more than 60 protests and been interviewed on several occasions and these interviews have been broadcast by international media outlets. He is also a devoted, active and committed member of the [Organisation].
- He is in a de facto relationship with his partner in Australia.

Refugee assessment

10. 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

11. 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.

12. In the applicant’s arrival interview in June 2013,¹ the applicant said that he left Iran because he had problems with his father-in-law who was in the Sepah. His father-in-law did not approve of him and on one occasion assaulted him. When asked when this assault occurred the applicant explained that he could not recall because the assault had affected his memory. He said the main reason he left was because of the problems he experienced with his father-in-law and that he was very fearful of him. He also said he came to Australia because of all the good things he had heard and that he wanted to live in Australia. The applicant also described himself as a Shia Muslim.

¹ I have had regard to the written record of this interview because, as indicated by the Department, no audio was available.

13. In his visa application lodged 10 July 2017, in addition to mentioning his father-in-law the applicant said that he was born into a strict and conservative Muslim family but that he was not interested in religion. He also said his father-in-law tried to force him to join “either the Basij or Sepah”. The applicant was against Islam and the Islamic government which was why his father-in-law did not like him. This also adversely impacted his relationship with his wife. He was continually physically abused and threatened by his father-in-law which made his life very difficult. He had no option but to flee. He also said that since arriving in Australia he had been introduced to the Christian church and they had helped him integrate into Australian society. He said “I am outspoken about my religion on my social media and my friends and family are well aware of my conversion. I have also been outspoken about my strong opposition towards the Islamic Republic of Iran in Australia by means of participating in protests in Australia. My friends and family are aware of my opposition and I am certain that my activism against the Islamic Republic will be known to the authorities. Because of the attitudes held by the Islamic Government regarding apostasy and imputed political opinions I am certain that I would face significant harm to such a degree where I would face danger to my physical and mental wellbeing”. He also indicated he would provide a statement with more detail.
14. By email dated 28 September 2020, the day prior to the visa interview, the applicant provided a statement to the Department (revised statement). In the revised statement the applicant said that when he had said he had converted to Christianity in his visa application this was stated in error and he was not Christian and that he wished to retract this earlier statement. He explained his father-in-law did not like him because of his religious and political beliefs and that because his father-in-law was a member of the Sepah the applicant was known to the authorities. He also mentioned that since being in Australia he had been able to participate in demonstrations critical of the regime in [Australia]. He said he was a devoted, committed and active member of the [Organisation], an international opposition group. He had been interviewed several times and these interviews had been broadcast by international media outlets such as [Media outlet 1] and [Media outlet 2]. He also said that he had been active on social media where he had shared and expressed his opinions against the Islamic regime and that his family and friends were aware of his strong opposition to the Islamic government. He said he was certain the Iranian authorities would be aware of his views which would result in dangerous and life-threatening consequences and punishment in Iran.
15. Based on the applicant’s evidence, including his documentary evidence, I accept he is an Iranian national from Tehran. I consider Iran the receiving country. The applicant is from Tehran and has family there and I consider if he were to return it would very likely be to there. Given the detail and consistency of his evidence regarding his background, I accept his education and work history.
16. Despite the applicant briefly mentioning he had memory issues in his arrival interview, he has not since mentioned this. In his visa interview² he said that he did not have any diagnosed mental or physical health issues and that he was feeling very good. I do not accept he suffers from memory issues.
17. In the visa interview the delegate noted records before him showing the applicant transferred a large sum of money to a person in Iran. The applicant denied these transactions submitting they may have been done by someone fraudulently using his identification, which is not impossible. I am willing to accept this may have been the case and draw no adverse inference from this.

² Which was conducted by telephone due to the COVID19 pandemic.

18. In his visa interview the applicant confirmed that he was not a Christian and in submissions to the IAA his migration agent reiterated that the applicant had retracted claims of persecution based on his religious beliefs. The applicant said that he went to church but that he did not like it and did not continue. He said he had not been baptised and was not following any religion. Despite submitting this explanation was not discordant with his earlier evidence I consider it somewhat at odds with statements in his visa application that he was “outspoken” about his Christianity on social media and with friends and family who were “well aware of my conversion”. The applicant has submitted screenshots from his [Social media] profile however none appear to relate to Christianity. I am willing to accept the applicant attended a Christian church a limited number of times when he first arrived in Australia and when he needed support however, I consider he exaggerated his level of involvement in his visa application in an effort to strengthen his claims for protection and has since resiled from that position. I note he described himself as a Shia Muslim in his arrival interview. I accept the applicant was born a Shia Muslim, was not that interested in Islam while in Iran and does not practice the faith.
19. DFAT³ reports that apostasy (where a Muslim leaves his or her faith or converts to another) and blasphemy (swearing at the Prophet) may be punishable by death in Iran, but that the death penalty for these crimes is now reportedly rare. While no longer an everyday occurrence, authorities continue to use religiously based charges such as ‘insulting Islam’ against a diverse group of individuals such as Shia members of the reform movement, Muslim-born converts to Christianity and religious minorities. Secularism is reportedly widespread. A significant proportion of the population does not attend mosque or pray on a regular basis. Alcohol consumption is also reportedly common. DFAT was advised by official sources that faith is a private matter and so long as people did not eat in public or hold parties during the holy Muslim month of Ramadan, how people observe Islam was an individual choice and not a State matter. DFAT also reports of anecdotal evidence that many Iranians do not strictly observe Ramadan. DFAT assesses that non-practicing Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities. DFAT also reports that the Iranian authorities have little interest in prosecuting Iranians for activities conducted abroad such as converting to Christianity and proselytising. Based on the country information detailed above and the applicant’s profile I am not satisfied the applicant faces a real chance of harm on account of his religious activities in Australia, views on religion or as a non-practicing Muslim.
20. In his visa application and revised statement, the applicant said his views against the Iranian regime and government were strongly held, that he was outspoken, and that friends and family knew of his views. The applicant said he found the [Organisation] in 2016 and got to know the group. He noticed his beliefs correlated with their views. The group opposed the Islamic Republic but without any force. They pursued civil rights. He then said that was all he had to provide in that regard. The applicant has also claimed he was interviewed several times at the protests and that these were broadcast by international media outlets. When the delegate asked the applicant to tell him about his protest activity in Australia the applicant appeared unable to meaningfully elaborate and his responses to more pointed questions were brief and lacked specificity, despite opportunity to elaborate. For example, when asked how many protests he attended in Australia he said it was “more than 60”. When asked where they had taken place he said in [various places] and close to a church.
21. In the visa interview the delegate referred to the [Organisation] support letter provided by the applicant. It is dated in August 2019 and briefly states that the applicant is an “active” member and has been “collaborating” with the group “since signing” the “charter of [Organisation]”, without specifying when this was. It goes on to essentially request that the applicant be granted

³ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

asylum in Australia. In the visa interview the applicant said it was signed by the Chair of Administration who is in [Country]. The delegate queried why it was signed by them given his activities were in Australia. The applicant said his contact in Australia told them about his involvement. The delegate asked for a copy of the email originally forwarding the letter to the applicant which the migration agent said he would provide. However, none was provided, and the delegate placed no weight on this letter in his decision. The applicant's migration agent has provided the IAA with what he claims is this email. It appears to be a "cut and paste" of the original email showing the sender details and some text however the senders, including the Chair of Administration who signed the letter are at "gmail" accounts, not the "[Email]" account used by the organisation as indicated in the letter. The country information before me⁴ reports that paper-based documents are easier to obtain through fraudulent means than primary and secondary forms of documentation. I do not accept the letter as genuine.

22. The applicant has also provided screenshots of his [Social media] profile which show he has shared content that could be viewed as critical of the Iranian regime. The year on most of these posts is not apparent, although some appear dated in 2018 and 2019. He does not appear to have authored any of the content he has shared on his [Social media] profile, which posts are also limited. One shows a still from what appears to be a video of the applicant at a protest in [location] [in] November 2019. Another dated [in] August 2018 states he is at a protest in [Venue]. He has also provided several videos posted to his [Social media] account of protests in Australia. Many relate to the same protests and in total appear to only document a handful. These are dated in 2017, 2018 and 2019. Many show a large group of protestors and do not appear to show the applicant. In the ones that appear to show a man who could be the applicant, he often appears to be wearing [deleted], is not a speaker and is not in a prominent position or a leadership role. The only footage that appears to show him being interviewed is one dated in 2019. At this protest he has stepped away from the protesting crowd. He is speaking to someone who is filming him. No translation of what is being said has been provided. He is wearing [deleted] and does not appear to be carrying any protest signage. Despite submissions that one of the media outlet's names appears as a watermark in the video footage, this is not apparent to me from viewing the footage. There appears to be nothing linking this footage with an international media outlet or in support of the claim it was broadcast internationally.
23. The applicant only commenced posting content critical of the Iranian Regime on his [Social media] account in 2018 and attended several protests in Australia in 2017, 2018 and 2019. This timing, commencing the year after he lodged his visa application, raises concerns for me regarding his motivation for engaging in these activities. The applicant has briefly explained he did not engage in these activities earlier because he was "numb" and "dumb" when he first arrived in Australia and only met like-minded people later. While I appreciate there may have been a period of adjustment, I note this was a four-year delay and that he claims to have privately held views critical of the regime as far back as when he was in Iran and that this was, at least in part, what led to his departure. I do not accept his brief and unpersuasive explanation for the delay. I also note he has exaggerated his level of involvement in these activities in Australia and consider his involvement to have been limited; I do not accept he is an active member of the [Organisation], I do not accept he has attended some 60 protests (only accepting he has attended a handful or so), I do not consider he has held an organising or leadership role at these protests and I do not accept he appeared in interviews broadcast by international media outlets. I am not satisfied the applicant has engaged in his political activities in Australia otherwise than for the purposes of strengthening his claims for protection. As such I am precluded under s.5J(6) from considering this conduct for the purposes of s.36(2)(a).

⁴ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

24. The applicant's evidence about his issues with his father-in-law has varied significantly and at times been vague. For example, in his arrival interview he said he was beaten by his father-in-law on one occasion and could not recall when, when pressed on this. Later in his visa application he briefly said his father-in-law continually physically abused and threatened him and attempted to force him to join the "Sepah or Basij". In his revised statement he indicated he was known to the authorities on account of his father-in-law. The applicant has said it was his religious and political views that raised the ire of his father-in-law, however, the evidence does not indicate he was vocal about his views in Islam. I consider the applicant has exaggerated the extent of his harassment and mistreatment by his father-in-law and I do not accept the applicant was continually assaulted by his father-in-law or that his father-in-law attempted to force him to join the "Sepah or Basij" or that the applicant was known or wanted by the authorities because of this at any time including when he left Iran in 2013. Given the consistency of the broader claim and that it is not implausible I am willing to accept the applicant's father-in-law, a member of the Sepah, did not approve of the applicant as the applicant was not religiously conservative like the father-in-law and that this placed a strain on the applicant's marriage. I note the applicant has been in a relationship with his de facto partner in Australia for some time now, was last in Iran some five year ago and has not indicated any ongoing contact with his father-in-law or estranged wife. I am not satisfied the applicant faces a real chance of harm on account of any personal dispute with his father-in-law, marriage or past events in Iran.
25. The delegate considered whether the applicant would suffer harm as a result of being a failed asylum seeker. I will also consider this. I consider the applicant will be identifiable as someone who has sought asylum in Australia and has also lived in Australia for several years. DFAT⁵ reports that while Iran has agreed to facilitate the return of certain Iranians who arrived in Australia after March 2018, it has historically refused to facilitate the involuntary return of those who arrived prior to this date, and as such I consider if the applicant were to return, it would be on a voluntary basis.⁶ DFAT also reports that a returnee may attract adverse attention if they had an existing high profile with authorities before they left Iran. A returnee may also be briefly questioned about the circumstances of their travel and return on a *laissez-passer* and if evasive or suspected of a criminal history they may be questioned further. DFAT's report refers to a well-placed source and international observers who indicate the authorities have little interest in prosecuting returnees for activities conducted abroad. Arrest and mistreatment are reportedly not common during processing. I do not accept the applicant had an adverse profile of interest to authorities when he left Iran in 2013 and other than brief questioning on his return, if returning on a *laissez-passer*, there is nothing to indicate he would be further questioned, arrested or detained by authorities on his return. Based on the applicant's profile and the country information detailed above I am not satisfied the applicant faces a real chance of harm on account of being a returning asylum seeker from Australia who has lived in Australia for several years.

Refugee: conclusion

26. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

⁵ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

⁶ By Memorandum of Understanding signed by Iran and Australia, Iran agreed to facilitate the return of Iranians who arrived after March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia.

Complementary protection assessment

27. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

28. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

29. 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.

30. As detailed above, I accept that between 2017 and 2020 the applicant attended a handful of protests, was filmed at some and has posted this footage to his [Social media] profile, and shared a small number of posts on social media critical of the Iranian regime. DFAT⁷ reports Iranians are able to criticise the government of the day robustly in public and online but that there are certain 'red-line' topics, authorities are more likely to crack down on dissent during times of political uncertainty and that the social media accounts of well-known figures and celebrities attract particular scrutiny. Human Rights Watch and United States Department of State reports note of more recent protests across Iran and the government's increasingly heavy handed response, resulting in large numbers of protestors being detained or killed and the internet blocked.⁸ DFAT indicates those with an existing profile may attract the adverse attention of the authorities. The UK Home Office⁹ reports that journalists, the press and those who engage in propaganda against the Islamic Republic may be imprisoned. However, DFAT's report indicates the situation is different for ordinary returning asylum seekers without a pre-existing profile who are critical of the Islamic Republic while abroad. DFAT refers to reports by international observers which indicate that the authorities have little interest in prosecuting returnees for activities conducted abroad, including in relation to posting material critical of the government on social media or protesting outside Iranian diplomatic missions. In this regard a well-placed source told DFAT it was not aware of voluntary returnees being prosecuted for criticising the Islamic Republic while abroad. DFAT is also not aware of any instances of the Iranian authorities checking the social media accounts of returnees. The applicant was not politically active in Iran. I do not accept the applicant was of any adverse interest to authorities when he left Iran in 2013. While I accept he may privately hold views critical of the regime I do not accept the applicant's more recent and limited political activities in Australia were done for reasons of a genuine political conviction and

⁷ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

⁸ Human Rights Watch, 'Human Rights Watch World Report 2019', 17 January 2019, 20190118091502; United States Department of State, 'Country Reports on Human Rights Practices for 2019 - Iran', 11 March 2020, 20200312093514.

⁹ UK Home Office, 'Country Background Note: Iran', 15 November 2019, 20191126100520.

desire to publicly voice these views as claimed and as such I am not satisfied he will engage in similar activities if he were to return to Iran. Based on the country information detailed above and the applicant's profile I am not satisfied the applicant faces a real risk of harm on account of his privately held political views and his political activities in Australia.

31. In considering the applicant's refugee status, I have concluded that there was no 'real chance' the applicant would suffer harm on his return to Iran for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

Complementary protection: conclusion

32. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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