



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/08992

Date and time of decision: 4 May 2021 17:02:00

S Ryan, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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 applicant (the applicant) claims to be a national of Iran and arrived in Australia [in] May 2013. On 25 September 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV) and participated in a video interview held on 11 February 2021 which was conducted by a delegate of the Minister for Immigration (the delegate). The delegate refused to grant the visa on 31 March 2021 and referred the matter to the Immigration Assessment Authority (IAA) on 6 April 2021.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the Migration Act 1958 (the Act).
3. I have also had regard to the portions of the applicant's submissions to the IAA received on 28 April 2021 which present argument with respect to the delegate's decision and which reiterate evidence that he gave with his SHEV application and is not new information.
4. Under s.473DD(b) the applicant must satisfy the IAA in relation to any new information given by the applicant that either the new information was not, and could not, have been provided to the delegate before the decision was made, or, that it is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims. Additionally, under s.473DD(a), the IAA must be satisfied that there are exceptional circumstances to justify considering the new information.
5. The submissions provided by the applicant also contain information that was not considered by the delegate and is new information. The new information includes letters from the pastor of the applicant's church, and letters from his partner in Australia, his former employer and members of his congregation (Attachments A, B, C and D).
6. The letters of support are said to be a response to the delegate's adverse findings with respect to the genuineness of the applicant's conversion to Christianity and, noting that the delegate's did not put any of these concerns to the applicant during the SHEV interview or prior to making her decision, I accept that they could not, have been provided to the delegate before the decision was made. The information is personal in nature, relating their observations of the applicant and his religious beliefs and practise.
7. Notwithstanding the above considerations, I have formed a different view of the applicant's conversion to Christianity and activities in Australia based on the information that was considered by the delegate. I consider the additional, new information submitted to the IAA corroborates the view I have formed; that the applicant is a genuine and committed practising Christian; but has no further evidentiary value in the context of this assessment. In light of these findings I am not satisfied there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:

- He was born in [year] in Tehran to a Shia Muslim family.
- He was a devout Shia Muslim up until the age of 15, at which point he began to question his religion but continued to engage in routine Islamic religious practise.
- From 2010 he gradually became more interested in Christianity and began conducting research into the faith.
- His father in law and his wife’s cousin are radical Shia Muslims and are both high-ranking members of the internal security paramilitary force, the Basij Resistance Force (Basij). His wife’s cousin held a personal animosity towards him.
- In April 2013 he came to know that [Mr A] had discovered his interest in Christianity and had disclosed this to his father-in-law. He immediately went into hiding, fearing he would be arrested by the Basij as a Christian convert. He fled Iran a few days later.
- Since arriving in Australia in 2013 he has become involved with the Baptist Church and was baptised as a Christian in 2014. He has been regularly attending church and is involved in church activities. If he returned to Iran he would continue practicing his Christian faith and would evangelise by speaking openly about his faith.
- He would be persecuted by Iranian authorities on account of having converted from Islam to Christianity. He would be executed as an apostate and as an imputed opponent of the Iranian regime.

Factual findings

Background and Identity

9. The applicant’s claims concerning his identity and basic circumstances are not matters in contention in this assessment. I accept the applicant was born in Tehran in [year], he is of Persian ethnicity and his family follow the Shia sect of Islam. He completed secondary school in 2003 and then worked as a [Occupation 1] and later also worked as a [Occupation 2] for an [employer]. He was married in Iran in 2004 and has one daughter, born in [year].
10. I accept his evidence in the February 2021 SHEV interview that he was in the final stages of divorcing from his wife. He is in regular contact with his wife and child, who live in Tehran, and maintains contact with his parents and his [number] sisters and their families, also living in Tehran.

Christianity

11. Since arriving in Australia the applicant has consistently claimed that he left Iran after members of his wife’s family discovered he had renounced Islam and intended to convert to Christianity. I consider the evidence given by the applicant with respect to the gradual change to his views on Islam and his discovery of Christianity to be plausible and persuasive. I accept as plausible the applicant’s claim that he began questioning Islam from his childhood but cannot recall a specific moment at which he renounced Islam or considered himself a Christian. I do not consider the applicant’s claim that he had continued to engage in Islamic religious practises in a limited way, even after he had ceased believing, to weigh adversely on his credibility; noting that this may plausibly be attributed to a person’s gradual disengagement from a lifelong religious practise, and/or a perceived need to avoid adverse attention or ostracism in a conservative socio-religious context.

12. During the SHEV interview the applicant described two formative experiences in which he states he was exposed to Christianity, and I concur with the delegate's finding that his evidence in this regard was convincing. I consider his description of his interactions with a Christian Armenian man in 2009 was persuasive and did not appear to be embellished. His description of the other man being wary of directly discussing his Christian faith with the applicant for fear of being punished for proselytising is consistent with country information, particularly the recent reports from the Department of Foreign Affairs and Trade (DFAT) and the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD).
13. The applicant claims that his primary form of research into Christianity whilst in Iran was via the internet and that he conducted this research in public internet cafes, using a VPN to avoid scrutiny. I do not concur with the delegate's finding that this is implausible or could not have occurred without coming to the attention of Iranian authorities. I note that the 2012 Guardian article cited describes the Iranian authorities tightening the regulation of internet usage in public cafes, but does not suggest it would have been impossible to bypass existing or new regulations using the method the applicant has described. Indeed, The Guardian notes that Iranians had previously found ways to bypass the regime's media censorship and cites a blogger expressing the opinion that they will likely find ways to bypass the 2012 regulations.
14. I accept that the applicant actively sought information about Christianity whilst in Iran and that he did so in a limited and discreet manner. I am willing to accept as plausible that he discussed his interest in Christianity to his wife, noting he has indicated they were very close, that she was not a religious person herself.
15. The applicant arrived in Australia in May 2013, and indicated in the July 2013 Entry Interview that he was interested in the Protestant sect of Christianity as a result of his exposure through Armenians. He gave evidence that he joined [Church 1] in October 2013 and was baptised as a Christian in February 2014. The delegate considered his delay in engaging with a church after arrival in Australia to raise credibility concerns, however I note that he was not asked about whether or how he sought to explore his interest in Christianity whilst in immigration detention, or whilst living in [City 1] prior to moving to Melbourne. When asked why he chose [Church 1] the applicant stated he had an existing interest in Protestantism and had been recommended that church by a friend. Given his lack of familiarity with Australia and Christianity I consider these reasons are plausible and I do not consider these circumstances suggest a lack of sincerity in his interest in Christianity.
16. The evidence and information the applicant provided to the delegate suggests that the applicant has personally engaged to a high level with Christian teachings, and has consistently engaged with [Church 1] and committed to his Christian faith over a period of more than eight years.
17. A second letter of support dated 2 February 2021 written by a different pastor, [Pastor B] from [Church 1], corroborates the information in the first letter from of support. The pastor states his opinion that the applicant is a prominent member of the church who has genuinely committed to the Christian faith. I give weight to the recent evidence from his former and current pastors in which they give opinions that the applicant has demonstrated to them that his beliefs and convictions are sincere and that he would practice Christianity if he returned to Iran.
18. A person's religious conviction is a personal matter and I take into account it can be difficult to fully articulate, particularly noting that the applicant predominantly gave evidence in English and at times appeared confused by the delegate's questions. This gave the impression at times

that the applicant was struggling to answer the delegate's questions, particularly those phrased in a general manner and that were asking him to articulate his personal experience of his faith. Nevertheless, I consider applicant's explanation of his interest in and commitment to Christian concepts appear to have involved a substantial degree of sincere and personal reflection, and to be more than the mere recitation of words.

19. I have had regard to the applicant's disengagement from the Baptist Church and from any form of organised, communal religious practise during an unspecified period between 2018 and 2020. He gave evidence during the SHEV interview that his ability to attend church was hindered by weekend work commitments and I also take into account the applicant's absence from church attendance coincided with prolonged restrictions on physical gatherings of this nature in Melbourne during the COVID-19 pandemic. The applicant's additional claim that his period of absence was also the result of having become disenchanted with the church after being involved in political matters that culminated in a change of pastor is a matter corroborated by the February 2021 support letter from the church. I accept it is plausible that a person who has ceased attendance at church in these circumstances may also be reluctant to immediately engage with other church congregations.
20. Having regard to the prolonged period in which the applicant was engaged with the church in the period leading up to 2018, the reasons he gave for his temporary absence from church, and the recent evidence from the pastor at his church observing the applicant has '*re-engaged with passion and energy since we reconvened our physical gatherings*', I am satisfied the applicant has given a reasonable and persuasive explanation for this and I do not draw any adverse conclusions from this period of absence with respect to the sincerity or ongoing nature of his commitment to his Christian faith.
21. I am satisfied that the applicant's conversion to Christianity has involved a development of belief and commitment over a substantial period of time and I do not consider that he has done so with the view of strengthening his protection application. I am satisfied that his conversion is for reasons other than strengthening his claims for protection and that s.5J(6) does not apply.
22. It appears that the applicant's religious practise in Australia is largely personal and private in nature, noting it is not apparent that he has engaged in public expression of his Christian beliefs outside his local church community, even in the relatively safe confines of Australia. He declared in the SHEV interview nonetheless that he feels obliged to engage in evangelism and that he would speak about his faith with others if he returned to Iran. He gave the examples of his discussions with his (now former) wife in Iran in which he sought to guide her towards Christianity, and of a recent discussion about his Christian beliefs with his Muslim housemate in Australia. I am willing to accept these conversations have occurred as described, but do not accept these are evidence of a broader or more active commitment to Christian evangelism.
23. On the evidence before me it is difficult to determine whether the applicant will actively proselytise or even whether he would outwardly display his Christian beliefs and conversion in Iran, however I accept that his engagement in religious practise would involve him seeking to regularly attend church in Iran. I give some weight to the evidence the applicant gave suggesting he would not lie about his conversion if he was asked about it, and I further consider that he may seek opportunities to engage with other people in private discussion about his religious beliefs. I am satisfied that the applicant is a committed and sincere Christian and that, if he is asked about his religion, he will disclose it.

Profile with the Basij and Departure from Iran

24. The applicant has claimed that family members of his former wife are senior officers in the Basij and that his departure from Iran was precipitated by their discovery of his interest in Christianity. For the following reasons I do not accept that the applicant's former father-in-law or his former wife's cousin were senior members of the Basij, or that the applicant's limited and embryonic interest in Christianity was known to the Basij in 2013, or that his conversion to Christianity has been become known to Iranian authorities since that time.
25. Since arriving in Australia the applicant has been consistent in claiming to fear harm from the Basij on account of his interest in Christianity becoming known or suspected by a member of his former wife's family. However, upon close examination of these claims I consider his accounts of these circumstances to be unpersuasive; in that they are inconsistent on material facts, largely implausible, and lacks any form of corroborative evidence.
26. During the Entry Interview conducted in July 2013 the applicant claimed to have been contacted directly by a person named '[Mr C]', a member of the Basij who held a personal animosity towards the applicant, telling him that he knew he had converted to Christianity and. He also claimed that '[Mr C]' had told his father-in-law the same information and that, through his wife he had come to know that '[Mr C]' was intending to arrest him within 48 hours. His evidence did not suggest that his father-in-law was involved in the Basij or in the vendetta against him.
27. In the 2017 SHEV application and in the 2021 SHEV interview the applicant claimed that his father-in-law is a '*radical Muslim*' and a senior officer in the Basij and that the person holding a personal animosity towards him was a man who reported to his father-in-law and whose full name was '[Mr A]'. The accounts he gave in support of the SHEV application represent a substantial escalation in the significance of his father-in-law and there is no mention of a man named '[Mr C]' in these accounts. I take into account the nature and purpose of the Entry Interview, and that the differences between the account he gave in the Entry Interview and his subsequent accounts were not put to him by the delegate for comment. However, even allowing for the different context of these two interviews, and considering the evidence he did provide, I am not satisfied these differences can be plausibly attributed to these factors, or the fact that he was asked to summarise his protection claims during the Entry Interview.
28. During the SHEV interview the applicant was invited to provide information about the nature of his wife's family members roles in the Basij, and to provide evidence substantiating his claim that they were senior members of the Basij. I consider it significant that he provided very limited responses, particularly noting that he claims that his wife had openly discussed her father's role in the Basij, even prior to their marriage in 2004. Given this, it raises serious concerns that the applicant was not able to describe his father-in-law's rank or role within the Basij, beyond reasserting the claim that his father-in-law was '*senior*' and that he gave (unspecified) orders to those in lower ranks, including [Mr A].
29. He has described his father-in-law as a high-ranking Basij member and '*radical Muslim*'. Noting this I have serious concerns with the plausibility of the applicant's evidence that his father-in-law, having told the applicant's wife that he was aware the applicant was a Christian convert and that the Basij were intending to arrest him, did not then take any action to alert airport authorities and prevent him leaving Iran three or four days later. The delegate put these facts to the applicant for comment and I am not persuaded by his response that his father-in-law may have mistakenly believed the applicant was merely travelling inside Iran for work.

30. DFAT advise that Iranian intelligence agencies are present at every international airport and regularly impose travel bans without judicial oversight. As such the applicant's claim that he left Iran a number of days after learning he had become a person of interest to the Basij, appears somewhat unlikely.
31. Considering the paucity of the evidence put forward by the applicant, I am not satisfied that members of his former wife's family are high ranking members of the Basij who hold a personal enmity against the applicant. For all of these reasons I am not satisfied that he was known to Iranian authorities as an actual or imputed Christian convert in 2013, or that he has subsequently become known to Iranian authorities as such a person.

Refugee assessment

32. 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

33. 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.
34. I have found that the applicant is an Iranian national and it follows that Iran is his receiving country. I have found that the applicant's conversion to Christianity in Australia is genuine and am satisfied it is not for the sole purpose of strengthening his claims for protection. I have found that the applicant's ongoing involvement in both public and private Christian worship is based on a genuine commitment to Christianity. I have found that the applicant will continue to practice his beliefs on return to Iran.
35. DFAT advise that none of the three recognised minority religions in Iran, which includes Christianity, are permitted to proselytise or accept converts as members. The activities of recognised Christian communities are closely regulated, to guard against proselytisation. All Christians and Christian churches must be registered with the authorities, and only recognised Christians can attend church. Authorities closely monitor registered churches and perform

regular identity checks on worshippers to confirm that non-Christians or converts do not participate in services.

36. As a result of these prohibitions, Iranian Christians who are not members of the recognised ethnic minority churches generally practise in underground '*house churches*'. By law, non-Muslims may not engage in public religious expression, persuasion, or conversion of Muslims, doing so would be considered proselytising, and is a capital crime. The applicant has engaged in discussions of Christianity with his family in Iran and I accept that he would continue to discuss and promote his Christian faith, were he to return to Iran.
37. Recent reporting on Iran (particularly ACCORD, DFAT, Danish Immigration Service and Danish Refugee Council and Landinfo) indicates there has been a shift in the approach taken by Iranian authorities with respect to Christians and converts to Christianity. Since 2011 there has been the crystallization within interpretations of Sharia law that apostasy is not applicable to converts to Christianity, and as a result the Iranian regime as reframed its approach to evangelical churches and house churches as a threat to national security. The authorities interpret activities related to Christian conversion as politically subversive acts.
38. While Christian converts are no longer typically charged with apostasy, cases concerning allegations of conversion are usually considered as national security matters, which are handled by the Revolutionary Court. It is apparent that many of the cases of this nature prosecuted in recent years involve prominent leaders of house churches and people engaged in public expression or publication of their religious views.
39. In July 2017, the Revolutionary Court convicted eight Christians of 'acting against national security through the establishment of a house church' and 'insulting Islamic sanctities', and sentenced the group to between ten and 15 years' imprisonment. In June 2018, four Christian converts were sentenced to 10 years' prison each, and another 114 were reportedly arrested on charges of proselytising in December 2018. According to media reports, nine Christian converts received five-year prison sentences in December 2019. The country information before me indicates that the Iranian authorities interpret the growth in house churches as a threat to national security and continue to actively investigate and prosecute cases of this nature.
40. I have found that the applicant would seek to become part of a Christian community on return to Iran, and as a Persian Muslim convert he would necessarily be engaging with a congregation that is not sanctioned or recognised by the Iranian authorities. Such communities are monitored by Iranian authorities and are subject to periodic raids and harassment of congregants.
41. It is clear that mere conversion from Islam to Christianity may not, on its face, lead to a real chance of serious harm in Iran and I consider the applicant faces a much lower risk of arrest and detention than a person with an existing adverse profile with authorities, or a church leader, or a person who is also engaged in other forms of anti-regime activism. Nevertheless I consider the applicant's activities in seeking to openly practise his religion as part of congregation, and the likelihood that he would engage in discussion with his friends and other people he meets about his conversion and his religious beliefs exposes him to some risk of being considered to be a Christian proselytiser and thus facing a risk of arrest, prosecution and imprisonment.
42. In my view the applicant's profile with Iranian authorities and the likelihood that he will come to adverse attention is elevated by being known to them as a Persian Shia Muslim who has

converted to Christianity as an adult, who has lived in Australia for a substantial period of time, who would openly practise his Christian faith and discuss his beliefs with others in Iran, and who will not deny or recant his religious conversion if asked.

43. I am satisfied that there is more than a remote chance that the applicant's conversion and/or religious beliefs will come to the attention of the Iranian authorities if he returned to Iran. I am satisfied that in these circumstances he may face harassment and discrimination by them. I am satisfied that there is also a small, but none the less real, chance that he may face more serious harm, which may include arrest, detention and mistreatment
44. Country information indicates that arbitrary arrest, torture and ill treatment in detention in Iran is common. Individuals under arrest often remain in detention facilities for long periods without charge. Human rights organisations report that torture and other ill-treatment of detainees remains common in Iranian detention facilities, especially as a means to force confessions during interrogation. International sources report that commonly reported methods of torture and abuse include prolonged solitary confinement, threats of execution or rape, forced virginity tests, sexual humiliation, sleep deprivation, electroshock, burnings, the use of pressure positions, severe and repeated beatings. Human rights organisations have reported that authorities have systematically failed to investigate allegations of torture and other ill-treatment, and have sometimes threatened to subject complainants to further torture and long sentences.
45. I am satisfied that such harm would constitute serious harm as contemplated by ss.5J(4)(b) and (5) of the Act. I am satisfied that it would be inflicted for the essential and significant reason of his religion; s5J(4)(a).
46. The risk of harm emanates from the Iranian authorities and as such I am satisfied that it relates to all areas of the receiving country; s.5J(1)(c). For the same reasons I am satisfied that the applicant would be unable to obtain effective protection in Iran; s.5J(2).
47. Section 5J(3) provides that 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. However, this does not include any modification that would, as relevant here, require the person to 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. I am not satisfied that the applicant could take reasonable steps to modify his behaviour.
48. For all of these reasons I am satisfied that the applicant has a well-founded fear of persecution should he return to Iran.

Refugee: conclusion

49. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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.