



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09028

Date and time of decision: 11 May 2021 13:58:00

I Sheck, 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 referred applicant (the applicant) is an Iranian national from Esfahan province. He departed Iran [in] June 2013 and arrived in Australia [in] July 2013. On 25 September 2017 he lodged an application for a protection visa (PV).
2. On 12 April 2021 a delegate of the Minister (the delegate) refused to grant the visa. The delegate did not accept that the applicant had been persecuted in Iran due to his opposition to the Islamic regime, that he was of any interest to the Basij or Iranian authorities or had any adverse profile with the Iranian authorities. The delegate also did not accept that the applicant had now converted to Christianity. The delegate concluded that the applicant would not face a real chance or a real risk of serious or significant harm in Iran due to religion, imputed political opinion or for any other 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). On 7 May 2021 the applicant's representative, [Representative A] of [company name], provided an undated letter of support from [Leader A] of [Church 1]. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information, and the new information was not and could not have been provided to the Minister before the decision was made or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.
4. [Leader A] confirms that she met the applicant when he attended English classes at the [Church 1] and provides her views on the reason for his interest in Christianity. Inasmuch as it supports the applicant's central claim to have converted to Christianity, this letter comprises credible personal information that may have affected consideration of his claims. Although the letter is undated, there is nothing to indicate why most of the information provided could not have been provided to the delegate prior to him making his decision last month. The exception to this is the opening remark that it had come to [Leader A's] attention that the applicant's PV claim had been refused. The applicant has not been a member of the [Church 1] congregation since 2016 and it appears that [Leader A's] contact with him since that time has generally been via [social media]. The review material includes a comprehensive letter from the pastor of the applicant's current church, which also addresses his conversion. Overall, I am not satisfied that there are exceptional circumstances that justify consideration of the new information.
5. On 11 May 2021 [Representative A] provided three further documents, the first comprising a submission. The submission by [Representative A] addresses the delegate's decision and findings in detail and restates parts of the applicant's evidence relating to his religious history and conversion to Christianity. This may be regarded as argument rather than 'information' and to that extent I have had regard to it. [Representative A] further makes a claim that people who know the applicant in Australia "could be the agents of the Iranian government which are everywhere amongst the Iranian community checking Iranian people aboard and report them back in Iran." [Representative A] asserts that there is a high probability that the applicant's conversion has been reported to the Iranian government. [Representative A] represented the applicant at the PV interview. He has not provided any information as to why this claim was not made to the delegate and I am not satisfied that it could not have been. [Representative A] has

provided no country or other information to support his assertions. He has not satisfied me that this information is capable of being believed therefore it is not credible personal information. As neither limb of s.473DD(b) is met in relation to the new information, I am prohibited from taking it into account.

6. [Representative A] has also submitted two additional documents, as follows:
 - a) Letter of support from [Leader B] of [Church 2];
 - b) Screenshots of a [social media conversation] between the applicant and [Leader C].
7. The letter from [Leader B] is dated 1 May 2021, which postdates the delegate's decision so could not have been provided to him. The letter supports the applicant's central claim to have converted to Christianity therefore it can be held to be credible personal information that may have affected his claims. In considering whether there are exceptional circumstances that justify consideration of the new information, I note that the letter is very similar to the one [Leader B] provided dated 10 March 2021, to which I have had regard. The main difference of note is the Pastor's view that "we are aware that there are some who feigned their religious affiliation to facilitate their visa application" but he is confident that the applicant is not one of them. Overall, I am not of the view that there are exceptional circumstances that justify consideration of the new information contained in this letter.
8. Turning to the [social media] screenshots, these show a conversation between the applicant and [Leader C], a leader of the [Zoroastrian community]. The conversation took place between November 2013 and January 2014. I am not satisfied that this information could not have been provided to the delegate. The applicant's claims include that he investigated both Zoroastrianism and Baha'i prior to his conversion to Christianity and to that extent this conversation is credible personal information that may affect consideration of the claim. The conversation itself basically comprises the applicant asking whether there is a Zoroastrian centre in Melbourne and receiving a certificate stating he is a follower of Avesta. As I have in any event accepted that the applicant investigated Zoroastrianism in both Iran and Australia the new information does not add to his case in any material way. I am not satisfied there are exceptional circumstances that justify consideration of the new information and have not had regard to it.

Applicant's claims for protection

9. After his arrival in Australia the applicant was interviewed by an officer of the then Department of Immigration and Border Protection on 4 August 2013. The applicant provided details of his claims for protection in a statement of claims dated 25 September 2017, lodged with his PV application. On 11 March 2021 the applicant attended an interview with the delegate by teleconference, at which his representative [Representative A] was present (the PV interview). He provided submissions to the delegate dated 29 March 2021. The applicant claims:
 - He comes from a liberal Muslim family but in school and society he was expected to adhere to Islamic norms. He was humiliated by his schoolteachers for questioning various facets of Islam and grew to oppose it. A neighbour who was a retired member of the Sepah had him under observation and the applicant's workplace was searched by the Basij, following which he was detained. After this he decided to leave Iran;
 - He was interested in various religions and began studying Zoroastrianism in Iran. He followed this faith for a time in Australia before abandoning it. He was living with members of his extended family who followed the Baha'i faith. He was also curious about this faith but after some studies decided to forget about religion altogether;

- In 2015 he enrolled in free English classes run by [Church 1]. In September 2016 he joined the congregation of [Church 2]. He has now converted to Christianity and been baptised. If he returns to Iran he will be considered to be an apostate and will be killed.

Factual findings

10. The applicant's evidence regarding his family, education and background has been consistent and I am satisfied that it is as stated. Based on the information provided in his arrival and PV interviews, his PV application and identity documents, I find that the applicant's background is as follows: he was born on [date] in Khomeini Shahr, Esfahan, and is an Iranian national. He is of Persian ethnicity. He [has specified family members]. His parents and siblings all reside in Iran. He undertook primary and secondary schooling, followed by part-time University studies. He completed a [degree] in [specified year]. He completed military service [between specified dates]. He departed Iran legally in June 2013 on his own passport. The applicant was employed in the retail field in Iran, both before and after his military service. He has been employed [in two occupations] in Australia and currently works in [another field].
11. In his arrival interview in 2013 the applicant stated that he had left Iran due to his opposition to Islam, Islam being compulsory in the country. He started looking into Zoroastrianism while at University. A retired member of the Sepah had the applicant under observation for not following Islam and in January 2013 the Basij came to the [workplace] where he worked and told him that he had to attend the Basij base. When he did so he was questioned on why he had been accessing Zoroastrian websites. They detained him for less than a day and before releasing him told him not to make trouble. If he was returned to Iran he may be executed for being an apostate.
12. In his 15 page statement of claims dated 25 September 2017 the applicant provided significant detail relating to his persecution in Iran. He claimed that due to his questioning of Islam he was beaten and publicly humiliated by teachers at both primary and secondary school, suspended from University, detained and restricted to base while undertaking his compulsory military service. In relation to why he left Iran he claimed that the Basij came to his [workplace] and found his book on Zoroastrianism. He was summoned to the Basij base but after the intervention of a friend was released. At his PV interview the applicant advised the delegate that he had exaggerated various events in his statement of claims. He had done this on the advice of other asylum seekers, who had told him that if he did not have a good story he would be deported. Despite questioning on this issue during the PV interview the applicant did not articulate which parts of his statement of claims were "exaggerated" or false. The delegate asked that he clarify this in writing.
13. The applicant then provided a written statement dated 29 March 2021 in which he stated in part: "When I spent my time in Camp in [detention], I was advised to exaggerate the events to underpin the validity of my case, surviving from the wild ocean I was traumatized, influenced and consulted by others to do what I know in this moment as a Christian was not right and I deeply regret it." I am not of the view that this explains why the applicant made the false statements in his statement of claims. This document was written and lodged more than four years after his arrival in Australia and at a point when he claims to have already converted to Christianity. Further, there is still no clarification at all as to which parts of the statement of claims are incorrect. In view of this, I place no weight on the evidence given by the applicant in his statement of claims.
14. The applicant has consistently stated that he began to research Zoroastrianism in Iran and in his arrival interview gave his religion as Zoroastrian. I accept this as plausible, noting that in recent

years, some Iranians have adopted Zoroastrian symbols and traditions to celebrate an Iranian cultural heritage predating Islam.¹ I accept that the applicant attempted to join the Zoroastrian community in Esfahan but they would not accept converts. This is also consistent with country information.² After being released from immigration detention in Australia the applicant met with local Zoroastrians and attended their gatherings. After a while he found the Zoroastrian concepts superstitious and ceased attending. The applicant claimed in his arrival interview that if he were returned to Iran he would be executed due to being an apostate. I am satisfied that the applicant no longer identifies as a Zoroastrian or follows that religion. The applicant also initially claimed that he was detained by the Basij due to having researched Zoroastrianism on-line. In his statement of claims he changed this claim, stating that the Basij had discovered a book on Zoroastrianism when they searched his [workplace]. I reject the latter claim as a false statement or exaggeration and consider the earlier claim to be far-fetched. The applicant remained in Iran for some five months after the claimed interaction with the Basij and has not claimed that he was of any further interest to them. I find that the applicant was of no interest to the Iranian authorities due to his study of Zoroastrianism.

15. The applicant has consistently stated that he was opposed to Islam and I accept that is the case. He also made reference to corruption of the Iranian authorities including the clergy. This is a commonly held view among Iranians of the applicant's generation; country information indicates that young people are not enemies of Islam; indeed, they continue to be Muslim, but they cannot stand the power of the Shia clergy, their control over how others ought to live. Young people are especially intolerant towards their corruption.³ There is no credible evidence before me to indicate that the applicant ever faced harm in Iran due to his views on Islam and the theocracy. Other than in his 2017 statement of claims, on which I place no weight, the applicant has not claimed that he has spoken out against Islam either in Iran or Australia and I find he has not. There is no reason to think that the applicant would behave differently in the future, so I conclude that he would not speak out against Islam or the theocracy if returned to Iran. The applicant has also stated that he does not practise Islam and I accept that this statement is true. I find that the applicant would not practise Islam on return to Iran.
16. The applicant has claimed since his 2017 statement of claims that he has converted to Christianity. After investigating Zoroastrianism and then Baha'i in Australia, he started attending a [denomination] Church as they were offering free English classes. The applicant was then introduced to [Church 2] as they held bible classes in Farsi. The applicant told the delegate that he did not intend to convert to Christianity. His fellow parishioners were nice and filled with kindness; "they didn't have a plan to convert me". Although his main interest in [Church 2] was socialising, he realised at some point that this is the place where he wanted to be "and by believing in Jesus Christ I have salvation I have eternal life".
17. The applicant provided the delegate with a letter of support from [Leader B], the Senior Pastor of [Church 2]. This confirms that the applicant has been an active member of the congregation since September 2016 and partakes in worship, prayer and bible study. The applicant was baptised in May 2017 after completion of a four week preparation for baptism programme. It notes that he has also held "connect group" meetings at his home. The letter does not provide any detail on the frequency of the applicant's attendances and the applicant's evidence appeared to be that since the disruption of Covid-19, there has been a reduction in his connection with [Church 2]. He noted that as the church was not allowed to have more than 38 attendees, due to Covid-19 restrictions, he was not attending. He then however stated that he does attend weekly services

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Iran', 20 April 2020, 20200414083132; 3.44

² Ibid; 3.43

³ Asia News IT, 'Young Iranians affected by the embargo, tired of political Islam', 01 April 2015, CXBD6A0DE4714

and fortnightly “connect groups”, which are held in parishioners’ houses. In his submissions of 10 May 2021, [Representative A] clarified this point, stating that due to the restricted numbers, [Church 2] gave equal share in participation of service for all members, meaning that the applicant (and all other members of the congregation) were unable to attend every week. The applicant has provided a certificate of baptism, confirming that baptism took place [in] May 2017. The delegate asked the applicant how he would practise his faith if he were to return to Iran. The applicant responded that it would be impossible, you would be punished heavily. When asked whether, in that case, he would not practise the applicant stated that of course he would. When asked what he would do to practise Christianity he replied that it was his duty “to send the message out”, that is, to evangelise.

18. I accept that the applicant underwent a baptism in 2017 and has since then attended [Church 2] for Bible Studies and Sunday services. It appears that he has been attending less over the past year than previously, due to Covid-19 restrictions. I am not satisfied that of themselves the applicant’s actions indicate a genuine conversion to Christianity. The applicant’s central attraction to [Church 2] particularly and Christianity more generally appeared from his oral evidence to be a sense of community, that the parishioners are kind to him and compassionate; also he is allowed to ask questions. This is consistent with the information provided by [Leader B], who notes in part that the applicant “is attracted to Christianity because of the message of love and forgiveness. He also noticed that Christians tended to be very helpful and kind especially towards strangers. He was drawn to [Church 2] because of the warmth and friendliness of the community. The church has a family-oriented environment where he felt safe and cared for”.
19. I find that the applicant initially approached Christian churches in order to learn English; I conclude that the applicant continues to attend as he enjoys and benefits from being a member of a community. The applicant has not claimed that he prays privately, lives as a Christian or that he presently undertakes activities such as proselytising. I am consequently not satisfied that he does. I further note that the applicant has not indicated that he would seek to join a Christian community in Iran by way of a house church. I therefore am not satisfied that he would do so.
20. The applicant states in his PV application, and I accept, that he speaks to his family regularly. He has not indicated that he has informed his parents or [family members] about his conversion to Christianity or his Christian activities in Australia. I am not satisfied that anyone in Iran would be aware of the applicant’s baptism or attendance at churches in Australia. I am not satisfied that the applicant would declare himself a Christian or would seek to practise or identify as a Christian on return to Iran. I do not consider that this would be because he would be afraid to do so, but because he does not have a genuine and ongoing commitment to the Christian faith. I do not accept that the applicant would be perceived to be a Christian in Iran because he has been baptised or attended church services and/or bible studies in Australia.

Refugee assessment

21. 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

22. 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.

23. The applicant is an Iranian national; it follows that Iran is his receiving country. I have not accepted that the applicant is or was of any interest to the Iranian authorities or that he was detained by the Basij in January 2013 due to researching Zoroastrianism online. I have accepted that the applicant practised Zoroastrianism for a time but no longer does so and would not do so or be interested in doing so if returned to Iran. I am satisfied that he does not face a real chance of any harm in Iran due to these past practices.

24. I have found that the applicant underwent a Christian baptism in Australia in 2017 and attends a church in Australia. Section 5J(6) of the Act requires that, for the purpose of determining whether a person has a well-founded fear of persecution, 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. I note the point made by the delegate, that the applicant was notified that he was able to make a PV application on 23 August 2016 and first attended [Church 2] in early September 2016. On the basis of this timing the delegate concluded that the applicant’s interest in Christianity was solely for the purposes of his claim for protection. I have however found that the applicant approached a Christian church in order to undertake free English classes and continues to attend [Church 2] as he enjoys being a member of his church community. Section 5J(6) therefore does not apply to the applicant’s activities as a member of [Church 2] since 2016. I have not however accepted that the applicant is a genuine convert to Christianity, that he lives as a Christian in Australia or that he would have any interest in doing so in Iran. There is no credible evidence before me to indicate the applicant will participate or have any interest in participating in any activities in which he would be perceived to be Christian on return to Iran.

25. Although I have not accepted that the applicant would practise Christianity on return to Iran I have accepted that he has abandoned the Islamic faith and did not practise Islam before his departure in 2013. The applicant has claimed that he would be executed as an apostate, due to this, if he were returned to Iran. I have found that he would not practise Islam on return to Iran. Country information indicates that secularism is widespread, particularly in the major cities and among younger and wealthier Iranians. A significant proportion of the population does not attend mosque or pray on a regular basis.⁴ DFAT assessed in 2016 that it is unlikely that the government

⁴ DFAT, ‘DFAT Country Information Report Iran’, 20 April 2020, 20200414083132; 3.70

would monitor religious observance, such as attendance at mosque.⁵ More recent country material does not indicate that there has been any change to this. I am not satisfied that there is a real chance the applicant would face punishment from the authorities on return to Iran even if he were known not to observe Islam.

26. Abandonment of Islam whether for another religion or for any other reason is viewed as apostasy, and is formally punishable by death as pointed out by the applicant. Today, death sentences in apostasy and blasphemy cases are rare. In March 2017, the Supreme Court upheld the decision of a criminal court in Arak to sentence a 21 year old man to death for apostasy. Authorities had arrested the man after he made social media posts considered critical of Islam and the Koran.⁶ The applicant has not claimed at any point that he has made public statements critical of Islam, online or otherwise, or has any interest in doing so, and I have found that he would not. Atheists are also considered to be apostate and are potentially subject to state persecution and the death penalty,⁷ however the applicant has not claimed that he does not believe in God or is now an atheist. Overall, on the material before me I am not satisfied the applicant faces a real chance of harm in Iran for reason of religion.
27. Although not raised as an issue by the applicant, and although it did not appear to me to be a claim that arose on the material, the delegate assessed whether he faced harm as a failed asylum seeker returning from a western country. Recent reports indicate that Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes converting to Christianity.⁸ The country information before me does not support a conclusion that returnees are imputed with anti-government or anti-Islamic Republic political views simply for applying for protection abroad. I am not satisfied that the applicant faces a real chance of harm on return to Iran because he has lived in Australia for several years or has sought asylum overseas. Nor am I satisfied that the factors as discussed above cumulatively raise the applicant's profile to a level such that he would face a real chance of harm on return to Iran.

Refugee: conclusion

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

Complementary protection assessment

29. 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.

⁵ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677; 3.55, 3.57

⁶ DFAT, 'DFAT Country Information Report Iran', 20 April 2020, 20200414083132; 3.76

⁷ Ibid; 3.71

⁸ Ibid; 5.29

Real risk of significant harm

30. 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.

31. 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.

32. I have concluded above that the applicant does not face a real chance of harm on the basis that he previously investigated Zoroastrianism or Baha'i, he has undertaken baptism and Christian activities in Australia, that he does not practise or has abandoned Islam or because he sought asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard,⁹ I am equally not satisfied that the applicant faces a real risk of significant harm on return for the purposes of s.36(2)(aa) for these reasons, including when considered cumulatively.

Complementary protection: conclusion

33. 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.

⁹ *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.