



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/09039

Date and time of decision: 18 May 2021 17:23:00

N Micallef, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a Persian Iranian citizen from Iran. He arrived in Australia as an unauthorised maritime arrival on or [about] May 2013. On 4 August 2017 the applicant lodged an application for a subclass XD785 Temporary Protection Visa (TPV) claiming to fear harm in Iran on the basis of his political opinion and activities and as a failed asylum seeker from Australia.
2. After having interviewed the applicant about his protection claims on 6 April 2021 (TPV interview), a delegate of the Minister for Immigration subsequently refused the visa application on 14 April 2021. The delegate did not accept many of the applicant's claimed political activities and was otherwise not satisfied that the applicant would face a real chance of serious harm or a real risk of significant harm if returned to Iran.

### 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) (the review material).
4. No further information has been obtained or received.

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - He is a Persian Iranian from Rasht, in Gilan Province, Iran where he was born in [year].
  - He was once arrested by police for a relationship with a girl and taken to the police station where he was beaten before being released.
  - He supported the political "Green Movement" in Iran and its leaders, including Karoubi, Mirhossein Mousavi and Zahra Rahnavard. He participated in the public protests that followed the 2009 elections. He was beaten by the Basij and Sepah whilst participating.
  - He worked as a [Occupation 1] for [Company 1] in [City 1]. He was publicly outspoken at work about his political views. He and a colleague friend, [Mr A], who was also a Green Movement supporter and protestor, had discussions at work with others about politics.
  - He had political arguments with [his] department boss, whom he suspected was part of or sympathetic with Sepah. His boss warned him not to speak out in this way.
  - When he was on leave from work, in Tehran, he heard from a friend that [Mr A] had been arrested by security and that he would be arrested too on return. He did not return to [City 1] and made arrangement to and then left Iran for Australia.
  - In Australia he has been involved in public protests against the Iranian government. He has heard that [Mr A] still remains in prison in Iran.
  - He will be arrested, jailed and tortured by the Iranian government authorities, including Intelligence, for his political opinion and activities. He will be arrested on arrival at the airport. He will be persecuted for having applied for asylum protection in Australia.

6. The applicant did not specify any religion in his TPV application or in the Statutory Declaration attached to the TPV application (TPV Statement). In response to background questioning in the TPV interview he stated that he used to be Muslim but no longer identifies with any religion. The applicant has raised no claims of fear of persecution on that basis, either before the delegate or before the IAA.

## **Refugee assessment**

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7. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

## **Well-founded fear of persecution**

8. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
9. The Department of Foreign Affairs and Trade (DFAT) reported that Iran is a theocratic Islamic republic whose majority population are ethnic Persians, Farsi speaking and adherents of Shi’a Islam, the official state religion.<sup>1</sup> I find the applicant has consistently maintained his claimed identity, nationality and origins. There is no real contention on the evidence before me concerning these claims and I accept the applicant’s evidence of these claims, supported by certified copy Iranian identity documentation, as did the delegate, who noted his original documents had been stolen in a mugging about a year and half earlier. I accept his identity as claimed and that he is a single, [age] year-old Persian Iranian from Gilan Province who then grew up and lived in Tehran, where his parents and siblings remain. I accept he is a citizen of Iran with no other citizenship, entry or residence rights elsewhere. I accept and find that Iran is the receiving country for the purpose of this review. Noting his origins from Tehran, and where his family live, I find that it is there he would return to if returned to Iran.

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<sup>1</sup>Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report: Iran”, 14 April 2020, 20200414083132 (DFAT Iran Report 2020)

10. I accept that the applicant worked as a [Occupation 1] for [a] company in [City 1], Boshahr where he worked on a roster of two weeks' work in [City 1] then one week off back in Tehran. The TPV application records that this work was from January 2009 to May 2013, overlapping with his studies for a bachelor's degree in [Discipline 1] from the [university].
11. The applicant claimed in the TPV interview that he had had an episode of depression and mental break down a couple of years ago, during which time he had disappeared for five days, lived rough, been mugged and robbed of his original identity documents before being found by police when his friends reported him missing and was hospitalised for two or three days. Although I consider it somewhat surprising that he had no police or hospital documentation to corroborate these claims he did cite the police report number. I accept that the circumstances he described - of missing his family whom he has not seen in about eight years, losing his employment, being owed money for work performed but refused to be paid, and the stress of his uncertain visa situation overwhelmed him at that time. He described that he recovered in the hospital, was not put on medication and is now fine. There is no medical evidence before me to the contrary. I accept these matters occurred. I am satisfied they have no ongoing consequence for the applicant in terms of any mental health issues requiring any treatment or therapy, nor concerning giving his evidence in the TPV interview.

*Arrest for relationship with a girl*

12. The applicant claimed he had once been arrested and beaten for having a relationship with a girl. His TPV interview evidence was that he could not recall when this occurred as it was so long ago, but that he had been arrested on the street. The evidence indicated he was beaten, held for two hours and then released.
13. Islamic religious and cultural norms prevail in Iran and DFAT has reported in the past that authorities could take a heavy-handed approach when they periodically enforced standards of Islamic conduct in the community, including Islamic dress and public displays of affection with non-family members of the opposite sex.<sup>2</sup> The reports indicated that enforcement could be unpredictable and related to the prevailing political atmosphere of a given time and noted that it was relatively common for youth to experience some low-level of harassment from security authorities such as being subjected to searches, car-checks and verbal warnings for dress or behaviour. DFAT also reported that an unmarried couple appearing in public was common particularly in the upper and middle classes and a blind eye was generally turned. If a couple were arrested, then usually parents were summoned to the police station, written statements made and sometimes a fine required to be paid.<sup>3</sup>
14. This information causes me some doubt that the applicant was beaten as claimed. Nevertheless, I am willing to accept that as a youth or young adult he was once detained and briefly held for being in public with a girl. Significantly, I note that he was released, with no indication before me that he was charged with any offences for immoral behaviour under the Penal Code. There is no claim that he was ever arrested or detained again for any such or similar reason. Moreover, I note that the applicant is no longer a youth and would return to Iran as a more mature adult now, and there is no claim or evidence before me that he has a girlfriend in Iran. Even so, although close extra-marital contact and defacto relationships between men and women are illegal in Iran, DFAT assesses that such relationships and interactions are more tolerated today, both officially and societally, particularly in the larger

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<sup>2</sup> DFAT, "DFAT Country Information Report -Iran", 29 November 2013, CIS26780 (DFAT 2013 Report); DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677 (DFAT 2016 Report)

<sup>3</sup> DFAT 2016 Report

cities; and informal, temporary marriages are allowed, which has contributed to officials turning a blind eye to couples.<sup>4</sup> White marriages or defacto relationships are common in Tehran, which I find is where the applicant would return. Even in the event of being arrested, an unmarried couple would be taken to the nearest police station, their parents or guardians summoned and either a written statement signed or a fine, occasionally, imposed. In all the circumstances, I consider the chance of the applicant being arrested or detained or otherwise coming to any adverse attention or harm on any such a basis to be remote.

### *Political Activities in Iran*

15. Under Iran's governing policy of *Velayat-e-faqih* most executive power is concentrated in the Supreme Leader (an Islamic jurist) and the Guardian Council and Expediency Council, most of whose members are appointed by the Supreme Leader. Offices and institutions subject to popular elections are the president, parliament, local councils and Assembly of Experts. Since the revolution there have been political tensions between those seen as moderate reformists and those seen as religious conservatives, with incumbents in the role of president having some power over Iran's social and economic life, domestic politics and foreign policy. Albeit within the constraints of the established institutions.<sup>5</sup> DFAT reported that President Mahmoud Ahmadinejad (a conservative) replaced the (moderate) President Mohammad Khatami in 2005 and was then returned to office again in June 2009 in a highly disputed election. This provoked large-scale and ongoing demonstrations in Tehran by the nearly 3 million supporters of the losing (reformist) candidates, Mir Hossain Mousavi and Mehdi Karroubi, from 2009 to 2010 including over public holidays and national commemoration events. This was called the "Green Movement", after Mousavi's campaign colour.<sup>6</sup> The Government's security response included Basij units, Revolutionary Guards (or Sepah-e-Pasdaran<sup>7</sup>) and paramilitary forces, who beat, harassed, arrested or detained thousands of protestors, arrested hundreds, and killed dozens with sniper fire. There were mass trials in 2009 and 2010.
16. The applicant's evidence in the TPV interview was generally consistent with his written claims in the TPV Statement and with the country information about these protests; however, was very minimal and undetailed. He described that his protest activity in Iran had been sometime in 2009, although he could not recall exactly when as it was nearly 12 years ago now. He stated he joined the "millions" of people who went out and attended the protests after the "cheated" election results. They all chanted slogans and there were processions in different parts of the city but the main one was from Imam Hossein Square to Azarir Square. It is plausible that as a young man at university the applicant was attracted to this large and popular uprising of Tehran's secular, middle-class, reformist-minded supporters of Mousavi and Karroubi (many of whom were educated urban youth) and I accept that he took part in some of the protests.
17. These protests represented a major challenge to the authority of the Islamic Republic and many protestors were arrested tried and imprisoned (including convicted in absentia for those who fled); and the leaders, Mousavi, his wife (Zahra Rahanavard) and Karroubi, have

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<sup>4</sup> DFAT Iran Report 2020; DFAT 2016 Report

<sup>5</sup> DFAT Iran Report 2020

<sup>6</sup> DFAT Iran Report 2020; DFAT, "DFAT Country Information Report -Iran", 29 November 2013, CIS26780 (DFAT Iran Report 2013); Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran COI Compilation", 1 July 2018, 20190326122102; Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114 (DRC and Others February 2013 Report)

<sup>7</sup> ACCORD, "Iran COI Compilation", 1 July 2018, 20190326122102

been under house arrest without charge since February 2011.<sup>8</sup> The reports noted there was crackdown on activists and journalists in the wake of the protests. I find on the evidence before me that the applicant was one of millions who took part in some of the protests. Noting there is no claim or evidence that the applicant was any kind of leader of this protest movement in Tehran or had any high-profile role in them, or that in the aftermath of the protests he was ever arrested or approached at home by any authorities, I find he was not identified and had no profile as a protestor by any authorities at the time. I accept it is possible, based on country evidence that he may have been beaten during a protest by Basij or other authorities, however on the evidence before me I find that this was a random event in the crowd, targeting the crowd and not because the applicant was personally identified in any way.

18. The applicant claimed he came to attention because of his outspoken support of the Green Movement and its leaders at work, where his boss was a religious extremist, possibly part of Sepah or Ministry of Intelligence. His TPV interview evidence was that he and his friend at work, [Mr A], were fellow protestors and supporters of the Green Movement and its leaders, and *"talked to each other"* at work about these things and in which conversations other like-minded colleagues began to join in. The applicant's boss was aware of this as the applicant also spoke to his boss about his views. He stated that his boss warned him that if he kept continuing to support these people *"something bad might happen in the future."* The import of his claims was that that did occur, when he was told by his colleague [Mr B], four days before he left Iran for Australia (which departure was [in] May 2013 on his TPV claims), that [Mr A] had been arrested and that he should not come back (from Tehran to [City 1]). He stated that it was the Intelligence Services in the [Occupation 1] department who had done the arrest and that [Mr B] told him they *"are just waiting for you, they do not want to come to Tehran and do it like that, they just want to do it quietly"*. The applicant explained they wanted to do it in this *"sneaky way"* because his father, retired, had used to be the manager of the [Occupation 1] department at the company.
19. As did the delegate, I have concern with this claimed arrest of [Mr A] and imminent intention to arrest the applicant for his politics. I consider it improbable, if this was meant to be a quiet and surprise arrest, that the Intelligence Services would have told [Mr B] that they planned to arrest the applicant when he returned from Tehran and that they did not propose going to Tehran to do so, in order to keep it quiet. And I am not satisfied that his friend would otherwise know these details of their claimed plans. I find the claimed conversation and warning implausible and not credible. Moreover, if the authorities had concern about the applicant as an anti-regime dissident and intended to arrest him, I find it very difficult to believe that they would not have gone to his home to look for and arrest him or make enquiries about him when the applicant failed to return to work when due as claimed; and there is no claim or evidence before me that any authorities did so.
20. I also note that the applicant made no mention at all of any arrest of [Mr A] in his Irregular Maritime Arrival & Induction Interview of 2 July 2013 (described in the delegate's decision as the "arrival interview"). He claimed there that the call from [Mr B] warned him that he had *"been found out"* and he told the applicant *"If you have been arrested over the conversations we have had, don't come back to work."* I take into account the cautions required by decision makers in relation to omissions or inconsistencies arising from entry interviews and the limitations inherent in that interview process and that it is not a forum for exploration of all

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<sup>8</sup> DFAT Iran Report 2020; ACCORD, "Iran COI Compilation", 1 July 2018, 20190326122102; Radio Zamaneh, "Protesters from 2009 election sentenced in absentia", 15 July 2014, CX323256; Amnesty International, "'We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610

details of all protection claims. However, I also note that the applicant was not interviewed immediately upon arrival but a week after his reception into Australia. He had a Farsi interpreter, with no indication of any interpretation difficulties. I note that the applicant was notified at the commencement of the arrival interview that its purpose was his opportunity to provide reasons why he should not be removed from Australia. And given that he claimed then to fear he would be jailed if returned to Iran and that on his present claims the arrest of [Mr A] is significantly material to why he believed any substance to [Mr B]'s claimed warning that he would be arrested himself, as they had engaged in the same activities, and was instrumental in his decision to leave Iran, I consider it significantly doubtful that the applicant would not have made any mention at all in this interview of [Mr A]'s claimed arrest, if it had occurred. Moreover, I note the applicant was asked several questions about why he thought he would go to jail and was asked about "*what exactly*" [Mr B] had told him and I am not satisfied that such a significant detail from such a recent conversation would have been forgotten. I also consider it of significance that the applicant made no mention of the protests and shared conversations at work with [Mr A] about the Green Movement as to why he feared arrest, stating only that it was because that is what happens to those who "*talk political things*" – which he had described as "*obscenities*" about the military and government when he argued with his boss. Indeed, he only mentioned his protest attendance when later specifically asked in the arrival interview if he had ever participated in any protests. I consider it appropriate in all the circumstances to have regard to the arrival interview and inconsistencies arising from it in considering the claims before me. I consider the difference between the claims in this interview to be materially at odds with the detail of his later claims which raises concern about their credibility.

21. Moreover, the country information before me indicated a severe crackdown on protestors and political activists by the security forces in the wake of the 2009/2010 protests, such that there were reports that prisons were overflowing, with many protestors needing to be held in makeshift facilities including buses, and newspaper publication of photographs of the demonstrations with encouragement to the public to identify and denounce fellow citizens to the authorities.<sup>9</sup> In light of this public campaign to identify protestors, and given the claimed extremism and Sepah or Ministry of Intelligence connections of his boss, and his claimed outspokenness including to his boss of his political views of support of the Green Movement and its leaders and his criticism of the government and participation in protests, I find it improbable and difficult to believe that he and [Mr A] would not have come to attention of the company's Intelligence Services or any other authorities and been arrested, or at least detained and questioned, at any time in 2009, 2010 or 2011 when the protests, activism and political interest were at their height and when the applicant was, on his evidence, working at this company and attending protests in 2009 and openly discussing his political views and Green Movement support at work. I do not consider it credible that his bosses or the authorities would only discover or act upon this in May 2013.
22. I note also from country information that the Green Movement had largely evaporated in the months following the 2009 elections, following the heavy-handed clampdown on, and surveillance of the activists and mass arrests and show trials of activists and leaders, and lost leadership with the house arrest of their presidential candidates in February 2011. Sources in ACCORD noted that many younger generation supporters lost interest in the movement, became disenchanted with politics and only re-engaged (some by wearing green bracelets and holding photographs of Mousavi and Kourrabi) when coming out to vote during the June 2013 presidential elections in which Hasan Rouhani (a moderate centrist) was elected based

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<sup>9</sup> Including: DFAT Iran Report 2013; DRC and Others February 2013 Report

on moderate, reformist support; and who remains incumbent.<sup>10</sup> There was no indication in ACCORD of any clampdown of or arrests for such public Green Movement support; and DFAT reported only one instance of arrests, at a Rouhani campaign rally of people chanting pro-Mousavi slogans.<sup>11</sup> This report otherwise observed an opening up, at this time, of space for non-state-sponsored political rallies and expression of oppositionist views, within a limited range - and in this context I note that DFAT has observed that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, with crack-down on dissent by authorities more likely in time of political uncertainty such as during demonstrations, or where well-understood “red lines” have been crossed, such as criticism of the Supreme Leader.<sup>12</sup> I am not satisfied the evidence before me supports that people displaying or who had sympathy with the Green Movement or its leaders or their policies, were generally subjected to crackdowns or arrests in 2013. I find Danish reporting in 2013 of a fact-finding mission from 2012 indicated overall that ordinary protestors from 2009 were not (then) likely to still be pursued by authorities unless they were still politically active or had started up a new activity considered to be provocation, such as being active on the internet about the then-up-coming 2013 election.

23. The applicant’s claims and evidence made no reference to Rouhani or that he supported him, nor any discussion about the 2013 elections or any engagement in them. Given the dwindling political engagement by the Green Movement’s supporters around 2010/2011, and that it was not a political party in the 2013 elections nor its leaders candidates, and the self-suppression of public outspokenness of non-conformist political views resulting from the mass arrests of 2009/2010, I am not satisfied that in 2013 the applicant was still as vocally supportive of the former Green Movement as he may have been at its height in 2009/2010. Moreover, the applicant’s interview evidence indicated that he is no longer interested in the Green Movement “*or anything like that*” as all the political parties are the same, which I consider reflective of that general disengagement in the movement noted above, and I am not satisfied this change of attitude occurred only recently in Australia and not much earlier after the events of 2009/2010 as indicated in the country information. Noting the applicant’s TPV interview evidence of conversations at work I am not satisfied and do not find that any of the applicant’s evidence supported or corroborated the assertion, in the submissions from his then-representative accompanying the TPV application, that the applicant’s political activities had included that he started a protest at the company he worked for. And I do not accept this occurred either in around 2009/2010 at the time of the mass protests in Tehran, nor in 2013, or at any other time. I also do not accept that the applicant organised meetings at work to make people understand his politics or to motivate others to any political view or support. Whilst I accept that the applicant had conversations in which he expressed his views, particularly at the time of the disputed election protests and the arrest of the presidential candidates, I find he has exaggerated the nature and extent of these public discussions.
24. I do not consider it credible that in May 2013, long after the protests and activism of the Green Movement had died out, the applicant was suddenly of adverse interest to the Intelligence Services at his company or to any other government security or other agencies either for his protest attendance in 2009 or for having had conversations about his political views at work with his boss or with other colleagues, even in groups. I am also not satisfied, on all the information before me that the applicant was in any way a political activist in 2013,

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<sup>10</sup> DFAT Iran Report 2020; ACCORD, “Iran COI Compilation”, 1 July 2018, 20190326122102; DFAT, “DFAT Country Information Report -Iran”, 29 November 2013, CIS26780 (DFAT Iran Report 2013)

<sup>11</sup> DFAT Iran Report 2013

<sup>12</sup> DFAT Iran Report 2020; DFAT Iran Report 2013



nor that he was perceived as one, nor that he was in conflict with his boss over political views or opinion.

25. Overall, for all the reasons above, I am not satisfied of the applicant's claims on the evidence before me, and I am not satisfied that the applicant has given a credible account of his reasons for leaving Iran. I do not accept the applicant's claims that his friend [Mr A] was arrested or is currently in prison. I do not accept that the applicant was warned that he was to be arrested, and I do not accept that when he departed from Iran in May 2013 he was about to be arrested, or was of any adverse interest or security concern to the Intelligence Services at his company or to Sepah or to any other Iranian authorities or other persons for political opinion or as a perceived opposition dissident or because of his having been one of millions of supporters of 2009's Green Movement or having attended some protests in 2009, or for any other reason.
26. DFAT noted in 2020 the period of time that has now elapsed since the 2009 protests, and assessed that ordinary participants in those Green Movement protests who avoided arrest at the time face a low risk official discrimination in Iran, noting that the authorities generally would not have records of, nor (I note more significantly) interest in, such participants. Those more likely to be of concern to authorities and who might be monitored or harassed or face discrimination in employment are the leaders of the movement, and those of high profile who had prominent or active organisational roles in the Green Movement. I am not satisfied the applicant has any such a profile. Whilst there is reporting in the review material of people arrested when returning to Iran for involvement in the Green Movement and 2009 protests, I note that these reports are predominantly quite old, and more significantly concern people with prominent profiles of activism, such as opposition party members and journalists, former political officials, senior advisers to the Green Movement presidential candidate leaders, and or people who had been previously arrested and either released on bail or sentenced to suspended imprisonment before leaving Iran and then engaging in anti-government demonstrations overseas.<sup>13</sup> The applicant does not have any such profile and I place weight on the DFAT report which is based on more recent sources, and from a broad range of credible local and international sources and is produced for protection status determination purposes only.
27. For all the reasons discussed above I am not satisfied that the applicant would face any real chance of being arrested or jailed or tortured or suffering any other form of harm in Iran on return or in the reasonably foreseeable future because of his former support of the Green Movement and participation in some protests in 2009.

#### *Activities in Australia*

28. The applicant claimed for the first time in the TPV interview that he had participated in anti-Government of Iran demonstrations in Australia, and provided two videos and three undated photographs in support of this claim to the delegate after the telephone interview. The videos are from [social media] pages that do not appear to have any association to the applicant.

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<sup>13</sup> Including: Radio Free Europe/Radio Liberty, "Rude Homecoming For Iranian Dissidents", 29 April 2014, CX320500; International Campaign for Human Rights in Iran, "Former Reformist Member of Parliament Arrested Upon Return to Iran", 27 July 2015, CXBD6A0DE10786; Radio Zamaneh, "Mousavi's campaign worker arrested upon return to Iran", 16 February 2014, CX318168; Amnesty International, "AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran", 6 May 2011, CX264288

29. The delegate did not accept that this material featured the applicant, as the applicant had not identified himself in the images. I note the interview was by telephone and there is no indication before me that the delegate otherwise knew the applicant's appearance other than from the identity and biographic documents in the review material and TPV application, as before me. I note that there is a common appearance in all the footage of the same man with a beard (the photograph of a man holding a [item] is too obscured over the face to satisfactorily identify any person and I am not satisfied this is the applicant) and wearing a [specified clothing] along with three or four others. The applicant claimed he had been "[specified role]" at demonstrations. Although clean shaven in the biometric and identity card photographs in the review material, it is possible that there is some bare resemblance of the applicant with the bearded man in the images provided post-interview. Although the applicant did not specifically identify which person he was in the images, I am willing to accept that the applicant is in these pictures.
30. One video appears to be on a [specified social media] site and shows a large crowd marching down the street waving Iranian flags and chanting in different languages, with the audible English words being "*Down with the Islamic Republic of Iran*". The video is described on the site page as '[description redacted]'. Of the three photographs one shows a street march also with flags and (illegible) banners, and two show a group of men, standing around with other demonstrators holding flags and banners, and they are posing for camera behind and holding a large Iranian flag. The presence of [the same lady] in these two photos and the video indicate this is the same occasion. In the absence of other contextual evidence and noting there is little to suggest the other photograph is not also of this same occasion I find that it is. The second video is from the [social media] page of one [Mr C], dated "[date]" and shows a crowd of people, holding Iranian flags and banners, lining the side of public road and chanting foreign language slogans in response to a man calling them on a microphone. Banners refer to matters such as Iranian women's rights, pollution and corruption, free elections and no religious government in Iran.
31. Despite claiming he had been politically active in Australia, I have some concern that the applicant's participation in these events was not for genuine interest in politics but for the purpose of strengthening his protection claims. I note the evidence provided indicates only participation in two events, in January and May 2018, significantly only in the few months following his lodgement of his TPV application in August 2017. There was no claim or mention in the TPV application of any participation in or interest, in Australia, concerning Iranian political issues or activities. Moreover, I consider the applicant exaggerated his level of involvement in such events, stating that he protested outside the Iranian Embassy in Canberra and was the one calling out chants that people then repeated after him. The video of the May 2018 protest, and which I am willing to accept may have been at the Iranian Embassy in Canberra, shows a man calling the slogans for the crowd response, who bears no resemblance whatsoever to the pictures of the applicant in the review material before me. I do not accept that the applicant is this man in the video or that the applicant was the person leading the chants at this or any protest. In the images before me the men in [specified clothing] are assiduously filming themselves, each other and the protestors and posing to camera for photographs. It is clear that obtaining this protest imagery was an intention at these events. I have regard to the applicant's TPV interview evidence which indicated that he no longer has any interest in the Green Movement or the politics that drew him to the 2009 protests, and that that was "*related only to that time*".
32. Under s.5J(6) of the Act, in determining whether a person has a well-founded fear of persecution, any conduct engaged in by the person in Australia must be disregarded unless I can be satisfied that the person engaged in the conduct otherwise than for the purpose of

strengthening their claim to be a refugee. Overall, I am not satisfied that the applicant's attendance at these two demonstrations was otherwise than for the sole purpose of strengthening his claims for protection and I have not considered that conduct in assessing whether he has a well-founded fear of persecution in Iran.

33. The applicant's evidence indicated that he now has little interest in politics or political candidates or figures in Iran and I am not satisfied on the evidence before me that he would become politically active in any way if returned to Iran or participate in demonstrations or protests or that there is any real chance that in the reasonably foreseeable future he would come to any adverse attention of any Iranian authorities or other persons for any political reasons or for an real or imputed political opinion.

#### *Failed Asylum Seeker*

34. Iran historically refused to issue travel documents (*laissez-passers*) to allow involuntary return of its citizens from abroad. Pursuant to a recent Memorandum of Understanding between Australia and Iran, Iran will now, for Iranians who arrived in Australia after 19 March 2018, facilitate the return of such Iranians who have no legal right to stay in Australia.<sup>14</sup> However, as the applicant arrived in Australia in 2013, if he were to return to Iran, I find that it would only be as a voluntary returnee. Iran continues to cooperate with the International Organization for Migration (IOM) to assist voluntary returnees. I accept the applicant is no longer in possession of the Iranian passport on which he departed from Iran, it having been destroyed by people smugglers in Indonesia. I accept that through the circumstance of the applicant's lengthy stay in Australia before return, and or through the process of issuing *laissez-passer* documents from an Iranian diplomatic mission to facilitate any return to Iran, if he does not obtain a new passport, the Iranian authorities may surmise that he is a failed asylum seeker from Australia.
35. DFAT reports that people returning on *laissez-passer* documents can be questioned by airport Immigration Police about circumstances of departure and why travel is on *laissez-passer*.<sup>15</sup> The standard questioning of 30 minutes to an hour may be extended if a person arouses suspicion including of any criminal history. I note the applicant departed Iran legally, from the airport, on his own Iranian passport, and I am not satisfied that he had or has a profile of any adverse interest or concern to the authorities of Iran, including for any political activism. There is no indication before me that the applicant has any criminal convictions or outstanding criminal matters. DFAT assessed in 2020 that those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists. I am not satisfied the applicant has any such profile. The country information indicates that generally, returnees are not arrested or mistreated in this routine questioning.
36. Country information<sup>16</sup> indicates that the authorities pay little attention to voluntary returnees, including failed asylum seekers on return; that millions of Iranians, including the large Iranian diaspora and those with asylum in western countries, travel to and from Iran each year without difficulty; and that seeking asylum abroad is not an offence. DFAT reports the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted abroad, including activities in relation to protection claims abroad. Although

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<sup>14</sup> DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226 (DFAT Iran Report 2018); DFAT Iran Report 2020

<sup>15</sup> DFAT Iran Report 2020

<sup>16</sup> Including: DFAT Iran Report 2020; DFAT Iran Report 2018; DFAT Report 2016; DRC and Others February 2013 Report; and the various DFAT reports of Responses to CIS Requests from 2007 to 2011 referred to by the delegate.

there are isolated anecdotal reports suggesting some official concern about seeking asylum abroad, I note that these are not recent, dating from 2011 and 2012 and the media report specifically linking asylum and charges on return was of a person already of adverse profile with authorities having left Iran whilst under charges for political activism in Iran and who then engaged in anti-government political demonstrations overseas.<sup>17</sup> The applicant does not have this same profile.

37. Whilst there are some reports in the review material of some returnees, including deported asylum seekers, being subjected to arrest, detention and mistreatment upon return to Iran, the overall information indicates these reports primarily relate to individuals with pre-existing charges or sentences for criminal matters, or previous adverse high profile for criminal or anti-regime or other rights activist activities in Iran, or member/s of an oppositional political party or involved in political or rights activism in other ways, including journalists who report on these.<sup>18</sup> I do not accept that the applicant has any such profile with any authorities in Iran. I take into account the country information discussed above, and the consistent reporting by DFAT over many years, from 2007 to 2020, in the review material, that claiming asylum abroad is unlikely, of itself, to be a trigger for mistreatment upon return; and overall, I am not satisfied that Iranian returnees from Australia, who are not otherwise of prior adverse security concern, whether returning on passports or *laissez-passer*, are routinely treated with suspicion or are imputed to be dissidents or to have any anti-government political opinion, simply for living for some years in Australia, a western country, or seeking asylum here. I am not satisfied that the applicant has or would have on return to Iran any profile of adverse concern. The country information before me does not support that Iranians returning to Iran having sought asylum protection in Australia are subjected to persecution of any kind by any authorities or other persons for that reason. On all the information before me I am satisfied that there is not a real chance that the applicant would be arrested or jailed or mistreated on arrival in or after return to Iran as a failed asylum seeker from Australia, a western country, or for any other reason. I am not satisfied that the applicant would face a real chance of any harm in Iran on return or in the reasonably foreseeable future for reason of returning from Australia as a failed asylum seeker, whether returning on a new passport or on *laissez-passer* documents from any Iranian authorities or any other persons.
38. Considered overall, I am not satisfied that, on return to Iran or in the reasonably foreseeable future, the applicant would face a real chance of any harm from any Iranian authorities, or any other persons, either at the airport on arrival or after return home, on any or any combination of his claims before me.

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<sup>17</sup> Iran Human Rights, "The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail", 19 June 2011, CX274950; Amnesty International, "We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February, 2012, CIS22610

<sup>18</sup> Including: Amnesty International, "Amnesty International - Urgent Action: UA 125/11: Student activists held in Iran", 6 May 2011, CX264288; Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; Radio Zamaneh, "Jailing of returning journalists called part of anti-Rohani plan", 31 July 2014, CX324017; Committee to Protect Journalists, "Rouhani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970; Amnesty International, "We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February, 2012, CIS22610; Danish Refugee Council and Danish Immigration Service, 'Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran", September 2013, CIS26587

39. The applicant does not have a well-founded fear of persecution within the meaning of s.5(J)(1) of the Act.

### **Refugee: conclusion**

40. 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**

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41. 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**

42. 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.
43. 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.
44. In assessing whether the applicant has a well-founded fear of persecution in Iran under the Refugee assessment criteria, I have disregarded the conduct engaged in in Australia for the sole purpose of strengthening his refugee claim, namely attending demonstrations in Sydney and Canberra in 2018. However, I now have regard to that conduct in assessing those claims under complementary protection. I have considered country information to assess whether those activities in Australia may result in significant harm to the applicant in Iran as an anti-regime political activist. As I have described them earlier, I accept that the rhetoric at the Sydney demonstration was anti-government of Iran, and at the Canberra demonstration evinced various views of support of women's rights or criticism of government issues including about elections, religious government and freedom.
45. There are anecdotal reports suggesting the Iranian authorities might monitor the activities of Iranians abroad including through informants.<sup>19</sup> I acknowledge there is [social media] footage of the two events the applicant attended in Australia, which might be publicly open or available. However, the footage is not clear. The Canberra footage is grainy, ill-focussed and at a distance, and the Sydney footage shows fleeting glances, from the side, of people

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<sup>19</sup> Iran Human Rights, "The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail", 19 June 2011, CX274950; United Kingdom Home Office (UKHO), "Iran: Christians and Christian converts", March 2018, OG9EF767914

walking past camera. The posed group photographs of the applicant are clearer; however, they are not obviously from those [social media] websites and I am not satisfied these have been posted online in any forum or made publicly available. In the photograph of a person marching with a banner the person's face is almost completely obscured by the arm holding the banner and I am not satisfied that, if this is the applicant, he is identifiable at all from this image. Noting my findings above that the applicant had no adverse profile in Iran with any authorities as a political activist or was of any prior concern to them when he left Iran, and that the videos are from [social media] accounts that have no obvious association to or mention of the applicant, I consider the chance or risk that the applicant has been identified in any photographs or video as attending these two events to be remote. Although one of a few wearing [specified clothing], and to the front at the Canberra protest, he was otherwise one of a crowd of many people, all doing the same thing of waving flags or banners or chanting at these two events. He was not a leader or organiser of the events and did not visibly appear to be so. I find it difficult to accept that the applicant, not previously of any note to the Iranian authorities, has been or would be identified by or come to the adverse notice of any Iranian authorities from the footage. There is no indication before me that any regime informers were present within the demonstrators or have otherwise identified the applicant to any Iranian authorities as having been involved in the demonstrations. I consider the risk that any Iranian authorities have identified the applicant as one of the demonstrators from two events in Sydney and Canberra in 2018 or that they would do so in the reasonably foreseeable future to be very remote.

46. Moreover and in any event, I note that DFAT has reported from international observers that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims and including criticising the government or protesting outside Iranian diplomatic missions.<sup>20</sup> It assessed that such people with existing high profile in Iran, particularly for political activism, face a higher risk of coming to official attention on return to Iran. This is borne out by other reporting in the review material which indicates that returnees arrested or coming to adverse official attention on return to Iran for political activities overseas, including attending protests, were predominantly people with pre-existing adverse profile in Iran before departure, including people with history of prior arrest for political activism offences, leaving Iran whilst on bail for such criminal charges or whilst under suspended imprisonment sentence for such criminal offences or otherwise from widely broadcasting or publishing their views including on television.<sup>21</sup> I am not satisfied that the applicant has or would be perceived or imputed to have any such profile on return to Iran.
47. I note DFAT's assessment that treatment of returnees, including failed asylum seekers, depends on the returnees' profile before departing Iran and their actions on return. Apart from these two demonstrations in Australia for his protection claims in 2018, the evidence

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<sup>20</sup> DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report: Iran", 14 April 2020, 20200414083132

<sup>21</sup> International Campaign for Human Rights in Iran, "Former Reformist Member of Parliament Arrested Upon Return to Iran", 27 July 2015, CXBD6A0DE10786; Center for Human Rights in Iran, "Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran", 18 October 2017, CXC90406615858; Amnesty International, "AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran", 6 May 2011, CX264288; Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; Ny Tid, "Teenager imprisoned after being deported to Iran", 23 March 2011, CX261493; Iran Human Rights, "The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail", 19 June 2011, CX274950; Human Rights Activists News Agency, "An Arab Asylum Seeker Sentenced to Jail after Returning to Iran", 30 May 2017, CXC9040668619

before me indicates that the applicant has otherwise not been politically active or engaged or interested, in Australia, in Iranian political issues, parties or movements, despite the greater freedoms here. The applicant's evidence indicating he no longer supports the reformist movement he once did persuades me that he is no longer interested in politics or activism and I am satisfied that he would not become politically active in Iran if he returned there. In all the circumstances and evidence before me, I am not satisfied that there is a real risk that the applicant would be imputed with any political opinion or to be an anti-government of Iran dissident or activist by any Iranian authorities or other persons from attending these demonstrations in Australia. I am not satisfied that on return to Iran or in the reasonably foreseeable future the applicant would face a real risk of being arrested, jailed or tortured or otherwise mistreated by any Iranian intelligence or other authorities for having attended the demonstrations in Australia. I am not satisfied that there is a real risk that he would be subjected to torture, or any imposition or carrying out of the death penalty, or being arbitrarily deprived of his life, or any cruel or inhuman or degrading treatment or punishment within the meaning of the Act. I am not satisfied that there is a real risk that the applicant will suffer significant harm on this claimed basis if returned to Iran.

48. I have otherwise found the applicant would not face a real chance of harm if returned to Iran on any other grounds claimed. Noting that the Full Federal Court has set out that the "real risk" test for complementary protection is the same standard as the "real chance" test,<sup>22</sup> it follows that, based on the same information, and for the reasons stated above, I am also satisfied that there is not a real risk that the applicant will face significant harm for any or any combination of those reasons if returned to Iran.

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

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

#### **Decision**

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

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<sup>22</sup> *MIAC v SZQRB* [2013] 210 FCR 505

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

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

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

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



...

### 5J Meaning of well-founded fear of persecution

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

#### *Protection obligations*

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

#### *Determining nationality*

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