



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09240

Date and time of decision: 19 July 2021 16:42:00

S McNeill, 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) claims to be a national of Iran. She arrived in Australia [in] April 2013 with other family members. On 8 May 2017 she lodged a combined application for a Safe Haven Enterprise visa (SHEV) along with her mother, sister F and brother EM. The applicant claimed to fear harm due to a dispute with her brother EM's ex-wife's family.
2. At her SHEV interview on 20 April 2021 the applicant stated she lived with her partner. Her representative advised she no longer claimed to be considered as part of the same family unit as her mother and siblings.
3. On 1 June 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 25 June 2021 the Immigration Assessment Authority received a submission from the applicant's representative. It addresses a number of the delegate's findings and this I consider to be legal argument and not information in the relevant sense. I have had regard to this argument. The submission also reiterates claims made by the applicant.
6. The representative also provided an attachment containing country information reports referred to in the delegate's decision and documentary evidence he had previously submitted on the applicant's behalf. No new information was identified.

Applicant's claims for protection

7. The applicant's claims contained in her statutory declaration can be summarised as follows:
 - She was born in [Year] in Ahwaz, Khuzestan Province of Iran.
 - She is of Persian ethnicity and was raised a Shia Muslim.
 - She divorced her husband in 2008 and has no contact with him. She left Iran because it was difficult to live there as a divorced woman. People saw her as if she had committed a serious crime. Divorce in Iran is not morally or culturally acceptable and women are blamed. She was constantly discriminated against because of her marital status. After her divorce she had to move back to her family because it was extremely difficult to rent accommodation.
 - She always wanted to leave Iran but could not afford to arrange her trip. When her brother faced problems with his ex-wife, the whole family decided to leave.
 - Since her arrival in Australia, she has renounced Islam and is now an agnostic. In Iran, Islam was imposed on her and she could not explore other religions. In Australia she finally had the freedom to express her religious views and is free to say she does not belong to any religion. She cannot bring herself to confirm with Islamic belief again. She will not attend mosque or wear Hijab.

- She fears being detained, arrested, seriously harmed and/or killed by the Iranian authorities because she has rejected Islam and is agnostic. They will accuse her of being an apostate and an enemy of the regime. She cannot modify her behaviour and bring herself to confirm with Islamic belief again. She will not attend mosque or wear Hijab.
- As a separated woman she fears being subjected to physical and sexual violence, physical harassment, serious emotional and psychological abuse by the Iranian authorities or by the community. She will struggle to find employment because divorced women are viewed as a social and moral disgrace.
- She will not be able to survive on her own and will not be able to find safe housing. As a single woman she will be vulnerable to exploitation and harm from others.
- She fears harm from her brother's wife's family.

8. On 16 April 2021 the applicant submitted further claims as follows:

- She has been active on social media, [Social media 1] and [Social media 2], criticising the Iranian regime. She has been identified as a political dissident.
- A video of her attendance at a protest in Melbourne on a [Social media 2] page called '[Page name]' which is run by an Iranian opposition group with more than 280k subscribers.
- [Social media 2] is constantly monitored by the Iranian authorities and her photos and videos would have been seen.
- She is a staunch atheist and part of [Organisation].

Refugee assessment

9. 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

10. 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.
11. There is no issue as to the nationality of the applicant. She has consistently claimed to be an Iranian national and has provided a copy of her birth certificate. I am satisfied the applicant is an Iranian national and that Iran is the receiving country for the purpose of this review.
 12. At her SHEV interview on 20 April 2021 the applicant confirmed she was legally divorced from her ex-husband in Iran. She could not provide a copy of her divorce certificate because SERCO had lost all their documents when they first arrived on Christmas Island. She was currently in a de facto relationship. Her partner was currently supporting her, and they were living together. Prior to COVID she worked as [an Occupation 1], but she was not presently working full-time only assisting friends.
 13. The applicant stated she did not have any religion. Islam was given to her at birth. In Iran she could not say she did not have a religion. If she said that she would be considered an infidel and the punishment for that is capital punishment. Her previous migration agent had put she was agnostic on her SHEV application, but she had no religion.
 14. Asked why she left Iran, the applicant said because of the conflict which emerged between her brother EM and his ex-wife and her family. It was a tribal conflict and in order to save their lives, her brother thought to flee the country. At that time because she lived with her family, they all decided to leave and if she had remained in Iran, she was going to be serious threatened by his ex-wife's family.
 15. The delegate questioned the applicant about what happened after her brother's ex-wife's father MZ and his family members came and shot at their house. The applicant said they raided them at night, they were shooting in the air, the door and walls but not shooting at them directly. The ex-wife's family belonged to a big tribe and they feared being involved in a big fight.
 16. Asked what they did the next day, the applicant said they decided to leave Ahwaz city and go to another town called Shooshtar near Ahwaz, to a relative on her mother's side. They were there about six to seven days and 'they' found out their location. They came over and started shooting at the air and making a lot of rampage. They panicked and decided to leave that place too. They were not found at the next place.
 17. Asked whether she reported it to the police, the applicant said they reported the matter, but the police said it was a tribal matter and needed to be solved between themselves. She did not personally report it, but her brother told the police.
 18. The delegate noted her anti-Islamic republic political opinions and had received photos of her being present at demonstrations. He was aware of the [Social media 2] page and asked if she had anything else, she wished to say about her political involvement. The applicant said she believed the Islamic Republic of Iran was very cruel to its people, especially women who were restricted. As a political activist, she was in conflict with the government of Iran. She had participated in protests and demonstrations and posted her activities and photos. She wanted to express her conflict and tell the government of Iran that she opposed them.
 19. Another reason she could not return to Iran was because she had rejected Islam and the punishment for that was execution, capital punishment. She had also posted photos of the Supreme Leader on [Social media 1] and [Social media 3] and showed how cruel he is to the

people of Iran. Her representative stated the applicant's posts on the [Page name] [Social media 2] page run by Iranian political activists outside Iran had attracted in excess of 275,000 members. The Iranian regime was very sensitive about this page. It came up frequently when in Iranian opposition group talks and speeches. One of the applicant's post had had 14,500 view and the second 58, 000 views and the applicant had been identified by the Iranian agents as a result.

20. She had also protested about the Iranian government recent 25-year agreement with the Chinese government selling the country's resources for nothing. The applicant will be arrested at the point of entry on her return to Iran, interrogated and after a confession is obtained, she will be tried and convicted as a political dissident.
21. Furthermore, her representative stated the applicant was active on [Social media 1] and she had shared material extremely offensive to the Iranian regime. She had shared posts since 2016. She had shared posts of the supreme leader, her support for the Iranian girls arrested for removing their Hijab and who had been imprisoned. The applicant did not wear Hijab, she did not conduct herself in an Islamic way and thinks Islam is backwards. She supported the white Wednesday campaign by young Iranian women who opposed compulsory Hijab in Iran. He further submitted the applicant will be arrested on entry to Iran and followed by interrogations, she will be tried and convicted as a political dissident. She will be forced to provide her password for her [Social media 1] and [Social media 2] accounts.
22. With regards to the applicant's core reason behind their departure from Iran, the family dispute arising from her brother E's ex-wife's family after her brother caught his wife in bed with another man. I have listened to E's SHEV interview and I also have the applicant and E's arrival interviews in the referred material. There are inconsistencies that impact on the credibility of this claim.
23. Firstly, whether the threats made by MZ were reported to the police. The applicant's brother EM in his statement of 13 May 2017 claimed they did not report the matter to the police, they would see it as a domestic issue and not intervene. However, in his SHEV application form at question 92, it is recorded that he approached the police, but they did not help. Likewise, it is similarly recorded in the applicant's SHEV application form. As noted above, while her brother EM stated they did not contact the police at his SHEV interview but at the applicant's interview, she stated he made the complaint. I also note in their mother's SHEV arrival interview undertaken on 17 May 2013 she stated the reason his ex-wife's family came to the house shooting was because they had reported it to the police.
24. As also observed by the delegate, the applicant's brother EM stated in his arrival interview of 15 June 2013, his ex-wife and her family took the matter to court. At his SHEV interview he did not recall saying this. Further, it came to light during both their interviews that MZ and his family found them at the first place they moved to after the initial time MZ came and shot at their house. They moved to Shooshtar near Ahwaz, to a relative on her mother's side. They were there six to seven days and then MZ's family came and was shooting in the air and making a rampage. Her brother EM recalled this but stated they were only were only in Shooshtar five to six days. This inconsistency is minor; however, according to their oral evidence, on two separate occasions MZ and his family members twice shot at the air when confronting the applicant's family but in EM's written claims he only referenced one occasion. Neither EM nor S mentioned being shot at second location in their arrival interviews. They have provided different accounts of the encounters and the reporting of the matter.

25. According to the Australian Department of Foreign Affairs and Trade (DFAT) killings are defined as a murder committed or ordered by a relative as a punishment to a family member who is seen – or suspected to have damaged the family’s reputation by their actions. Such actions can include extramarital sex, refusal of an arranged marriage or choosing one’s own spouse with the family ‘s approval. Honour killings are an established phenomenon in many of Iran’s outermost provinces, particularly where state infrastructure is scarce and tribal traditions strong. For cultural reasons, women and girls are the most likely victims. In cases where authorities have attempted to stop the phenomenon of honour killings by sentencing some perpetrators to long prison terms (as has reportedly occurred in Khuzestan Province), new strategies have quickly evolved to circumvent these punishments, including through hiring third parties to commit the murder¹
26. EM in his SHEV application and interview provided no substantive background details to flesh out his marriage, whether her Arab family opposed her marriage to him an ethnic Persian, or what problems they were facing or for how long. I find it somewhat far-fetched that EM upon discovering his wife (an Arab) with another man, would immediately notify his father-in-law and that once rebuffed by his father-in-law he would get his brother EH to attempt to further persuade him. Although the country information indicates that woman are the most likely victims in these cases, there is no information to suggest EM’s ex-wife came to any harm. According to EM’s arrival interview his now ex-wife returned to live with her family. There is no information as to what, if anything, became of the man his wife was apparently having the sexual relationship with. This evidence does not provide for a persuasive or convincing account of these claims.
27. Taking my above concerns into consideration, while I accept the applicant’s brother EM was previously married, I do not accept the applicant’s brother’s found his wife having sexual relations with another man and that he immediately told his father in law MZ and that MZ and his family members came and attacked the applicant’s family home. I do not accept this family dispute as claimed. I do not accept the applicant is at risk of her brother EM’s ex-wife’s family. I am not satisfied the applicant faces a real chance of any harm on this basis on her return to Iran now or in the reasonably foreseeable future.
28. On the information before me, while the applicant did not provide documentary evidence of her divorce, she has consistently claimed to be divorced and I accept the applicant divorced in 2008. She is currently engaged and living with her partner in a de facto relationship and he is supporting her. The applicant claimed it was difficult to live as a divorced woman in Iran and she was constantly discriminated against. She fears being subject to physical and sexual violence, serious emotional and psychological abuse from the Iranian authorities and community and stigma from the community.
29. I note the applicant’s address differs from that of her mother’s in the SHEV application for the period leading up to their departure; however this is the same address her sister R has provided and also her brother EM, albeit EM lived in a different address for the two years preceding their departure. I accept the applicant lived with family members just prior to her departure from Iran. Her employment history indicates she worked in Iran as an administrator and a salesperson. She was employed in the same [shop] as a salesperson for the five-year period prior to her departure.

¹ ‘DFAT Country Information Report – Iran’, Department of Foreign Affairs and Trade (DFAT), 14 April 2020, CIS20200414083132.

30. While the applicant claimed she fears being discriminated and fears sexual and physical violence, she has not articulated in any detail past instances of discrimination or violence. Iran is a socially conservative and male-dominated society, the family structure is based on patriarchal principles and men have priority over women. Women do not have equal rights as men in many areas of the law including marriage, divorce, custody or adultery, and freedom of movement.²
31. According to DFAT, Iranian women have gained greater rights to divorce in recent years, and divorce is more common today, particularly in the major cities. Nevertheless, laws pertaining to marriage and divorce are tilted heavily in the favour of men. Article 1133 of the Civil Code stipulates that a man 'can divorce his wife whenever he wishes to do so'. A woman can obtain a divorce from her husband only with the husband's permission or if a court determines the husband: cannot provide for his family; has violated the terms of their marriage contract; or is a drug addict, insane or impotent. The applicant has not stated who instigated her divorce.³
32. A 2017 report indicated divorce rates in the past decade had increased from 102 to 225 divorces per 1000 marriages, more than doubling. This equates to approximately 22 per cent. In this study of 18 divorced female participants, 13 were the initiators. Participants referred to acts of discrimination against them, they felt a lack of trust and cynicism from society; their sexual and moral integrity was brought into question even by her own family. The endured inappropriate labels, societal stigma and sexual harassment in the workplace. Divorce individuals experience and identity crisis when encountering the definition of self-outside the marriage.⁴
33. A 2016 article also observed along with the increase of divorce the number of educated women in Iran electing to remain unmarried was increasing, the number of registered marriages decreasing. The internet and Western satellite channels were influencing what was socially acceptable especially among the middle class were slowly expanding the boundaries of what was socially acceptable. More unmarried couples were living together in 'white marriages.'⁵
34. On the information before me, I accept the applicant may have experience some societal social discrimination and stigma when she divorced over 13 years ago in Iran. The applicant resided with her family members and was gainfully employed with the same employer for five years. She has completed high school. The applicant did not claim she was otherwise seriously harmed including sexual or physical violence. Nor did the applicant claim that her immediate family gave her any problems because of her marriage breakdown. I accept that as a divorced woman the applicant may be subject to societal discrimination including some stigma on a day to day basis on her return to Iran. I am not satisfied the applicant's capacity to subsist will be threatened. I am not satisfied the treatments she may face constitutes serious harm in this case.

² 'Legal Status of Women: Iran's International Human Rights Obligations', Human Rights in Iran Unit, School of Law, University of Essex, Laura Jokinen, Mona Sabella and Catherine Bevilacqua, 01 June 2014, CIS2F827D92383; 'Iran - COI Compilation', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 July 2018, 20190326122102; DFAT Country Information Report – Iran', Department of Foreign Affairs and Trade, 14 April 2020, CIS20200414083132; 'Honour killings in Iran', Landinfo, Landinfo, 01 January 2009, CIS17741

³ DFAT Country Information Report – Iran', DFAT, 14 April 2020, CIS20200414083132.

⁴ 'Perception of Identity Threat as the Main Disturbance of Iranian Divorced Women: A Qualitative Study', Taylor & Francis, Zare, S, Aguilar-Vafaie, ME, Ahmadi, F, 11 January 2017, CISED50AD5992.

⁵ 'More women in Iran are forgoing marriage. One reason' The men aren't good enough', Los Angeles Times, 11 November 2016, CX6A26A6E17124.

35. The applicant is now currently living with her fiancé. According to DFAT, while prohibited by the law and frowned upon by the religious establishment and more conservative Iranians, relations outside of marriage occur in practice. DFAT assesses that there is greater tolerance today for mixed-gender interactions, particularly in the larger cities. DFAT heard anecdotally that so-called 'white marriages' – that is, unmarried couples living together in long-term relationships – are common in Tehran. According to local sources, while some landlords may refuse to rent property to couples in such arrangements, others have no qualms. The practice of 'white marriage' is less prevalent in rural areas and in cities like Qom and Mashhad, where more conservative social attitudes generally prevail.⁶
36. The Danish Refugee Council has similarly observed pre-marriage relationships or white marriages are widespread, especially among the young people and the number of these cohabitating is increasing. These relationships are common in Tehran and other major cities. Generally, the police do not crackdown on white marriages if no one reports the couple to the authorities they will not be prosecuted. A number of sources stated if someone reported such a relationship, the person in most cases would be neglected by the authorities. One embassy noted it had not come across any couples in white marriages who had been arrested or otherwise punished for such a relation.⁷
37. If her fiancé were to return to Iran with the applicant, I am satisfied they would be able to cohabit without the need for marriage should they so wish. I am not satisfied she will face a real chance of any harm on this basis.
38. I accept although born and raised a Shia Muslim the applicant no longer practices Islam and that she has no religion. In his email to the delegate of 16 April 2021 the representative describes the applicant as 'a staunch atheist and part of [Organisation].' I am of the view the representative has exaggerated the applicant's profile in this respect. He also provided a photo of the applicant standing with a man who wears a [shirt] with '[Slogan]' and '[Website address]' imprinted on it. I accept the applicant has at some point in time in the last four years since she lodged her SHEV application in May 2017 when she claimed to originally be an agnostic, met a member of [Organisation]. The applicant has not provided any background details as to when she became part of this group, that she attends meeting on a regular or ad hoc basis, nor has she claimed to be a member. The group itself has not provided any letter of support to indicate the applicant's connection. In discussing her religion at her SHEV interview as indicated above, the applicant herself did not use the term atheist. I accept the applicant is an atheist, however, I am not satisfied she devotes much time to atheist groups or actively promotes her atheist beliefs on a day to day basis on in a public or online forum.
39. Country information reports that Muslims constitute 99.4 per cent of Iran's population with Shia Muslims representing about 90 to 95 per cent; however, many Iranians have a secular attitude, rejecting all religions, Islam included.⁸ Local sources in Iran have told the Australian Department of Foreign Affairs and Trade (DFAT) 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, and alcohol consumption is common. Official sources told DFAT that religion was a private matter – that, beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of

⁶ DFAT Country Information Report – Iran', DFAT, 14 April 2020, CIS20200414083132.

⁷ Danish Refugee Council and Danish Immigration Service, "Iran: Relations outside of marriage in Iran and marriages without the acceptance of the family", 1 February 2018, CIS7B83941639.

⁸Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 September 2015, CISEC96CF13622.

Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities.⁹

40. Under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy. Separately, a person of any religion may be charged with the crime of 'swearing at the Prophet' (blasphemy) if they make utterances that are deemed derogatory toward the Prophet Mohammed, other Shi'a holy figures or divine prophets. The Penal Code does not specifically criminalise apostasy, but provisions in the Penal Code and the constitution stipulate that sharia applies to situations in which the law is silent, and judges are compelled to deliver sharia-based judgements in such cases. Although the Quran does not explicitly say that apostasy should be penalised, most Islamic judges in Iran agree that apostasy should be a capital crime.¹⁰
41. While apostasy and blasphemy cases are no longer an everyday occurrence in Iran, authorities continue to use religiously based charges (such as 'insulting Islam') against a diverse group of individuals. This includes Shi'a members of the reform movement, Muslim born converts to Christianity, Baha'is, Muslims who challenge the prevailing interpretation of Islam (particularly Sufis) and others who espouse unconventional religious beliefs (including members of recognised religious groups). Some religiously based cases have clear political overtones, while other cases seem to be primarily of a religious nature, particularly when connected to proselytisation.¹¹
42. 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 (Markazi Province) to sentence a 21-year-old man to death for apostasy. Authorities arrested the man after he made social media posts considered critical of Islam and the Quran while on military service. According to publicly available information, the death sentence had not been implemented at the time of publication. The court also convicted two co-defendants of posting anti-Islamic material on social media, sentencing them to prison.¹²
43. A Muslim who renounces Islam and becomes atheist is considered apostate and risks state persecution and, potentially, the death penalty. DFAT is unable to verify what proportion of the population is atheist. According to local sources, atheists are discreet about their non-belief beyond their close family and friends. Unless they widely publicise their non-belief, atheists are unlikely to come to the attention of the authorities. Atheists from conservative families might face familial pressure and potential ostracism if their atheism were revealed but would generally not be subjected to physical harm. Local sources told DFAT that atheists from more liberal families and parts of the country, like north Tehran, would face no such pressure. DFAT is unaware of individuals being prosecuted for atheism.¹³
44. Other information before the delegate confirms the non-practice of Islam in Iran is relatively common. One article observed Iranians were 'leaving the mosques in droves', turning away from Shia Islam and there is a 'tsunami of atheism.'¹⁴ Reports noted abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in

⁹ 'DFAT Country Information Report – Iran', DFAT, 14 April 2020, CIS20200414083132.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ 'Turning away from Shia in Iran - 'A Tsunami of Atheism'', Qantara, 07 February 2013, CXC28129415432.

Iran do not regularly attend mosques. Further, the authorities do not usually monitor mosque non-attendance.¹⁵

45. There has been a revival of nationalism (an attachment to pre-Islamic Persian myths and traditions) and secularism since the children born after the 1979 Revolution have come of age. One of the reasons for the increasing secularism is the rejection of the type of Islam pushed by Iran's theocratic leaders.¹⁶ Iran has been referred to as one of the least religious countries in the Middle East and while Iranians remain a spiritual people who see Islam as part of their identity, many have moved away from 'institutionalised religion.'¹⁷ Up to half of Iranians informally view themselves as agnostic or similarly disinterested in Islam. Many young Iranians are cynical, even derisive, about their religion. Epithets like "mad mullahs" and "this thing Islam" are not uncommon.¹⁸
46. A senior research fellow in Iranian studies at a university in Germany advised the ACCORD in 2015 non-practising Muslims form a large part of the population of Iran's cities. They lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are rarely pressured to observe Muslim precepts. A religious historian in Islam had the impression that there is a great diversity of attitudes and treatments of persons who hold non-mainstream religious views, depending on level of education and other factors. In general, ordinary Iranian citizens seem to be fairly tolerant and, when left without interference from authorities, more curious about digressing religious belief and practice than condemning. Many Iranians also have a secular attitude, rejecting all religions, Islam included. At the same time, a growing number of people appear to be looking for an alternative to the official version of Islam and many are interested in new religions, Buddhism or Christian messages.¹⁹ In 2018 the ACCORD quoted two sources indicating it was not uncommon for people to claim they do not believe, and a significant number of Austrians do not consider themselves Muslims.²⁰
47. The applicant claims she cannot conform with Islamic belief again and she will not attend mosque. I accept the applicant will not attend mosque on her return to Iran. As indicated above this is not uncommon and it is unlikely to come to the attention or be of concern to the authorities. I am satisfied the applicant will be able to live a normal life with no religion in Iran and continue her atheist beliefs. I am not satisfied the applicant will be outspoken about her non-practise of religion or her atheist beliefs and this is not because of any fear of persecution but she is not so inclined. On the information before me, I am not satisfied her family is religiously conservative such that she may face familial pressure or ostracism. While I accept the applicant is an apostate because of her non practise of religion and that she is an atheist, on the information before me, and given her personal circumstances that she had no significant or adverse profile in Iran prior to her departure, that she is not a Christian convert, a Baha'i nor does she espouse unconventional religious beliefs or challenge the interpretation of Islam, I am not satisfied she faces a real chance of any harm on this basis from the Iranian authorities on her return to Iran now or in the reasonably foreseeable future.

¹⁵ 'Update on the Situation for Christian Converts in Iran', Danish Immigration Service, Danish Immigration Service, 1 June 2014, CIS28931; 'The Revival of Nationalism and Secularism in Modern Iran', LSE Middle East Centre, Pejman Abdolmohammadi, 1 November 2015, CISEC96CF14725.

¹⁶ 'The Revival of Nationalism and Secularism in Modern Iran', LSE Middle East Centre, Pejman Abdolmohammadi, 1 November 2015, CISEC96CF14725.

¹⁷ 'Turning away from Shia in Iran - 'A Tsunami of Atheism'', Qantara, 07 February 2013, CXC28129415432.

¹⁸ 'Iran's Other Religion', Boston Review, 01 June 2003, CX82EDE9415499.

¹⁹ 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 September 2015, CISEC96CF13622.

²⁰ 'Iran - COI Compilation', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 July 2018, 20190326122102.

48. The applicant claimed she cannot confirm to Islamic beliefs and she will not wear hijab. Since shortly after the 1979 revolution, men and women of all religions have been required to adhere in public to conservative dress codes. Women are required to cover their whole bodies with the practice, this translates as loose all-covering clothing and a headscarf. Men are required only to cover their 'private areas', although social norms dictate wearing long trousers rather than shorts. Article 638 of the Penal Code stipulates that women who appear in public without a proper hijab (the generic term for the proper Islamic dress for women) be imprisoned from 10 days to two months or pay a fine of between 50,000 and 500,000 rials (approximately AUD0.50-5 at current market rates). Women appearing in public without a proper hijab can also be punished with 74 lashes. There is no similar rule for men.²¹
49. In practice, these penalties are rare. Generally, women deemed to have 'bad hijab' (where the headscarf is worn loosely, and some hair is showing) are ordered by morality police to adjust their headscarves and are warned against future indiscretions. In some cases, they may be escorted to a police station, asked to sign a declaration undertaking not to wear 'bad hijab' again, and released without sanction. Repeat offenders reportedly incur a fine and their family is notified and asked to bring appropriate clothing for them. Repeat offenders may incur a criminal record, which could impact one's ability to find employment in the public sector and large private firms.²²
50. Dress codes are enforced primarily by the morality police, who are sometimes plain clothed, but also the Basij, who tend to take a stricter approach to enforcement. Marked vans belonging to the morality police (coloured green and white) patrol the streets to monitor Islamic dress code adherence. There have been reports of women not complying with the hijab laws being insulted and physically assaulted by the morality police (including being slapped in the face or beaten with batons) and by members of the public.²³
51. According to local sources, enforcement of Islamic dress codes fluctuates, with checks on dress code violations increasing during holy periods (such as Muharram and Ramadan) and the summer season (when many women tend to adhere to dress codes more loosely due to the heat). Local sources told DFAT that, generally-speaking, the Islamic dress code is not enforced strictly, particularly in the major cities, but that enforcement has increased since the emergence of the anti-hijab protest movement in January 2018.²⁴
52. On the information before me, all Iranian women of all religions, are required to wear hijab in Iran. While this requirement imposed on women and not men appears discriminatory in nature, I am not satisfied being required to wear hijab amounts to serious harm. I accept the applicant supports the White Wednesday movement, but I am not satisfied she will seek to actively participate in their protests. I accept if the applicant were to not comply, she may be escorted to a police station, asked to sign a declaration undertaking, and released without sanction. As a repeat offender she may incur a fine or criminal record which might impact on her ability to get a job in the public sector. Given her employment history is as [an Occupation 1] and shop assisted, if this were to happen, I am not satisfied that she would be prevented from earning a livelihood such as it would impact on her ability to subsist. While there are reports of some women being insulted and physically assaulted, given that half Iran's adult population is required to wear hijab, I am not satisfied the applicant faces a real chance of the applicant being detained, interrogated, tortured, sexually exploited, executed or assaulted on this basis. I am not satisfied the requirement to wear hijab constitutes serious harm.

²¹ 'DFAT Country Information Report – Iran', DFAT, 14 April 2020, CIS20200414083132

²² Ibid.

²³ Ibid.

²⁴ Ibid.

53. The applicant has also provided a sample of her activity on social media including posts from her [Social media 2] and [Social media 1] account. None of these posts depict any connection to atheist groups. The first attachment is two pages from [Social media 2] depicting the [Page name] homepage which indicates it has 275.3 K subscribers. The applicant is included in these posts with other images like a collage. The first image depicts a protest [details deleted]. This appears to have had 14.5K views. The second page the applicant is [described] and this page has had 58.5k views. These images demonstrate the applicant's opposition against the Iranian government. The representative submits in his email that these images of the applicant would have been viewed by the Islamic regime and Ete'laat.
54. The last attachment is described as the applicant's political posts on [Social media 1] and the representative notes she has been active since 2015/2016 sharing a lot of political posts and has over 1500 followers. There are six pages of posts and the first page is a post, dated [April], with a photo [described]. It includes statements such as [deleted]. The applicant's account has [information about user name].
55. The other posts I note are all from 2017, the year the applicant lodged her SHEV application, and one from 2016. These appear to be critical of Islam, the Mullahs including Khomeini, and the Islamic Republic. While I question the timing of most of these posts, 2017 the year she lodged her SHEV application and April 2021, just prior to her SHEV interview, I accept the applicant has been active on social media since at least 2016. Again, I consider her representative has sought to embellish the applicant's social media profile and online activity. I accept her image is included in the [Social media 2] pages of [Page name]. The applicant is not the administrator of this group.
56. I accept the applicant participated in one protest in Australia; however, I am not satisfied her involvement was solely to strengthen her claims protection. The applicant has not claimed she organised this protest or that she had a leadership role. While her representative described her as a political dissident, I am not so satisfied. The applicant has not indicated she was previously involved in any protest activity in Iran prior to her departure including in the major 2009-2010 protests which followed the highly disputed presidential elections of 2009 when up to three million Iranians took part in protests as part of the Green movement.²⁵ Other than her online, on the evidence before me, I am not satisfied the applicant will actively seek out or participate in demonstrations or protests on her return to Iran. Again, this is not because of any fear of harm but rather she is not so inclined.
57. According to DFAT Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, although this freedom is not unlimited — a number of well-established 'red line' topics are off-limits. Local sources told DFAT that it is common for Iranians to be critical of the government in public places, including supermarkets, shopping malls and taxis. However, people remain cautious about crossing well-understood 'red lines', like insulting the Supreme Leader, in their public interactions beyond close family and friends.²⁶
58. According to DFAT, the use of the Internet in Iran is widespread, but highly censored. According to the government, nearly 50 million Iranians use the Internet. Authorities block or filter websites and social media applications they consider objectionable, although Iranians routinely use virtual private networks (VPNs) to circumvent these blocks. Facebook, for example, while blocked, is one of the most popular social media platforms in Iran. YouTube

²⁵ Ibid.

²⁶ Ibid.

and Twitter are also banned, although, in the case of the latter, this only applies to the general population (the Supreme Leader and President Rouhani, among others, have Twitter accounts). Instagram, WhatsApp and Viber are permitted. Iranians are avid users of social media and mobile messaging applications.²⁷

59. Telegram, a mobile messaging and information sharing application, was suspended temporarily in January 2018 and then blocked by judicial order in May 2018. Telegram, which is encrypted, had been used to coordinate demonstrators and share footage of unrest during the 2017-18 protests. The authorities claimed Telegram was being used to spread propaganda against the state, disrupt national unity and incite terrorist activities, and some of its administrators were charged and imprisoned on these grounds. Before it was banned, Telegram had over 40 million users. Iranians continue to access in large numbers Telegram and other blocked services with the use of VPNs.²⁸
60. The authorities monitor social media. Individuals posting content openly critical of the Islamic Republic, its institutions and policies may attract adverse attention, including individuals based abroad. Local sources told DFAT that Iranians with links to Iran-based foreigners are more likely to have their social media accounts monitored. Social media influencers who post content on Instagram deemed to be critical of the Islamic Republic and/or un-Islamic are the subject of increasing pressure from the authorities. DFAT assesses that the authorities do not comprehensively monitor Iranians' online activities.²⁹
61. Individuals with a public profile (including with large social media followings, particularly on Instagram), who are politically active, advocate for greater human rights, have connections to foreigners and are otherwise perceived as threats to the Islamic Republic are more likely to have their social media monitored – and, concomitantly, face a higher risk of arrest or harassment – than other Iranians. As cited above DFAT noted the arrest and imprisonment of three people who had posted material critical of Islam on social media, one in 2017.³⁰
62. A well-placed source of DFAT's was not aware of voluntary returnees being prosecuted for criticising the Islamic Republic while abroad on their return to Iran. As far as DFAT is aware, the authorities do not check the social media accounts of Iranians returning from abroad. 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 posting social media comments critical of the government (heavy Internet filtering means most Iranians will never see them).³¹
63. Older information in the referred material indicates the authorities have focused on political opposition, human rights activists, 'immoral' internet users, artists and activists from minority groups.³² There are reports of social media users including Telegram and Facebook users being arrested, imprisoned, tortured and some even killed.³³ In 2016 three 24-year-old men were

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² 'Fictitious Profiles and WEBRTC's privacy leaks used to identify Iranian activists', Iran Threats, 11 November 2016, CX6A26A6E16849

³³ 'Tightening the Net: Online freedoms in Iran following Rouhani's re-election', Article 19, 17 July 2017, CISED50AD4882; 'Human Rights Watch World Report 2017', Human Rights Watch, Human Rights Watch (HRW), 13 January 2017, NG2A465F52; 'Freedom on the Net 2016 - Iran', Freedom House, 14 November 2016, NGE43874C612; '12 Reformist Telegram Channel Admins Arrested in Iran Ahead of May 2017 Election', Center for Human Rights in Iran (United States), 22 March 2017, CXC9040664483; 'Country Policy and Information Note: Iran: Journalists and internet based media', UK

arrested and sentenced for 12 years prison for posting articles and cartoons on Facebook and Telegram that criticized Iran's political and religious situation.³⁴ Also in 2016 a website linked to the Iranian Revolutionary Guards reported 450 social media users had been 'arrested or summoned' over their online activities. Gherdab, the cyber arm of the Guards, said the people targeted administered pages on social networks including smartphone applications such as Instagram, Telegram and WhatsApp.³⁵

64. ACCORD's 2018 report states both local and foreign journalists act under the premise the authorities monitored their social media accounts. The government undertook cyber-attacks and cyber espionage is being used as a tool for the Iranian judiciary; because the authorities cannot find evidence to legally prosecute the activists, dissidents, journalists and others whom they wish to target, they pursue private information unlawfully obtained through these attacks. The authorities also targeted and arrested the Telegram channel administrators.³⁶ DFAT has previously observed journalists do not have to be particularly high-profile to be subject to adverse attention from authorities. For example, bloggers who only have a handful of readers have been arrested and imprisoned for their published work. The more high profile a journalist or blogger is, the more likely that they will become subject to adverse attention if the material they publish crosses red lines.³⁷ The applicant is neither a journalist nor a blogger.
65. Reports suggest the Iranian authorities use highly publicised arrests to exaggerate its ability to monitor online activities of Iranians. Small Media Foundation advised the Danish Immigration Service in 2014 that Facebook is not monitored on a systematic basis and a lot of people will use it and not be concerned about potential surveillance. The only way for the authorities to monitor an individual's activities on Facebook would be if he or she has a friend who is an agent of the authorities or if he or she has not set the privacy settings of his or her page properly (i.e. has an open page). It also knew of someone running a Facebook group who had been arrested.³⁸
66. I accept there have been arrests of Iranians because of their online social media activities and some of those arrested have even been sentenced and imprisoned. I am not satisfied the Iranian authorities consider her a political dissident. In considering the country information, the share number of internet users in Iran including the millions who are active on online platforms the applicant uses, the heavy filtering by the government, the wide use of VPNs by users, that she does not have a profile as a social influencer, administrator of an online platform, that she is not a journalist or blogger, I am not satisfied the applicant faces a real chance of any harm on her return to Iran now or in the reasonably foreseeable future because of social media posts which indicate her involvement in a protest and criticism of the Iranian authorities and Islam made in Australia. Even if she were to continue her social media activity on her return to Iran, based on the country information before me, and the applicant's personal circumstances, I am not satisfied she faces a real chance of any harm on this basis.

Home Office, 25 October 2016, OGD7C848D83; 'Iran: Cyber Police arrests man for blasphemy', Iran Human Rights Monitor (United States), 26 July 2017, CXC90406611072.

³⁴ 'Three Young Iranian Men to Serve 12 Years in Prison For 'Insulting' Social Media Posts', Center for Human Rights in Iran (United States), 28 April 2017, CXC9040666693.

³⁵ 'Iran rounds up 450 social media users for 'immoral activities'', Agence France Presse (AFP) - France, 23 August 2016, CX6A26A6E8281.

³⁶ 'Iran - COI Compilation', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 July 2018, 20190326122102.

³⁷ 'DFAT Country Information Report Iran April 2016', DFAT, 21 April 2016, CIS38A012677.

³⁸ 'The State of Surveillance in Iran's Cyberspace', Article 19, 14 May 2015, CXBD6A0DE6390; 'Update on the Situation for Christian Converts in Iran', Danish Immigration Service, Danish Immigration Service, 01 June 2014, CIS28931.

67. As observed above the applicant's representative submitted the applicant will be arrested at the port of entry on her return to Iran, tried and convicted as a political dissident and forced to provide the password for her [Social media 1] and [Social media 2] accounts. According to DFAT, 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. As already noted, Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including social media post critical of the government and protesting outside Iranian diplomatic missions. A well-placed source was not aware of voluntary returnees being prosecuted for criticising the Islamic Republic while abroad on their return to Iran. As far as DFAT is aware, the authorities do not check the social media accounts of Iranians returning from abroad.³⁹
68. Iran currently does not accept involuntary deportees except returnees who arrived in Australia after March 2018. As such, if the applicant were to return Iran, I consider it would be as a voluntary returnee. From DFAT's anecdotal observation at airports, a voluntary returnee does not attract much interest from authorities amongst the large regular international movements of Iranians. Returnees will generally move quickly through airports without official interests. DFAT notes returnees even if traveling on a temporary travel document will only be questioned if they have done something to attract the attention of the authorities such as committing a crime in Iran before departing.⁴⁰ There is no information before to suggest the applicant committed a crime prior to her departure from Iran.
69. On the evidence before me I am not satisfied the applicant, if he returns to Iran on a travel document, would attract the adverse attention of the Iranian authorities. I am not satisfied he will be detained, interrogated and forced to provide her [Social media 1] or [Social media 2] passwords. I am not satisfied she faces a real chance of any harm as a returnee who has social media accounts which display posts against the Iranian regime and Islam.
70. I find the applicant does not have a well-founded fear of persecution on any of these bases.

Refugee: conclusion

71. 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

72. 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

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

³⁹ 'DFAT Country Information Report: Iran', DFAT, 14 April 2020, 20200414083132.

⁴⁰ Ibid.

- 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.

74. 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.

75. I accept the applicant will be required to wear Hijab as part of the Iranian dress code for women. I accept the applicant, as a divorced or separated woman; may be subject to societal discrimination and social stigma. I am not satisfied such behaviour or its consequences, though regrettable, constitutes significant harm. There is not a real risk she will be arbitrarily deprived of her life or subject to the death penalty or that she would be subject to torture, cruel or inhuman treatment or degrading treatment or punishment.

76. I have otherwise concluded that the applicant does not face a real chance of any harm for the reasons claimed. Given 'real chance' and 'real risk' involve the same standard, I am not satisfied he faces a real risk of any harm on these bases.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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