



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/09513

Date and time of decision: 6 September 2021 12:17:00

J Maclean, 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) lodged an application for a safe haven enterprise visa (SHEV), making claims against Iran. A delegate of the Minister for Immigration refused to grant the visa on 14 July 2021 on the basis that the applicant is not owed protection.

### Information before the IAA

2. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 10 August 2021 the IAA received an email from the applicant's representative attaching a submission (IAA submission). In the main the IAA submission reiterates the applicant's claims, takes issue with the delegate's findings, provides commentary on issues and information discussed by the delegate, or on matters or claims that may have been overlooked by the delegate, and refers to caselaw and legal commentary. To that extent I am satisfied the IAA submission is not new information, and I have had regard to it.
4. Under s.473DD of the Act, the IAA cannot consider new information provided by an applicant unless satisfied there are exceptional circumstances to justify consideration of the information, and either the information could not have been provided before a decision was made, or that it is credible personal information which was not previously known and may have affected consideration of the applicant's claims had it been known. 'New information', as defined in s.473DC(1) and explained in *MIBP v CED16* [2020] HCA 24, is knowledge of facts or circumstances relating to material or documentation of an evidentiary nature, that was not before the Minister (or delegate) when the decision was made and that the IAA considers may be relevant to the review.
5. The IAA submission refers to a number of country information reports that were not before the delegate. The applicant's representative contends that some of these reports are not 'new information', but rather a response to a particular line of argument in the delegate's decision. In my view the reports are undoubtedly 'new information'.
6. Two of the country information reports referred to in the submission pre-date the delegate's decision, and copies of those reports were provided with the email to the IAA.<sup>1</sup> The reports were not before the delegate, and are new information. These reports are best described as general country information relevant to the conditions in Iran. The first report concerns Iranian state-owned media broadcasting forced confessions and defamatory content about individuals between 2009 and 2019, and the second relates to the recent broadcast of propaganda concerning an Australian who was detained in Iran. The reports clearly refer to identified individuals, however there is no suggestion there is any direct relationship or connection between the applicant and those individuals. Rather, the applicant seeks to rely on the information as corroborative of the country conditions, and to support his claim to fear harm from Iranian authorities or as a result of their actions. The applicant squarely raised the issue of him being of interest to Iranian authorities and being tortured on return to Iran, and I do not accept the information could not have been provided simply because it is responding to the

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<sup>1</sup> International Federation for Human Rights, Justice For Iran, 'Orwellian State: Islamic Republic of Iran's state media as a weapon of mass suppression', 25 June 2020, 20200703083700; News.com 2 December 2020 titled 'Iran targets Kylie Moore-Gilbert in sick propaganda video'

delegate's decision. The submission does not address why the information is credible personal information which was not previously known and, had it been known, may have affected consideration of the applicant's claims. The applicant has not satisfied me s.473DD(b) is met. There was information before the delegate, and included in the review material, from credible sources regarding detainees being tortured and mistreated to force confessions, and of state television broadcasting propaganda, such as documentary accounts of crimes before formal charges are laid, in particular in the DFAT report published in April 2020,<sup>2</sup> and I do not consider this new information materially adds to the information that was before the delegate. In all the circumstances, including considering: the nature and the source of the information; the applicant has not pointed to any circumstance that could be considered exceptional and none is apparent to me; the applicant had the assistance of a solicitor/Registered Migration Agent to prepare his SHEV application, and that same representative attended the SHEV interview and provided written submissions after the interview; he is represented before the IAA, albeit by a different Registered Migration Agent; he was given various warnings about the importance of providing all information before the delegate made their decision; more than two and a half months elapsed between the SHEV interview and the decision; he had ample opportunity to provide information to support his claims; the most recent document pre-dates the delegate's decision by over seven months; no request was made to the delegate for an extension of time to provide further information; and taking into account that the applicant has not satisfied me either s.473DD(b)(i) or (ii) are met; I am also not satisfied there are exceptional circumstances to justify considering the information.

7. A further report referred to in the submission post-dates the delegate's decision. It is an article from Amnesty International, dated 23 July 2021 and concerning security forces using live ammunition to crush protests in Khuzestan.<sup>3</sup> A copy of the report has been provided. It is contended that the report is relevant to the applicant's fear of harm as an Ahvazi Arab returning at a time of intense political unrest and supports that a person with the applicant's profile may face increased adverse attention. Given the date of publication of the report I am satisfied it could not have been provided before the delegate's decision, and I am also satisfied the information is from a reliable source and it potentially materially adds to the information already before me, and that there are exceptional circumstances to justify considering it.

### **Applicant's claims for protection**

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8. The applicant's claims can be summarised as follows:
  - He and his family are Iranian, but Arab by race. Iranian people do not like Arabs because of their history, and this caused problems for them in Iran.
  - The ill treatment of Arabs was noticeable from primary school. He did not speak Farsi and was beaten for the first two years of schooling until his Farsi was perfect.
  - Over the last 10 years things have worsened. Big companies in Ahvaz do not want Arabs working for them. They will not hire workers from Ahvaz and advertise for workers in other cities, so the people in Ahvaz are very poor.
  - His father, mother and brother accepted everything the Iranians did or said to them and prayed to the Ayatollah, who his father sees as a God, and told him to shut up and

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<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

<sup>3</sup> Amnesty International, 'Iran: Security forces use live ammunition and birdshot to crush Khuzestan protests', 23 July 2021, 20210726093414

accept the ill treatment. He could not accept his family being onside with the Persians because they want to live there peacefully.

- Two serious incidents happened to him in Iran which he attributes to him being an Arab. The first was when he was picked up by police whilst out walking and taken to the police station. He was accused of wanting to steal their car, and when he questioned the authorities he was detained for three days and not given any food. The second incident was when he was in Kerman studying. He went outside for a smoke and was stopped by police, detained and mistreated.
- Ahvaz used to be Arab, but the Iranians brought other people to live there making it Persian. It was getting worse and worse all over the city of Ahvaz. He does not want to betray who he is, and wants to be free to speak Arabic and live his life the way he believes he should.
- He tried seeking asylum in [Country 1] some years earlier and was given a residence card but could not get a job and had no money and returned to Iran voluntarily.
- His parents supported him in Iran, giving him a car and a house, and told him to just be good and do what they do. He lived his life for them and never felt free. At his family home his father listens to their news 24 hours a day, and his brother will not talk to him.
- He has not been in any demonstrations in Australia because the Ahvazis believe in separation from Persia and he does not want that. The Ahvazis in Australia want to fight, but he does not like that way and cannot be with them.

## **Refugee assessment**

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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. The applicant has consistently identified his citizenship as Iranian. Documentary evidence has been provided to support his identity, including his Iranian birth certificate and National Identity Card, and English translations of those documents. He has also provided a copy of the biodata page of an expired Iranian passport. The documents are in his name and show his claimed date and place of birth. I accept the applicant's identity is as claimed, that he is an Iranian national, and Iran is the receiving country for the purpose of this assessment.
12. I accept the applicant's broadly consistent information about his background and early life in Iran and his family, as follows: he was born in [year] in Ahvaz, Khuzestan province, Iran, and predominantly lived in that province; he attended school in Ahvaz [between specified years], and after completing high school went on to complete [a qualification] in [Subject 1]; his mother, father, [and specified family members] continue to live in Ahvaz; he speaks Arabic, Persian and English.
13. The applicant provided a Compulsory Military Service Exemption Card, and English translation. The 'Exemption Type' is noted as 'Guardianship'. At the Arrival interview he said his father was sick and [he] was exempt from military service. DFAT reports Iranian authorities grant individual exemption from military service on several grounds, including, of relevance to the applicant, having elderly parents or a brother currently serving in the military.<sup>4</sup> I am prepared to accept the applicant has been granted an exemption from compulsory military service in Iran.
14. The applicant has consistently referred to being of Arab ethnicity. Although his preferred language is noted as Farsi in the record of a Case Assessment & Biodata interview (Biodata interview) conducted [in] May 2013, he has otherwise identified his preferred language as Arabic, and was assisted by Arabic interpreters during the Irregular Maritime Arrival and Induction interview (Arrival interview) conducted in June 2013, and at the SHEV interview conducted on 28 April 2021. Country information reports that between 1.5 million and 3 million Arabs live in Iran, predominantly in the south-western province of Khuzestan bordering Iraq. Iranian Arabs are often referred to as 'Ahvazis', after the capital city of Khuzestan Province (Ahvaz), they speak Arabic, and most practise Shia Islam (about 70 per cent).<sup>5</sup> I accept the applicant is of Ahvazi Arab ethnicity.
15. At his Arrival interview when asked why he left his country of nationality the applicant referred to breeding dogs as a hobby in Iran, and people considering him filthy as a result and not wanting to shake his hand, and his family not wanting him to come into the house or bring the dogs inside the house. This claim is not mentioned in the SHEV application, and when the delegate asked about it at the SHEV interview the applicant said he used to breed and train dogs, which he gave away to people, but could not bring them into the home and hid them on the roof. He went on to say his family are religious and could not accept he had a dog in the home, and he would have to change his clothes and take a shower to visit home. When asked why this claim is not mentioned in his SHEV application he said when he was in immigration detention in Australia he was really scared of being captured at the airport on return to Iran and tortured if he gave the real reason he left, so he just gave a general reason for leaving. The delegate specifically asked the applicant if he thought he would be harmed because of the dogs, and he said 'No'. He also said he thinks his family gave the dogs away after he left, but they did not want to talk about it and never mentioned it.

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<sup>4</sup> Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

<sup>5</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

16. The post-interview submission indicates the applicant began to breed dogs on the roof of his parents' house, that his parents did not accept dogs in the house as they were very religious, and that he gave dogs away to hide what he was doing from his family. The submission refers to country information suggesting that although antagonism towards dogs is not written in the Koran, the majority of both Shia and Sunni Muslims consider dogs ritually unclean, but those beliefs are not unanimous. It goes on to suggest there may be historical reasons for Islam's antipathy toward dogs, with dogs being prized by Zoroastrianism, or the 'old religion', but being converted into the devils of the 'new religion' of Islam.<sup>6</sup> The applicant considers the understanding of the place of dogs within Islam is absurd.
17. The delegate referred to country information from 2011 regarding the banning of dogs from public spaces and apartments, and police fining dog owners up to \$500 if the dog is seen in public space, confiscating pets from streets and parks, and temporarily confiscating cars and suspending drivers' licenses if a dog is not contained in a carrier inside a car. However, more recent information from 2019 suggests that even though the judiciary has banned dog walking in public and having dogs in cars, dogs are everywhere in Tehran, and there has been an explosion in pet clinics. As with other off-limits activities to Iranians, such as dancing, drinking alcohol, and improper wearing of a headscarf, Iranians routinely flout official rules, despite the possibility of being punished, including being fined and at times flogged. One dog owner said that like many previous edicts of this sort, the ban on dog walking is not being taken very seriously.<sup>7</sup>
18. There is no information before me to support the applicant presently keeps dogs in Australia, where he would be free to do so, or that he would do so if returned to Iran. His specific denial that he fears harm because of dogs on return to Iran, along with his failure to mention this claim in his SHEV application, or provide an adequate explanation as to why the claim was not included, leads me to consider he does not genuinely fear harm for that reason. Nevertheless, I am prepared to accept he kept and bred dogs in Iran previously, and he may do so on return. I consider it rather improbable he would have been able to hide his activities from his family, and I do not accept he did. I can accept the applicant may have experienced social stigma for keeping dogs previously, from members of society generally, and from his family. Other than his family not wanting him to come inside without washing and changing his clothes, and people not wanting to shake his hand and considering him unclean, the applicant did not otherwise indicate he suffered any harm as a result of his dog-related activities, including being fined or having dogs or vehicles confiscated or his license suspended. Considering his evidence in the context of the country information, I can accept the applicant may experience some social stigma if he were to own and breed dogs on return to Iran, but I am not satisfied this amounts to serious harm, or that there is other than a remote risk he would be harmed for that reason.
19. The applicant claims as an Arab in Iran he had problems which led him to leaving Iran and seeking asylum in Australia. He described a number of specific instances of mistreatment he claims were as a result of his Arab ethnicity, discrimination against Arabs by big companies in Ahvaz resulting in unemployment and poverty, and Persianisation of Arab areas.
20. The post-interview submission indicates that although his family were Arabs and spoke Arabic they had decided to accept the Iranian government's discrimination against the Arab community, and because they are 'with the government' they are comfortable financially. His

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<sup>6</sup> Stanley Coren, Psychology Today, 'Why is Iran Oppressing Pet Dogs and Their Owners?', 31 January 2019

<sup>7</sup> Farnaz Fassih reported in Free Republic, 'A Craze for Pooches in Iran Dogs the Morality Police', 21 July 2011, <http://www.freerepublic.com/focus/f-news/2751265/posts>; New York Times, The, 'More Bark Than Bite in Iran's Ban on Walking Dogs', 01 February 2019, 20190208101903

father was [an Occupation 1] in the army before he retired, his younger brother is an officer in the army, and his [other siblings] work in offices. However, the applicant could not accept it as his family had done, and they thought there may be trouble for him, or for them. He did not understand the discrimination against Arabs, and believes Arabs should be part of Iranian society, but allowed to speak their own language and live their own culture, just as French-speaking Quebecois are allowed to do in Canada. At the SHEV interview, and in his post-interview submission, the applicant referred to not being able to fit in with the government, and not agreeing with what they say, specifically that you should not wear traditional clothes or speak about Arab culture or language. He claims he spoke out against these constraints, but unlike most other Arabs he does not believe there has to be separate Arab state or country. In the submission reference is made to the applicant being interviewed by authorities many times, but no context about the reason for these interviews is provided. He indicates he was trying to be true to his identity in a country that was trying to suppress Arabs, and the authorities did not like his replies to their questions, such as telling them he only reads Arabic newspapers and did not pray traditionally. At the SHEV interview the applicant said his family tried to register him with the army, and he went for interviews many times, but they did not like how he spoke. I am satisfied the applicant was being interviewed by the Army in relation to either joining the army or seeking employment, rather than because authorities had an interest in him.

21. At the Arrival interview the applicant referred to having problems in Iran because of language, being told he must speak in Persian at the Registry office, that you cannot choose an Arabic name, and to people putting pressure, making fun or commenting about Arabic customs and dress. During the SHEV interview he made numerous references to speaking a different language and having a different culture, being told he should not talk about his culture, language, or the type of traditional clothes he wears, or about neighbour countries who have the same language and culture. His responses at the SHEV interview were repetitive and had the quality of being rehearsed, lacking the spontaneity and nuance one may expect of a person having strong connection to a particular culture or views about expressing that culture. Other than mentioning differences in language and clothing he gave no indication of how Arab culture differs from Persian culture, which neighbouring countries he was referring to, how he presently expresses his culture in Australia, or how he would do so in Iran in the future.
22. In his statement of claims and at the SHEV interview the applicant described being beaten during the first two years of his schooling until he became proficient in Farsi, the majority language. I am prepared to accept the applicant was beaten at school until he became proficient in Farsi.
23. In his statement of claims he describes two 'serious incidents' when he was detained and mistreated by Iranian authorities. The first was when he was walking in the street one night and stopped by police and asked what he was doing. He was taken to the police station and searched, accused of wanting to steal their car and told to 'shut up'. When he asked them why they brought him there he was told it was because he was walking late at night, and in the end said he could go. He complained that he had been brought far from home, and was told he talked too much, and was detained for three days without being given any food. He noted that most of the police officers were from a neighbouring state, that they hate Arabs, but might be friendly to Persians. It is not apparent to me the applicant mentioned this incident during the SHEV interview, and it is unclear when this incident purportedly occurred. The post-interview submission only refers to one incident of the applicant being detained 'when he was younger', and which occurred when he went to Kerman, which appears to be the second incident referred to below.

24. The applicant claims the second incident occurred while he was studying in Kerman (in the western province of Kerman)<sup>8</sup>. He went outside for a smoke and was stopped in the street. He had had a drink at home and the person who stopped him smelt alcohol on his breath, which would not have been a problem except that he is Arab. He was taken to detention where it was freezing because it was winter and there was water on the floor. His hands were tied behind his back with a flag and then 10 to 12 police came and punched and kicked him for about 15 minutes and insulted him for being Arab. At the SHEV interview he said after obtaining his [qualification] in [Subject 1] he attended University for six months but did not finish the course. Given he was about [age range] years old when at University, presumably the second purported incident happened in about 2004. He said while at University he wanted to be free, and smoke and drink, but ‘there were always problems in the University because of that, I used to get arrested or something, why I drink, why I smoke’. The account of the incident given at interview adds little to the written account, and differs from it significantly in claiming he was beaten all night by a team of about 15 people, and he has permanent damage on his hand from it, and sometimes it is sore. No documentary evidence has been provided to support the applicant had an injury to his hand, or that it was obtained in the manner claimed, and I consider if the account given at the SHEV interview were true the applicant would have suffered more than an injury to his hand that is sometimes sore.
25. I acknowledge the country information supports that allegations of forced confessions through torture, and mistreatment while in detention are common in the case of individuals charged with national security offences. However, individuals arrested for minor offences, dress code violations and consuming alcohol face a low risk of torture.<sup>9</sup> Overall I did not find the applicant’s evidence about being detained to be convincing. In relation to the first incident, I consider it rather improbable the applicant would have questioned Iranian authorities as claimed, and I am surprised by the failure to mention a second incident in the post-interview submission, or provide further details at interview. In relation to the second incident, if this incident had genuinely occurred I consider he would have provided a more nuanced and detailed description at interview, rather than simply repeating the brief descriptions given in his written statement. It is not clear to me why the applicant felt able during the Arrival interview to disclose fearing a ‘bad punishment’ on return to Iran as a result of previously giving an undertaking he would not leave Iran again, which will be discussed further below, but not to mention the incidents of mistreatment from authorities he claims actually occurred while he was in Iran, and which were part of the reason he claims he left Iran. I am aware of the caution that needs to be exercised when relying on interviews such as the Arrival interview attended by this applicant, the purpose of which are not for assessment of protection claims. However, I am not satisfied the contention that he did not disclose his claims because he feared being harmed on return adequately explains his failure to mention these key aspects of his claims during the Arrival interview, and I consider he would have mentioned the events if they actually occurred. The noticeable lack of detail about the incidents, the significant exaggeration of the extent of the claimed beating during the second incident, and the complete failure to mention these incidents during the Arrival interview, leads me to believe he is not recounting lived experience. Considered in the context of the country information regarding the low risk of torture for minor violations such as the incidents described, and regarding the treatment of Ahvazi Arabs generally, which will be discussed further below, I am not satisfied the claimed incidents occurred, and I do not accept the applicant was detained as claimed on the two occasions noted.

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<sup>8</sup> DFAT, ‘DFAT Country Information Report Iran’, 14 April 2020, 20200414083132

<sup>9</sup> DFAT, ‘DFAT Country Information Report Iran’, 14 April 2020, 20200414083132



26. At the Arrival interview the applicant claimed to be a member of the Ahvazi Arab groups on the Internet, that he had been helping for about 10 years to put up photos and tagging them, and used a fake name to do it. At the SHEV interview the delegate asked if he had been involved in any protests or activities for Arab rights. The applicant referred to having a user account as an Arab activist and running a blog from the time he was about [age] until he was [age range], but that he 'does not use those things any more'. He referred to a 'neighbour kid' who got caught and never returned, and that he stopped this activity because the pressure got too much and he could not continue. When asked about activities in Australia he said 'in Australia I do not', and he does get along with those who are for separatism or independence. He went on to say that he thinks people are too busy to continue with these activities, that those who do are usually unemployed, but that he is not eligible for Centrelink and could not survive without work.
27. Although the post-interview submission suggests the applicant spoke out against constraints on Arab culture, on the evidence before me, I am not satisfied he did so publicly or in an identifiable manner. I am prepared to accept he may have posted some content anonymously to the internet, but that he stopped doing so in about 2006, and that part of the reason he stopped may have been because he feared being discovered by Iranian authorities. I am not satisfied he has engaged in pro-Arab activities in Australia, where he would be free to do so, or activities that could be considered as against the Iranian government, nor is it apparent to me he has indicated he would do so if he was returned to Iran, and I do not accept he would. I accept the applicant needs to work to support himself in Australia, but consider if he genuinely held strong views about the situation for Arabs in Iran this would not prevent him from expressing those opinions. I am not satisfied lack of time is the reason he does not engage in Arab activist activities in Australia, such as posting material online, but rather he does not do so because he has no interest in doing so, either presently in Australia or in Iran if he returns.
28. DFAT reports Arab cultural activities are tolerated, and Arabs can freely wear traditional Arabic dress. They also freely speak the Arabic language. DFAT also reports that Arabs in Khuzestan province are afforded considerable space to express their ethnic identity. Like other ethnic minorities, Arabs complain of economic neglect and discrimination in education, employment, housing, politics and culture.<sup>10</sup> The United Nations refers to limited access to education for ethnic minorities in their mother tongues.<sup>11</sup> As Muslims, Arabs can contest parliamentary elections but are politically under-represented. While they hold most of Iran's oil and gas reserves and have significant shipbuilding, manufacturing and petrochemical industries, the south-western provinces are under-developed economically (largely due to a lack of post-war reconstruction) and suffer from widespread unemployment and poverty. In April 2019, Khuzestan Province, at 16.9 per cent, had the highest unemployment rate in the country, behind only Kurdish-majority areas. Community representatives claim that Iranian Arabs are systematically excluded from employment in the shipbuilding, manufacturing and petrochemical industries and from opportunities to work in local government. Environmental degradation in the south-western provinces is significant, with residents suffering from high levels of air and water pollution and water shortages. DFAT also refers to media reports of Arabs being evicted from their homes as a result of industrial and infrastructure development projects.<sup>12</sup>
29. Protests in Khuzestan province are common. DFAT reports on violent protests, including some followed the government's announcement in November 2019 to reduce petrol subsidies, with

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<sup>10</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

<sup>11</sup> United Nations General Assembly, 'Situation of human rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran', 28 January 2020, 20200228105335

<sup>12</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

at least 80 people arrested. Hundreds were also arrested in Khuzestan Province during 2018 protests relating to water shortages and poor water quality. In October 2018, the authorities launched a major security sweep in Khuzestan Province following a deadly terrorist attack on a military parade in Ahwaz. Freedom House claims up to 800 people were arrested in relation to the attack, some of whom were reportedly executed. DFAT is unable to verify these claims. DFAT understands some of those arrested were subsequently released. Despite their grievances, Iranian Arabs do not harbour strong separatist tendencies, and fought on the side of Iran during the Iran-Iraq War (1980-88). Separatist groups do not enjoy broad support among Iranian Arabs, who generally favour greater political and cultural rights over autonomy or a separate state. The authorities maintain security control in Arab-populated areas, and militant separatism has largely been neutralised. An Arab, as with any other ethnic minority, who openly espouses separatism would face a high risk of arrest and imprisonment.<sup>13</sup>

30. Although DFAT assesses the Arab-populated parts of the country have traditionally been the subject of economic neglect, the most recent DFAT report goes on to assesses that Arabs are not specifically targeted for discrimination on the basis of their ethnicity, including in their ability to access government services, and they are afforded the same state protections as other ethnic minorities. However, since the September 2018 terrorist attack against security forces in Ahvaz, the Arab population in Khuzestan Province has been a sensitive topic for the government. DFAT assesses that Arabs, more so than other ethnic minorities, who are active politically are likely to attract adverse attention from the authorities, particularly those in border provinces. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment. This accords with country information provided with the post-interview submission referring to Iranian authorities being particularly hostile to dissent in minority areas where there has been any history of separatist activities, and silencing those who criticise the government.<sup>14</sup>
31. Also in the information before me is a recent country information report regarding recent deployment of unlawful force by Iranian security forces, including using live ammunition and birdshot, to crush mostly peaceful protests over severe water shortages in Khuzestan province. At least eight protestors and bystanders were reportedly killed, scores of people were injured, and security and intelligence forces swept up dozens of protestors and activists, including many from the Ahvazi Arab minority.<sup>15</sup> The IAA submission refers to DFAT's April 2016 report on Iran, which indicates treatment of Arabs by the state is usually consistent with that of other ethnic minorities, but can be unpredictable, and that Arabs may unexpectedly face increased adverse attention according to the prevailing political environment. Despite that, DFAT assessed that most Arab Iranians do not come to the adverse attention of authorities and are subject to only low levels of adverse attention by the state, however the risk increases dramatically for Arabs who attempt to publicly assert cultural or political rights. Specifically in relation to Ahvazi Arabs, DFAT assessed that the risk of attracting the interest of authorities is dependent on being perceived as a threat to the Islamic Republic's constitutional underpinnings or territorial integrity.<sup>16</sup> DFAT's more recent 2020 report indicates broadly that for 'ordinary Iranians', interactions with security forces can be unpredictable, and can be

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<sup>13</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

<sup>14</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132; Arab News, 'Iran's harsh treatment of ethnic minorities', Dr Majid Rafizadeh, 28 July 2019

<sup>15</sup> Amnesty International, 'Iran: Security forces use live ammunition and birdshot to crush Khuzestan protests', 23 July 2021, 20210726093414

<sup>16</sup> DFAT 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677

influenced by the prevailing political environment, rather than indicating Arab Iranians specifically were at such risk.<sup>17</sup>

32. I have accepted the applicant was beaten during the first few years of his schooling. Despite that he went on to become proficient in Farsi (Persian), the official language of Iran,<sup>18</sup> completed his schooling, and completed [a qualification] at a tertiary institute. As the applicant is now proficient in Farsi, I am not satisfied he would be in a position to experience similar treatment if returned to Iran. Although in his statement of claims the applicant said his parents' supported him in Iran, at the Arrival interview he referred to being employed at [an Occupation 1 business] for 5 months in about 2009, and working [at a specified] factory from 2009 to 2013, and at the SHEV interview his employment in Iran is listed as working as [an Occupation 1] in Ahvaz from April 2008 to February 2013. Other than suggesting he was not accepted when he applied for employment with the army he provided no examples of discrimination regarding employment or housing. He lived in Khuzestan Province for the majority of his life in Iran, a majority Ahvazi Arab area,<sup>19</sup> where his family members presently reside. His parents gave him a car and a house in Iran, and at the SHEV interview he indicated the house remained in his father's name and was conditional on him doing what they wanted him to do, but he could not do it. Despite that he was able to live in the house until he departed Iran, and when asked if he still has the house said he did not know, but it was possible. He also indicated he is in contact with his mother, sometimes every night. The delegate referred to records indicating the applicant had sent money home to his family, and the applicant indicated his family had assisted him return loaned funds to some friends or neighbours. When asked if his family would still be willing to help him if he was in trouble, he said he thought his mother or a friend would help him. I accept the applicant's evidence on these issues, and consider his family assisting him in the manner is indicative they would also assist him on his return to Iran. The applicant did not suggest the homes of his family members or himself had been at threat, or that they had been impacted by development projects or Persianisation of Arab areas. I am satisfied his parents would be able to provide accommodation and a basic level of support while he re-establishes himself in Khuzestan Province. I accept as an Ahvazi Arab it is possible he may experience some low-level societal discrimination in Iran, such as being insulted for being Arab by members of the public or Iranian authorities, that he may face difficulties in immediately finding a job, he may be excluded from government roles and some jobs in other industries, and affected by a lack of infrastructure and services. The applicant did not indicate he attended protests previously in Iran, that he has done so whilst in Australia, or that he would do so on his return to Iran, and I am not satisfied he would, or that he has recently publicly expressed any anti-government opinions.
33. On the information before me, I am not satisfied the applicant was of interest to Iranian authorities when he left Iran in 2013. I am also not satisfied he would engage in activities of a political nature on return to Iran, such as posting information online, or attending protests, or that he would otherwise be politically outspoken such that he would have the higher risk profile of an Ahvazi Arab or other ethnic minority who engages in activism or is politically outspoken. I am satisfied he would not be at risk of harm should he speak Arabic or dress in Arabic clothing. I am not satisfied there is other than a remote risk the applicant would be imputed with an anti-government political opinion for any reason, such that he would be subject to an increased risk of discrimination or harm, even considering the recent protest activity in Khuzestan, and the political environment surrounding those events, which may still

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<sup>17</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

<sup>18</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

<sup>19</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

prevail. Overall, I am not satisfied any discrimination or other treatment the applicant may experience on return would threaten his capacity to subsist or otherwise amount to serious harm, including considering that he is an Ahvazi Arab.

34. The applicant has been broadly consistent in claiming to be of the Shia Muslim religion, the majority religion in Iran,<sup>20</sup> at the Biodata and Arrival interviews, in his SHEV application, and in the IAA submission. However, towards the end of the SHEV interview, when asked if he had anything else he wanted to say, the applicant said 'I am not even a Shia, and I think it shows I am a bad citizen'. In the post-interview submission the applicant indicated when interviewed by Iranian authorities he told them he does not pray traditionally, however, it is not apparent to me he claimed to fear harm for reason of religion on return to Iran. Nevertheless, he has indicated he does not consider himself to be a Shia, and I will assess that claim. I consider the applicant's repeated references to his religion as Shia Muslim is indicative he grew up in a Shia Muslim family, and find that to be the case.
35. DFAT reports, that under Iranian law, a person who leaves their faith or converts to another religion can be charged with apostasy, and risks state persecution, and potentially the death penalty. 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. 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, including 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). However, today death sentences in apostasy and blasphemy cases are rare. According to local sources, secularism is widespread, particularly in the major cities and among younger and wealthier Iranians, and a significant proportion of the population does not attend mosque or pray on a regular basis. Official sources told DFAT religion was a private matter, and beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state. DFAT heard anecdotally that many Iranians do not observe Ramadan strictly, including by eating, drinking liquids and smoking at home. Most restaurants are closed during Ramadan, although many (especially in Tehran) reportedly serve food discreetly. According to DFAT, unless a person widely publicises their non-belief, even atheists are unlikely to come to the attention of the authorities. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, which is consistent with other country information before me.<sup>21</sup>
36. Although it is not clear to me when the applicant first decided he did not consider himself to be a Shia Muslim, I can accept he does not. I can also accept he does not practise Islam or pray in the traditional way, that he may not have been engaging in Islamic practices, such as attending mosque and fasting, at the time he left Iran, and that he may not do so on return to Iran. There is no information before me to support the applicant experienced any adverse consequences for any previous non-adherence to Islam, or that he has publicly renounced Islam or widely publicised his religious beliefs, or lack thereof, or that he would do so in the future, such that he would be considered apostate and be at risk of harm for that reason. I am satisfied the applicant would be considered a non-practising Muslim on return to Iran if he does not engage

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<sup>20</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

<sup>21</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132; Danish Immigration Service and Danish Refugee Council, 'Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs', February 2018, CIS7B83941872

in Islamic practices. However, taking into account the country information, I am not satisfied there is a real risk he would experience harm in Iran, from Iranian authorities or any other person, for reason of religion, including as a non-practising Muslim.

37. In his SHEV application and statement of claims the applicant refers to seeking asylum in [Country 1] but deciding to return to Iran. He claims he did so because the situation in Ahvaz City was getting worse for Arabs. He claims he was given a 'residence card' in [Country 1], but that he could not get a job and had no money, and his parents would not support him because leaving Iran was wrong for his family, and in the end he returned to Iran voluntarily. In the SHEV application he indicated the date he was 'excluded, asked to leave, deported or removed' from [Country 1] was [in] February 2006, and noted being unemployed and supported by his family whilst in [Country 1], from November 2005 to February 2006. However, at the Arrival interview he said he was in [Country 1] in 2009, and that he went on a bus through [Country 2] and went in an inflatable boat to [Country 1]. Notably in his SHEV application, in response to the question 'Have you ever applied for refugee status or protection in any country other than Australia?' he indicated 'No'. When asked at the SHEV interview about any travel to other countries, in addition to noting travel to [Country 3], the applicant said he wanted to escape to [Country 4], that he spent two weeks in [Country 2] on the way to [Country 1], and was in [Country 1] for roughly three months, that he tried to go to [Country 5] from [Country 1], but was caught and given a 'one-way passport' and sent back to Iran. When the delegate asked about the residency card, the applicant noted the card said he had to leave within 45 days. When the delegate asked if he had residency in [Country 1], the applicant said 'No, they did not even want to open the case', presumably indicating he tried to apply for asylum in [Country 1]. With regard to what happened to him on return to Iran from [Country 1] he said that because he was from a good family and they 'got a call' he was all right to 'get in', but next time it would not be so easy, and he is 'sure they could store all your background, close all your credit, and you could not get a job, it is hard'.
38. I have a number of issues regarding these claims. His evidence at the SHEV interview lacked details I would expect of someone having lived the claimed experience, such as who he contacted to try to 'open a case' in [Country 1], who issued the 'residence card' and the circumstances of it being issued, and who made the call to the Iranian authorities to influence them. Overall I did not find his evidence on these issues to be convincing. I am rather surprised that the applicant did not provide a consistent account of the date of travel to [Country 1], the number of days the purported 'residence card' was valid for, and whether or not his family supported him during that time. In addition, I consider it entirely implausible that authorities in [Country 1], having captured the applicant trying to leave [Country 1] illegally, would simply issue him with a document permitting him to remain in the country for a period of time and potentially make further attempts to leave, but rather that he would have been detained until arrangements were made for him to leave the country. Further, the applicant referred to travelling to [Country 3] at the Arrival and SHEV interviews. The Arrival interview record indicates he went by plane in 2006, he had a 'visiting visa', and that he 'had an old passport and it has been taken by the government', but does not indicate when that occurred or provide any further information about the circumstances surrounding the passport being taken. Although he mentioned travelling to [Country 3] at the SHEV interview he did not specify when this occurred, nor did the delegate specifically ask about that. The delegate's decision refers to the applicant returning to Iran from [Country 1] in 2006, and neither the post-interview or IAA submissions suggests that date is incorrect. The applicant has provided a copy of the biodata page of an Iranian passport in his name, which was issued [in] 2005 and expired [in] 2010, and I accept that document is genuine.

39. I consider it entirely implausible the applicant would risk departing Iran illegally in circumstances where he had recently obtained an Iranian passport. Given the passport was issued in late 2005, shortly before the purported departure for [Country 1], that the applicant said he was in [Country 1] for roughly three months, and he specified in the SHEV interview that he left [Country 1] [in] February 2006, I am satisfied the applicant left Iran and travelled to [Country 1] in late 2005, and that he returned to Iran [in] February 2006. I do not accept he departed Iran illegally, that he claimed asylum in [Country 1], or that he was issued a 'residence card' by [Country 1] authorities. I consider it most likely the applicant had a valid visa to remain in [Country 1] for a period of time, such as a tourist visa, and that he returned to Iran legally within the allowed timeframe using his Iranian passport. Having not accepted the illegal departure occurred, I also do not accept the applicant was threatened by authorities as claimed on return to Iran, or that he gave an undertaking not to leave the country again, as noted in the Arrival interview. I am satisfied the applicant also travelled legally to [Country 3] later in 2006 using the same passport, which is also indicative the passport was not confiscated. I do not accept the applicant's passport was confiscated by Iranian authorities or any other person, or that he was of interest to Iranian authorities on return from [Country 1] because of any illegal departure.
40. I also note that at his Arrival interview the applicant referred to being deprived of a passport for two years after returning from [Country 1], and then having a meeting about whether to give him a passport or not, and having his photos and fingerprints taken. He indicated the consequences of him returning to Iran would not be good and he would receive a bad punishment. At the SHEV interview he said his family paid for the trip to Australia, and they did everything for him to obtain a passport, because he could not have a passport again. They had good connections and applied and got all his documents. I consider these two distinctly different accounts of how the applicant obtained a passport in 2012, which he used to leave Iran and travel to Australia, casts doubt on his overall credibility, and specifically on the claim that he had difficulties obtaining a passport, and I do not accept he did. At the SHEV interview when asked if he had any problems leaving from the airport he said he did not have a problem because his passport was alright. The applicant did not suggest the passport he used to leave Iran was not genuine, and I am satisfied he left Iran without issue using a genuine Iranian passport in his name. His ability to do so is indicative he was not of interest to Iranian authorities at that time, and I am satisfied he was not.
41. The delegate considered whether the applicant would be harmed on the basis of being a failed asylum seeker from a Western country. At the SHEV interview the applicant noted the majority of people who return from the west are Persian, but because he is Arab he will be at greater risk of being targeted. He went on to refer to many people from his culture returning and never seeing their families but has provided no country information to support the contention.
42. I accept the applicant departed Iran from the airport using a genuine Iranian passport in his name which he no longer has in his possession. On the information before me, I am not satisfied the applicant was of interest to Iranian authorities for any reason when he departed, or that he has been involved in any activities in Australia that would make him of interest to Iranian authorities on return.
43. Iran has historically refused to issue travel documents (*laissez-passers*) to allow the involuntary return of its citizens from abroad. In March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters including an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. The applicant does not fall within that category, and if returned to Iran in the foreseeable

future, I am satisfied it would only be on a voluntary basis.<sup>22</sup> I accept if he returns to Iran it would be done using a temporary travel document, and as a result it is likely Iranian authorities would assume he sought protection in Australia.

44. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Those who return on a laissez-passer are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a laissez-passer. Questioning usually takes between 30 minutes and one hour, but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. In 2016 DFAT reported that a voluntary returnee would not attract much interest from authorities amongst the large regular international movements of Iranians, and credible sources said they move quickly through airports without official interest. Similarly, the 2020 DFAT report indicates Iranian authorities pay little attention to failed asylum seekers on their return. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, and unless they were the subject of adverse official attention prior to departing Iran, for example for their political activism, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.<sup>23</sup>
45. The applicant contends that separatist activities are rife in Australia, and that if he is returned he is at risk of enhanced interrogation to determine his actual profile, and being subject to a confession being coerced by security forces, as occurred during the July 2021 protests in Khuzestan, referred to above. I accept if returned the applicant may be questioned about returning on a temporary travel document, the circumstances of his departure, and he may be briefly detained at the airport before being released. I am not satisfied the applicant would be harmed during questioning at the airport, or that this treatment amounts to serious harm for him. The country information before me does not support a finding that Ahvazi Arabs or others from ethnic minorities are treated differently on return because of their ethnicity, or that persons who have sought asylum in Western countries, in particular Australia, are imputed to hold anti-Iranian government political opinions for having done so, or simply because there may be others in Australia who hold such views or engage in separatist activities. I acknowledge there are reports of failed asylum seekers coming to the attention of authorities on arrival in Iran, as noted by the delegate, however overwhelmingly such people have a profile of interest, such as political or human rights activists, journalists, or those otherwise expressing dissident opinions. I am not satisfied the applicant had a profile of interest when he left Iran such that there is a real chance he would suffer enhanced interrogation or serious harm for being a failed asylum seeker who sought protection in Australia, for having resided there for a significant period of time, because he is an Ahvazi Arab, or if he returns to Iran at a time of political unrest in Iran, including in Ahvaz.
46. Considering the applicant's background and profile, I am not satisfied there is a real chance he will suffer serious harm on return to Iran, for any reason, now or in the foreseeable future. I am not satisfied the applicant faces a real chance of persecution.

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<sup>22</sup> DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

<sup>23</sup> DFAT 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677; DFAT, 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

## Refugee: conclusion

47. 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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48. 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

49. 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.
50. 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.
51. I accept on arrival at the airport in Iran the applicant is likely to be briefly detained and questioned about his departure, and why he is travelling on a temporary document, but that he will not be harmed during this process. I am not satisfied the process or questioning amounts to pain or suffering, severe pain or suffering, or extreme humiliation, or that there is a real risk of the death penalty, torture or arbitrary deprivation of life, for this applicant. I am not satisfied that in the process of returning to Iran there is a real risk the applicant will suffer significant harm.
52. I have accepted the applicant may experience some low-level societal discrimination in Iran, that he may face difficulties in immediately finding a job, he may be excluded from working in government roles, and be affected by a lack of infrastructure and services. I also accept he may experience some social stigma if he keeps dogs. Although experiencing discrimination and social stigma is hurtful, having considered the applicant's evidence in the context of the country information, I am not satisfied the applicant would be unable to subsist for these reasons, or that these circumstances amount to significant harm, as defined in ss.36(2A) and 5 of the Act, for this applicant.
53. I have otherwise concluded there is not a real chance the applicant will face any harm on return to Iran. For the same reasons, I am also not satisfied there is a real risk of any harm, including significant harm, should he return to Iran.



**Complementary protection: conclusion**

54. 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.

## 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.