



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09785

Date and time of decision: 20 October 2021 17:22:00

M Anderton, Reviewer

Decision

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

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The applicant is an Iranian citizen of Arab Ahwaz ethnicity who arrived in Australia in May 2013 by boat.
2. On 16 August 2017 he applied for a safe haven enterprise visa. His claims revolved around a protest he and his brother attended in Iran in 2013 and the applicant's attendance at political events, protests and Ahwazi [Community Group 1] in Australia, his younger brother's detention in Iran, his ethnicity, imputed and actual political anti-government opinion and as failed asylum seeker.
3. On 27 August 2021 the delegate refused the visa. While the delegate accepted the applicant attended protests in Iran in 2013 the delegate did not accept either of the applicant's brothers, [Mr A] or [Mr B] were detained. While the delegate accepted the applicant attended protests in Australia on three occasions, [was a member of Community Group 1] and did community activities with Ahwaz community organisations in Australia, the delegate did not accept the applicant was or would be of adverse interest to Iranian authorities upon return.

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. New information and submissions were provided to the IAA. The new information included a letter from the Sydney Al Ahwaz Community head dated 8/9/2021 and photo of a person on a hospital bed with ankle cuffs, which the applicant was his younger brother, [Mr B].
6. The 8/9/21 letter post dated the delegate's decision and it is credible personal information that further explains and elaborates on an earlier letter by the same author before the delegate. I am satisfied as to s473DD(b)(i) and (ii). Further, given it is further explanation in response to the delegate's findings, is corroborative and may have affected consideration of the claims, I am satisfied there are exceptional circumstances that justify considering the information. I have considered the information.
7. However, I am not satisfied that the photo of the person in cuffs on a hospital bed meets s 473DD. The applicant claimed he was only given the photo by his other brother [Mr A], after the refusal decision and that the photo was taken by his sister when she visited [Mr B] in his 2019 detention. It was submitted it was credible personal information and it reaffirmed the applicant's protection interview evidence that his brother [Mr B] had been detained.
8. However, I consider the applicant had plenty of opportunity to provide the photo as it was allegedly taken in 2019 by his sister and the applicant's brother [Mr A], who also applied for asylum, had the photo. Further, it was evident that the applicant had no difficulty obtaining and providing photos, letters and other evidence during his application process and understood the importance of providing information to the delegate and it was explained at the protection interview as well. I am not satisfied that the applicant could not have provided it to the delegate. S473DD(b)(i) is not satisfied. Further, I do not consider it is personal credible personal information as there is no identifying information that it is the applicant's brother, or when it was taken or supporting information from the person in the photo or the

person who took the photo. I am not satisfied that it is corroborative of his claims. I am not satisfied either that it is credible personal information. I am not satisfied as s473DD(b)(ii). I am not satisfied there are any exceptional circumstances to consider the information either. I have not considered the information.

9. There were country information references in the submission which was not in the review material. However, contrary to the requirements of the practice direction the submissions did not provide a copy of the country information and so I have not considered them.

Applicant's claims for protection

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

- He is an Ahwazi Arab who fears harm on the basis of his ethnicity, actual political opinion against the Iranian government, for his time spent in Australia and perception that he holds an anti-government opinion and as a failed asylum seeker. He fears harm from the Iranian government, Sepah, Basij and from the Iranian public who are hostile towards Ahwazi Arabs.
- He experienced discrimination and persecution throughout his life. He has been beaten many times because he was an Ahwazi Arab. If he was caught speaking Arabic in a group and within earshot of authorities, they would come and beat them and often use their batons. If he spoke Arabic people would not buy or sell from them. He was rejected for jobs because of his ethnicity. So, he sold [products] at the market and could not do anything else. They could not wear traditional clothing and if they played Arab music it would be shut down by the authorities. People told him to change his name to a Farsi name, but he should not as it is part of his identity. During military service he was called 'jarab', a derogatory name. Ahwazi Arabs were given the lowest rank in the army.
- In 2005/6 after the Eid celebration police and Sepah opened fire on the celebration and many were killed and injured. His brother [Mr A] was pushed from the bridge and broke his [Body Part 1].
- Seven or eight months before he left Iran (in his 2021 statement the applicant corrected this to around January or February 2013), the applicant and his brother went to the stadium where an Imam was delivering a speech about the good things done for Arabs. The applicant, his brother and friends protested the oppression by authorities and screamed that it was all lies and not true. The Basij began to beat them with batons. The applicant escaped. His brother was beaten badly, taken to hospital, guarded by Sepah or Basij, but managed to escape. He is not sure how his brother escaped but perhaps someone from the hospital helped. The applicant spent the rest of the time in hiding moving between friends and family's places and occasionally returned home to see his mother in secret. A member of the their group sent photos of the incident, which the applicant provided.
- After coming to Australia, his mother told him a letter from the intelligence agency was sent to their home, naming the applicant and his brother, that they needed to surrender to police. A year after he left Iran, authorities came to the home and took his national ID card and military service document and the applicant's youngest brother, [Mr B] who was imprisoned for 6 or 7 months. They said he was being arrested for drugs, but it was lies. While he was detained and tortured, he was asked where the

applicant and his brother were. It was clear the authorities were looking for him given the letter sent to the house and arrest of his brother.

- He fears harm as a failed asylum seeker returning from a western country and would be seen as someone who is against the government having fled to a western country. He knows a person who (who was also Ahwazi) was arrested at the airport upon return from Australia.
- In his June 2021 statement the applicant added that two years prior his brother, [Mr B] was arrested by authorities during a protest against government policies and imprisoned for a few months.
- The applicant is a member of the Ahwazi community in Australia which organises social, cultural and political events, such as Eid, protests about the mistreatment of Ahwazi Arabs. He has been a member of the Sydney Ahwazi community for 5 years and a member of the Melbourne Ahwazi community for a bout two years before that. Letters from the Ahwazi communities, photos of attendance at 2021 Eid in Sydney and photos of attendance at events in Melbourne were provided.
- In Australia he has attended 3 protests organised by the Ahwazi community In [Year 1] or [Year 2] he travelled to Canberra to [protest] with a sign of the Ahwazi flag and yelled things like “free our country, people and stop putting Ahwazi Arabs in prison for nothing”. In [Year 3] he attended another Canberra protest and yelled with the crowd about poor treatment of Ahwazi Arabs. He held [specified signs]. He can be seen in the [photos]. He attended a third Canberra protest in [Year 4], held a [sign] and yelled about their mistreatment. In the photos he is [description of clothing]. He protests to send a message of support from Australia to his people in Iran and will continue to protest against the Iranian government treatment of Ahwazi Arabs. If he protested in Iran he would be imprisoned, tortured and killed.
- He has been a member of the Ahwazi [Community Group 1] in Sydney for 5 years. The [group’s identifying material] has the flag on it and [members] fly the Ahwazi flag. Pictures were provided. It is dangerous to display the Ahwazi flag in Iran and if he did in Iran he would be arrested, imprisoned and killed.
- He has a back problem which has required treatment for the last 3 or 4 years. A copy of his health issues was provided.
- It was submitted the applicant feared persecution due to his political activities and opinion in Iran and Australia as a pro-Ahwazi activist. Pro-Ahwazi political activism included political opinion and action regarding the interests of Ahwazi ethnicity in Iran and towards establishing a nation stat of Ahwazi as a separate nation state of Iran. It was submitted the applicant engages, and will continue to engage in pro-Ahwazi political activism (opinion and activities), and will continue to seek to continue if returned to Iran.
- At the protection interview the applicant said the Iranian government had taken Arab lands and it was like the Palestine/ Israel situation but worse. He said they suffered more than the Palestinians and the aim of the group was to get their voices heard through social media and more. They were on videos, social media and he sent messages to others outside the community to join protests. They were against the regime. They would be in trouble in Iran for the Ahwazi flag used on their [Community Group 1 materials] and at [activities] and on social media.

Refugee assessment

11. 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

12. 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.
13. Based on his identity documents, I accept the applicant is an Iranian citizen. I accept also that he is Ahwazi Arab.
14. Between 1.5 million and 3 million Arabs live in Iran, predominantly in the south-western province of Khuzestan bordering Iraq (Bushehr and Hormozgan provinces also have large Arab communities). Iranian Arabs are often referred to as ‘Ahvazis’, after the capital city of Khuzestan Province (Ahvaz).
15. The applicant claimed he was rejected for jobs because of his ethnicity and could only work selling [products] at the market. He claimed authorities beat him when he spoke Arabic and they were not able to wear traditional clothing.
16. DFAT assessed that members of ethnic minority groups face a moderate risk of discrimination and may take the form of denial of access to employment and housing and the risk is higher for those involved in activism, including those advocating for greater political or cultural rights or speaking out against violations.
17. However, DFAT information is that Iranian cultural activities are tolerated, and Arabs can freely wear traditional Arab dress and they are also free to speak Arabic. DFAT heard anecdotally 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. There is high unemployment and the community complains of exclusion from certain employment such as shipbuilding, manufacturing and petrochemical industries and local government.

18. Given the country information I am not satisfied that the applicant was not allowed to speak Arabic or wear traditional clothing or beaten when he did. The applicant said he finished school at 16 and did military service and had a [product] shop at the market. He did not provide any meaningful detail of what other type of jobs he applied for or was rejected for. I note also the applicant lived in a majority Arab province. On the evidence I am not satisfied that the applicant was discriminated in employment, his language or dress or education in Iran. While he may have been called names or at a lower rank in military service, I do not accept that amounts to harm.
19. However, like the delegate I accept that the applicant and his brother were celebrating Eid in traditional clothes in 2005/6, when police opened fire on the group celebrating. I accept the applicant was very scared and ran away from it. I note country information about 2005 Arab protests also and that many demonstrators were killed and hundreds detained.
20. Like the delegate, I accept also that the applicant and his brother attended and protested at the stadium in January/ February 2013. I accept the applicant managed to escape but the applicant's brother was beaten as was evidenced by photographs of the brother's injuries and attendance at the event.
21. However, like the delegate I do not accept that the brother was detained and escaped from hospital. The applicant's account of that was vague, lacked details and credibility. Further, that the applicant and his brother were able to obtain passports and depart Iran on own passport further reinforces my view that the applicant was not of adverse interest to authorities.
22. DFAT country information indicates that travel bans can be imposed on some Iranians including for security concerns, debts, outstanding taxes, sentences awaiting enforcement, those released on bail or parole, and civil and political activists. Ministry of intelligence and the revolutionary guard have power to impose bans without recourse to the judiciary and Iranians under travel bans are often unaware of their status until they reach the airport passport control. There are also security organisations present at the airport. I consider if the applicant was of adverse interest or authorities were looking for him that he would not have been able to depart Iran as he did.
23. I do not accept the applicant was in hiding or of adverse interest to authorities before he left Iran.
24. Further, I do not accept the applicant's younger brother, [Mr B] was detained. Further, even if he was, I do not accept that was because of any interest in the applicant, as I do not accept that the applicant or brother [Mr A] were of interest to authorities upon departure from Iran. Further, I do not accept that the applicant's mother received a letter asking them to surrender to police or police were looking for him. I note the applicant provided no documentary evidence of that either.

Sur place claims

25. Like the delegate I accept the applicant attended Ahwaz Arab protests in Canberra on three occasions (in [Year 1] or [Year 2] and [Year 3] and [Year 4]). The applicant provided photographic evidence of his attendance. The post interview submissions contained [social media] clips also which included the applicant. I accept that the protests were covered also in the print media, though there is no evidence that the applicant was identified or mentioned in the print media. There was social media however. The applicant also provided letters from

the Al Ahwazi community organisations in Sydney and Melbourne which supported his claims. The applicant had been a member since 2013 and was on subcommittee which assisted in organising the protests. The applicant confirmed he also sent messages to others not in the community to join the protests and activities.

26. I accept the applicant was also in the Al Ahwazi [Community Group 1] and that the [group materials] indicated that they were Al Ahwazi and wanted to “free Al Ahwazi”. The applicant claimed also that [members] waved flags (which would be banned in Iran) at the [group activities].
27. Like the delegate I consider the [Community Group 1] activities and community involvement evidenced the applicant’s ethnicity and wish to identify as that and support of Al Ahwazi community events. I do not consider the attendance at protests in Australia on their own were such that, even if they were to be known by authorities, that the applicant would be of adverse interest to authorities. I note the country information that 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, including protesting outside an Iranian diplomatic mission and posting social media comments critical of the government.
28. However, I note the submissions that the applicant intended to continue his political activism upon return to Iran. That political activism included support for Pro-Ahwazi political activism and activities for a separate nation state. At interview I note the applicant wanted their lands back and likened the Ahwaz Arab situation to the Palestine/Israel situation. The applicant said they were anti-regime and wanted their Arab land back. That confirms to me that the applicant was interested in and advocating for a separate state. The applicant’s [Community Group 1 activity] and community involvement with Al Ahwaz activities and protest activities has been for many years (and not timed with his application milestones)also. I note the applicant was involved on a subcommittee in the Al Ahwaz organisation in organising protests in Australia. The applicant also attended and protested before his departure in Iran. While his involvement in Iran was limited and did not bring him to the attention of authorities, it is consistent with his continued interest in activism in Australia. I note also he was still quite young in Iran and that his activism has further developed in Australia as he matured and in a freer and safer environment to be involved in such activities. I accept that the applicant genuinely supports Pro- Ahwazi activism and activities, including a separate nation state and that he would engage in continued activities upon return.
29. I am satisfied that the applicant had a genuine interest in activism and these activities and that he engaged in the conduct otherwise than for the purpose of strengthening his refugee claims.
30. I note DFAT information that protests in Khuzestan Province are common and there were violent protests in November 2019 to reduce petrol subsidies with 80 people arrested and some deaths. Hundreds were arrested during protests in 2018 relating to water shortages and quality. In April 2015 authorities arrested large numbers of Arabs in Ahwaz in the lead up to the anniversary of the 2005 protests. While most of those arrested in 2015 were prominent activists, human rights organisation, claims some were targeted for their perceived political opinions, for peacefully expressing dissent or for openly exhibiting their Arab identity and culture.
31. I note DFAT information that for the most part, ethnic minority communities have sought greater rights rather than greater autonomy or secession. DFAT stated despite grievances

Iranian Arabs do not harbour strong separatist tendencies and separatists do not enjoy broad support among Iranian Arabs, who generally favour greater rights over autonomy or a separate state.

32. However, given the applicant's statements at interview about Arab lands being taken and likening to the Palestine/Israel situation and submissions that the applicant will continue to advocate for a separate nation state upon return to Iran, I accept that the applicant's protests and political views are more than just advocating for greater rights, but rather for greater autonomy or secession.
33. Further, I note DFAT information that, the authorities are highly sensitive to political activism, particularly in border provinces and when they perceive the activism to be a threat to the Islamic Republic. Authorities have targeted ethnic minority activists for arrest and prosecution on national security grounds. since the September 2018 terrorist attack against security forces in Ahvaz (see Security Situation), 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. DFAT also noted that human rights observers claim authorities commonly subject members of ethnic minorities in pre-trial detention to more severe physical punishment or mistreatment than other prisoners, regardless of the crime they are accused of committing. According to the Special Rapporteur on the situation of human rights in Iran, ethnic minorities account for a disproportionate number of political prisoners and executions on national security-related charges.
34. DFAT notes that common methods of torture used in Iranian prisons include threats of execution , rape, sexual humiliation, electroshock burning etc and allegations of forced confessions through torture and mistreatment while in detention are common in the case of individuals charged with national security offences. DFAT assessed that individuals suspected or found guilty of national security related offences are vulnerable to mistreatment that may amount to torture inside prison.
35. Given my findings about the applicant's political activism and views, that he will continue his activities upon return, and his ethnicity and the country information I accept that upon return there is a real chance that the applicant will come to the attention of authorities for such activism and protests and face a real chance of imprisonment and mistreatment, which may amount to torture.
36. I find the essential and significant reason for the persecution involves serious harm and systematic and discriminatory conduct.
37. I find applicant 1 faces a real chance of persecution in all areas of Iran.
38. Further, I find the applicant could not take reasonable steps to modify his behaviour to avoid a real chance of persecution as his Arab Ahwazi ethnicity is fundamental to his identity and his political views. I am satisfied the applicant has a well-founded fear as defined in s5J.
39. Considering the applicant's ethnicity, pro-Ahwazi activism including for a separate nation state and that he will continue to that upon return and those activities would be against the Iranian government I satisfied that there are no effective protection measures are available to the applicant. I find s5LA is met.

Refugee: conclusion

40. The applicant meets the requirements of the definition of refugee in s.5H(1). The applicant meets s.36(2)(a).

Decision

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

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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