



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/10048

Date and time of decision: 10 December 2021 15:40:00

K Juttner, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. He arrived in Australia in May 2013 and on 11 September 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 6 October 2021, a delegate of the Minister for Immigration refused to grant the visa on the grounds that Australia did not owe protection obligations to the applicant.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born and lived in Tehran, Iran.
 - He was born a Shia Muslim. He did not practise Islam.
 - When he was aged [age range], he bought a Christian bible because he was curious about religion. He had some Armenia friends who affected him. He read or studied the bible several times.
 - He was introduced to the Baha'i faith by a friend in around 2013. He attended four or five Baha'i classes or gatherings over one or two months. The authorities raided a Baha'i class he was attending, and he was detained and questioned for around seven days. His father came to bail him out and was given a date for the applicant to attend court. He did not attend court and left Iran in April 2013. His family were visited by the authorities about one or two months after he left Iran because he did not attend the court hearing. The case against him will be reopened or continue if he returns to Iran.
 - He attended Baha'i centres in [Australian cities] because he wanted to convert to Baha'ism. He was not permitted to convert to the Baha'i faith because he was not an Australian citizen or permanent resident and because they were afraid he would be harmed on return to Iran.
 - He moved towards Christianity and attended church in Australia.
 - If he is forced to return to Iran, he would be seriously harmed because of his religious beliefs, his real and/or imputed political opinions for having spent time in a Western country, and because he practised the Baha'i religion in Iran.

Factual findings

6. The applicant has consistently claimed he was born in Tehran and is an Iranian national. He provided a copy of the biodata page of his Iranian passport which was issued in [2012] and

indicates he was born in Tehran. According to DFAT¹, passports serve as proof of Iranian citizenship. The applicant also provided a copy of his Iranian driver's licence (not translated) which contained the insignia of the Islamic Republic. I am satisfied that the applicant is an Iranian national and Iran is his receiving country.

7. The applicant claimed in his SHEV application and at his SHEV interview (which took place over two days, on 30 April 2021 and 10 May 2021) that he was of Iranian Turkish origin. In his SHEV application he stated that he was not Azeri, which was the ethnicity specified in the written record of his arrival interview that took place on 16 June 2013. I agree with the applicant's contention that there was a mistake in his entry interview, as it is clear from listening to the audio recording of that interview that he responded that his ethnicity was Turkish. I am willing to accept that the applicant is of Turkish ethnicity. He did not raise any claims in relation to this ethnicity.
8. Since his arrival in Australia, the applicant has claimed that the reason he left Iran was because he attended a Baha'i gathering that was raided by the Iranian authorities, and he was subsequently detained and questioned. When he was released, he was given a date for his court hearing but did not attend court and left Iran. He later claimed to have attended Baha'i centres in Australia and to have developed an interest in Christianity. The applicant claimed that if he is forced to return to Iran, he would be seriously harmed because of his religious beliefs, his real and/or imputed political opinions for having spent time in a Western country, and because he practised the Baha'i religion in Iran.
9. The applicant claimed he was born a Shia Muslim but never practised as a Muslim. He said he occasionally went to mosque during Ramadan and sometimes practised Islam, but not all the time. According to his SHEV application, not many of his family and friends practised Islam. At his SHEV interview, he agreed with the delegate that his parents were very religious people. There was no evidence before me that his parents had any issues that the applicant did not practise Islam. When asked by the delegate why he disliked Islam, the applicant said that when he was looking at Islam with the things which he observed when he was in Iran and what he had observed now he was in Australia, there were things he did not like, and it was not beautiful for him. He told the delegate he could not say if he detested or hated Islam or not, but he could say it was not beautiful for him. He confirmed he had not attended mosque or said prayers or participated in Ramadan since being in Australia.
10. The applicant further claimed that when he was aged [age range], he bought a Christian bible because he was curious about religion. He started reading it but could not attend classes or ask any more questions because Christianity is not allowed in Iran. DFAT² reporting indicates that Christianity is a recognised minority religion in Iran (with its members having to register with the authorities), but that Muslims are not permitted to renounce their faith or convert to another religion. When asked by the delegate why he bought the bible, and if he had an interest in learning about Christianity, the applicant said at that period of time and while he was still studying, he had some Armenian friends who had affected him. He had purchased the Christian bible to study and to receive more information from it. He said he read or studied the bible several times. He did not watch any religious programs on satellite television. He told the delegate he did not consider becoming a Christian or converting to Christianity at that time. He was still a student at school and was just reading out of curiosity and to find out more about it.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

² DFAT, "DFAT Country Information Report Iran", 29 November 2013, CIS26780.

11. The applicant consistently claimed he went to Baha'i classes or gatherings in Iran for around one or two months. At his SHEV interview he claimed he attended approximately four to five sessions with the Baha'i. He said the meetings were held twice a month and were not all held in one place. According to his SHEV application, the applicant was introduced to the Baha'i faith by a friend who had been attending Baha'i gatherings for around five or six months. This friend told the applicant about the religion and he decided he wanted to go with his friend to Baha'i gatherings. The applicant told the delegate his friend was not a Baha'i by birth and had been converted. He had known this friend for "maybe a year". When asked at his SHEV interview why he thought his friend had asked him to come to a Baha'i meeting, the applicant said that at that time he was [age range], which was "the age of curiosity", and he wanted to explore more. He explained that they were speaking about the religion and with the friend who was Baha'i and a person who was Christian, and that was what inspired him to learn and find out more about these religions. However, I note that on his SHEV application evidence, he did not meet his Baha'i friend until around a year before his departure from Iran in 2013, when he was [older]. On the applicant's evidence, he attended the Baha'i classes a few months before he left Iran.
12. At his SHEV interview, the applicant told the delegate he didn't know when he went to the Baha'i sessions that Baha'is were targeted by the Iranian authorities but did understand that Baha'is were among the minorities. DFAT³ reports that Baha'is, Christians, Zoroastrians, Jews and Sabean-Mandaeans make up Iran's religious minorities, although only Christians, Zoroastrians and Jews (excluding converts) enjoy legal recognition and, in turn, the ability to worship openly. Baha'ism is not a recognised religion in Iran and its adherents are considered infidels and face widespread official and societal discrimination. In his SHEV application, the applicant stated the gatherings were secret and were mostly made up of people who were Baha'i, with a few Muslims who were interested in joining. He said that they did not talk about the actual religion during the first couple of gatherings, and mostly discussed the discrimination against people who had converted or were from a minority religion. He believed this was discussed in order to warn new people like himself about the risks of converting to the Baha'i faith. He referred to the fact that conversion would be viewed as apostasy under Islamic law. The applicant claimed their phones were taken and returned at the end of the sessions. In the next few classes, they talked about unity and the way they worshipped God and about how the Baha'i religion came to be. He said he learnt in the classes that children of members of the Baha'i religion are free to choose their own religion and he liked that aspect of the religion very much.
13. When asked to explain at his SHEV interview what happened at these gatherings and whether he was taught about the Baha'i faith, the applicant said there were classes that were like a gathering for Christians or Muslims, and they were doing their own energies and prayers. He was a guest or observer. On some of the days he attended, he participated in the classes. He said he did not learn that much about the Baha'i faith at that time, and that it was limited to becoming a bit familiar with the faith. He also stated that there was a big leap between being just curious about something and deciding to convert. The delegate questioned whether the applicant was just studying the Baha'i faith out of curiosity or if he was interested in joining them at some stage. The applicant responded that at that period and the age he was, and because of talking "about these things", he happened to enter their sessions. He also said he had knowledge about the faith before entering the sessions, although he did not respond to the delegate's question about whether he was interested in converting to the Baha'i faith in Iran. I note that at the applicant's arrival interview, he said he

³ DFAT, "DFAT Country Information Report Iran", 29 November 2013, CIS26780.

did not convert to the Baha'i faith in Iran. When asked to specify his religion at that interview, he said he was a Shia Muslim.

14. Having regard to the applicant's evidence about his religious beliefs, I accept that he was born a Shia Muslim and that other than occasionally attending mosque and sometimes practising Islam, he did not practise as a Muslim on a regular basis. I also accept that the applicant became curious about other religions when he was aged [age range]. As noted by the delegate, religious proselytising is heavily controlled by the Iranian authorities and it would have been impossible for the applicant to become further involved in Christianity through links with the Armenian community. Notwithstanding this, I am willing to accept that he may have had contact with some Armenian friends when he was [age range] and had access to a Christian bible which he started reading. On the applicant's evidence, which I accept, he did not convert to Christianity in Iran. I am not satisfied that the applicant did anything further to explore other religions at that stage. In relation to his attendance at Baha'i classes in Iran, I note that DFAT⁴ reported that Baha'is faced considerable official and societal discrimination in Iran, which resulted in an inability to openly practice their faith and led many to hide their religious identity, which suggests that it was somewhat unusual for members of the Baha'i community to invite people who were not Baha'is to their gatherings. Notwithstanding this, I found the applicant's evidence about becoming interested in the Baha'i faith through a friend and attending Baha'i gatherings with his friend was generally credible, and I am willing to accept that he attended gatherings or classes about four or five times in around two months. I find that the applicant's interest in the Baha'i faith took place shortly before his departure from Iran in 2013 and not when he was aged [younger age range]. Again, the applicant's evidence was that he did not convert to the Baha'i faith in Iran, which I accept.
15. While I accept that the applicant attended a number of Baha'i gatherings or classes in Iran, and notwithstanding that he has consistently claimed that he got into trouble with the Iranian authorities as a result, I do have significant concerns about this claim. The applicant claimed that a Baha'i gathering he was at was raided by four or five men who were not in uniform, who he believed were from the Iranian authorities. He was arrested together with about ten to fifteen other people in the class and taken into detention.
16. The applicant claimed the raid happened in February or March 2013, around twenty days before their new year. At his SHEV interview, the applicant said the undercover officers had batons and tear gas, but he did not see if they had any guns. This differs to some extent from the evidence in his SHEV application where he said the men did not have any weapons. He said he was blindfolded and taken away to temporary detention. He told the delegate he was not held in a police station but as far as he remembered, it was a temporary home and detention, and he did not know where it was. According to his SHEV application, the applicant was placed in a dark, dingy room where he was held for approximately one week. During that time, the guards interviewed him and asked how he was introduced to the classes. When asked by the delegate about the information they wanted to know, the applicant said they asked what the classes were about and how he had entered the sessions. He confirmed that the men understood that he was not Baha'i himself. The delegate pressed the applicant about the sort of information he gave the men, to which he responded that he told them the truth that he became familiar with these sessions via his friend, and that he didn't know the Baha'i faith was among the minority faith. The applicant claimed they did not harm him physically. He also said that for the first four days, the men would not let him call anyone and after four days a call was made to his parents. In his SHEV application, he claimed

⁴ DFAT, "DFAT Country Information Report Iran", 29 November 2013.

the men contacted his parents and told them where he was, so that they could bail him out. At his SHEV interview, he said he requested the men allow him to have a telephone conversation with his family to inform them where he was. The applicant claimed he was held for another three days and then his family came to where he was being detained. His father provided them with one of his welfare payslips because he was retired. Given that his family, to whom he speaks to all the time, came to collect him from where he was being detained, I do find it somewhat difficult to believe he did not know, at the very least, the location of where he was being held.

17. The applicant claimed that upon his release, the men gave his father a date for his court hearing. He was not given any written notice and they only told his father that he had come to court with the applicant on that date because he was the one who bailed the applicant out. He stated that he was not sure about his charges and was just told to attend. He told the delegate he did not have any conditions on his release, such as reporting to police every week. The applicant also claimed he did not know what happened to the other people who attended the class, including his friend, and never saw them again. He further claimed that he left Iran either a week before or a week after his hearing date, although he cannot recall the exact date, because he was scared he would go to prison indefinitely or be executed for his religious beliefs. In his SHEV application he also stated that he was unsure whether his case was still open. The applicant left Iran in April 2013 on a lawful Iranian passport he obtained the year before his departure. He did not have any problems leaving through the airport.
18. The applicant further claimed in his SHEV application that he found out in early 2014 that in about mid to late 2013, about one to two months after he left Iran, representatives of governmental organisations (who he believes were from either from Sepah, Basij or the Ministry for Intelligence and Information) came to his family's house a couple of times because he did not attend his court hearing. They asked his brother where the applicant was, and his brother said that he didn't know. In his 2017 SHEV application, he stated that he had not asked his family whether anyone else has visited his family home to ask about him since that time because he was scared that the government was listening to phone calls and did not want to mention anything about the court hearing he had missed or the visits from government officials. The applicant's evidence about the telephone calls being monitored was speculative and in any event, it is difficult to understand why the authorities would have an issue with conversations about visits and court hearings they had initiated.
19. DFAT has reported that Baha'is with actual or perceived links to religious or cultural organisations could have faced additional harassment by the state, including through the application of national security laws, and referred to reports of Baha'i individuals being subject to lengthy prison terms for possession of Baha'i-related materials or for being a member of an 'illegal' group⁵. The severity of this attention was dependent on the prevailing political environment, the level of cultural or religious activity in which the person was engaged (or perceived to be engaged), as well as the individual personalities of security officials. The US State Department⁶ subsequently reported in 2018 that over the previous ten years, more than one thousand Baha'is had been arbitrarily arrested on the basis of their faith, with arrest orders coming from the Revolutionary Courts and executed by both security forces and agents of Iran's Ministry of Intelligence. The USSD also stated that the Iranian government arbitrarily detained, harassed, and imprisoned Baha'is based on their religion

⁵ DFAT, "DFAT Country Information Report Iran", 29 November 2013.

⁶ United States Commission on International Religious Freedom (USCIRF), "United States Commission on International Religious Freedom Annual Report 2019", 29 April 2019, 20190508143726.

and continued its long-term practice of egregious economic and educational persecution of the community.

20. When asked by the delegate whether any warrant or summons was issued in his name after the authorities found out he had not attended court, the applicant said that the only documents that he had was in relation to attending the court. He told the delegate that after he left Iran, the authorities physically came to his family's door but did not give any summons or warrant. The reason the authorities had not sent any warrant or summons was because he had not committed a crime, and his only fault in their eyes was that he had participated in "those classes". He claimed that they had come to ask for the applicant in order to take him for more interviews about why he had participated in the Baha'i classes. This explanation is at odds with the information in his SHEV application that he was released on bail and requested to attend court. It is also at odds with the applicant having answered "yes" to the question in the visa application that he was the subject of a criminal investigation or had criminal charges pending. Moreover, his statement at the SHEV interview that the only documents that he had were in relation to attending the court contradicted the SHEV application statement that he was not given a notice about the court appearance. I note that the applicant did not provide any documentary evidence of this document.
21. As well as the variations in the applicant's evidence about documents and the reason for the authorities' ongoing interest in him, I have significant concerns about other aspects of this claim. On the applicant's evidence, the men who were questioning him knew he was not a Baha'i and were more interested in how he was introduced to the Baha'i group, rather than his own activities. As such, it is difficult to understand why the applicant was charged and released on bail and required to attend court. Furthermore, I consider it implausible that the applicant did not receive any documentary evidence of his claimed bail or know what charges had been laid against him. Although he says he was bailed out by his father there was no evidence that the applicant's father faced any consequences when the applicant failed to attend court. In addition, the applicant's evidence about the court appearance was cursory. He did not know whether he had left Iran a week before or a week after the court date.
22. Overall, I did not find the applicant's evidence about being detained by the authorities and subsequently bailed and required to attend court credible. I do not accept that the authorities raided the Baha'i gathering or that the applicant was held for around a week or released on bail, charged and told to attend court. I also do not accept that the applicant's family were visited by the authorities after his departure. I am not satisfied that the applicant was of any adverse interest to the Iranian authorities when he left Iran.
23. The applicant also claimed that he tried to participate in Baha'i classes after he came to Australia. According to his SHEV application, he was in [City 1] for four months (between August 2013 to January 2014) and attended a couple of classes at the Baha'i centre. After that, he moved to [City 2] where he attended the centres in [specified locations].
24. The applicant claimed that the Baha'i members in Australia did not permit him to enter the faith by being officially baptised because he was on a temporary visa. They told him that if he was deported back to Iran, it would cause problems for him and for that reason they did not accept him. They said he had to acquire permanent residency to be let into the Baha'i religion and the position was the same for all temporary visa holders. At his SHEV interview, he said that he requested the Baha'i community to register him as a Baha'i as he wanted to convert to the Baha'i faith, but they said they could not do this as he was not a permanent resident or citizen of Australia. They also said that if his visa was rejected by the Department for Home Affairs and he was obliged to return to Iran, his name would be going "in the database" and

he would be known by the Iranian authorities and arrested when he returned. It meant that what they would do to him was much harsher than what would happen to a Baha'i minority and would have serious consequence if he had converted. As such, the applicant appeared to be suggesting that he would be known to the authorities because he had converted to the Baha'i faith but did not provide any supporting evidence for this. The applicant also did not provide supporting information in relation to his contention that the authorities in Iran have a database of people whose visas have been rejected. DFAT⁷ reports in contrast that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, which includes converting to Christianity (which is regarded as similar to Muslims who convert to Baha'ism).

25. The country information before me states that the policy of the Baha'i in Australia that non-permanent residents would not be accepted for conversion to the faith ended in 2010, and that when considering the possible enrolment of a refugee or asylum seeker from a place where it was unsafe to be a Baha'i, particular caution was taken to ensure that the individual appreciated the full implications of the step and their motive was genuine and sincere⁸. Information about the subsequent position gives a somewhat different reason from that given by the applicant about why he may not have been accepted into the Baha'i faith in Australia. This information indicates⁹ that in the case of Iranians who were not members of the Baha'i community in Iran but wish to join the Faith after coming to Australia, the Local Spiritual Assembly in the area where they live has responsibility for ascertaining that they are acting genuinely out of faith and fully understand the implications of the step they are taking. Each such case is also assessed on its merits by the National Spiritual Assembly before the individual is enrolled in the community and a membership card is issued.
26. Notwithstanding that the applicant was not permitted to be registered as a Baha'i in Australia, he stated that he was still allowed to attend the classes, and also youth group or Baha'i events when they were on. He told the delegate the Baha'i community did not have any problems with him participating in Baha'i spiritual sessions. However, when asked if he continued with the spiritual sessions after he was rejected from joining the Baha'i faith, the applicant responded that he didn't participate after that. The applicant's evidence about his Baha'i faith and practise in Australia was cursory. He did not provide any documentary or other evidence in support of his attendance at, or activities with, the Baha'i centres in [the two Australian cities].
27. At the time of his 2017 SHEV application, the applicant left the question about his religion blank. The applicant did claim in his SHEV application that he would want to continue to practise the Baha'i faith if he returned to Iran but knew it would be considered apostasy and he could be imprisoned or killed. However, in that same application, he also stated he had not been to a Baha'i class for six months and claimed this was because he feared his ongoing activities with the Baha'i faith would cause problems for him if he was deported. He also claimed that he was known by many people in the Iranian community in Australia and was afraid that that through friends and family it might become known in Iran that he continued to attend Baha'i classes and to remain actively involved in the religion since coming to Australia. At his SHEV interview, the applicant gave differing evidence about when he had stopped attending the Baha'i classes in Australia, saying it was in 2014 and 2015 that he used to participate in Baha'i sessions.

⁷ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

⁸ Country of Origin Information Section (COIS), "Iran – IRN36282 – Bahai – Conversion – Apostasy – Tenets – Persecution – Espionage – Israel", 19 March 2010, CR829A2B4372.

⁹ National Spiritual Assembly of the Baha'is of Australia, "Baha'i membership procedures", 19 May 2011, CX265162.

28. The applicant claimed that one of the friends who went to the Baha'i classes advised him that if he converted to Christianity, the Iranian authorities did not look at Christianity as harshly as they looked at the Baha'i faith, and that returning to Iran after converting to the Baha'i faith was much more serious than converting to Christianity. The applicant claimed that after receiving this information, he started participating in the church for prayers and Christian classes. He told the delegate his interest in the Baha'i faith finished and he moved towards Christianity.
29. When asked which church he attended, the applicant said he used to go to the "[Suburb 1] church" and that because his co-workers were also Christians, they invited him to different churches and he participated in four or five churches. He said he participated in the [Suburb 1] church just two weeks before his SHEV interview on 30 April 2021. When asked if he remembered the name of the church, he said he could not recall the name but that it was a big church next to [Location 1] on [a named street]. As noted in the delegate's decision, an external source indicated that the applicant may have been referring to [Church 1] [Suburb 1]. The applicant did not provide any submissions to the IAA in response to this information.
30. The applicant claimed at his SHEV interview he attended another church in [Suburb 1] but again could not give its name. The applicant also did not know the pastor's name but described him as tall and aged around [age] and a "good man". The delegate queried whether the Pastor was called [Pastor A], to which the applicant said he did not know. Later, at the beginning of the second part of his interview, the delegate confirmed that after the interview, the applicant had showed him a picture of [Pastor A] and confirmed that he was the Pastor, and the church was [Church 2] [near Suburb 1]. However, later in his interview, he said he did not remember his name.
31. The delegate queried when the applicant first attended church and whether it was in 2015, given that was when he ceased practising the Baha'i faith. The applicant referred to having many friends who were Christians, and that he used to go to church with them, but did not respond to the delegate's question about when he first went to church. He also told the delegate that he had not become a Christian officially. He had not been baptised but wanted to. He said he was waiting for his interview to be finished before being baptised and officially converting into Christianity. I note that in his June 2017 SHEV application, the applicant did not indicate he had attended church, although he did claim that some of his friends had converted to Christianity and that the "Holy Father" sometimes came to their house and that he listened to what he said and sometimes joined the discussion. At his SHEV interview, he said that the Pastor (whose name the delegate had mentioned but he did not remember) had come to their house for bible study only once, and it was three or four years ago.
32. When asked how often he attended church at the present time, the applicant said that because of his work engagements, he tried to participate in the church once or twice a month. Later in the interview, he agreed with the delegate had had attended the church at [Suburb 1] (i.e. the [Church 2]) twice a month for a two year period. He said he had mixed with that community and his friends as they changed their religion, and attended as a visitor. He also said that sometimes when his friends contacted him in the afternoons, he participated in spiritual classes. He described these as classes held by the pastor of the [Suburb 1] church in the library once a week where he taught Christian teachings and encouraged them to donate money for the church and to needy people according to their capacity. The applicant told the delegate had had participated in bible studies classes about eight to ten times in the last two or three years and that he went along with his friends when they went to bible study and he was spending time with them. I note that the applicant has

not provided any documentary evidence, such as letters of support, in support of his attendance at church or bible studies classes at the [Church 2].

33. The applicant said he had started a business and moved to [City 3] in October 2020. He told the delegate he had not found a church to attend in [City 3] yet because he had been busy. He was going to stay in [City 3] for a year or so for his work and needed to ask one of his friends to refer him to a church that he could go to in [City 3]. At the time of his May 2021 SHEV interview, which was six months after his move, he said he was waiting for his friends to connect him with friends in [City 3] so he could go to church with them. The applicant does not appear to have made any attempts himself to find a church to attend in [City 3].
34. The applicant was asked about his interest in Christianity and what he liked about it. He replied that the biggest reason or interest for him was because of being in Australia for nine years, he had reached the conclusion that in Christianity, he had found a religion that had brought him a lot of peace. He said that Christianity was more peaceful than the other religions. When asked if he owned a copy of the bible, the applicant said he did not have a bible as he mainly read on the internet. He said he needed to get a Persian version of the bible from his friend who was a Pastor at a church in [City 2]. The applicant claimed that he learnt a lot at bible studies. When asked if he had learnt about bible stories or parables when he was at bible studies, he said he had not, because he was new to Christianity. He explained that he had to start to learn Christianity but that so far, he hadn't been able to because he was new and was learning about the Baha'i faith, but now he had to learn about Christianity. The delegate questioned whether the applicant knew anything about Jesus Christ, to which he said he knew a bit but didn't have time to study Jesus yet because he had been involved in the Baha'i and learning about Zung. The applicant said it was just a matter of studying, and shouldn't be hard to learn about Jesus.
35. When asked to tell the delegate the little that he said he knew about Jesus, the applicant referred several times to his kindness, and that the classes he participated in were about his kindness and trying to be helpful for people and to harm people less. He explained that he wasn't able to learn more because he was trying to get the case for the Baha'i which was rejected. He said he didn't have time to participate in bible studies because he was engaged in his Baha'i case, but after he came to the conclusion it was not good being a Baha'i in Iran, he started to have time for Christianity, but that so far it hadn't happened much. He claimed he was interested in going further and learning more about Christianity. I note that according to the applicant's other evidence, he stopped attending Baha'i classes either in 2015 (SHEV interview) or 2016 (SHEV application). The evidence that he had not had much time for Christianity or bible studies calls into question the level of his commitment to Christianity. More significantly, despite claiming that he had participated at the church at [Suburb 1] twice a month for two years, the applicant was unable to recount any information of substance about the classes or his Christian beliefs or knowledge.
36. When asked by the delegate if he regards himself as a Christian at this time, the applicant said that "they" have to accept and confirm him as a Christian and that he had to learn to practice and study the bible for the Pastor to recognise him as a Christian. He said he could not confirm the religion by himself. Earlier in his SHEV interview, the applicant told the delegate he had not yet converted to Christianity but was thinking being baptised and converting to Christianity. When asked if he wanted to become a Christian, the applicant said he wanted to, but because he was busy, he could only go to church on Sunday and hadn't had the time to choose a pastor at a church in order to go to bible study. The delegate queried whether the applicant was baptised at the [Suburb 1] church when he was going there. In response, the applicant said he was not baptised because he wasn't ready for it. He said he

hadn't participated in bible study to have enough knowledge to be recognised for baptism, and that back then, he was still studying the Baha'i faith and trying to get a certificate for that. When asked if he believed that he would have problems in Iran because of his interest in Christianity, the applicant replied that he could not answer with certainty but that his interest would most probably create problems, not just for him but for anyone who changes their religion or is interested in any other religion, be it Christianity or Baha'i.

37. Having regard to the applicant's evidence, I accept that he became interested in religions other than Islam when he was in Iran and had access to and read a bible when he was around [age] and attended several Baha'i classes shortly before his departure. However, I do not accept that he converted to the Baha'i faith in Iran or that the Baha'i class he attended was raided or that he had problems with the authorities as a result. I accept that the applicant may have attended Baha'i centres in [Australian cities] in around 2014 and 2015 for the purpose of trying to join Baha'i classes and the Baha'i faith because he wanted to be allowed to convert to the Baha'i faith at that time. I also accept that the applicant was not allowed to join the Baha'i faith in Australia. After considering the country information before me, I find, like the delegate, that this was because of concerns by the Baha'i centres in Australia about the genuineness of the applicant's faith, rather than because of the visa he was on, or concerns about what would happen to him on return to Iran. While I am willing to accept that the applicant may have approached the Baha'i centres because he had an initial interest in the Baha'i faith, I also consider that some of his interest in Baha'ism was motivated by the fact that it may have assisted his protection visa. Moreover, I am not satisfied the applicant had a genuine ongoing commitment to the Baha'i faith. On his evidence, the applicant did not continue to attend Baha'i spiritual sessions or classes after he was rejected as a member, despite being allowed to do so, which suggests that his interest in the Baha'i faith was short-lived and that he did not consider there was any real value in attending if he was unable to convert. The applicant's evidence about his activities with the Baha'i community in Australia focussed mainly on the fact he was not accepted as a Baha'i, and his knowledge about the Baha'i faith and evidence about the extent of his involvement in Australia was very cursory. I am not satisfied that he did attend Baha'i classes or events in Australia, or that he had any interest in doing so after he was rejected for conversion. On the applicant's evidence, which I accept, he is no longer interested in practising the Baha'i faith. In these circumstances, I am not satisfied that the applicant has any interest or commitment to the Baha'i faith at this time. Notwithstanding this, I accept that the applicant did have some interest in the Baha'i faith when he first arrived in Australia, and am satisfied that this initial engagement with the Baha'i faith in Australia was not solely to strengthen his claims for protection.
38. Unlike his initial interest in the Baha'i faith in Australia, I not satisfied that the applicant's engagement with Christianity in Australia was at all genuine. On the applicant's evidence, his motivation and interest in attending church in Australia only began after he was rejected from the Baha'i faith. The applicant was unable to provide any meaningful information about when he started attending church and he gave varying evidence about how long he attended church. Moreover, despite claiming he had attended the [Church 2] once or twice a month for two years, he had extremely little knowledge about the pastor or the church itself or the Christian faith. Unlike his evidence about his interactions with the Baha'i centres in Australia, the information he gave about his engagement with the church was at best, basic. Notwithstanding this, he did give an account of attending the [Suburb 1] church two weeks before his SHEV interview which was believable and I am willing to accept that the applicant may have physically attended the [Church 2] on one occasion, two weeks before his interview. I also accept that a Pastor may have visited a house where the applicant was living on one occasion. However, I am not satisfied that he attended the other church near

[Location 1] in [Suburb 1], given that he could not remember its name and provided scant details about it.

39. I am also not satisfied that the applicant attended the [Church 2] once or twice a month for two years as claimed, or that he ever attended bible study. He has not provided any letters of support from this church or the community, or any other churches, about his church attendance or commitment to Christianity. The applicant's knowledge of Christianity and the bible was extremely limited. While I accept that religious knowledge and beliefs may manifest themselves differently in different people, to my mind the applicant's level of knowledge was superficial and he did not demonstrate any engagement with, and commitment to, Christianity. On the applicant's evidence, which I accept, he has not been baptised. Despite claiming that he wants to be baptised, there is no evidence he has taken any steps to be baptised, including following his SHEV interview. Furthermore, the applicant had not attended any church in [City 3] since he moved there in around October 2020. While it may be the case that he has been busy since he moved and was waiting for a friend to recommend a church, I am not satisfied that this explains why he has not made any effort to try to find a church himself or been unable to attend church on any occasion in [City 3], if indeed he has any interest in pursuing the Christian faith. Indeed, he was able to attend church in [Suburb 1] shortly before his SHEV interview. While I accept that the applicant may have had a curiosity in Christianity as a teenager in Iran, I am not satisfied that this interest continued following his arrival in Australia when he had the opportunity to pursue it. I am not satisfied that the applicant attended church over a period of time, finding instead that he attended the [Church 2] once, shortly before his interview. Overall, I am not satisfied that the applicant genuinely believes in Christianity or is a genuine Christian convert. I am not satisfied that the applicant attended the [Church 2] otherwise than for the purpose of strengthening his claims to be a refugee.
40. When asked at the end of his second SHEV interview if there was anything else he wanted to discuss, the applicant said he needed to mention that he had left Iran without his wife and because he had stayed in Australia for long and could not go back, she had divorced him. In his SHEV application, he said he was married in Iran and divorced his wife in 2015. The applicant told the delegate he had loved his wife, who had remarried and had a child, and that this had been the hardest thing for him and changed his life for the worse. It also affected his mother's health. He said these were all negative impacts "from that incident", although he did not raise any claims in relation to them.

Refugee assessment

41. 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

42. 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.
43. I am not satisfied that the applicant was physically present on one occasion at the [Church 2] otherwise than for the purpose of strengthening his claim to be a refugee. Accordingly, I have disregarded this conduct in determining whether he has a well-founded fear of persecution pursuant to s.5J(6) of the Act.
44. However, I do accept that the applicant had some interest in Christianity when he was a teenager in Iran, and that he attended Baha'i classes in Iran and had some engagement with the Baha'i community in Australia when he tried to join the Baha'i faith. The applicant claimed in his SHEV application that the case against him will continue or be reopened when he returns to Iran and that he could be imprisoned for a long time if the court finds out he has committed apostasy. He also initially claimed that he would want to continue to practise the Baha'i faith if he returned to Iran. However, I do not accept that the applicant has a case against him in Iran. I also note that the applicant stated more recently at his SHEV interview that he is not interested in practising the Baha'i faith. It is now over six years since he had any interest or engagement with Baha'ism. In these circumstances, I am not satisfied that the applicant has any ongoing interest or commitment to the Baha'i faith or that he intends to engage with the Baha'i faith on return to Iran.
45. I accept that the applicant is a non-practising Muslim. Country information before me¹⁰ indicates that Iran is an Islamic republic and Shia Islam is the official state religion. The law prohibits Muslims from changing or renouncing their religious beliefs and apostasy from Islam is a crime punishable by death. Notwithstanding this, recent reporting from DFAT¹¹ indicates that secularism is widespread, particularly in the major cities and among younger and wealthier Iranians. A significant proportion of the population does not attend mosque or pray on a regular basis, and there are anecdotal reports that many Iranians do not observe Ramadan strictly, including by eating, drinking liquids and smoking at home. Official sources told DFAT that religion was a private matter and that 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. Overall, DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities. I note that the applicant is from the capital city, Tehran. I am satisfied that the applicant did not have any problems with the authorities or any other persons as a non-practising Muslim when he lived in Tehran. In relation to the applicant's interest in Christianity when he was in Iran, this was over twenty years ago, and

¹⁰ US Department of State, "Iran 2018 International Religious Freedom Report", 21 June 2019, 20190627091702; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

¹¹ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

he did not pursue it further in Iran or experience any difficulties as a result. While I accept that the applicant attended some Baha'i classes in Iran, I am not satisfied that he came to the attention of the authorities for it or faced any difficulties as claimed. Nor am I satisfied that the authorities are aware of the applicant's brief engagement with Baha'i centres in Australia or that he would be a person of interest because of it, in light of the information from DFAT¹² that Iranian authorities have little interest in prosecuting asylum seekers for activities conducted outside Iran, including converting to Christianity (which is treated similarly to Baha'ism). I am not satisfied that the applicant has any interest in sharing his religious beliefs. Having regard to the information that many Iranians do not attend mosque and religion is considered a private matter, I am not satisfied that the applicant would face a real chance of harm from the Iranian authorities for his religious beliefs.

46. The applicant claimed that he will be detained by the Iranian authorities at the airport and could receive the death penalty or be imprisoned because they will say that a person who departs Iran has "sold" their country and it is considered treason. He also claimed that because he didn't go to court and will be going back to Iran with same paperwork or passport, they will ask him questions at airport. When asked by the delegate if he would be targeted because he sought asylum in a western country, the applicant agreed that this offence would be added to his other offences. DFAT¹³ reports that Iranians have left the country in large numbers since the 1979 revolution, and the Iranian authorities accept that many will seek to live and work overseas for economic reasons. DFAT also indicates that authorities pay little attention to failed asylum seekers on their return to Iran. The information before me does not support that returnees from a western country are regarded as people who have "sold" their country or as traitors, or that it considers that people who sought asylum in a western country committed an offence.
47. According to DFAT¹⁴, Iran has a longstanding policy of not accepting involuntary returns of its citizens from abroad, and has refused to issue travel documents to them (unless they arrived in Australia after March 2018 which does not include the applicants who arrived in 2013). The applicant has consistently claimed that his Iranian passport was destroyed on the boat on his way to Australia and he no longer has it, although he gave varying accounts about whether it was burnt in a fire on the boat by the people smugglers (SHEV application) or thrown in the water (SHEV interview). In any event, the applicant provided a copy of his passport which expired in [2017]. DFAT reports that temporary travel documents (*laissez-passers*) can be obtained from an Iranian diplomatic mission on proof of identity and nationality. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return, and in these circumstances, the applicant may be identified by the authorities as a person who sought asylum in Australia. DFAT also reports that people returning on a *laissez-passer* are questioned by the Immigration Police at the 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. The information does not suggest that persons travelling on Iranian passports are questioned on return.
48. As the applicant does not have a current Iranian passport, I accept that if he returns it will very likely be on a *laissez-passer*, and as such he may be questioned briefly by Immigration

¹² Ibid.

¹³ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

¹⁴ Ibid.

Police at the airport. I do not accept that the applicant has a criminal history or an outstanding case before the court. I am not satisfied that any questioning the applicant may face amounts to harm, or that there is a real chance it would give rise to any harm. Aside from this, DFAT¹⁵ reports that Iranian authorities have little interest in prosecuting asylum seekers for activities conducted outside Iran, including in relation to protection claims. I am not satisfied that the applicant was or is a person of interest to the authorities for his religious activities or beliefs. I do not accept he would be regarded as a traitor on return. I am not satisfied the applicant would face a real chance of harm because he sought asylum in Australia.

49. I am not satisfied that the applicant has a well-founded fear of persecution.

Refugee: conclusion

50. 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

51. 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

52. 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.
53. 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.
54. I accept that the applicant had some interest in Christianity when he was in Iran, and that after his arrival in Australia he was physically present at the [Church 2] on one occasion. However, I do not accept that the applicant's engagement with Christianity in Australia was sincere or that he has any genuine ongoing interest in Christianity. I also do not accept that he has a genuine intention to practise Christianity or proselytise if he returns to Iran.
55. Notwithstanding this, I accept that the applicant had some peripheral involvement in Christianity in Iran and Australia, and also had an interest in the Baha'i faith around the time

¹⁵ Ibid.

he left Iran and when he first arrived in Australia. Country information before me¹⁶ indicates that Christian converts would not face harm if they keep a low profile, practise their faith discreetly and do not openly proselytise and are not of interest to the authorities because the authorities previously had an interest in their activities in Iran. DFAT¹⁷ indicates that Baha'i is not a recognised religion in Iran and its adherents are considered infidels, and that most Baha'is conceal their faith. DFAT also reports that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, which includes converting to Christianity or proselytising while abroad. I am not satisfied that the applicant would practise as a Christian or proselytise on return. I am also not satisfied that the applicant has any ongoing interest or commitment to the Baha'i faith, noting that his last engagement with the Baha'i community was over six years ago and he is no longer interested in practising Baha'i. I do not accept that he intends to practise the Baha'i faith on return to Iran. I also do not accept that the applicant was of any adverse interest to the Iranian authorities for his activities with the Baha'i faith in Iran or that they were aware of his curiosity about Christianity as a teenager. Moreover, I am not satisfied that they are aware of the applicant's engagement with Christianity or Baha'ism in Australia. Even if they were, I am not satisfied that this would be of concern to them in light of the information that the authorities have little interest in the activities of its citizens abroad. I am not satisfied that the applicant's engagement with the Baha'i faith or Christianity in Australia or his brief interest in Christianity and Baha'ism in Iran would give rise to a risk of any harm, including serious harm.

56. Beyond this, I have found that there is not a real chance of the applicants experiencing any harm if they were to return to Iran. Having regard to the fact that the standard for real risk in a complementary protection assessment is the same as for real chance in the refugee context, I am not satisfied that the applicants face a real risk of significant harm for any reason.

Complementary protection: conclusion

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

Decision

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

¹⁶ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; UK Home Office, "Iran: Christians and Christian converts", 1 March 2018, OG9EF767914

¹⁷ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

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.