



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA22/10413

Date and time of decision: 10 March 2023 13:41:00

S Kamandi, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Iran and of Ahwazi Arab ethnicity. He arrived in Australia in July 2013 and on 21 September 2017 made an application for a Safe Haven Enterprise Visas (SHEV).
2. On 1 March 2018 a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations. The delegate accepted that the applicant was of Ahwazi Arab ethnicity and that he was of Sunni Muslim religion. While the delegate accepted that Arabs in Iran faced some discrimination, Sunnis faced some intimidation, and that those who engaged in premarital relations or drunk alcohol in public faced adverse attention, she was not satisfied that the applicant would face a real risk of serious harm for these reasons. While accepting that since his arrival in Australia, the applicant had limited engagement with [Organisation 1] and posted material on [Social media 1], the delegate was not satisfied the applicant would be of interest to the Iranian authorities for these reasons. Overall, the delegate was not satisfied that the applicant faced a real chance of serious harm or was at a real risk of significant harm for any of the claimed reasons, including as a returned asylum seeker from a western country.
3. The matter was referred to the Immigration Assessment Authority (IAA) which made a decision affirming the delegate's decision on 18 April 2018.
4. The applicant applied for judicial review of the IAA's decision to the Federal Circuit Court of Australia, which was allowed [in] February 2020 (on the basis that the IAA misapplied the real chance test when assessing the applicant's risk of harm as a returned asylum seeker) and remitted the matter to the IAA for redetermination according to law.
5. On 14 April 2020, the IAA made a further decision affirming the delegate's decision. The applicant applied for judicial review of that decision. [In] November 2022, the Federal Circuit and Family Court of Australia remitted the matter to the IAA by consent orders. The Minister conceded that the IAA failed to ask the question required by s. 473DD(b)(i) of the *Migration Act 1958* (the Act) in respect of new information.

### Information before the IAA

6. I have had regard to the review material given by the Secretary under s.473CB of the Act. This review material includes a number of documents which have been identified as information not provided to the IAA previously. This includes a form relating to consular access, the applicant's detention notice after arrival in Australia, a document signed by the applicant consenting to the Department officers accessing, examining, and copying the applicant's document relevant to his identity, a letter from the Department inviting the applicant to lodge a SHEV or Temporary Protection visa application, and the applicant's biographic details confirmation form. These documents are administrative in nature, and in my view, do not contain information that would materially assist in the determination of the applicant's claims for protection. I do not consider them to be relevant in the assessment of the applicant's claims.

7. The IAA has also been provided with the audio recording of part one of the applicant's arrival interview held on 27 July 2013. The IAA was previously provided with the recording of Part two of the applicant's arrival interview held on 10 August 2013 and the written record of both interviews. It does not appear the applicant's audio recordings or written record of his arrival interviews were before the delegate. The delegate has not referred nor referenced the applicant's arrival interviews in her decision, and absent any other indication of them being before the delegate, I consider them to be new information. The information contains details of the applicant's identity, family, education and employment history, and the reasons for his departure from Iran in 2013. The information is broadly consistent with the applicant's evidence provided to the delegate, particularly his claims of having faced discrimination and economic hardship due to his ethnicity. It is information that may be expected would have been considered when assessing the applicant's claims for protection and provides a more complete picture of his case for protection since his arrival in Australia. I am satisfied that there are exceptional circumstances to justify considering the new information.

#### *Information provided in 2018*

8. On 26 March 2018, the IAA received a five-page submission prepared by Refugee Advice and Casework Service (RACS). The submission primarily refers to the delegate's findings, references case law and some country information that was before the delegate and sets out arguments against the delegate's decision. I do not consider these aspects of the submission to be new information and where relevant have considered them in undertaking this review.
9. The submission also references the June 2013 UN Committee on Economic, Social and Cultural Rights (CESCR) report and the 2017 Amnesty International report on human right defenders in Iran and includes a short extract from the Amnesty International report about the discrimination faced by religious minorities. Copies of these reports were not provided. The reports were not before the delegate, and I consider this information included in the submission to be new information. The reports pre-date the delegate's decision. The information extracted from these reports do not include personal information in the relevant sense. I am not satisfied that ss.473DD(b)(i) or (ii) of the Act is met. The delegate was provided with a large volume of information, including country information regarding the persecution of minority groups in Iran. The delegate's decision references several reports, including Amnesty International reports, on treatment of minorities in Iran and the general human rights situation in Iran at the time. Some years has passed since the publication of these reports and the applicant has now provided further new information, including more recent reports which discuss these issues. Given these matters, I am also not satisfied that there are exceptional circumstances to justify considering the new information.

#### *Information provided in 2020*

10. In March 2020, after the remittal of the matter from the court in February 2020, the IAA received several emails from RACS attaching a "new information submission"; a list of "new information"; numerous statements, including a supplementary statement from the applicant; and country information/media reports. The submission and statement refer to some information and claims that were before the delegate and I do not consider those aspects of the information provided to the IAA to be new information and will have regard to them. The submission and statement also include information and claims that were not provided to the delegate and are new information. I have assessed the new information within the statements, and country information/media reports which were not before the delegate, in the paragraphs below.

11. It is submitted that the IAA has a legislative mandate to accept new information in exceptional circumstances. It is argued that the new information, all of which post-date the delegate's decision and arose after the delegate's decision was made, directly relate to the harm the applicant would suffer if returned to Iran and should be considered as credible and personal to the applicant's claims. It is also submitted that "additional exceptional circumstances in this matter" included the significant length of time which had lapsed since the delegate's decision; the changes that had occurred in Iran; the changes in the applicant's situation and the relevance of the witness statements and the applicant's supplementary statement to his claims.
12. In his supplementary statement dated 25 March 2020, the applicant stated that he met (his now wife) "N" in immigration detention and that after their release they were able to develop their relationship. He stated that he and N got engaged in November 2019. This caused him some problems with a few members of the Ahwazi political organisation as they did not like the applicant marrying N, a person who left Islam and was a Christian. The applicant provided a photograph of their engagement and [Social media 2] posts of their engagement photos. The IAA was also provided with a statement from N, dated 22 March 2020, in which she also stated that she was a Christian, had a five-year protection visa, and confirmed their engagement on 19 November 2019. A statement from "A" also dated 22 March 2020, indicated that she had known the applicant through her boyfriend and that she had attended the applicant and N's engagement in November 2019. The applicant claimed that he would be harmed by the Iranian authorities because of his relationship with a Christian. This information and the claim were not raised before the delegate and are new information. Given the timing of the claimed events, I am satisfied that the information and claim relating to, and stemming from, the applicant's engagement to N in November 2019 could not have been provided to the delegate and that it is credible personal information which may have affected the consideration of his claims. These are changes in the applicant's personal circumstances since the delegate's decision and provided in support of his fear of returning to Iran. I am satisfied that ss.473DD(b) and (a) of the Act are met.
13. In his supplementary statement, the applicant maintained that he was a practising Sunni Muslim, and that he continued to practise his religion. The statements from N and A also attest to the applicant's strong religious belief in Sunni sect of Islam. In addition, the IAA was provided with statements from "Sheikh K" and R, Australian citizens, confirming that the applicant was a practising Sunni Muslim. R stated that he worked with the applicant [and] that they spoke in Arabic and prayed together at work, and at times went to the Sunni Mosques in [Suburb 1] or [Suburb 2] to pray. He attested to the applicant being a committed and genuine Sunni Muslim. Sheik K stated that he was a Sheikh in the Sunni community in Sydney, worked with the applicant and R in [Work sector] and that the applicant prayed at work every day. He stated that the applicant prayed "in a Sunni manner" and that he had "personally witnessed" that the applicant was a Sunni Muslim. A further statement was from the applicant's cousin "IH", also an Australian citizen. He confirmed that the applicant converted to Sunni Islam and that they had extensive discussions about the differences between Shia and Sunni Islam, the manner the different sects of Islam prayed and their beliefs. IH also stated that he had personally seen the applicant's public display of his Sunni beliefs. The information about the applicant's practise of his religion in these statements was not before the delegate and is new information. At the time of his SHEV interview the applicant was held in immigration detention. I am satisfied that the information about the applicant's continued practise of his religion after the delegate's decision could not have been provided to the delegate and that, on its face, it is credible personal information in the relevant sense, which may have affected the consideration of his claims. The information has been provided in support of the applicant's claim that he was a practising Sunni Muslim.

Given these matters, I am satisfied that s.473DD(b) of the Act is met and that there are exceptional circumstances to justify considering the new information.

14. Before the delegate, the applicant claimed that his mother voiced her views about the Ahwazi Arabs, which caused her problems, including being detained and beaten. The applicant claimed that his mother's [medical condition deteriorated] due to the beatings and that she passed away in 2009. While the applicant claimed that he spoke to family and friends about his views regarding the treatment of Arabs in Iran and that his father faced discrimination as an Arab, he did not indicate that his father was politically active or engaged with any political parties in Iran. In his supplementary statement to the IAA, the applicant claimed that his father would often speak to other Ahwazis about Ahwazi issues "just like my mother", and that a few years ago, the applicant was told by his father that the place he used to meet up with other Ahwazis was burnt down by the authorities. In his statement to the IAA, the applicant's cousin IH, stated that the applicant's father was involved in political activities even before the Islamic revolution of Iran, and worked to try and get the Iranian regime to enforce articles 15,16,19 and 20 of the Constitution which related to minorities' rights. This information about the applicant's father's political activities in Iran was not before the delegate and is new information. While IH's statement post-dates the delegate's decision, the information about the applicant's father relates to his claimed political activities years prior to the applicant's departure. While not entirely clear when the applicant is claiming that his father told him about the Ahwazi people's meeting place being burnt by the authorities, he states that it was a few years ago. IH has not indicated that the applicant was unaware of his father's political activities until recently. I am not satisfied that this information could not have been provided to the delegate. The applicant discussed his mother's activities prior to her death in 2009 and he also spoke about the discussion of his views with others while in Iran. In the circumstances, I consider that if there was any credible basis for the new claim that his father was politically active, the applicant would have referred to it before the delegate. I am not satisfied that the information about the applicant's father's past political activities is credible personal information. The information presented to the IAA in 2020 lacks specificity regarding the applicant's father's role, the political party he was involved and whether his father personally faced any issues or was harmed by the authorities. Given these matters, I am not satisfied that ss.473DD(b) or (a) of the Act are met.
15. It is submitted that since the COVID 19 pandemic, the general health situation in Iran has deteriorated, and that if the applicant was forced to return to Iran, he would be subjected to in-depth questioning due to COVID-19 screening requirements and that if the applicant became ill, he would face discrimination in accessing health services. In support of these claims, the IAA was provided with a John Hopkins University graph of global COVID-19 cases, accessed on 19 March 2020, a news report published by Anadolu Agency on 19 March 2020, an article published in Time.com accessed on 20 March 2020, and article published in Annals of Internal Medicine accessed on 19 March 2020. The submission also includes an extract from an article published in themuslimvibe.com reporting on Afghan refugees being refused treatment in hospitals in Iran. The claim and information provided in support of the claims that are said to have arisen due to the COVID-19 pandemic were not before the delegate and are new information. I am satisfied that the information could not have been provided to the delegate and meets s.473DD(b)(ii) of the Act. While the information is general information relating to the emergence of the COVID-19 pandemic and not personal information for the purposes of s.473DD(b)(ii), it is information that relates to a global event the impact of which is ongoing. I am satisfied that s.473DD(b)(i) is met and that there are exceptional circumstances to justify considering the new information.

16. In his statement, the applicant also stated that as part of the Ahwazi group in Sydney, [in] July 2019, he went with a group of other refugees to [venue] in [city] for a political [protest]. He also stated that since the COVID-19 pandemic, he has worked with the Ahwazi group to raise funds for Ahwazis in need in Iran. This new information relates to events after the delegate's decision, and I am satisfied that s.473DD(b)(i) of the Act is met. I am also satisfied that it is personal information that is capable of belief that may have affected the consideration of the applicant's claims. The information has been provided in support of the applicant's claim of his involvement with the Ahwazi community in Australia. Having regard to these matters, I am also satisfied that there are exceptional circumstances to justify considering the new information.
17. The IAA was also provided with numerous country information/media reports in support of his claims that he faced harm for reasons of his Ahwazi Arab ethnicity, his Sunni religion and due to his activities in Australia. These included copies of the 2018 and 2019 Amnesty International reports on the Iranian authorities crackdown on national wide protests in November 2019 and Ahwazi Arabs in 2018; 2019 and 2020 Human Rights Watch reports on treatment of protesters and curbing of protests that began in 2019, treatment of human rights defenders and lack of due process and fair trials in Iran; the 2018 international religious freedom report published by the US Department of State; articles published by Peter Tatchell Foundation in 2019 regarding the execution of two Ahwazi activists and the torture of Ahwazi Arabs prisoners; a report of UN Special Rapporteur (Javid Rehman) dated 9 March 2020 on the situation of human rights in Iran at the time; a report by the congressional research service titled "Iran: Internal Politics and US Policy and Options" updated on 6 February 2020; the UNOHCHR report on human rights violations in the context of protests in 2019; and further media reports published in BBC news, Aljazeera and Reuters regarding the 2019 protests and government action to curb unrest.
18. It is submitted that the country information/media articles report on the Iranian authorities' crackdown on protests held in 2019 which included harsh treatment and detention of protesters and demonstrates the authorities lack of regard for human rights. The submission also includes extracts from the 2018 DFAT report relating to human rights organisations expressing concern about the treatment of Ahwazi Arabs by state authorities, their crackdown on Ahwazi protesters involving arbitrary arrest of Arabs in Khuzestan, and discrimination faced by Sunni Muslims. The reports post-date the delegate's decision and I am satisfied that they could not have been provided to the delegate. While some reports refer to, and in part are about identifiable individuals not directly connected to the applicant (and to that extent may be regarded as personal information), the bulk of the information is general country information. Several years has now passed since the publications of these reports in the period between 2018 to 2020. As part of his 2022 submissions and provision of new information, the applicant has provided more recent country information reports for various sources, including DFAT, Amnesty International, US Department of State, UK Home Office and UN Report of Secretary General on the situation of human rights in Iran. While I am satisfied that s.473DD(b) is satisfied, I am not satisfied that there are exceptional circumstances to justify these now outdated reports.

#### *Information provided in 2022*

19. After the remittal of the matter to the IAA in 2022, the IAA received emails from RACS on 7 December 2022, attaching a submission and various documents and images.
20. The submission indicates that the applicant has converted to Christianity, married his Christian wife and that they have a child. It is claimed that the applicant will be harmed for

reasons of his conversion to Christianity and his continued involvement with the Ahwazi Political party in Australia. It is also claimed that his conversion to Christianity, his Christian refugee family, his pro-Christian [Social media 1] posts, are likely to lead to further questioning, prolonged detention and increased risk of ill-treatment if returned to Iran. In support of these claims, the IAA has been provided with photos of their marriage certificate dated [April] 2022; a photo of the applicant and his wife holding their marriage certificate in the presence of [Pastor F] of the [named] Church and another two people; a letter from [Pastor F] dated 6 December 2022; the applicant's certificate of baptism issued [in] August 2020; information about the [Church's] [specified] Pastor, "GM" and his leave from the Church to preach Gospel messages in [Country 1] to be aired in Iran; their child's Australian birth certificate; screenshots of the applicant's [Social media 1] activities; and the applicant and his wife's supplementary statements dated in December 2022 which contain information about their marriage, birth of their child and the applicant's conversion to Christianity and his ongoing involvement with the Ahwazi Arab political party in Australia.

21. The new claims were not raised before the delegate and the documentary information was not before the delegate and are all new information. It is submitted, and I am satisfied, that the new claims and documentary evidence, which relate to matters after the primary decision, could not have been provided to the delegate. I am also satisfied that the new information, on its face, is credible personal information that may have affected the consideration of the applicant's claims. The new information relates to new events in the applicant's personal circumstances said to give rise to a need for protection, and I am satisfied that there are exceptional circumstances to justify considering them.
22. The IAA has also been provided with numerous country information and media reports in support of the applicant's claim that he faces a real risk of harm for reasons of his conversion to Christianity, marriage to his Christian wife, his activism in Australia and as a returned asylum seeker. This includes the most recent DFAT report on Iran,<sup>1</sup> the 2021 US Department of State reports on human rights and international religious freedom, the 2021 Amnesty International report on Iran, the 2022 Human Rights Watch world report on events of 2021 on Iran, the August 2021 Report of the Secretary General on the situation in Iran, the January 2022 Report of the Special Rapporteur on the situation of human rights in Iran, the January 2022 joint letter from the UN Working Groups/Special Rapporteurs to the Iranian government in relation to the situation in Khuzestan; the July 2021 Article 19 report on Iran; the September 2022 UK Home Office report on Christians and Christian converts; the December 2021 EASO report; August 2021 Iran Human Rights Documentation Centre Report; the June 2022 Arab News report on protests in Iran, and a February 2020 UK Upper Tribunal decision. These reports post-date the delegate's decision and I am satisfied that they could not have been provided to the delegate and met s.473DD(b)(i) of the Act. The bulk of the information in these reports is general country information on the situation in Iran and does not meet s.473DD(b)(ii) of the Act. To the extent that part of the information refers to identifiable individuals, I am satisfied that it is credible personal information that may have affected the consideration of the applicant's claims. The 2020 DFAT report has been prepared specifically for the purposes of assisting in determination of protection status of applicants and the other reports also published by reputable organisations include recent information on the situation of Christians and Christian converts, other minorities and human rights situation in the country said to support the applicant's claims for protection. In the circumstances, I am satisfied that there are exceptional circumstances to justify considering the information.

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<sup>1</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

23. The submission requests that the IAA invite the applicant to an interview if it requires further details or clarification of the new information and to provide the applicant with an opportunity to respond in writing should the IAA have any questions or concerns. In this case, the applicant has been assisted by his representative on all occasions that the matter has come before the IAA. The applicant and his representative have demonstrated and are aware of their opportunity to put submissions and information to the IAA which they have taken up on several occasions. The IAA has been provided with extensive country information and supporting evidence, the bulk of which I have considered in undertaking this review. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. The IAA is required, subject to Part 7AA of the Act, to review a matter without accepting or requesting new information and without interviewing the applicant. It is for the applicant to make out their case before the IAA and there is no obligation on the IAA to put its concerns to the applicant for comment. While there is a discretion to obtain new information (whether at interview or otherwise), which must be exercised reasonably, which I have considered, in the circumstances I have decided to conduct the review without inviting the applicant to provide further information at an interview or otherwise.

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

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24. The applicant's claims can be summarised as follows:
- The applicant was born in [Khuzestan], Iran. He is of Arab ethnicity and was born as a Shia Muslim. He converted to Sunni Islam after his arrival in Australia and then subsequently converted to Christianity and was baptised in August 2020.
  - The applicant's parents were [profession] and were posted to work in [Country 2] and [Country 3] between the years 1991 and 1993. Following their return to Iran, the applicant and his family resided in various addresses in Ahwaz, Khuzestan.
  - The applicant faced discrimination in employment due to his Arab ethnicity. Despite his tertiary qualifications, he was unable to secure employment.
  - The applicant's family were impacted by the authorities' discrimination of Arabs. His mother was a [profession] and became a [deleted]. She voiced her views publicly, telling Ahwazi people that they should not change their accents to sound Persian, should not change their names to Persian names, and to be proud of who they were. As a result, she was detained and beaten. [Details of medical condition] and she died in 2009.
  - His mother's death caused the applicant to hold a grudge against the Iranian authorities. He wanted to protest against the Iranian authorities and make decision opposite to what they represented.
  - One time while in Ahwaz, the applicant witnessed an explosion during a protest held by Ahwazi people against the Iranian government. Another time, Arabs wore their traditional clothes and protested against the discrimination by the authorities resulting in the arrest of many people. While the applicant was not injured during the explosion nor arrested for dressing in traditional Arab attire, he sustained psychological harm due to the discrimination against Arabs.
  - The applicant was arrested on two occasions (when he was [age range]) because of walking on the street with his girlfriend. He was detained for several hours, beaten by the police, then released. On another occasion, when he was [age] years of age, the applicant was arrested for drinking alcohol. He was detained, not beaten, and released after eight to 10 hours.



- The applicant's father told him that there was no place for his attitude in Iran and that he had to leave the country. The applicant departed Iran using his Iranian passport and arrived in Australia [in] July 2013.
- After arrival in Australia, the applicant had an opportunity to speak to other Muslims from different countries. His rejection of the Iranian authorities and their Shia religion together with his research and talking to other Sunni Muslims convinced him that Sunni Islam was the better way. In 2015, he told his father, brother, and friends that he regarded himself as a Sunni Muslim.
- The applicant married his Christian wife in 2020 and converted to Christianity. He was baptised in [Church] in August 2020 and practises the religion by attending church, praying and reading the Bible. He has told his family and friends that he is a Christian and regularly posts Christian content on [Social media 1].
- Since his arrival in Australia, the applicant has also been involved with an organisation called [Organisation 1]. He has attended protests against the Iranian government in [City], raised the Ahwazi flag, attended meetings and festivals, and posted comments on [Social media 1] which were critical of the Iranian government.
- [In] July 2019, the applicant attended a protest, with other refugees, held in [City] in relation to their visas. Since the COVID-19 pandemic, the applicant has worked with the Ahwazi group to raise funds for Ahwazis in need in Iran. The applicant has also posted material on [Social media 1] in support of the July 2021 protests in Khuzestan. The applicant has continued to participate in the [Organisation 1] and if returned to Iran, he would continue to participate in activities in support of Ahwazi Arabs.
- The applicant fears that he will be arrested, detained, tortured, and killed by the Iranian authorities for reasons of his Arab ethnicity, anti-government political activities in Australia, including his [Social media 1] activities, and as a returned asylum seeker from a western country.
- The applicant fears harm as a Christian convert with a Christian refugee wife and child. He would not be able to practice Christianity in Iran.
- The applicant fears being subjected to in-depth questioning due to COVID-19 screening requirements and that if the applicant became ill, he would face discrimination in accessing health services.
- The applicant and his wife have a child born on [Date]. He fears being separated from his family.

## Refugee assessment

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25. 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

26. 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.
27. The applicant has consistently claimed to be a national of Iran. He provided the delegate with his Iranian identity documents which support his claimed identity and nationality. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.
28. The applicant's evidence in his SHEV application and interview was that although his identity documents indicate that he was born on [date], his real date of birth is [another date]. He claimed that as his parents were [profession], they waited 14 days to obtain his birth certificate, so that he could start school when he was seven years old and not earlier. In his SHEV statement, the applicant indicates that the Iranian authorities issued his birth certificate with the later date, at his parents' request. At the SHEV interview the applicant confirmed that he was born in a hospital. When asked how his parents were able to delay obtaining his birth certificate, the applicant stated that things like this happened in Iran in the past. The applicant has been consistent in this regard, and I accept that his birth certificate was issued 14 days after he was born with the date of birth requested by his parents and that this was to ensure the applicant did not have to start school earlier than seven years of age.
29. The applicant's evidence in his SHEV application is that he was born in Khuzestan, Iran. He travelled with his parents to [Country 2] and then [Country 3] from 1991 to 1993. Apart from going to university in Fars between July 2011 and March 2013, the applicant resided with this family in Ahwaz between 1993 and March 2013. During this period, apart from completing his high school studies and tertiary degree, the applicant also engaged in employment in [industry] (self-employed between July 2009 and August 2009) and as [an Occupation 2] (August 2009 to September 2011). His evidence is that prior to his departure for Australia, he travelled to [Country 4] (seven days) and then to [Country 3] (30 March to 7 April 2013) on tourist visas. He returned to Ahwaz and remained there until 1 July 2013 when he started his journey to Australia. I accept the applicant's evidence in this regard.
30. Regarding his family, the applicant claims, and I accept, that his mother died in 2009. He provided the delegate with his mother's death certificate which indicates that she died in 2009 due to [a] disease. The applicant's evidence, which I accept, is that his father remarried, and that his father, stepmother and two brothers remain in Ahwaz, Iran.
31. The applicant has consistently claimed, and I accept, that he was born in Khuzestan and is of Ahwazi Arab ethnicity. He claims that Arabs in Iran face official discrimination. During his arrival interview, the applicant referred to Arabs not being able to study in their language, that they resided in a region rich in oil but did not see the benefits, and that Arabs could not reach some positions and posts within the public sector. In his SHEV statement, the applicant

claims he left Iran because he suffered discrimination in the employment market in Ahwaz. He states that employers reject persons with Arab family names and ask job applicants whether they are Arab with a view to cull them. The applicant states that although employers did not reveal the reason for rejecting Arab applicants, it was common knowledge that applicants were rejected due to their Arab ethnicity. He also refers to official discrimination by the Iranian authorities and states that areas outside of Ahwaz were without electricity and clean water and that he believed that the government ordered educated Arabs to relocate to other areas to keep the general Arab population poor and ill-educated.

32. Regarding his own experiences, the applicant claims that he personally experienced discrimination in employment and refers to not being able to find a job despite his university qualifications, while others with lower grades than him secured roles. At the SHEV interview, the applicant was asked about the forms of discrimination that he encountered. He stated that even though they were an educated family, the neighbours did not trust them, in Fars people were even more racist, people made fun of them when they wore their traditional attire, and that his father talked about discrimination at his work and that his colleagues were making fun of him.
33. Regarding his family's experiences, the applicant in his SHEV statement states that his mother was a [profession] and became a [deleted]. She was a respected Ahwazi community member because of her intellect and family name. She believed that people should not hide their true identity and would voice her views publicly by telling Arabs that they should not change their accent or names to Persian names and be proud of who they were. He claims his mother's attitude caused her problems, in that she was detained and beaten which caused her [medical condition to deteriorate] resulting in her death in 2009. At the SHEV interview the applicant referred to the circumstances of his mother's death and stated that she died because of discrimination at the age of [age]. When the delegate made the observation that his mother may have already had the [medical condition], the applicant stated that was a possibility but questioned the authorities' actions to interrogate and beat her given she was not politically active and served the country as a [profession] for 30 years.
34. While not referred to during the SHEV interview, I note the applicant's evidence in his SHEV statement that he witnessed an explosion in Ahwaz city during a protest against the government and that on another occasion, Arabs dressed in their traditional attire and protesting against government discrimination were arrested. He claims that while he was not injured due to the explosion nor arrested for wearing Arab attire, he sustained psychological harm because of these incidents.
35. DFAT reports<sup>2</sup> indicate that Arabs in Iran predominantly live in the south-western province of Khuzestan. Iranian Arabs are referred to as Ahvazis, after the capital city of Khuzestan, Ahvaz and they speak Arabic. They are by majority Shia Muslims, although some have converted to Sunni Islam. Like other minorities, Arabs complain of economic neglect and discrimination in employment, housing, politics, and culture. While they hold most of Iran's oil and gas reserves and have significant manufacturing and petrochemical industries, the region is under-developed and suffers from unemployment and poverty. It is noted that community representatives claim that Iranian Arabs are systematically excluded from employment in the industries operating in the area and from opportunities to work in local government.

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<sup>2</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

36. Regarding discrimination, the 2016 DFAT<sup>3</sup> report indicated that there were high levels of societal discrimination against Arabs, which led to unfair day to day treatment, such as in employment and access to housing and services. DFAT assessed that such discrimination usually resulted because of patronage, nepotism, and favouritism reflecting social attitudes rather than official or state-directed policies and that societal discrimination was rarely coupled with community-level violence. DFAT also assessed that most Arabs did not come to the attention of the authorities and were subjected to low levels of adverse attention by the state. However, this risk increased for Arabs who attempted to publicly assert cultural or political views. Depending on the individual's profile and the prevailing political environment at the time, the harassment of such individuals could include monitoring, summons for questioning, or arrest and that family members were sometimes also threatened. DFAT also noted large number of arrests of protesters, including those who peacefully expressed dissent or openly exhibited their Arab identity and culture. The most recent DFAT report<sup>4</sup> on Iran indicates that Arab cultural activities are tolerated, and Arabs can freely wear traditional Arabic dress. They also freely speak in Arabic language and that there is anecdotal evidence that Arabs in Khuzestan are offered considerable space to express their ethnic identity. DFAT assesses that Arabs are not specifically targeted for discrimination on the basis of their ethnicity, including in their ability to access government services and are offered the same state protection as other ethnic minorities.
37. The applicant's evidence is that his parents were [profession] and that his mother worked as a [profession] for 30 years before her [passing]. He states that his parents were well regarded as [profession] and were sent to work in [Country 2] and [Country 3] in the early 1990s. He claims that his parents were able to obtain his birth certificate with a different date of birth so that he did not have to start school earlier than seven years of age. The applicant and his parents had their Iranian passports, and they were able to travel overseas, which also included the applicant travelling to [Country 4] and [Country 3] in March 2013, three months prior to his departure for Australia. The applicant is well educated, having completed his secondary and tertiary qualifications in Iran. Although he does not regard his work history to commensurate with his qualification, he was able to operate his business in [an industry] and also work as [an Occupation 2] while in Iran. While he was not able to do his education in Arabic, he is fluent in both Farsi and Arabic. The applicant's evidence regarding the economic and employment situation in Khuzestan region accords with the country information cited above, and I accept that Arabs generally felt that they were economically disadvantaged due to their ethnicity and that the profits from the oil and gas reserves were not utilised to their benefit. I also accept it as plausible that the applicant witnessed an explosion in Ahwaz city and the arrest of Arabs wearing Arabic attire during a protest. His evidence is that he was not physically injured nor arrested but psychologically impacted.
38. In claiming that despite his qualifications, he was not able to obtain employment in his field of study in Ahwaz while other with lower grades were, I note the applicant's evidence in his SHEV application that he completed his Bachelors degree in March 2013, a few months before he decided to leave Iran. At the SHEV interview, the applicant referred to having applied for one role after completing his associate degree and that he got an entrance exam but did not get the position despite having good grades. The applicant has not provided details of applying for any further positions nor any details of the roles that people with lower grades than him were able to secure. The applicant's evidence is that after his graduation he travelled to [Country 4] and [Country 3] and was attempting to travel to [another country] with the assistance of a smuggler. I accept that as Arabs, the applicant's

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<sup>3</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

<sup>4</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

family may have faced some disrespect and insensitivity due to social attitudes as supported by the country information cited above, and that the applicant witnessing protests and an explosion in his area cause him some distress and shaped his views about how Arabs were treated. However, on the applicant's evidence I am not satisfied that the applicant was discriminated against in obtaining employment based on his ethnicity.

39. I accept that the applicant's mother died in 2009. The documentary evidence provided by the applicant indicates that his mother died due to [a] disease. I accept that she was a respected member of the community and that in her role [she] encouraged Arabs to be proud of their identity. At the SHEV interview, the applicant described his mother as not politically active and having served the country as a [profession] for 30 years, with no indication that, prior to the claimed interrogation and beatings, she was of any concern to the authorities. As a well-respected and educated member of the Arab community, I accept that the applicant's mother encouraged others to retain and be proud of their Arab identity. The applicant has not explained when his mother's views caused concern for the authorities, prompting them to detain and mistreat her or indicated that she was of continued interest to the authorities after her release. The applicant has not indicated that his father or other members of his family faced any issues due to his mother's expression of her views or claimed detention and mistreatment. On the applicant's evidence, I am not satisfied that the applicant's mother was detained or mistreated as claimed or that her death was in anyway connected to her alleged detention and mistreatment.
40. The applicant's evidence is that he did not engage in any protests or political activities while in Iran. At the SHEV interview, he was asked if had raised concerns about the treatment of Arabs while in Iran. He stated that he had, with a lot of fear, and explained that this entailed talking to his close family and friends. He also referred to his father not wanting him to speak about such things, and that a relative was in prison due to his political activities and that things like this happened in Iran. When asked to explain, the applicant referred to the treatment of Arabs by the authorities such as their views that Arabs fought with Iraq during the war and there was instability in 2006. When prompted to speak about his own personal experiences rather than the general historical context of what Arabs encountered, the applicant referred to his inability to obtain employment. I accept that the applicant was of the view that Arabs were not treated as equals to Persians, faced discrimination in employment and other opportunities and that the resources from the region were not used to their benefit or to further their interests. Given my findings regarding the applicant's mother's death, I do not accept his evidence that his mother's death caused him to hold a grudge against the Iranian authorities and as a result he wanted to become politically active or engage in protests against the Iranian authorities as claimed.
41. In his SHEV statement, the applicant indicates that since his arrival in Australia he had been involved with an organisation called [Organisation 1]. He attended a protest against the Iranian government outside of [a Venue] in [City] three years earlier (around September 2014) where he raised the Ahwazi flag, and that he attended two meetings held in Sydney. He claims that one meeting was related to voting and the other to organising the protest outside the [Venue] in [City]. He claims that he also volunteered to raise funds for Ahwazi people and attended festivals organised by the [Organisation 1]. At the SHEV interview the applicant was asked about the level of his involvement with the organisation. He stated that he used to go to festivals, attended a demonstration and a meeting when the head and deputy head were elected and that he and friend used to raise funds for poor families. When asked to explain further, the applicant stated although he didn't do it always, on occasions he and his family put money together to help the poor people which made him feel good.

42. In his SHEV statement, the applicant further claims that he posted comments, on his public [Social media 1] account, critical of the Iranian regime and that his friends shared his posts. At the SHEV interview the applicant was asked why he posted comments on [Social media 1] in Australia given that in the past he only expressed his views amongst close friends and family. He referred to having the freedom to do so and that after his [Social media 1] posts, his father was interrogated by the intelligence organisation in Iran and asked why his son was posting such material on [Social media 1]. He also stated that his father told him to delete his posts which he did. At the conclusion of the interview and in submissions provided to the delegate after the SHEV interview, the applicant's representative argued that the applicant's involvement in these activities in Australia was as a result of the culmination of years of resentment and opposition against the Iranian government which began while in Iran. It is also argued that his conversion from Shia to Sunni Islam was also consistent with his attitude towards the Iranian authorities and that he did not engage in these activities solely for the purpose of enhancing his protection claims. It was also claimed that the applicant would continue to express his views if returned to Iran.
43. In the information provided to the IAA in 2020, the applicant states that he continues to have discussions with Ahwazi people in Sydney about what is happening in Iran and that [in] July 2019, he together with other refugees, went to the [Venue] in [City] for a political protest in relation to their visas. He also stated that since COVID-19, he has worked with the Ahwazi group to raise funds for Ahwazis in need in Iran. In the more recent information provided to the IAA, the applicant states that he has continued to participate in the [Organisation 1], posted material in support of the July 2021 protests in Khuzestan and would continue to participate in such activities in support of Ahwazi Arabs. Copies of the applicant's [Social media 1] posts include a post made in July 2021 of what appears to be a news article titled "violence intensifies in water-crises protests in Iran's Khuzestan" and indicates that a police officer was shot dead by "agitators" in Khuzestan. There is also a photo of what appears to be of the protests which includes commentary in Farsi, a translation of which has not been provided. In a submission, his representative argues that the applicant's desire to support the Ahwazi Arab rights exacerbates his risk of harm and that even if his support for the Ahwazi Arabs is low level, the Iranian government targets Ahwazi Arabs with arbitrary arrest, mistreatment in detention, and use disproportionate violence against protesters, placing the applicant at a real risk of serious harm.
44. DFAT<sup>5</sup> reports that protests in the Khuzestan province are common. In April 2015, protests organised to mark the ten-year anniversary of the 2005 protests which was triggered due to publication of a government official letter indicating that the government were introducing to reduce proportion of Arabs in Khuzestan, led to the arrest and death of Arabs in Ahwaz, who were mostly activists or human rights defenders. Most recently, the November 2019 protests in response to the government's announcement to reduce petrol subsidies led to arrest of protesters by the authorities. Arabs who are politically active are likely to attract adverse attention and those who advocate for greater rights and autonomy face a high risk of official harassment and mistreatment. The information nevertheless indicates that despite their grievances, Iranian Arabs do not harbour strong separatist tendencies and generally favour greater political and cultural rights over autonomy or a separate state. Country information reports provided to the IAA refers to human rights organisations concerns regarding the human rights situation in Iran and report on matters such as the July 2021 protests triggered by water shortages in Khuzestan and concerns expressed about the lack of investigation of reports that the authorities used disproportioned force which resulted in killings of protesters and arrest of those exercising their right to peaceful assembly. The information also refers to

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<sup>5</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

recent protests held in Khuzestan in response to rising prices of commodities with Arab protesters showing their resentment for being treated as second-class citizens and the domination of Persian elite in Iran; and the poor conditions of prisons and detention of Arab and the execution of Arab political prisoners sentenced to death under vague charges.

45. Country information<sup>6</sup> indicates Iran's constitution provides for freedom of expression, association, opinion, assembly, and religion, but stipulates those freedoms must not violate certain principles, including Islam and public rights. While use of internet and social media platforms including Facebook and Instagram is widespread, it is reported that authorities monitor social media. Individuals posting content openly critical of the Islamic republic, its institution and policies or deemed to be pushing moral boundaries may attract adverse attention, including individuals based abroad. However, it is reported that the authorities do not comprehensively and cannot effectively monitor Iranian's online activities. While there has been instances of the authorities keeping a close eye on Facebook activities and have at times blocked or filtered websites they consider objectionable, including International social media sites such as Facebook, the information indicates that individuals with a public profile who are politically active, advocate for greater human rights, have connections to foreigners or otherwise perceived as threats to the Islamic Republic are more likely to have their social media monitored. Groups such journalists, bloggers, administrators of social media accounts and those who run popular groups or chat apps are at a higher risk of arrest and harassment by the authorities. Although it appears that there have been some instances of ordinary individuals also coming to the attention of the authorities for engaging in publishing information that is perceived to be insulting to Islam or waging propaganda against the state, frequent harassment is directed at journalists, bloggers and other media professionals to ensure they do not cross these known red lines. Further, it is reported that local sources told DFAT that it is common for Iranians to be critical of the government in public places, including supermarkets, shopping malls and taxis. However, people remain cautious about crossing well-understood "red lines", like insulting the Supreme Leader, in their public interactions beyond close family and friends.
46. I accept that while in Iran, the applicant discussed his views of the Iranian authorities' treatment of Arabs with his close family and friends. I also accept that after arrival in Australia, the applicant has engaged with the Ahwazi Arab community and participated in some activities with an organisation called [Organisation 1]. The applicant has not provided any supporting evidence, such as a letter from the organisation outlining his involvement. His evidence is that he participated in a couple of meetings which were about election of the head and deputy head of the organisation and one related to organising of the protest in [City] which he also attended. He also attended some festivals organised by the organisation and according to his evidence at the SHEV interview, on occasions he has also collected/donated money for Ahwazis in need in Iran. Since the refusal of his SHEV application in 2018, the applicant's evidence is that he continues to engage with the organisation, that he talks about the situation in Iran with other Ahwazis, that he attended a protest regarding refugee visas in 2019 and he shared a news article and photo about the July 2021 protests in Khuzestan. I accept the applicant's evidence in this regard. I accept that the applicant is of the view that Arabs are treated in a discriminatory manner, denied employment and educational opportunities, and live-in poverty because of government inaction and the majority Persian community's perception of them as second-class citizens. I am not of the view that the applicant's engagement with the organisation and the Ahwazi

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<sup>6</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

community in Australia has been solely for the purposes of strengthening his protection claims.

47. On the applicant's evidence, in the almost one decade that he has been in Australia, his engagement with the Ahwazi organisation has been limited and confined to attending a couple of meetings, some festivals, one protest in 2014 and another in 2019 about visas and raising funds for Ahwazi communities. His activities with the organisation, in my view, is sporadic, very low level and largely community based. The applicant claims that he posted anti-regime material on [Social media 1] (prior to his SHEV interview) and that his father was interrogated about his posts. He did not provide any evidence of these posts claiming that he deleted them at his father's request. The evidence of his subsequent two posts relate to sharing of information about the 2021 protests which was widely reported on in international media. The applicant has claimed that there are informers in Australia who would have informed the Iranian authorities of his activities in Australia, but he has not provided any further evidence in this regard, and I note that he has not claimed that his father or brothers in Iran have been questioned about his involvement with [Organisation 1] or his two [Social media 1] posts in July 2021. While the applicant claims that his relationship with his Christian wife caused some issues with some members of the organisation, he has continued his engagement with the organisation and has not provided any further details or instances of issues in this regard.
48. Considering what I have accepted of the applicant's claims and the country information cited above, while I accept that as an Arab, the applicant views the treatment of Arabs in Iran as discriminatory and insensitive, and that he has voiced these views amongst his close family and friends, I am not satisfied that the applicant had in the past or continues to have a strong interest or desire to take part in political activities that may be viewed as political or in support of Arabs self-determination by the Iranian authorities. While he claims that he did not engage in such activities in Iran due to fear and that he engaged with [Organisation 1] in Australia because he has the freedom to do so, his activities in Australia are very low level and sporadic. The applicant's online activities are also limited and low level, and I do not accept that this is due to fear of being monitored in Australia. On the applicant's evidence, I am not satisfied that his activities in Australia, including his limited online activities, have come to the attention of the authorities in Iran. I do not accept that he posted material resulting in interrogation of his father as claimed at the SHEV interview. Given his level and nature of his activities in Australia, I am not at all satisfied that the applicant has engaged in any activities that would be of concern to the authorities, particularly given that Iranians are able to be critical of the government in public places provided that they do not cross the known "red lines". I am also not satisfied that the applicant did not engage in political activities in Iran due to fear or that he has any intention or desire to engage in political activities that would be of concern to the authorities if returned to Iran.
49. In his SHEV statement, the applicant claims that he was arrested on two occasions (when he was [age range] years of age) for walking with his girlfriend. He was detained for several hours, beaten, and then released. He also claims that on another occasion (when he was [age] years old) he was detained for eight to 10 hours for drinking alcohol. He was not beaten, and his family arranged his release. The applicant did not refer to these incidents during the SHEV interview nor provided any further details in his extensive post-interview submissions and information presented to the IAA.



50. Country information reports<sup>7</sup> indicate that Iranian law does not recognise relationships outside of registered marriages and considers them to be “illegitimate” criminal acts and punishable. However, it is reported that prosecution before a court is rare. While premarital relations are not accepted in public, it is reported that they are common occurrence behind the scenes and couples appearing in public is very common. It is also reported that couples are generally punished or come to the attention of the authorities if they are caught in a “street check” due to breach of dress code or at a “crack-down” on a party and that the risk of being caught or coming to the attention of the authorities can be higher during certain periods such as religious holidays or political unrest. Alcohol consumption, although punishable under Islamic Penal Code, remains widespread in Iran. Prosecution for consumption of alcohol is not common. Police do not actively investigate or seek to entrap individuals consuming alcohol in their own homes and will generally act only if the activity comes to public attention. The punishment for alcohol consumption is normally a fine, usually paid on the spot. Flogging may be imposed on occasions but is rare.
51. I accept that the applicant was detained on three occasions as claimed and that he was mistreated but released after some hours. He has not indicated that had to pay a fine, that he faced any further repercussions or attention following his release, or that the authorities maintained an interest in him due to these incidents, his Arab ethnicity or otherwise. The applicant is now married and has not claimed that he drinks alcohol or would do so if returned to Iran.
52. At the SHEV interview the applicant confirmed that he obtained his passport legally. He did not claim that he faced any issues obtaining his passport. Before the delegate, the applicant claimed that on his trip to [Country 3] in 2013, prior to his journey to Australia, he was questioned and detained in [the] airport due to fake documents in his passport, which were obtained by a smuggler who was arranging for the applicant and others to travel to [another country]. The applicant claims that these documents were obtained in [named city], and once it was established that the fake documents were not obtained within [named country], he was released. The applicant has not claimed that he faced any issues or was questioned on return to Iran or when he departed Iran for his journey to Indonesia to come to Australia.
53. Overall, I am not satisfied that the applicant had any ongoing adverse profile with the Iranian authorities at the time of his departure from Iran. On the applicant’s evidence, I am not satisfied that he had a genuine desire to publicly engage in political activities against the Iranian regime or in support of the Iranian Arabs rights nor that he engaged in any separatist activities while in Iran. I do not accept that the applicant’s activities in Australia would be perceived by the Iranian authorities as activities of concern. I do not consider the applicant’s lack of any activities in Iran, which I do not accept was due to fear of persecution, and his limited activities in Australia, to be indicative that he has a strong desire or any intention to partake in such activities if returned to Iran. Country information cited above indicates Arab cultural activities are tolerated, Arabs can freely wear traditional Arabic dress, can freely speak in Arabic language and that Arabs in Khuzestan are offered considerable space to express their ethnic identity. The weight of the information does not support a conclusion that Arabs are specifically targeted or face official discrimination on the basis of their ethnicity, including in their ability to access government services and are offered the same state protection as other ethnic minorities. Considering the applicant’s background in the context of country information together with his ability to speak Persian, his tertiary

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<sup>7</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, “Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures”, February 2013, CIS25114; DFAT, “DFAT Country Information Report – Iran”, 14 April 2020, 20200414083132; DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677.

qualifications, I am not satisfied that there is a real chance he faces threats to his capacity to subsist or that he would face discrimination or treatment that amounts to serious harm based on, or stemming from, his ethnicity and background. While human rights organisations have reported on the poor economic and living conditions in the Khuzestan region which has led to protests, the lack of investigation of reports of the authorities using disproportionate force to curb the protests which resulted in harm and arrest of Arabs exercising their right to peaceful assembly, and the poor conditions of prisons where Arabs are held in detention, given my findings above, I consider the chances of the applicant being detained or facing any harm due to an actual or perceived political opinion to be no more than remote.

54. The applicant claims, and I accept, that he was born as a Shia Muslim. In his SHEV statement, the applicant states that when first arrived in Australia he told the authorities that he had no religion because he hated the Iranian authorities' use of religion to justify violence and mistreatment of people and wanted to distinguish himself by not following the Shia religion. This suggests that the applicant, for at least a period in Iran and on his arrival in Australia, did not follow the Shia religion. In his SHEV statement, the applicant identified himself as a Sunni Muslim and stated that after reading the Quran and history books, he concluded that Sunni Islam was the original branch of Islam. He stated that since coming to Australia, he had opportunities to speak to other Muslims from different countries and decided that it was the "better way". He also stated that in 2015, he told his father, brother, and friends that he regarded himself a Sunni Muslim. At the SHEV interview, the applicant displayed some knowledge about the differences between the Shia and Sunni sect of Islam and confirmed that he identified as a Sunni Muslim and practised the religion. In 2020, the IAA was provided with supporting evidence, including a statement from his then Christian fiancé N, who stated that the applicant was a Sunni Muslim, and a statement from their friend A, an Australian citizen who identified as a Christian. A states the applicant's fiancée is her boyfriend's sister, and that the applicant and N were engaged. She attested to the applicant's strong belief in Sunni Islam. Further Statements were from "Sheikh K" and R, both Australian citizens, confirming that the applicant was a practising Sunni Muslim, they prayed together at work and that at times the applicant attended the Sunni Mosque in [Suburb 1] or [Suburb 2] and that the applicant prayed "in a Sunni manner". A further statement was provided from the applicant's cousin "IH", who states that he and the applicant had extensive discussions about the differences between Shia and Sunni Islam, the manner the different sects of Islam prayed and their beliefs.
55. I accept that in Australia, the applicant identified as a Sunni Muslim and attended Sunni Mosques and prayed in the "Sunni manner". In his most recent submission, the applicant has indicated that he is no longer a Sunni Muslim. He claims that after an invitation by a Christian friend to attend Church in June 2020, he commenced exploring Christianity and no longer practices Sunni Islam. I also note that in the 2022 submission, the applicant's representative indicates that the IAA may disregard the submissions made in 2018 relating to the applicant's then fear of harm for reasons of his Sunni religion. I accept that the applicant no longer fears harm on this basis.
56. Regarding his journey towards Christianity, in his 2022 supplementary statement, the applicant states that "after a while" he realised that Sunni Islam had the same problems as Shia Islam, because Islam is a religion of violence. He states that in Australia, he also met Christians and he became interested in Christianity. He states that Islam is a religion of war and force, but Christianity is a religion of love. The applicant claims that one of his Christian friends invited him to go to Church and that around June 2020, he started going to [Church] and learning about the Bible and Jesus. He states that Christianity changed him to a better person and as he learnt more, he decided to convert to Christianity and was baptised [in]

August 2020. The applicant has provided a copy of Certificate of Baptism. He claims that told his family and friends about his conversion and regularly posts Christian material on [Social media 1]. The applicant has provided screenshots of his [Social media 1] posts, which includes Christian content, in the period between June 2020 and September 2022. He claims that he continues to practise Christianity by praying, reading the Bible, attending Church and Bible study, and talking to his friends, family, and workmates. He states that he does not know if he could attend Church in Iran or study the Bible and that it is important to him to introduce others to Christianity.

57. In support of his claimed conversion to Christianity the applicant has also provided a letter from [Pastor F] of the [Church] dated 6 December 2022. In that letter [Pastor F] writes that he had known the applicant since [August] 2020 when he visited the Church, and that afternoon when the applicant attended Bible study after Church, the Pastor explained to the applicant the serious mistakes in the Quran, the Bible's plan of salvation and how Jesus died on the cross to pay for our sins. The letter also confirms that the applicant was baptised the following day [in] August 2020.
58. The applicant also provided a further brief statement from his wife N dated July 2022. Both the applicant and N's statements confirm that they started living together in July 2020, got married [in] April 2022, and their daughter was born on [Date]. The applicant provided a copy of their marriage certificate which indicates that they were married at home by [Pastor F], a photograph of the applicant and his wife being presented with their marriage certificate, in the presence of two other persons, and their daughter's birth certificate. In her supplementary statement, N, also confirms that the applicant, after being invited to attend church by his friend, converted to Christianity. N states that the applicant asked her questions about Christianity and started attending church regularly. The applicant told her that he felt more connected with Christianity than Islam, and that he found peace in this religion. She states that "after some time", the applicant decided to convert to Christianity and that the pastor explained everything to him and baptised him. N states that after the applicant's conversion, she had seen a big change in him, in that he is more spiritual, calmer, kinder, and caring towards her and their daughter. She also states that the applicant continues to attend church regularly, attends Bible study and reads the Bible.
59. The applicant claims, and I accept, that he met his now wife, N, in immigration detention after his arrival in Australia and that N holds a five-year protection visa as stated in her statement dated 22 March 2020. The applicant has provided photographs of their engagement, which is also referred to in the statements by N and A, and I accept that they were engaged to be married in November 2019. I accept that they married in April 2022 and have a child born [on date].
60. I accept that the applicant has attended the [Church], was baptised in August 2020, and has posted some Christian material on [Social media 1]. However, I have serious doubts about the genuineness of his claimed conversion to Christianity. The letter from [Pastor F] indicates that he had known the applicant since [August] 2020, the day prior to the applicant's baptism. The letter also indicates that the applicant attended Sunday morning services, has brought one person and a family to the church who have been baptised, puts Bible information on [Social media 1], is always willing to help and is a genuine Christian. However, the letter does not refer to the applicant having attended church or Bible study classes prior to [August] 2020. While I accept that the applicant has presented himself as a genuine Christian to the Church, I am not satisfied that to be the case. The applicant's sudden interest in and conversion to Christianity, a process which is claimed to have taken between June and August 2020, casts doubt over his reasons for engaging with Christianity. The applicant claims that he was

invited by a friend to attend Church in June 2020. While he has provided a brief statement from his wife indicating that he started attending church regularly and converted to Christianity, he has not provided any further supporting evidence from any other members of the Church community. The applicant's evidence is that he had known his wife since being in immigration detention and was aware of her Christian religion prior to their engagement in 2019. He claims that they had mutual respect for each other's religions. I find it difficult to accept that the applicant had not attended Church with his Christian wife yet attended Church when invited by a friend and proceeded to convert to Christianity in a matter of a couple of months. The information about the [Pastor], MG, has been obtained from the [Church]'s website and, in my view, does not support the applicant's claim that his is a genuine convert. As evidenced by screenshots of his [Social media 1] posts, I accept that the applicant has posted some material on [Social media 1] in the period between 2020 and 2022. The posts include some Christian material, including what appears to be a videos and photos of Bible study classes at [Church] (which I note do not show the applicant), a photograph of a cross, a post of "Happy Easter Day" with content posted in Farsi (no translation provided) and some posts of pages of what appears to be information related to Christianity, some with highlighted text. Considering the frequency of the posts and the nature of the information posted, I am not satisfied that it establishes that the applicant has a genuine commitment to Christianity or that he posted the material with a view of promoting the religion to others.

61. On the evidence before me, I am not satisfied that that the applicant's conversion to Christianity is genuine or that he genuinely practises the religion in Australia, told his family in Iran about his conversion or that he has any intention or desire to practice the religion if returned to Iran. I am not satisfied that the applicant has engaged in his Christian activities since June 2020, otherwise than for the purpose of strengthening his claim to be a refugee. In accordance with s.5J(6) of the Act I am required to disregard the applicant's religious activities in Australia when determining whether he has a well-founded fear of persecution.
62. Apart from the incidents when he came to the attention of the authorities for reasons of being in public with his girlfriend and having consumed alcohol, the applicant's evidence does not indicate that he came to the attention of the authorities or harmed for religious reasons. The applicant's evidence is that he no longer practices Islam. The most recent DFAT report<sup>8</sup> indicates that that the official religion of Iran is Shia Muslim and that a Muslim who leaves his or her faith or converts to another religion or atheism risk state prosecution and may be charged with apostasy. However, in relation to the Muslim population, it is reported that a significant proportion of the population does not attend Mosque or pray on a regular basis. Religion is considered 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 is an individual choice, and not a matter for the state. I consider the chance of the applicant coming to attention of the authorities or facing any harm for not adhering to or not practising Islam to be no more than remote.
63. I accept that the applicant is married to his wife who has been granted a protection visa and has identified as a Christian. The applicant submitted to the IAA, in 2020, that he feared that he would be harmed by the Iranian authorities for reasons of his relationship with a Christian woman. In her statement to the IAA dated 7 December 2022, N, stated that she did not know if she or their daughter would return with the applicant if he were forced to return. The applicant has not indicated that his wife's Christianity is known to his family or anyone in Iran. I also note that the screenshots of the applicant's [Social media 1] posts, include photos

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<sup>8</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

of the applicant with a woman who closely resemble his wife, wearing the Islamic head scarf. The applicant's evidence is that N's family reside in Australia and been granted refugee status. The applicant has not provided any evidence indicating that his family Iran have been approached or questioned about the applicant's marriage in Australia. I am not satisfied that the authorities in Iran have become aware of the applicant's relationship with N who identifies as a Christian. N's evidence is that she does not know if she and their daughter would return to Iran with the applicant, and no further information in this regard has been provided by the applicant. I am not satisfied that the applicant's wife or daughter would return to Iran with the applicant. I also note that the applicant has not presented any independent evidence that Muslim men with Christian wives are persecuted or face a real risk of harm. I consider the chances of the applicant facing any harm in this regard, even if his marriage to a person in N's position was to become known to the authorities, to be no more than remote. The applicant claims that he fears being separated from his family. While I accept that being separated from his wife and child would be distressing for the applicant, the harm caused by separation from family members arising from the applicant's removal from Australia does not of itself amount to persecution. The distress is not the consequence of systematic and discriminatory conduct by the authorities or any other person in Iran, but rather due to separation from his family remaining in Australia.

64. The applicant claims, and I accept, that he departed Iran using his own passport and that he is no longer in possession of a valid Iranian passport. He claims that returned asylum seekers without a passport are subject to questioning on arrival and that he will be harmed by the authorities as a returned asylum seeker from a western country. In addition, the applicant claims that he fears being subjected to in-depth questioning due to COVID-19 screening requirements exposing him to a real risk of harm.
65. The 2020 DFAT report<sup>9</sup> indicates that Iran does not permit the involuntary return of Iranians from Australia unless they arrived in Australia after 19 March 2018, the date on which Iran and Australia signed a Memorandum of Understanding that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. As the applicant arrived in Australia prior to 19 March 2018, I find that if he were to return to Iran, it would necessarily be on voluntary basis. DFAT also reports that persons, who do not have a valid Iranian passport require temporary travel documents issued by Iranian diplomatic representatives overseas to facilitate their return and that the authorities at the airport will be forewarned about such persons' return.<sup>10</sup> Given that the applicant will only be returned on a voluntary basis, it may be possible for him to obtain an Iranian passport. However, even if the applicant returns to Iran on temporary travel documents, I am not satisfied he faces a real chance of persecution. The 2020 DFAT report<sup>11</sup> indicates that he may be questioned by immigration police about the circumstances of his departure and why he is travelling on temporary travel documents. I consider it possible that this may lead the authorities to infer that the applicant has sought asylum while in Australia. The DFAT report<sup>12</sup> indicates that the questioning is usually for a short period of between 30 minutes to an hour but may take longer where returnees is considered evasive in their answers or have a suspected criminal history. Arrest and mistreatment are not common during this process. The applicant has not claimed that he had any criminal record in Iran and there is no indication, and the applicant has not claimed, that the authorities in Iran have any knowledge of his time in prison in Australia that he referenced in his supplementary statement.

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<sup>9</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

<sup>10</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

<sup>11</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

<sup>12</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

66. Other than the possible questioning on arrival, DFAT<sup>13</sup> advises that voluntary returnees do not attract much interest amongst the large regular international movements of Iranians and that they will generally move quickly through airports. International observers have reported that the Iranian authorities pay little attention to returned asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims. Unless returnees have an existing profile or were the subject of adverse official attention prior to departing Iran, they are unlikely to attract attention from the authorities. I am not satisfied that the applicant had any adverse profile with the authorities prior to his departure from Iran or would be suspected of having any criminal history, and the information cited above does not indicate that returnees are harmed for reasons of having resided in or sought asylum in a western country.
67. In 2020, the applicant provided reports on the situation regarding the COVID-19 pandemic in Iran. These included statistics on number of confirmed COVID-19 cases in Iran at the time, and the spike in deaths due to COVID-19 in February 2020 and that the number of infections in Iran were higher than what was reported. I accept that Iran, like the rest of the world, was adversely impacted by the COVID-19 pandemic and there were high numbers of infection and deaths. The information provided does not support the applicant's assertion that due to COVID-19 screening protocols, that may have been in place in 2020, he would be subjected to more stringent questioning about his absence from the country or attract any additional attention, that would bring him to the adverse attention of the authorities.
68. Overall, I do not consider that apart from routine questioning on arrival, that the applicant would attract any form of adverse attention from the authorities. I do not consider being questioned on arrival for a short time amounts to harm nor am I satisfied that he would otherwise face a real chance of any harm during questioning.
69. It is also claimed that due to the COVID-19 pandemic, should the applicant become ill, there is a real chance that he would face discrimination due to his Arab ethnicity. In 2020, the applicant cited information about Afghan refugees reportedly being refused treatment for COVID-19, and that due to US sanctions on Iran, the country struggled with supplies, medicine, and sanitary equipment needed to help combat the virus. The information provided do not indicate that Iranian nationals of Arab ethnicity were denied access to treatment for COVID-19 or any other medical attention. The applicant has not provided any further information to support that there is a real chance he would be denied access to medication or health treatments for reasons of his Arab ethnicity, and on the information before me, I am not satisfied that the applicant has in the past or that there is a real chance that he would be denied health care, COVID-related or otherwise, for any reason specified in s.5J(1) of the Act.
70. I also note the applicant's evidence during the SHEV interview that after his mother's death his father's behaviour changed, he remarried, and wasted money by making bad decisions. I also note his evidence which suggested that he did not have the support of his father as his father was willing for him to leave the country. However, the applicant's evidence is also that since his arrival in Australia he has maintained some contact with his family in Iran and I do accept that he does not have family support in Iran. While I accept that the applicant's mother's death had a detrimental impact on the family as a whole and that his father may have made bad decision that impacted the family's finances, that appears to have occurred over a decade ago. The applicant has resided in Australia since 2013 and I do not consider that he would face a real chance of harm for reason of his father's actions or that any

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<sup>13</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

treatment he might face would be for the essential and significant reason specified in s.5J(1) of the Act.

71. Considering the applicant's circumstances as a whole and in light of what I have accepted of his claims, I am not satisfied that the applicant faces a real chance of serious harm at the hands of the authorities or any other person in the reasonably foreseeable future. I am not satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J of the Act.

#### **Refugee: conclusion**

72. 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) of the Act.

#### **Complementary protection assessment**

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73. 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**

74. 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.
75. 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.
76. I accept that the applicant has attended the [Church], and that he was baptised in August 2020. I accept that he has a marriage certificate issued by the [Church] in 2022. I do not accept that the applicant has genuinely converted to Christianity or has any genuine ongoing interest in the religion or would seek to practise the religion or proselytise if returned to Iran. I do not accept that details of the applicant's claims or activities have reached the authorities in Iran or that he has discussed his claimed conversion to Christianity with people in Iran. It is submitted that a [Church]'s [specified] Pastor, "GM", is in [Country 1] preaching messages to be aired in Iran, and that this may be known to the authorities and perceived as a connection to Iranian house churches and place the applicant at a real risk of harm. The IAA has been provided with what appears to be information published on the [Church]'s website providing background information on GM's journey towards Christianity and his role as a [preacher], which includes the translation of lessons from English to Farsi during [Pastor F]'s Bible study classes. It also notes that GM is on leave from his ministries preaching Gospel messages in

[Country 1] to be aired over satellite TV and radio in Iran, Afghanistan and Tajikistan. While it is possible that GM's messages may be perceived to relate to house churches in Iran, I do not consider that the information implicates the applicant as an attendee of the [Church] in Australia or substantiate the claim that the applicant will face a real risk of harm due to GM's activities in [Country 1]. Given that I do not accept that the applicant is a genuine Christian, I do not accept that he has told his family of his attendance at [Church] or baptism or that his limited [Social media 1] posts have been monitored or connected him to the Church or raised any concerns for his family.

77. The applicant claims that he regularly posts Christian material on [Social media 1] and in support provided screenshots of his [Social media 1] activities which includes some posts made in the period between 2020 and 2022. Country information cited above<sup>14</sup> indicates that authorities do not comprehensively and cannot effectively monitor Iranian's online activities. While there has been instances of the authorities keeping a close eye on Facebook activities and have at times blocked or filtered websites they consider objectionable, including International social media sites such as Facebook, the information indicates that individuals with a public profile who are politically active, advocate for greater human rights, have connections to foreigners or otherwise perceived as threats to the Islamic Republic are more likely to have their social media monitored. It is also reported that although it appears that there have been some instances of ordinary individuals also coming to the attention of the authorities for engaging in publishing information that is perceived to be insulting to Islam or waging propaganda against the state, frequent harassment is directed at journalists, bloggers and other media professionals to ensure they do not cross these known red lines.
78. The applicant has not provided any information suggesting that the applicant's family in Iran have been approached by the authorities in relation to his activities in Australia. In addition, the country information reports,<sup>15</sup> including reports provided by the applicant, indicate that converts who engage in evangelical or proselytising activities to convert others are likely to come to adverse attention of the authorities. Converted returnees who do not carry out activities related to Christianity upon return will not be of interest to the authorities. I do not accept that the applicant has any intention to engage in such activities if returned to Iran. The applicant had no public or adverse profile with the Iranian authorities when he departed Iran. I am not satisfied that the limited material that he has posted on [Social media 1], a decade after his departure from Iran, would be of concern to the authorities or perceived to be insulting to Islam or crossing the known red lines.
79. Country information<sup>16</sup> also indicates that the authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims, such as posting on social media and converting to Christianity. Considering the applicant's profile as a whole, including his marriage to a woman who identifies as a Christian, his limited Christian activities since June 2020 and his limited engagement with [Organisation 1] in Australia, I am not satisfied that the applicant faces a real risk of significant harm, as defined in ss.36(2A) and 5J(1) of the Act, for reasons of his religious activities in Australia.

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<sup>14</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

<sup>15</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

<sup>16</sup> DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.



80. I accept that Arabs encounter some unofficial discrimination due to their ethnicity. While I accept that the applicant's family may have experienced some discrimination and insensitivity due to their ethnicity, I am not satisfied that the applicant, would in the foreseeable future face a real risk of discrimination or treatment that would amount to a level of pain, suffering or humiliation required by the definition of torture in s.5(1) of the Act, nor cruel or inhuman or degrading treatment or punishment, such as to amount to significant harm as defined in s.36(2A) of the Act. Nor am I satisfied he faces a real risk of the death penalty being carried or the arbitrary loss of his life.
81. I also accept that should the applicant return to Iran without his wife and child, that would be distressing for him. While I am sympathetic to the applicant and his family in this regard, distress, and mental harm due to family separation as a result of inability to stay in Australia does not fall within the definition of significant harm which is concerned with acts or omissions in Iran resulting in the applicant being treated in a particular way<sup>17</sup>.
82. I have otherwise found above that the applicant does not face a real chance of harm in Iran for any of the claimed reasons. The Federal Court<sup>18</sup> held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm on those grounds, if returned to Iran.
83. I am not satisfied that there is a real risk that the applicant will suffer significant harm in Iran.

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

84. 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) of the Act.

#### **Decision**

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

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<sup>17</sup>SZRSN v MIAC [2013] FCA 751; CLD18 v MIAC [2020] FCAFC 2.

<sup>18</sup>MIAC v SZQRB (2013) 210 FCR 505.

## Applicable law

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### **Migration Act 1958**

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
  - (c) that is not inconsistent with Article 7 of the Covenant; or
  - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

...

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

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

...

#### *Protection obligations*

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

#### *Determining nationality*

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