



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA23/10454

IRAN

IAA reference: IAA23/10457

IRAN

IAA reference: IAA23/10456

IRAN

IAA reference: IAA23/10455

Date and time of decision: 31 May 2023 14:20:00

P Tyson, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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

Background to the review

Visa application

1. The referred applicants (the applicants) are an Iranian father and his [age] year old [children]. On 25 September 2015 they lodged applications for temporary protection visas. The wife/mother of the applicants was also included in the application, but is not a subject of this review as she was found to be an excluded fast track applicant. The applicants had claimed that the wife was of Faili Kurd ethnicity, was born in Iran to parents who had been expelled from Iraq and that she and her family were stateless. It was claimed that even after her marriage to an Iranian citizen, she had been unable to obtain any citizenship documents and the children were similarly denied documents or recognition of citizenship, because of the wife's lack of any identity documentation. The family claimed to fear harm in Iran because of the wife and children's stateless undocumented status and lack of rights.
2. A delegate of the Minister for Immigration refused the visas in a decision dated 10 November 2016. The delegate found that the claims that the wife and children were stateless were not credible, based on country information about Iranian citizenship by marriage and paternal descent, and on various anomalies in the evidence of the husband and wife. The delegate was not satisfied that there was a real chance or risk of the applicants being harmed in relation to any of the other claims they had made.
3. On 21 April 2017 the IAA affirmed the decision of the delegate. On 10 March 2023 the Federal Circuit and Family Court made orders quashing that decision and requiring the IAA to redetermine its review.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 28 April 2023, prior to receiving the applicants' new information discussed below, the IAA requested information from the Secretary which was referenced in the delegate's decision but had not been provided to the IAA. This related to evidence given by the wife in various interviews and in submissions and responses to the Department. The IAA requested this material because, on the claims then made by the applicants, the mother's evidence was relevant to determining the status of the child applicants and identifying any claims put forward by their mother on their behalf. The Department provided the requested material along with additional material. The additional material included a notice of seizure of bogus documents and an identity interview conducted with the wife. Neither of these are referenced by the delegate in the decision or the applicant's interview and it is not apparent that this information was before the delegate in respect of these applicants' applications. I have listened to the recording of the identity interview, which discusses the mother's family history, her meeting and marrying the applicant father, and other matters relating to her then claimed statelessness. In light of the new information provided by the applicants discussed below, the information provided in that interview and in the seizure of documents form adds little to the other material before me and has little bearing on the matters now arising in this review. I am not satisfied there are exceptional circumstances to justify considering it. The remainder of the material provided by the Department in response to the IAA's request is referenced in the delegate's decision and is not new information. I have

considered the material relating to the mother insofar as it is relevant to identifying and assessing claims raised by and on behalf of the applicant father and children.

6. The review material before me includes Departmental identity assessment documents in respect of the father and mother which contain the opinions of Departmental officers. They are little more than subjective analysis. I do not view these documents as helpful in assessing the claims, and have placed no weight on them.
7. On 10 May 2023 the applicants, through their legal representative, provided an email attaching submissions, a statutory declaration from the applicant husband, statement from the wife, copies and translations of various identity documents, photographs and new country information. All of this is new information.
8. In his statutory declaration, the applicant father withdraws a number of claims made in the protection visa application, including that his wife and children are stateless. The material now submitted by the applicants claims that the mother and applicant children are not stateless but are Iranian citizens. This new claim is supported by copies of the mother and children's Iranian identity documents, the applicant father and mother's marriage certificate and translations. The applicant father provides details about how he and his wife met and their marriage, and his family's support of the marriage, contrary to earlier claims he had repeatedly made to the Department. A statement from the mother corroborates this new information and provides what is now said to be correct information about her status, including that she obtained Iranian citizenship in 2003 prior to meeting and marrying the applicant father. The mother says that she did not previously disclose the truth about her citizenship because her brother, who had serious problems in Iran, had sought asylum in Australia and had concealed his Iranian citizenship, and that she also claimed she and the children were stateless because she was afraid her brother or her family would be deported if she said something different. The father and mother discussed coming forward with the truth but were fearful about the outcome of changing their case following the change of government in the 2013 federal election and subsequent attitudes towards refugees. They have now received advice about the importance of providing the correct claims and feel safer given political changes in Australia.
9. While I note the claimed explanation provided by the mother about their reasons for providing incorrect information upon arrival, fear about attitudes towards refugees following the 2013 election and more recent receipt of advice regarding the importance of providing only correct information, I am not satisfied that these matters prevented the father and mother from providing correct information to the delegate. The applicants had legal representation before the delegate from an organisation experienced in protection matters. They completed their protection visa application with the assistance of that organisation and an interpreter in their own language. As part of that application, they made a Declaration of Truth that the information provided in the application was truthful and honest in every way, and were warned that giving false and misleading information is a serious offence. They were clearly put on notice of the delegate's concerns with their claims about the mother and children's statelessness, and warned by the delegate of the need to provide truthful information and consequences of failing to do so, including the proposed application of s.91WA of the Act. I am not satisfied that the new information could not have been given to the delegate prior to the decision being made. However, given the nature of credibility concerns identified by the delegate with the earlier, now disavowed, claims about statelessness, the information now provided is clearly more plausible than the earlier claims and is supported by documentary evidence, I accept it is credible personal information that was not previously known and, had it been known, may have affected consideration of the

claims. The correct information about the children's status in Iran is crucial to determination of their claims and circumstances on return. Taking all of these matters into account, I am satisfied there are exceptional circumstances to justify considering the new information relating to the mother and children's status and the father and mother's relationship and history, including the new documents and arguments relating to these matters in the submissions.

10. The applicant father states that he has fears for his wife and children in Iran, particularly his daughter, and that his children have their own claims as children, and his daughter as a girl in Iran. He makes claims about their growing up Australia, westernisation, not practicing religion, not speaking Persian as a first language and his daughter and wife not wearing hijab. He refers to his daughter's characteristics, ambitions and unwillingness to wear a hijab. He expresses fear about harm his children may face in Iran. Photographs of the family, presumably to demonstrate the western appearance/dress of the children, have been provided in support. The submissions make arguments based on these new claims. I accept that the information provided about the applicant children and claims of fear on their behalf may have arisen in the period since the delegate's decision, as the children have become older and spent an increasing portion of their lives in Australia, and as it is said to relate to the current situation in Iran. I am satisfied the information could not have been given to the delegate prior to the decision being made. Notwithstanding my credibility concerns about the applicant father, the information he presents about his children, who have lived in Australia since the age of [age], is capable of being believed and I am satisfied it is credible personal information that was not previously known and, if known, may have affected consideration of the claims. The applicant children are now older than when the delegate determined the matter. Taking all of these matters into account, I am satisfied there are exceptional circumstances to justify considering the new information about the applicant children, along with the arguments made about these new claims in the submissions.
11. The applicant father repeats earlier claims about his political beliefs and participation in protests after the 2009 elections. He provides new information relating to his current political beliefs, the reasons that he has not attended protests in Australia against the Iranian government including his fear of the Iranian government having found out he was in Australia due to the 2014 data breach, and what he would do if returned to Iran. He refers to keeping abreast of political developments in Iran over 'the last few years' and to awareness of protests taking part in Australia. I am satisfied this information relates at least in part to his current beliefs and to events occurring in recent years since the delegate's decision, and that it could not have been given to the delegate. While I have concerns about the applicant father's credibility for the reasons given further below, this new information relates in part to claims made previously by the applicant father regarding his anti-government views, involvement in protests in Iran and being affected by the data breach, which are unrelated to the stateless Faili Kurd claims. I accept that on its face, the new information about his beliefs and fears is capable of being believed and in that sense is credible personal information that may have affected consideration of the claims. I find that both limbs of s.473DD(b) are satisfied and am further satisfied there are exceptional circumstances to justify the new information, and related arguments in the submissions.
12. In his statutory declaration, the applicant father states that when the family fled Iran in 2013 it was because of the conflict his wife's brother had with a family that affected them. The applicant's wife's statement similarly refers to problems experienced by her brother. She says that her brother [had] serious problems and left the country for his safety. She refers to problems with another family, who then continued to harass her family and ask where her brother was even after his departure. She claims they would harass her and her sisters in the

street, attack her brother [and] her husband any time they saw them in the street. She claimed in one of those fights her brother and husband were attacked and her brother badly injured, and so her father thought it best if they left the country too. The wife's 2013 statutory declaration refers to the Basij stabbing her father and beating her brother because of his relationship with an Iranian woman, the brother leaving Iran because of this issue, and being fearful that similar things could happen to them. Her August 2015 statutory declaration similarly mentioned her brother and father being badly hurt when they were assaulted by the Basij. To this extent, the claim about a conflict experienced by the wife's brother and the family being afraid because of that is not new information. However, the earlier statements refer to the wife's father, rather than her husband (ie the applicant father), being beaten. They also say that it was the Basij, rather than another family, who were the perpetrators. The applicant father's own statutory declarations of 2013 and 2015, submitted with the visa application, make no reference to this conflict or to him being attacked. Nor could I find reference to these events in any of the other evidence before me. No further detail is provided in the new information to explain the circumstances in which the applicant father was supposedly beaten or otherwise particularise these events. These claims relate to events that occurred before the applicants' departure from Iran and I am not satisfied that this information could not have been given to the delegate prior to the decision being made. The new information about these events and the applicant father being attacked is simply not capable of being believed, considering the failure to raise it earlier, the inconsistencies with the earlier claim and the absence of detail. I am not satisfied this is credible personal information that if known may have affected consideration of the claims. I am further not satisfied there are exceptional circumstances to justify considering this new claim.

13. The submissions attach and refer to new country information about the situation in Iran.¹ These are all recent reports that post-date the delegate's decision. While the reports refer to particular individuals and in that sense contain personal information, that information is not in itself relevant to the claims. The reports are general information about the situation in Iran rather than credible personal information that may have affected consideration of the claims, in the relevant sense. However, I am satisfied that these reports post-date the decision and that they, and the argument based on them, could not have been given to the delegate prior to the decision being made. Taking into account the length of time since the delegate's decision the relevance of these reports to assessing the claims now raised, I am satisfied there are exceptional circumstances to justify considering this new information.
14. The applicant father requests an interview to give more information to the IAA as he is making claims on behalf of his children whose claims, he says, have never been properly assessed. He says that they cannot speak for themselves due to their age ([age]) but he does not want them to be affected by the decision he and his wife made not to tell the truth about her identity. The applicant father requests the opportunity to talk about his children's claims and his fears on their behalf. The claims he has made are based on country conditions in Iran along with assertions about things such as his children's identity, attitudes and experiences. These types of claims, by their nature, involve a degree of speculation. It is not obviously apparent to me what useful additional information the applicant father could provide at an interview to support these claims, and he has not offered any explanation or further detail about what evidence he might be able to give. In the circumstances, I have decided not to

¹ Amnesty International, 'Human Rights in Iran', 2022; The Guardian, 'Two women attacked with yoghurt in Iran arrested for not covering hair', 2 April 2023; Human Rights Watch (HRW), 'Iran – Events of 2022'; United Nations Office of the High Commissioner for Human Rights (UNOHCHR), 'Repressive enforcement of Iranian hijab laws symbolises gender-based persecution: UN experts', 14 April 2023. (I note that I accessed complete copies of the UNOHCHR and HRW reports as the versions submitted by the applicants appeared to be missing some text).

exercise my discretion to invite the applicants to an interview or to otherwise provide further new information.

15. I have also obtained new country information reports,² one of which replaces an earlier version relied on by the delegate. Taking into account the passage of time since the delegate's decision and that the applicants' claims have fundamentally altered, I am satisfied there are exceptional circumstances to justify considering this new information.

Applicants' claims for protection

16. The applicant father has made claims for protection on behalf of himself and his children. I also take into account claims made by the mother on behalf of the children. The claims made by the applicants in the 2015 visa applications (incorporating claims made in 2013 statutory declarations) and interviews with the delegate related largely to the claimed undocumented, stateless status of the mother and the child applicants. In summary, it was claimed:
 - The mother is of Faili Kurd ethnicity and was born in Iran to stateless parents who had been deported from Iraq. She had a green card which expired in 2002 and was unable to be renewed.
 - The husband and wife married in 2008 but due to the wife's lack of documentation were unable to register their marriage. Without a marriage certificate they were sometimes suspected of being an unmarried couple. They were at risk of being arrested and punished by authorities.
 - Some of the applicant father's family opposed the marriage because the wife was not from their Bakhtiari tribe and the tribe has enmity with the Kurdish people. His uncles threatened to set fire to his house and beat him if he married a Faili Kurdish woman, and disowned him.
 - The child applicants were born in [year]. Because of their mother's lack of documentation, the applicant father was unable to obtain birth certificates or identity documents for them and they remained stateless and undocumented. They were premature. His work insurance did not cover his wife's medical costs because she was not an Iranian citizen and he had to pay very high fees to the hospital.
 - The children would not be able to enrol in school, have education, work legally or be covered by medical care. They have no rights or protections. His wife cannot work or study because she is undocumented. They do not receive any government assistance. The applicant father worried about his family's ability to survive in Iran.
 - The mother and applicant children departed Iran on false passports. The applicant father feared being punished for having departed with them on false passports.
17. The new information provided to the IAA indicates that the applicants no longer rely on the above claims. The applicants' remaining claims, and new claims, can be summarised as follows:
 - The applicant father is of Persian ethnicity from the Bakhtiari tribe. He is a Shia Muslim. He is from Esfahan. His wife is of Faili Kurdish ethnicity and from Yazd. The applicant's family had no problem with the marriage. After marriage they initially lived in Esfahan

² Danish Immigration Service, 'Iran Protests 2022-2023', 31 March 2023, 20230406140516; Department of Foreign Affairs and Trade (DFAT), 'Country Information Report: Iran', 14 April 2020, 20200414083132.

before moving to Yazd following the birth of their children. The applicant father has worked in various [fields].

- Some of the wife's family members were attacked by the Basij because of her brother's relationship with an Iranian woman, which the Basij considered inappropriate for because of his ethnicity. The family were fearful similar things could happen to them.
- The applicant father is against the Iranian government and is opposed to everything they do, the way they treat people and especially women. He participated in post-election protests in 2009. The situation in Iran has become worse. In Australia, he has followed political events in Iran including through social media and talking to people in Iran about what is happening. He has not attended protests against the Iranian government in Australia because he is afraid of being seen at the protests and the information including photos of protesters being passed to the Iranian government through pro-government informants. The applicant father became distrustful of the government after the data breach and did not want to take part in protests to make the situation worse, or take risks with the safety of his family.
- The applicant children have grown up in a western, secular society. They do not practise any religion, do not speak Persian as their first language, wear western clothes and the applicant daughter does not wear the hijab. The applicant father fears they will be physically, psychologically and emotionally harmed in Iran, that they will have to conceal their identities and beliefs. He fears his daughter will be harassed, assaulted and preyed on by men, physically harassed and assaulted by extremists and arrested and jailed by the Basij or 'morality' authorities.
- The Iranian government has sophisticated technology to monitor its citizens, including overseas. The applicants' personal information was released on the internet in the 2014 data breach and it is highly likely the Iranian government knows they were in Australian immigration detention and have made a claim for asylum. They will be accused of betraying their country and spreading propaganda against the Iranian government. They will be seen as spies for the west and arrested, jailed, tortured or killed.

Refugee assessment

18. 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

19. 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.
20. The applicant father has consistently claimed to be a national of Iran, but until very recently falsely maintained that his wife and children were stateless Faili Kurds. The applicant father has now withdrawn that claim and provided new information that his wife and children are in fact Iranian citizens, and that his wife was born stateless but had obtained citizenship in her own right in around 2003, prior to meeting the applicant father. The family's earlier claim that the wife and children were unable to obtain citizenship despite having an Iranian citizen husband/father was contrary to country information outlined in the delegate's decision. The delegate also identified other concerns with their evidence relating to the wife and children's claimed statelessness. Noting the lack of credibility of the earlier claims and considering the applicant father's admission that those claims were not true, the amended information now provided by the applicants and particularly the identity documents provided to the IAA, I accept that the father and children's identity as claimed and that they are nationals of Iran. I find that they departed Iran legally on their own genuine passports.
21. The applicant father has submitted a statement from his wife which explains why the family presented themselves as stateless. It is said that the wife's brother travelled to Australia prior to the applicants and on the advice of a people smuggler did not disclose his Iranian citizenship to the Department. The wife was afraid that if she said something different to him, he and her family would be deported, so the applicant father and wife also said that the wife and children were stateless. They considered providing the correct information to the Department but were fearful due to attitudes towards refugees after the change of government in the 2013 federal election. After they were successful in their application for judicial review they did not want to lose the opportunity they had been given to correct their case, they received advice about the importance of providing only correct claims, and felt safer given political changes in Australia.
22. I do not accept this explanation provides any sort of reasonable justification for the applicant fathers' actions. He did not simply state, as background information, that his wife was from a family of stateless Faili Kurds. He presented the wife and children's claimed statelessness, inability to obtain citizenship or documentation and lack of rights in Iran - notwithstanding that their husband/father was an Iranian citizen - as the central tenant of the family's claims for protection. Little other reason was given for their decision to depart Iran and seek asylum in Australia. In addition to the claims about the wife's statelessness, the applicant father also presented claims that members of his extended family opposed the marriage and had threatened him, which he now states were not true. The claims about the wife and children's statelessness were maintained by the applicant father from the time of their arrival in Australia in 2012. He relied on these claims in his protection visa application in 2015, despite having the benefit of legal representation and attested to their truthfulness despite being presented with the Department's concerns about the wife and children's claimed statelessness, warned on a number of occasions since arrival about the consequences of providing incorrect information and given opportunities to provide correct information. He has now presented to the IAA a copy of the second page of his shenesnameh which contains the details of his wife and children, having previously given to the Department what was

purported to be a copy of that page, that did not record a wife or children. The previous copy he provided cannot have been a genuine copy of that document. He did not provide any information to the IAA during the initial review in 2016, and has presented no evidence to suggest that he sought to provide correct information to the Department since that time, including after the change of government in the most recent federal election and while his judicial review matter remained on foot. While the applicant father has now provided corrected information, this is at a very late stage, after already having been through one IAA review and a judicial review application. I find that the applicant father deliberately and knowingly engaged in deception over a number of years, for the purpose of obtaining a migration outcome. In light of his having presented numerous claims which he now says were not true, I approach his evidence with caution.

23. The applicant father and his wife have referred to problems experienced by the wife's brother in Iran which were said to have impacted the family. No meaningful, credible detail has been provided to explain how this issue impacted them, or how it may lead to any future harm. Over ten years have passed since the family's departure from Iran. I am not satisfied there is a real chance of any of the applicants being harmed in the reasonably foreseeable future in connection to these claimed past events.
24. The applicant father claims that he holds opinions against the Iranian government. He has consistently said since arrival that he participated in protests after the 2009 elections. At the protection visa interview he was able to expand on his views about that election and the then-President. He has also consistently expressed his dislike of the treatment of women in Iran. The applicant father claims to the IAA that he remains opposed to the Iranian regime and continues to follow political events in Iran on social media and talking to people in Iran about what is happening. Notwithstanding my general concerns about his credibility, I am willing to accept that the applicant father, like many Iranians, holds views against the government and joined in wide scale protests that took place following Presidential elections in 2009. Questioned by the delegate about why he would be at risk because of this if he went back to Iran, he stated that he did not have any political issues. He does not claim to have faced any problems in Iran because of that past activity. His participation in those protests appears to have been a one-off event. He has not detailed any other expression of his political views before or after that time, whether public or private/anonymised. He claims the reason he has not participated in protests or public acts in Australia is because of a fear of surveillance and consequent harm for himself, his family and for family members that remain in Iran, that if he had permanency and safety he would not hesitate to take part in protests to voice his opposition to the Iranian regime. He says in his IAA statement that if he is returned to Iran he will continue to hold his anti-government beliefs and to talk to people who have similar political beliefs to himself online and in person. However, he has not detailed previously engaging in any such activity either in Australia or Iran. He claims that he might go to protests but is afraid of being killed if he does.
25. The only evidence before me of the applicant father's political commitment is his own claims, to which I give little weight in light of my concerns about his credibility and willingness to provide incorrect information. The applicant father has described no previous political activity beyond attendance at a large protest in 2009. His statutory declaration to the IAA makes a vague reference to talking to people with similar beliefs in person or online but gives no further detail such as information about when this has occurred or what it involves and I am not satisfied that he has in fact engaged in any such activity. I do not accept that the reason for the applicant father's lack of political activity in Australia is out of fear of identification and harm. Rather, I find it is because of a lack of interest in or commitment to political activism or expressing his views. I do not accept the applicant father has ever been a

person of any interest to the Iranian authorities because of his political opinion. I am not satisfied he would, or would have any genuine desire to, publicly express his views in the reasonably foreseeable future whether in Australia or Iran. Considering the evidence as a whole, I am not satisfied there is a real chance of the applicant father being harmed in the reasonably foreseeable future for reason of his political opinion.

26. I accept that the children's mother is of Faili Kurd ethnicity and that the children have both Faili Kurdish and Persian ethnicity. Much of the evidence given by the applicant father and mother about the treatment of Faili Kurds was intertwined with the statelessness claims and is not reliable. While DFAT points to some discrimination against ethnic minorities in Iran, in relation to Faili Kurds (who it assesses separately to the broader Kurdish population) it specifically states that those who are citizens of Iran enjoy the same rights as other Iranians and that DFAT is not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment.³ Information from the Danish Immigration Service indicates that ethnicity has not played a decisive role in the reaction of the authorities to recent protests in 2022-3 (detailed further below), although courts are said to have handed down heavier sentences in predominantly Kurdish areas such as Kurdistan.⁴ I note that the applicants are not from a predominantly Kurdish area, and that Iranian authorities are sensitive to political activity by the (Sunni) Kurdish minority. In light of the country information specifically relating to Faili Kurds, and in the absence of any credible evidence from the applicants on this issue, I am not satisfied there is a real chance of the children suffering any harm on account of their Faili Kurdish ethnicity.
27. The delegate considered the possibility of the applicants being harmed because of the applicant father and mother being in an ethnically-mixed marriage. There is no credible evidence of the family being harmed for that reason and the applicant withdrew the claims about his uncle's opposition to the marriage. I am not satisfied there is a real chance of any of the applicants being harmed for this reason.
28. The applicant father has made claims on behalf of his children relating to their having grown up in Australia, lack of religion and westernisation. The applicant father claims that the children cannot live safely in Iran given their beliefs and attitudes in support of equality which are the opposite of Iranian society. They will suffer psychological and physical harm and be forced to conform to Islamic society which is harmful to their development. He says they dress how they want to dress, speak their minds freely and live like teenagers raised in a western society. Their right to self-expression is important to them as teenagers and their attitudes have been shaped by growing up in western society. To avoid harm in Iran they would need to conceal their identities and beliefs and fundamentally change who they are. They will be forced to conform to rules that cause them serious harm and deny them freedom of thought, speech, expression and gender equality. He fears they will suffer serious physical, psychological and emotional harm if they are returned to Iran.
29. In the new information given to the IAA the applicant father claims that he and his wife do not practise any religion and are not raising the children with religion, although he says that they are 'influenced by the perception that Australia is a Christian country'. Later in his statutory declaration he asserts that his children do not believe in God. On their visa application in 2015, the applicant father and the mother identified their own and the children's religion as Shia Muslim. The applicant father did not previously raise any claims to fear harm because he or his wife were not practising Muslims and I have some doubt over

³ DFAT, 'Country Information Report: Iran', 14 April 2020, 20200414083132.

⁴ Danish Immigration Service, 'Iran Protests 2022-2023', 31 March 2023, 20230406140516.

the credibility of his assertions. However, I note that the photo of the mother included in the visa application and the photos of the family submitted to the IAA show that at least on those occasions, neither the mother nor the applicant daughter wore hijab. I am willing to accept that while nominally Shia Muslim, the family do not strictly observe that religion.

30. According to DFAT, secularism is widespread in Iran, particularly in the major cities and among younger and wealthier Iranians. A significant proportion of the population does not attend mosque or pray on a regular basis. DFAT was told that religion is a private matter and an individual choice, beyond the expectation that people refrain from eating in public or holding parties during Ramadan. A Muslim who becomes an atheist is considered an apostate and risks persecution, although DFAT states they are unlikely to come to attention unless they widely publicise their non-belief. DFAT assesses that non-practising Muslims face a low risk of official and societal discrimination, particularly in the major cities. While I accept the applicants may not engage in religious practise, I am not satisfied on the evidence that they have any sort of commitment to atheism or to speaking publicly against Islam or about their religious views. Considering this and the country information, the prospect of any of the applicants being harmed for reasons of their religious views is no more than remote.
31. The applicant father makes particular claims on behalf of the applicant daughter. He states Islamic rules are strictly enforced in Yazd, where the applicant's wife needed to wear full chador. His daughter has never worn a hijab or chador and they will never allow this to happen. She is headstrong, independent and being raised equally with her brothers. She is westernised, dresses in casual western age appropriate clothes and speaks her mind. In Iran she will be oppressed and have no freedom, forced to give up her identity and behave in a way that conceals her beliefs and attitudes. She would stand out and be seriously harmed. Women have been killed or attacked for refusing to wear the hijab. The applicant is afraid his daughter will defy expectations and not wear the hijab. If she dresses in public as she currently does, including not wearing a hijab, she will be harassed, assaulted and preyed on by men, physically harassed and assaulted by extremists and arrested and jailed by the Basij or 'morality' authorities. The Basij harass even women who do wear the hijab. She wants to study and become an architect or lawyer but there are many obstacles for her as a woman.
32. I accept that the [age] year old applicant children have spent the majority of their life in Australia. I am willing to accept that they may well have a 'western' outlook and that they generally dress in 'western' style clothing, in that in the photographs submitted by the applicant they are wearing clothing such as jeans, t-shirts and shorts. I accept that the applicant daughter does not wear a hijab in Australia.
33. According to DFAT, although the Iranian government is 'officially' committed to women's equality, hard line sharia interpretations and conservative culture and societal norms limit the extent to which women are able to participate in Iranian society. Women in Iran can work and attend university and there are more female university graduates than men. However, there are restrictions on women taking certain public offices and women are significantly under-represented in the labour force with only 16.8 percent of women in paid employment, one of the lowest rates in the world.⁵
34. Women from more religiously-minded families generally require the permission of a male guardian to travel alone and can face societal harassment for doing so, particularly in more conservative areas. Unmarried women under the age of 40 require written permission of their fathers or other male relatives to obtain a passport and travel abroad. A woman cannot

⁵ DFAT, 'Country Information Report: Iran', 14 April 2020, 20200414083132

marry without the permission of her father. Girls can marry at age 13, or younger with the permission of a court and their father. Under the Civil Code, husbands can prevent their wives from working in some occupations and women are not supposed to mix openly with unmarried or unrelated men and can be sentenced to lashes for doing so. Legally, the life and testimony of a woman is given half the value of that of a man. Laws pertaining to marriage and divorce are tilted heavily in favour of men. Domestic violence occurs frequently and is met with inadequate police or judicial response.⁶

35. Women and men are required to adhere in public to conservative dress codes. For women (including girls over nine), in practice this requires loose all-covering clothing and a headscarf/hijab. Men are required to cover their 'private areas' although social norms require long trousers.⁷ Women who do not have their hair covered can be denied access to public institutions, including hospitals, schools, government offices and airports.⁸ The official penalty for women appearing in public without hijab is imprisonment from 10 days to two months or a fine of up to 500,000 (AUD 5 as in April 2020), and women can also be punished with 74 lashes.⁹ There is no similar rule for men. In April 2020, DFAT indicated that in practice these penalties are rare and generally women deemed to have 'bad hijab', described by DFAT as wearing a headscarf loosely with some hair showing, are ordered by morality police to adjust their headscarves and are warned against future indiscretions or, in some cases, escorted to a police station, asked to sign an undertaking and released without sanction. Repeat offenders reportedly incur a fine and their family is notified and asked to bring clothing for them. Women who refuse to sign a written document or who refuse to comply with hijab laws after signing such a document can potentially incur a criminal record which might impact ability to find employment in the public sector and large private firms, or can be placed under surveillance for six months, face restrictions on foreign travel and exclusion from government positions.¹⁰
36. In 2022, a popular uprising broke out against gender-based discrimination and violence including the compulsory veiling laws. In August 2022 a presidential decree sanctioned women for showing their hair on social media, with female government employees facing dismissal for having profile pictures without their hijab and women posting pictures of themselves online without mandatory hijab would be deprived of social services for periods of up to a year if a fine was not paid. It was also announced that surveillance technology would be used on public transport to identify and fine women not conforming to dress codes.¹¹ A Kurdish woman arrested for breach of the dress laws died in custody in September 2022, amid credible reports of torture and ill treatment. Her death sparked mass nationwide protests over the following months which were met with violent force and arbitrary arrests.¹² Since that time, a growing number of Iranian women have defied hijab laws, with The Guardian reporting that women are widely seen unveiled in malls, restaurants, shops and streets around the country and videos of unveiled women have flooded social media.¹³

⁶ DFAT, 'Country Information Report: Iran', 14 April 2020, 20200414083132

⁷ DFAT, 'Country Information Report: Iran', 14 April 2020, 20200414083132

⁸ UNOHCHR, 'Repressive enforcement of Iranian hijab laws symbolises gender-based persecution: UN experts', 14 April 2023.

⁹ DFAT, 'Country Information Report: Iran', 14 April 2020, 20200414083132; UNOHCHR, 'Repressive enforcement of Iranian hijab laws symbolises gender-based persecution: UN experts', 14 April 2023.

¹⁰ DFAT, 'Country Information Report: Iran', 14 April 2020, 20200414083132; UNOHCHR, 'Repressive enforcement of Iranian hijab laws symbolises gender-based persecution: UN experts', 14 April 2023.

¹¹ Amnesty International, 'Human Rights in Iran', 2022; Human Rights Watch, 'Iran – Events of 2022'; Danish Immigration Service, 'Iran Protests 2022-2023', 31 March 2023, 20230406140516.

¹² Amnesty International, 'Human Rights in Iran', 2022; Human Rights Watch, 'Iran – Events of 2022'; Danish Immigration Service, 'Iran Protests 2022-2023', 31 March 2023, 20230406140516.

¹³ The Guardian, 'Two women attacked with yoghurt in Iran arrested for not covering hair', 2 April 2023.

Several high profile women have been arrested and await trial on national security charges.¹⁴ There have been incidents of women being attacked and arrested, with one article submitted by the applicants referring to two women having yoghurt thrown over their heads by a man and then being subsequently detained for violating hijab rules.¹⁵

37. According to information in a Danish Immigration Service report, new measures for not observing the hijab were introduced in January 2023, with police being ordered to act decisively against women who do not obey the rules including arresting women who publicly remove their hijab and handing them over to the judiciary, and potential lengthy prison terms for women found guilty of encouraging others to wear their hijab in a more lax form.¹⁶ Ordinary citizens have been urged to confront unveiled women, potentially encouraging hardliners to attack women with impunity.¹⁷ Repressive enforcement of the laws has been described as a manifestation of gender-based persecution.¹⁸
38. While unjust, I am not satisfied that having to wear a hijab and dress conservatively does, of itself, amount to serious harm, including emotional or psychological harm, even taking into account the applicant daughter's young age and the fact of her having grown up in Australia, not practising Islam, having western ideals and being accustomed to greater freedoms and equality. While I accept the applicant daughter does not wear a hijab in Australia, and note that her father has described her as 'headstrong' and 'independent', I am not satisfied on the evidence that she has any sort of commitment to non-conformism, advocating for women's rights, opposing the hijab laws or making public statements against wearing the hijab, including by not wearing one herself, or that there is a real chance of her being harmed by authorities or anyone else in this regard. The mother made a claim that the Basij harass young Faili Kurdish women, and while I take into account the applicant's Faili Kurdish ethnicity, the information does not suggest that Faili Kurdish ethnicity is an exacerbating factor. I accept the applicant daughter will be subject to restrictions and limitations in Iran that would not apply to her in Australia. However, the information indicates that she will nevertheless be able to pursue education if she wishes, and she has a father who believes in equality and supports her ambitions and freedom and so will not, in practice, be subject to things such as underage marriage or denial of the ability to work, travel or, if she wishes, to marry a man of her choice. While I have considered the claims and concerns raised by the applicant father on behalf of his daughter, I am not satisfied in this particular applicant's circumstances there is a real chance of her suffering harm in the reasonably foreseeable future at a level that would amount to serious harm as required by the Act.
39. The applicant father made a number of claims about his opposition to the treatment of women in Iran. He referred to being unable to go out easily with his wife, and to the possibility of being arrested if he tried to protect her. While I accept he may hold views about the treatment and position of women in Iran, there is no credible evidence that he has ever expressed them publicly in Iran, been involved in any situations where he has needed to 'protect' his wife, participated in any advocacy or activism in favour of women's rights or ever faced any problems or issues in relation to these matters. I am not satisfied that he has any sort of commitment or intention to publicly express these views including joining in any protests about these matters. I find the chance of the applicant father being in a situation where he is harmed attempting to protect his wife (or daughter) or otherwise harmed

¹⁴ Danish Immigration Service, 'Iran Protests 2022-2023', 31 March 2023, 20230406140516.

¹⁵ The Guardian, 'Two women attacked with yoghurt in Iran arrested for not covering hair', 2 April 2023.

¹⁶ Danish Immigration Service, 'Iran Protests 2022-2023', 31 March 2023, 20230406140516.

¹⁷ The Guardian, 'Two women attacked with yoghurt in Iran arrested for not covering hair', 2 April 2023.

¹⁸ UNOHCHR, 'Repressive enforcement of Iranian hijab laws symbolises gender-based persecution: UN experts', 14 April 2023.

because of these views, no more than remote. While I am willing to accept that the applicant children have views broadly in favour of gender equality, I am not satisfied on the evidence that these are such that they have or would wish to engage in any sort of public activism and am not satisfied they face a real chance of harm in this regard.

40. Considering the circumstances of the applicant children more broadly, DFAT indicates that it is common to see men in 'western-style' clothing on Iranian streets and while there have been incidents of harassment of men for violating the dress code, these were more likely incidents of overzealous enforcement by individual security authorities, or because the individual had come to attention for other reasons such as political activism. DFAT assesses that people of 'western' appearance face a low risk of official and societal discrimination.¹⁹ I am not satisfied there is a real chance of the applicant children (or father) being harmed in this regard.
41. The applicant father claims that his children speak a little bit of Persian but English is their first language. I note that at the time of their arrival in Australia the children were [age] years old. At his arrival interview, the applicant rated his English language capability as 'poor'. In their visa application forms completed in 2015 when the children were [age], the applicant father and his wife completed a question about which languages they spoke, including English, and recorded only Farsi and, in the wife's case, Arabic. I accept that, having spent most of their life in Australia, and having been educated here, English may well be the children's preferred language, and they may not be able to read or write in Farsi. However, I do not consider the father a reliable witness and the fact that the children have been raised and educated in Australia does not necessarily indicate they cannot speak much Persian, particularly considering they were raised by parents who, for at least the first five years of their life, had only little if any English. I do not accept that the applicant children speak so little Persian that they would be unable to converse in that language or learn to read and write in it if returned to Iran and immersed in the language.
42. I accept that the applicant children will face restrictions in Iran that they do not in Australia. However, I am not satisfied on the evidence that their circumstances will be such that they need to conceal their beliefs, identities and change who they are, as claimed by their father. The applicant father clearly wishes the best for his children and is fearful of how their lives will be if they return to Iran. That is understandable and no doubt their lives and opportunities will be different to what they would be in Australia. However, while I take into account their young age and that they have spent the majority of their lives and formative years in Australia, I am not satisfied that the circumstances that the applicants will face in Iran amounts to serious harm, including psychological or emotional harm. Nor am I satisfied there is a real chance of the applicant father facing harm as a result of the 'westernised' attitudes of his children.
43. The applicant father made a number of references to financial hardship in his evidence to the Department. These claims were intertwined with the claims about his wife and children being stateless and unable to work legally or access government assistance. I do not consider the applicant father's assertions about the family's financial situation in Iran credible. I note that the applicant father has detailed a history of employment in Iran. I am not satisfied on the evidence there is a real chance of the applicants facing any harm in connection with their economic situation in Iran in the reasonably foreseeable future.

¹⁹ DFAT, 'Country Information Report: Iran', 14 April 2020, 20200414083132.

44. The applicants claim that their personal information was released on the internet in the 2014 Department of Immigration data breach and it is highly likely the Iranian government knows they were in Australian immigration detention and have made a claim for asylum. The authorities will accuse them of betraying their country and spreading propaganda against the Iranian government. They will be seen as spies for the west and arrested, jailed, tortured or killed.
45. I accept that the applicants' data was released in the 2014 data breach. Information extracted in the May 2016 post-interview submissions to the delegate indicates that the information released included the names, dates of birth, nationality and that the applicants were in immigration detention. There is no evidence that it included details of protection claims. It is possible that persons in Iran, including Iranian authorities, may have accessed this information, and that persons accessing the information may have inferred that the applicants had sought asylum in Australia, although there is no direct evidence of this.
46. The applicants departed Iran legally on their own passports. I find that if the applicants were to return to Iran, it would be as a voluntary returnees travelling on temporary documents (*laissez-passer*). This is because they are no longer in possession of their passports and Iran does not issue travel documents to facilitate involuntary returns in respect of persons such as the applicants who arrived in Australia before March 2018.²⁰
47. While I accept that whether because of the manner of their return, or possibly the information released in the data breach, Iranian authorities will be aware of the applicants' lengthy stay in Australia and may infer they have applied for asylum, according to DFAT, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Where a person is issued a *laissez-passer*, authorities in Iran are forewarned of their imminent return and the person will be questioned by immigration police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are travelling on temporary documents. This questioning usually takes less than an hour, but may be longer where the returnee is considered evasive in their answers and/or immigration police suspect they have a criminal history. DFAT states that arrest and mistreatment are not common during this process. DFAT assesses that the treatment of returnees to Iran, including failed asylum seekers, depends on their profile before departing Iran and their actions on return. Unless they were the subject of adverse official attention prior to departing Iran, returnees are unlikely to attract attention from the authorities and face a low risk of monitoring, mistreatment or other forms of official mistreatment.²¹ Information in a Danish Immigration Service report indicated there had been no change in entry procedures for Iranians returning to Iran, including those returning after refusal of asylum in European countries.²²
48. I am not satisfied that any of the applicants have ever been persons of any interest to Iranian authorities, or that they have a profile that could lead to them coming to attention in the reasonably foreseeable future. The delegate noted the applicants having social media profiles indicating they lived in Australia, but I am not satisfied on the evidence that there is anything in the applicants' profiles that might be of any interest to authorities even in the unlikely event that their profiles are viewed. The information set out above does not support a conclusion that Iranian authorities impute asylum seekers or persons who have spent time in Australia with any sort of adverse views, believe them to be spies or harm them because they are perceived as (or are) westernised, including returnees of Faili Kurdish ethnicity. I am not

²⁰ DFAT, 'Country Information Report - Iran', 14 April 2020, 20200414083132.

²¹ DFAT, 'Country Information Report - Iran', 14 April 2020, 20200414083132.

²² Danish Immigration Service, 'Iran Protests 2022-2023', 31 March 2023, 20230406140516.

satisfied there is a real chance of the applicants suffering any harm in connection with the data breach, having sought asylum in and spent time in Australia whether on their immediate return to Iran or otherwise in the reasonably foreseeable future.

49. I have considered each of the applicants' circumstances as a whole, including the children's Failsi Kurdish ethnicity, their non-practise of Islam, the applicant father's political views, their westernisation, appearance and beliefs, the applicant daughter's gender and that they will be returning to Iran as failed asylum seekers who have spent a lengthy time in Australia and had their details released in the data breach. However, even considering these matters in totality, I am not satisfied there is a real chance of any of the applicants suffering serious harm amounting to persecution.

Refugee: conclusion

50. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

51. Under s.36(2)(aa) of the Act, a criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

52. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
53. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act. Treatment that would meet these definitions involves physical or mental pain or suffering that is 'severe', or that could reasonably be regarded as cruel or inhuman in nature, or that causes extreme humiliation that is unreasonable.
54. I accept the applicant daughter will face restrictions and limitations as a girl/woman in Iran. However, as I have said above, she will have the support of her father and will be able to pursue education, work and travel, and marry if and who she chooses. I am not satisfied that the requirement to wear hijab and conservative clothing, together with the other restrictions she may face involves physical or mental pain or suffering that is 'severe', or that could reasonably be regarded as cruel or inhuman in nature, or that causes extreme humiliation. It

does not amount to arbitrary deprivation of life or the death penalty. Nor am I satisfied that the broader restrictions and limitations that the applicants will face in Iran meets those thresholds or otherwise amounts to significant harm.

55. I have otherwise found there is not a real chance of the applicant being harmed in Iran. Real chance and real risk involve the same standard.²³ Relying on the reasoning and country information I have set out above, I am similarly not satisfied there is a real risk of the applicant suffering significant harm in Iran.

Complementary protection: conclusion

56. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

Member of same family unit

57. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include parents and their dependent children.
58. I have found that none of the applicants meet the definition of refugee or the complementary protection criterion. There is no evidence that the applicant children's mother/applicant father's wife has been found to be a person who meets the refugee definition or complementary protection criterion. It follows that none of the applicants meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

²³ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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