



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA23/10519

Date and time of decision: 16 August 2023 11:29:00

C Wilson, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Christian convert from Iran. He arrived in Australia as an unauthorised maritime arrival [in] October 2012. He applied for a Temporary Protection visa (TPV) on 29 June 2016.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on 2 March 2017. The delegate did not accept the applicant was a Christian convert, and did not accept the applicant's father had been detained or that the father or the family were of adverse interest to the Iranian authorities.
3. The IAA affirmed the delegate's decision on 15 June 2017. The applicant sought judicial review and by consent order of Snaden J of the Federal Court dated 30 May 2023 the decision was quashed and the matter remitted for re-determination.

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). This includes relevant material from the Department's files for the applicant's relatives, as described at page 3 of the delegate's decision. This material was not provided for the first IAA review but was referred to by the delegate as material that was before them when they made the decision. Also included in the materials given by the Secretary for the applicant's relatives were the visa decision records for these same relatives. These decision records post-date the delegate's decision in this case and would be new information. However, I have not obtained them as new information for this review, as I consider the delegate's decision records for his relatives are not relevant. I have therefore not considered them for the purpose of this review.
5. The applicant says there has been a denial of procedural fairness in not extending the time they wanted to provide submissions and new information. The IAA's Practice Direction requires that for new referrals submissions and new information must be provided within 21 days, however for court remittals a decision may be made at any time. I note their representative advised the IAA on 2 June 2023, following the court remittal on 30 May, that they were acting for the applicant. The applicant has been on notice since a copy of the IAA's Practice Direction was sent to them on 21 June 2023 that they should act quickly in any dealings with the IAA, as reviews are expected to be completed promptly and a decision may be made at any time after a court order is made. The applicant has made numerous requests for more time to provide new information because they say there have been significant changes in country information and the applicant's personal circumstances since 2017. As the applicant indicated new information would be provided, the IAA agreed not to make a decision before 8 August 2023 to give them time to do so. It has been more than 2 months since the representative advised they were acting for the applicant, 8 weeks since the IAA's Practice Direction was referred to them, and 4 weeks since the IAA wrote to them on 14 July 2023 reminding them to act quickly as a decision may be made at any time following the court remittal of 30 May 2023. Having regard to this history, I consider they have had sufficient time to provide any submissions or new information they wanted considered in this review.

6. The applicant also says there has been a denial of procedural fairness in not releasing copies of the information held by the Department for their relatives, or at least for copies of the certificates issued by a delegate under s.473GB on the basis that 'there may be circumstances which would require the IAA to provide [the applicant] with material covered by a valid s.473GB certificate'. They say the circumstances in this case are that this is a remittal from the Federal Court due to the Secretary's breach in not providing the first IAA with the relevant relative's protection files. The IAA is not required to disclose the fact of notification under s.473GB(2)(a), but confirmed with the applicant that it had the material for the family members to address their concern as to whether the IAA now had all the relevant material to conduct the review. The IAA is not required to give reasons for the exercise or non-exercise of a procedural power such as those conferred on it by s.473GB(3).¹
7. In a letter dated 23 March 2017 the applicant provided a written submission responding to the delegate's decision. Attached also was new information comprising his father's insurance history with the Social Security Organisation Shiraz, and an insurance payment receipt card with the [Company]. These documents pre-date the decision by many years and could have been provided to the delegate before the decision was made. I accept however they are credible personal information that may have affected the consideration of the applicant's claims, as they provide supporting evidence to his claim that his father was a [Vehicle] driver. I accept the applicant was not aware the delegate would make a finding that he did not accept the applicant's father was a [Vehicle] driver, as the delegate did not raise this issue in the TPV interview. For these reasons I am satisfied there are exceptional circumstances to justify considering this new information.
8. On 9 August 2023 the IAA received submissions containing new information, and country reports that are also new information. The applicant's representative submits the delegate failed to consider an implied claim that the applicant will be imputed to be a Christian convert because of his tattoo, and failed to consider his cumulative profile of his father's anti-government outburst in front of Sepah, his actual or imputed Christian conversion, his past arrests by the authorities, his Christian tattoo, fleeing Iran before obtaining a certificate confirming he completed national service, and living in Australia for over 10 years.
9. The new information in the submissions includes a new claim that since 2017 the applicant has been actively making political and anti-Iranian regime comments and posts on [Social media 1 and 2], and has received threatening messages as a result, as well as attending political protests in Melbourne against the Iranian regime. On 11 August 2023 the applicant provided a statement expanding on these claims to have been politically active and attaching screen shots of social media posts (and translations where required), and also information on his practice of Christianity and that in 2021 he married an Australian citizen with whom he has since had two children. I am satisfied the applicant could not have provided this information to the delegate, as it post-dates the decision made in March 2017. Whilst I have some doubts about the credibility of his claimed political activity and alleged threats, I accept that on the face of it some of this new information may amount to credible personal information that may have affected the consideration of his claims. I acknowledge the long period of time between the delegate's decision and this review and that this information regarding his political activity, current engagement with Christianity, and change in his family situation, could not have been provided to the delegate. For these reasons I am satisfied there are exceptional circumstances to justify considering the new information provided regarding his political claims, religion, and changed family situation.

¹ *BVD17 v MIBP* (2019) 268 CLR 29.

10. The applicant provided a number of new information country reports, including: DW 'Iran's tattoo taboo hounds Ashkan Dejagah' 17 August 2018; ABC News 'How the Iranian regime is intimidating and surveilling its former citizens in Australia' 5 November 2022; The Guardian 'Australia foils Iran surveillance plot and vows to bring foreign interference into the light' 14 February 2023; Foreign Affairs, Defence and Trade References Committee 'Human rights implications of recent violence in Iran' February 2023; Immigration and Refugee Board of Canada 'Responses to Information Requests' 2 March 2023; and the DFAT 'Country Information Report Iran' 24 July 2023. All of these reports post-date the delegate's decision and therefore could not have been provided before the decision was made. Although individuals are mentioned in the reports, these reports have been provided as country information, and not as credible personal information that may have affected the consideration of his claims. Having regard to the long period of time since the delegate's decision in 2017 I am satisfied this amounts to an exceptional circumstance to justify considering more recent country information for the purpose of making this decision.
11. In his 2016 TPV application the applicant disclosed that he had been charged with [Offence]. He said he was not aware of the status of the charges. There is no information before me of the content of the charges or that he was ever convicted, and I do not consider it necessary to seek new information regarding the charges or the outcome. The charges disclosed by the applicant have no relevance to his protection claims and I have had no regard to them as part of this assessment.

Applicant's claims for protection

12. The applicant's claims can be summarised as follows:
 - The applicant came to Australia in 2012 as a single man from Shiraz, Iran, with his parents, sister, and sister-in-law. His two brothers are also in Australia, one having come here in 2011 ([Mr A]) and the other in 2013 ([Mr B]).
 - He did [Sport] in Iran but felt he was not supported in his sport by the Iranian government. He was selected for a team in an overseas competition, however he was dropped from the team and replaced by someone with connections. He was warned by his coach not to protest the decision to drop him as it could cause him harm.
 - In April 2012, when the applicant was away doing military service, his father was arrested whilst working as a [Vehicle] driver. His father was driving two passengers when he heard President Ahmadinejad on the radio saying Iran was a rich country with a good economy and social freedoms. His father strongly disagreed with this and started swearing and insulting the President in front of his passengers. The passengers happened to be Sepah agents and they immediately arrested the father. His father was detained for 5 days, and during that time Sepah searched the family house. On the fifth day his father was taken to the Revolutionary Court and made to sign an undertaking that he would not attend any gatherings of more than 3 people. In addition the father's [Vehicle] driving registration was cancelled, and the [Vehicle] was taken from him and he was given the proceeds of its sale. A month later Sepah came again to search the house, and this time the applicant was at home on leave from his military service.
 - The family left Iran in September 2012 for Australia as they feared they were perceived as anti-regime due to the father's arrest earlier that year.
 - He was unhappy with the conservative dress standards in Iran, as he preferred to wear tighter and shorter fitting clothes, particularly when going to the gym. He was stopped

by the morality police because he was considered anti-Islamic and breaching public morals. He was detained for a few hours on three occasions, twice because of what he was wearing and once because he was out with his sister and the police mistakenly thought they were a couple in an illicit relationship.

- Islam was forced on him in Iran, but he did not believe in the religion. He was interested in Christianity. An acquaintance of his father gave the family a bible and he read some of it. Before he left Iran he got a tattoo of a cross on his [Body part] as a promise to himself that he would convert to Christianity once he got to Australia.
- Since being in Australia the applicant has been baptised and converted to Christianity. He will be unable to practice his new religion in Iran and will face harm, including the death penalty, because he is considered an apostate. His Christian tattoo will cause his problems.
- He fears harm for his actual and imputed political opinion against the Islamic Republic of Iran and his pro-Western political opinion, and his political activity in Australia on social media and at protests. He also fears harm as a member of the particular social group of people who breach public morality laws due to his clothing preferences, tattoo, and general Western appearance.
- He fears he will be considered a spy because he left Iran shortly after completing his military service.

Refugee assessment

13. 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

14. 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.

15. The applicant claims to be a citizen of Iran from Shiraz. Based on the identity documents he provided to the Department, including his passport, I accept he is an Iranian citizen from Shiraz. I find Iran is his receiving country and Shiraz is the place he is likely to return to.
16. The applicant came to Australia in 2012 with his parents, sister, and sister-in-law. One brother [Mr A] had already come to Australia seeking a protection visa in 2011. For reasons unrelated to this application, [Mr A] was granted a permanent visa. The other brother [Mr B], the husband of the sister-in-law who came to Australia with the applicant, came later by boat to Australia in 2013.
17. The applicant claims he came to Australia with his family because he had an interest in converting to Christianity and because they were perceived as opponents to the Islamic Republic of Iran due to his father's arrest for insulting the President. He fears harm if he is returned to Iran for reason of an actual and imputed political opinions, his membership of a particular social group of people who breach public morality laws, and his conversion to Christianity.

Father's arrest

18. The applicant claims his father was arrested by Sepah in the first month of the Persian calendar for the year 1391, or around April 2012. It is claimed the father became incensed by a speech he was hearing from President Ahmadinejad on the radio in his [Vehicle]. He is said to have openly railed against the President in front of his passengers, including swearing and disrespecting the President and his family. The passengers happened to be Sepah officers who arranged for his immediate arrest and detained him for 5 days whilst interrogating him about what opposition group he must belong to.
19. The delegate did not accept this incident had occurred. The delegate had interviewed the applicant's father, mother, sister and brother just prior to making the decision in this case, and noted in the decision record that all had given generally consistent accounts of the father's alleged outburst in the [Vehicle] and subsequent detention. They all claimed Sepah came to the house twice to search it, once whilst the father was in detention and a second time a month after he was released. Nothing was found or taken from the house. The father was said to have been released after he was taken to the Revolutionary Court and signed an undertaking he would not speak against the government or attend any gathering of 3 or more people. The father's registration to drive a [Vehicle] was cancelled and he was given a cheque to cover the seizure of his [Vehicle]. However, the delegate had doubts about the story because there was no documentary evidence to show the father had ever worked as a [Vehicle] driver in Iran. In fact, the brother [Mr A] who had come to Australia in 2011 had said his father was retired, but previously worked in [a] division of [a] Department. The delegate also doubted the father would have been taken to the Revolutionary Court for his outburst, noting country reports indicated the Revolutionary Court dealt with high profile cases and serious offences related to security, drug trafficking, corruption, and moral and religious offences, and further that if he was taken to the Revolutionary Court he would have been subjected to harsher penalties than signing an undertaking.²
20. I have before me evidence from the applicant that appears to show his father worked as a [Vehicle] driver in Iran. This includes an 'Insurance Payment Receipt Card' from the [Company] which lists receipts for April 2010 to March 2011, and an 'Insurance History' from the Social Security Organisation Shiraz listing the father's employer as [Organisation] from

² UKHO, 'Iran June 2011', 28 June 2011.

1992 to 1995, and the [Company] as his employer from 2007 to 2012. Based on these documents I accept the applicant's father had worked as a [Vehicle] driver in Iran and it is possible he was working as a [Vehicle] driver at the time the incident is said to have occurred.

21. The applicant and his family have been consistent in claiming in their TPV applications that the father was arrested, detained and taken to court by Sepah following his political outburst in his [Vehicle] in front of Sepah agents. However, none of the family witnessed the alleged outburst, arrest or court appearance. Brother [Mr B] was out of the country, working in [Country 1], and has no first-hand knowledge of the events. Similarly the applicant was away completing his military service. He was not present when his father was in detention nor when Sepah allegedly came to the family house to search it. He has no first-hand knowledge of what happened and therefore relies on his father's account. He does claim however to have been home on leave a month later when he alleges Sepah came a second time to search the house.
22. I have considered the alleged arrest of the father for his outburst in the [Vehicle] in front of Sepah agents. Sepah, also known as the Islamic Revolutionary Guard Corps, is an internal security source with dual political and military roles to gather intelligence and defend the country's Islamic system. I consider it unlikely an experienced [Vehicle] driver would act in such a manner in front of customers he did not know. DFAT says Iranian citizens may robustly criticise the government in public, such as in conversations on the street, but will treat harshly political activists and published public criticism of the regime.³ I'm not satisfied his outburst in the [Vehicle] equated to political activism. Even if I accept he was detained by Sepah for interrogation as to whether he was involved in any political group, and his house searched for such evidence, the father was not a member of any group and no such evidence was found nor false confession made. I acknowledge arbitrary arrests are reported to occur in Iran, but it is active protestors and known human rights activists and political dissidents that have been reported to suffer such arbitrary arrests.⁴ I consider it unlikely a [Vehicle] driver with no political profile would be detained and interrogated for 5 days merely for his outburst, when it would have been readily apparent he had no adverse record. I also consider it unlikely he was taken to the Revolutionary Court in the manner claimed. The Revolutionary Court deals with serious cases concerning internal and external security (including political cases) and drug smuggling. The procedures for the investigation, prosecution, trial procedures and issuance of sentences in the Court are outlined in the Iranian Criminal Code.⁵ I consider it unlikely the father's outburst in the [Vehicle], unsupported by any evidence he had an activist or political profile, would be serious enough to be brought to the Revolutionary Court in such an expedited manner. Further, if his alleged outburst was dealt with as political activism, such matters attracted heavy sentences⁶, not a release after 5 days in detention and the signing of an undertaking not to protest or attend gatherings. I also consider it unlikely the Revolutionary Court would deal in the matter of a [Vehicle] driver's registration, such as to cancel his registration, seize his [Vehicle], and provide a cheque as compensation. I note no evidence of this cheque or the banking of it in their account has ever been provided.
23. I acknowledge the applicant's claims regarding his father were generally consistent with what the father, mother, sister and brother said in their TPV interviews and applications. I consider consistency alone is not a reason to accept the account is genuine, as it is also possible the family could have agreed to tell the same narrative. Having regard to the concerns raised

³ DFAT, Country Information Report Iran, 21 April 2016.

⁴ UKHO, 'Iran June 2011', 28 June 2011.

⁵ DFAT, Country Information Report Iran, 21 April 2016; UKHO, 'Iran June 2011', 28 June 2011.

⁶ DFAT, Country Information Report Iran, 21 April 2016; UKHO, 'Iran June 2011', 28 June 2011.

above, I consider it unlikely the father was arrested and detained by Sepah, and dealt with by the Revolutionary Court, in the manner claimed. I consider that in the unlikely event the father did criticise and curse the President in his [Vehicle], in front of Sepah agents, he may have been questioned or beaten by them, but having regard to country information and the nature of the incident and lack of corroborative evidence beyond his family repeating the narrative, I am not satisfied the father was detained, beaten and interrogated for 5 days, taken to the Revolutionary Court, had his family home searched on two occasions, or had his [Vehicle] sold and registration cancelled. In the unlikely event the father had an outburst in his [Vehicle] in front of Sepah agents, I consider the incident has been embellished.

24. The applicant claimed that because of his father's incident he will forever face discrimination and mistreatment by the Iranian authorities. At the TPV interview he raised concerns that is might affect his ability to access a government job or enrol in study or get a loan. Even if the father had an incident with Sepah and agents came to the house in April and/or May, there was no ongoing adverse interest in the father or his family after this time. No-one from the authorities came to the house in the following 4 months before they departed Iran. The applicant was completing his military service during this incident, and there were no consequences for him arising from the father's incident, such as punishment during his service or interrogation regarding his or his father's political views. The applicant applied for passport after the alleged incident and faced no discrimination or problems in doing so, in fact his passport was quickly and easily obtained. The family left Iran legally on their own passports, and had no issues at the airport in Tehran. Country information indicates security checks are carried out at the time of passport issue which prevent people of concern from being issued a passport. At the airport there are a number of security checks of a person's eligibility to depart Iran with the passport and personal information checked on a computer system.⁷ None of the family had any problems at the airport indicating they had no adverse profile. I further note none of the father's siblings or other relatives have been harmed or questioned about the family since they left Iran.
25. It is more than 11 years since the alleged incident occurred. Given there were no adverse consequences for the family in the following months and when they departed Iran, I consider is implausible the applicant would face harm such as detention, physical harm, harassment or discrimination now or in the reasonably foreseeable future for reason of his father possibly insulting the President 11 years ago. I find the applicant does not face a real chance of harm arising from an alleged incident where his father insulted and cursed the President in front of Sepah agents over 11 years ago.

Religion

26. The applicant claims one of his reasons for coming to Australia was to convert to Christianity.
27. The applicant provided a certificate of baptism dated 21 June 2015. When asked at his TPV interview to explain how he converted to Christianity he said he was looking for another religion in Iran because he did not like Islam. He disliked that Islam was the religion forced on him by the Iranian regime and he disliked the way it was used to dictate how people should dress. His family had a bible that had been given to his father by a Christian passenger, but the applicant did not read it much. He wanted to convert in Iran but it is not allowed there. He got a Christian tattoo as a promise to himself he would convert in Australia. However, for the first three years he was too busy settling in to pursue religion. He said it was only in 2015 that a family friend who had themselves converted to Christianity introduced the family to

⁷ UKHO, 'Iran June 2011', 28 June 2011.

their church. He went to that church 4 or 5 times and then got baptised. After getting baptised he went 3 or 4 times, and then a couple of times to another church with a friend. At the time of the TPV interview in June 2016 he was in detention and had been since late 2015. When asked how he practised his religion in detention he said he would sit by himself in the prayer room. He also said a friend in detention had told him there are bible study classes in the centre. He would like to participate but hadn't yet. He confirmed he did not have a bible.

28. The delegate put to the applicant at the TPV interview that they were concerned the motivation in getting baptised was to assist his claims for protection, and not because of his religious beliefs. The applicant said getting a cross tattooed on his [Body part] in Iran showed it was about his religious beliefs, not making protection claims. However, whilst the applicant says he got the tattoo as a promise to himself he would convert to Christianity in Australia, he waited nearly 3 years after arriving in Australia before attending a church. He does not appear to have otherwise engaged with Christianity prior to 2015. Once he was baptised he attended church a few more times and then stopped. He has not provided any references from the pastor who baptised him, or from any other Christians he has interacted with who may support his claim to be Christian. At the time of his TPV interview in 2016 he confirmed he did not have a bible and was not attending any religious groups in detention. He could not remember the names of churches he attended in 2015.
29. In his statement dated 11 August 2023 the applicant says that because he has young children he is not able to attend church as often as he would like to. He does not provide any detail of which church he has attended at any time since 2015, nor how often. He says he has a bible in Farsi and reads it when he gets time for comfort. He says he posts Christian images on social medias, and provided 2 screenshots of Christian crosses said to have been posted on his [Social media 2] account. He says his wife is interested in Christianity, but not converted. He will let his children choose a religion themselves.
30. For someone who claims to have come to Australia to convert to Christianity, the applicant has provided very little evidence of any engagement with the religion. There is no evidence he has attended a church apart from the baptism certificate, and the only times he's said he went to a church were around that event in 2015. I do not accept him saying he doesn't attend church 'as often as I would like to' is evidence he has been attending church at all, when he has not even given the details of what church he may have attended or when. There is no supporting evidence before me that he is currently attending a church or engaging with a Christian community. I note also he does not intend to raise his children as Christians. I find that even if the applicant occasionally reads the bible, the applicant is not actively and openly practising Christianity. I do not accept he will practice Christianity on return to Iran, when he is not actively following the religion in Australia where he is free to do so. I find he does not face a real chance of harm as a Christian convert in Iran because I do not accept he is a Christian convert.
31. The applicant claimed at the TPV interview that he fears harm from relatives in Iran for converting. He said one relative asked if he had converted and the applicant denied it. He says this relative holds a 'sensitive position' in the government but does not know exactly what the position is. For reasons given above, I do not accept the applicant is a Christian and therefore I do not accept he would face a real chance of harm from this or any other relative for reason of converting. The applicant's evidence is also that he did not practice Islam in Iran, and nor were his family religious. I do not accept relatives who had no issue with the applicant's non-practice in the past would be concerned to the point of harming him for any engagement with Christianity in Australia.

32. I have considered whether the applicant would be imputed to be a Christian convert because of his actions in Australia or his tattoo. DFAT reports that returnees sur place activities, including social media posting, are not routinely investigated by the Iranian authorities and even social media posting about conversion in a Western country is unlikely to come to the attention of the authorities, unless the person had a profile previously, such as for political activism in Iran. DFAT reports Christian converts who proselytise and openly practice their new religion in Iran risk arrest and detention. Returnees without a previous profile are unlikely to come to the attention of the authorities.⁸ As discussed below, the applicant does not have such a profile. I consider the chance of the Iranian authorities being aware of his low level posting on an account under a pseudonym, or his baptism and attendance a few times at church in 2015, is too remote to amount to a real chance. The applicant was not imputed as a Christian when he was still in Iran with the tattoo. I consider the chance of the tattoo being noticed and the applicant imputed as Christian when I do not accept he would be engaging with Christianity in Iran, is too remote to amount to a real chance.
33. The applicant submitted in post-interview written submissions in 2016 that even if his conversion to Christianity is not accepted, he will still be considered an apostate for leaving Islam. In Iran a Muslim who leaves the faith can be charged with apostasy. Although the Iranian Penal Code does not criminalise apostasy, sharia law is applied in such cases. Most Islamic judges in Iran treat apostasy as a capital crime. However death sentences are rare, and the charge of apostasy is often politically motivated rather than about a person's religious beliefs.⁹
34. I accept the applicant was considered culturally Muslim in Iran because of his family background, but he did not believe in nor practice the religion. He was effectively an apostate and atheist in Iran. There is no evidence this caused him harm when he lived in Iran, including during his military service. There is no evidence he publicly advocated for atheism or protested against Islam, he just didn't practice or believe in it. I do not accept as an ordinary non-believer without a political profile that he would be charged with apostasy. Many younger and wealthier Iranians, particularly in major cities, are secular. The majority of the Iranian population does not attend mosque, and many do not observe Ramadan. A 2020 study found 20% of Iranians do not believe in God.¹⁰ The country information indicates that Iranians who leave Islam are not charged with apostasy just for this reason. Such charges are made in politically motivated cases. I consider it farfetched the Iranian authorities would know of or have an adverse interest in the applicant's non-practice or lack of belief in Islam. I find the applicant does not face a real chance of harm for not practising or not believing in Islam.

Breach of public morality laws

35. The applicant claims he was briefly detained on 3 occasions in Iran, twice for wearing Western style short gym clothing and once because he was with his sister and it was incorrectly assumed they were an illicit couple. These incidents have been described by the applicant as 'arrests' but there is no evidence of charges being laid. He does not claim to have been physically mistreated during the short detentions, and each time was released without any charge or penalty. The applicant was a teenager when these incidents occurred more than 10 years ago, and I consider his young age may have made him a target of occasional dress code enforcement by the morality police. More recent reporting from DFAT

⁸ DFAT, Country Information Report Iran, 24 July 2023.

⁹ DFAT, Country Information Report Iran, 24 July 2023.

¹⁰ DFAT, Country Information Report Iran, 24 July 2023.

is that men in Iran are not targeted for dressing in Western style clothing. The enforcement of Islamic dress codes fluctuates, with checks increasing during holy periods, but it is women whose dress (and wearing hijab) that is the focus.¹¹

36. Significant protests broke out in Iran in September 2022 following the death of a young woman Mahsa Ahmini. Ms Ahmini had been in the custody of the morality police for breaching the Islamic dress code in not wearing the hijab correctly. Protests were initially led by women and girls, but went on to attract support among young people generally against the morality police but more broadly against the Iranian regime. The government's response was harsh, with the Iran Human Rights Group estimating as at 3 April 2023 at least 537 people had died during the protests. Around 20,000 protestors were arrested and severe sentences were imposed on some. DFAT reports that as a response to the protests the morality police have been disbanded.¹²
37. The applicant says he has a tattoo of a cross on his [Body part], and showed this to the delegate. A photo said to be of the applicant's [Body part] was provided to the IAA. He obtained the tattoo in Iran, shortly after finishing his military service. He claims he will be arrested at the airport because of the tattoo, but I note the tattoo caused him no problems in Iran or at the airport when he departed the country.
38. DFAT reports that tattoos, including 'sleeve' tattoos that cover the entire arm, are common amongst young Iranian men. They are not aware of men in Iran being targeted for having tattoos, nor even of tattooists being targeted.¹³ The applicant provided an article regarding the treatment of a footballer on the national team in Iran who had extensive sleeve tattoos on both arms. There has been criticism by the Ethics Committee of Iran's Football Federation of players with tattoos, yet this footballer was still on the national team and has widespread support amongst Iranians. The article also notes that whilst getting a tattoo was considered an 'immoral act' and part of Western culture, it is not subjected to any punishment and not a crime.¹⁴ The country information before me does not indicate the applicant's tattoo would attract adverse attention.
39. I rely on the recent reporting by DFAT that tattoos and dressing in a Western style are now common amongst young Iranian men and that men are not targeted for this reason. Whilst I acknowledge he was picked up on three occasions by the morality police when he was a teenager, twice for wearing tight or short gym clothing in public and once for being out with his sister who was mistaken as his girlfriend, he was only briefly detained and then released without mistreatment or ongoing consequences. I find the applicant does not face a real chance of harm for reason of his appearance including his tattoos or preference to dress in Western style clothing, or his membership of the particular social group of people who breach public morality laws, if such a social group exists.

Political opinion

40. The applicant claims he has an actual and imputed political opinion of being against the Islamic Republic of Iran and pro-Western. In his statement dated 11 August 2023 he asserted that he is 'totally politically opposed' to the Iranian regime, and that he is politically active on social media to express this opinion. He says he's a supporter of the liberal movement who

¹¹ DFAT, Country Information Report Iran, 24 July 2023.

¹² DFAT, Country Information Report Iran, 24 July 2023.

¹³ DFAT, Country Information Report Iran, 24 July 2023.

¹⁴ DW, Iran's tattoo taboo hounds Ashkan Dejagah, 17 August 2018.

desire the return of the Shah to Iran. He also claims to have attended protests in Melbourne against the Iranian regime.

41. In his statement dated 11 August 2023 the applicant raises for the first time that he attended a 2009 Green Movement protest and claims he has seen a photograph on [Social media 2] that shows him at the protest, with a comment that half the people in the photograph have been killed. He has not provided a copy of this photograph because he said he could no longer find it on [Social media 2]. The applicant made no mention in his Entry Interview, TPV application or TPV interview that he had attended any protests in the Green Movement. In fact, in his Entry Interview when directly asked whether he or any family members had even been involved in protests in Iran he answered 'no'. I note however his father said in his Entry Interview that he had attended a Green Movement protest with his wife and son. He does not specify which son. It is possible the applicant, as a young man of [Age] years at the time, attended a Green Movement protest as many young Iranians did. But his failure to raise this in his claims suggests his attendance was low key and not of ongoing concern. I do not accept there is a photograph of him on [Social media 2] on anywhere else online showing him at the protest, for if there was I expect he could have provided it. I note DFAT reports the Green Movement has little or no profile in Iran today. There have been extensive protests since the Green Movement and authorities are more likely to be interested in those protest movements than historical examples.¹⁵ If the applicant attended a Green Movement protest, he was a mere attendee and not a high profile participant. I do not accept his attendance is known by or of interest to the Iranian authorities. I find any attendance at a Green Movement protest from 14 years ago did not give the applicant a profile in Iran at the time and will not elevate his profile now.
42. To support his claim to be politically active on social media the applicant has provided screenshots of his activity. Although he says he is active on both [Social media 1 and 2], he has only sent screenshots from [Social media 2]. I do have 5 [Social media 1] posts from 2013-2014 before me, as these were saved by the delegate. Those posts do not appear to be overtly political against the Iranian regime, in fact one of the posts is promoting a Muslim religious procession in Melbourne in [Year]. The posts from his [Social media 2] include 2 images of crosses, a cartoon of an injured soldier with the word 'respect', and a post asking people to stand by the people of Iran. He also provided three other screenshots from [Social media 2], although it is not evident from the screenshots that they were posted on his page. One is said to be a screenshot of an influencer the applicant says he follows and who was arrested in Iran, and another an image of a vandalised grave with the words 'what kind of regime would burn down someone's grave' and angry face emojis. This handful of posts are all that the applicant has provided to support his claim to have long been politically active on social media in making posts and comments that are anti-regime.
43. The applicant claims his social media activity has come to the attention of the Iranian authorities, because he received threatening messages between 1 June to 18 July (the year is not apparent) from an unknown person. After 2 weeks of back and forth, the person sent an image of the applicant's national ID card, as well as information about his address and school he attended, to show they had worked out who the applicant was, even though his real name is not used on his [Social media 2] account. The person also sent a photo of a document that is supposedly an arrest warrant for Interpol to hand the applicant over. The applicant says he was not worried about this person initially, but when the person sent a screenshot of his national identity card this really scared him. I do not accept if the applicant was receiving such messages he would not block this person or report them to the [Social media 2]

¹⁵ DFAT, Country Information Report Iran, 24 July 2023.

administrator, or even to the Australian authorities. I note the person says in the messages that if the applicant blocks them they will come back under another user, however the applicant also says his [Social media 2] account is set to private, which would allow him to block direct messages from people he hasn't allowed to follow him. The applicant says this threat must be from someone in the Iranian government because they have access to his identity card which he did not bring to Australia. I do not accept this. The applicant does have his national identity card in Australia, or at the very least he has a copy of it. When asked at the TPV interview on 5 June 2016 what Iranian identity documents he had, in addition to a passport, the applicant said he had his Iranian birth certificate, national identity card, and military service completion card. The applicant's then representative provided copies of them to the delegate by email on 21 July 2016. The national identity card provided by the applicant to the Department in 2016 is the same as the one appearing in these messages. In fact the image even looks the same, noting the angle of the card and the same pinkish background from whatever the card is lying on when the photo or copy is taken. Taking these concerns into account, that is, the applicant's lack of action in blocking the person or raising the threat with [Social media 2] or the Australian authorities, his claim that he didn't bring the national identity card to Australia yet could provide a copy to the Department, and the similarity in the image of the card in the messages with the copy provided to the Department, leads me to conclude this back and forth between the applicant and an unknown threatening person is not genuine but has been concocted by the applicant. For these reasons I give it no weight. I note the applicant says he has been receiving 'strange messages' since about 2018, responding to stories he uploaded on [Social media 2], but hasn't saved them. Based on the lack of credible evidence of such threats, and even the very limited evidence he has provided of his alleged activity of social media, I am not satisfied the applicant is being followed by the authorities or threatened by the authorities or anyone else for his social media use.

44. The applicant also claims to have attended protests in Melbourne against the Iranian regime. These include a protest [in] June 2023 in relation to riots in Iran, and some protests in 2019 'in relation to what was happening in Iran at that time'. He does not elaborate on what it was that was happening or why it concerned him such that he wanted to protest. He says at one protest he got 'in trouble' with someone because 'we' burned a picture of the Supreme Leader. He doesn't say who the 'we' were. He says a man near them told them they could protest and riot, but not to burn that picture. No evidence has been provided in support of his claim to have attended protests in Melbourne in person, such as photographs or social media posts or messaging between him and friends organising to go to the protests, or even any external reporting on protests being held in Melbourne at those times. Having regard to this lack of evidence and lack of detail about the protests, I am not satisfied the applicant did personally attend them.
45. The applicant says if he is returned to Iran he will be immediately arrested because of his anti-government posts. There are reports the Iranian regime monitors its citizens abroad. The IRBC reports Iranian intelligence agencies have targeted a broad range of diaspora groups of concern to them, including monarchists, Kurdish separatists, dissidents who defected, and the Mujahedeen-e Khalq, as well as individual activists and journalists. Such persons online activity can be tracked and intercepted. The report gives examples of persons in Canada who claim to have been physically monitored by the Iranian authorities, including a retired professor who published works on such topics as the leftist movement in Iran and religious fundamentalism, and a woman's rights activist who had been imprisoned in Iran before fleeing. The applicant submits the IRBC report confirmed the regime had close knowledge and surveillance of people who attended protests in Canada, even for those who were not very politically active or were ordinary Iranians. What the report actually said, in quoting a lawyer, was that those monitored in Canada by Iranian authorities certainly

included people who are very politically active, but can include ordinary people who might not engage in politics every day but may do so from time to time.¹⁶ DFAT reports the Iranian authorities monitor online content and Iranians who repeatedly post content that is openly critical of the government may attract adverse attention, especially if the content goes viral.¹⁷ The applicant's level of posting is minimal and not repeated, and there is no evidence anything he posted has gone viral. Some former Iranian citizens in Australia have also spoken publicly of receiving threatening messages from people associated with the Iranian authorities and having their relatives back in Iran facing questioning or threats because of their activity.¹⁸ However, the people reporting such treatment are publicly active in Australia in attacking the Iranian regime and the applicant is not. I note also there is no claim his relatives in Iran have faced any questions or consequence for his low level activity in Australia.

46. Protests are relatively common in Iran, but the applicant does not have a history of involvement in such activity. DFAT reports the Iranian government may be criticised robustly, both in public (such as in the street or at the workplace) and online. However the authorities also routinely suppress free speech and punish public criticism of the regime. Those particularly targeted include human rights defenders, political activists, lawyers, and journalists. The Iranian constitution protects freedom of belief, so long as it is not 'detrimental to the principles of Islam'. Topics deemed sensitive to the government include women's rights, LGBTI rights, criticism of the regime, relations with the United States and Israel. In recent years mass protests have been relatively common in Iran, largely driven by economic issues. Whilst ordinary protestors may risk arrests and violence during protests, it is the higher profile organisers, civil society activists and human rights defenders who attract more ongoing harassment and adverse attention.¹⁹
47. I find the applicant has not provided credible evidence of regular or open political activity in Australia, or expressed a credible intention to become politically active if he is returned to Iran. The applicant is not a human rights activist nor a leader or organiser for any political activity. The evidence he has provided on his social media activity is minimal. I do not accept this low level of online activity would have brought him to the attention of the Iranian authorities. In the unlikely event any of his posts were ever noticed, his [Social media] account is not even in his name, and his [Social media] profile is not genuine²⁰ and does not identify him as being from Shiraz, Iran. I do not accept he has a profile as being anti-Iranian regime or pro-bringing the Shah back to Iran or pro-Western such that he has or would attract the adverse attention of the Iranian authorities. I am not satisfied he faces a real chance of harm for reason of his political opinions and low level political activity in Australia.
48. The applicant says his friends in Iran have been involved in protest activity in recent times, and one of his friends was killed by the authorities during the protests. He also says last year he posted details online two or three times about the protests in Iran when the internet was cut off in Iran by the authorities. His friends in Iran would send him the information and he

¹⁶ IRBC, Responses to Information Requests, Iran: Monitoring of Iranian citizens outside of Iran, including political opponents and Christians, but Iranian authorities, monitoring of Iranian citizens in Canada; consequences upon return to Iran (2021-March 2023). 2 March 2023.

¹⁷ DFAT, Country Information Report Iran, 24 July 2023.

¹⁸ ABC News, How the Iranian regime is intimidating and surveilling its former citizens in Australia, 5 November 2022; The Guardian, Australia foils Iran surveillance plot and vows to bring foreign interference into the light, 14 February 2023; Foreign Affairs, Defence and Trade References Committee, Human rights implications of recent violence in Iran, February 2023

¹⁹ DFAT, Country Information Report Iran, 21 April 2016; DFAT, Country Information Report Iran, 24 July 2023.

²⁰ For his [Social media 1] profile he is described as being from Melbourne, and attending high school and university in Melbourne.

would post it so that people in Iran with VPN could still access information. He has not provided any evidence of this. Even if he could not provide copies of the [Social Media 2] stories, he has also not provided copies of the messages he alleges his friends in Iran sent him with the information. On the information before me I am not satisfied the applicant was posting such information. He also says he supports the protestors in Iran, and if he is returned to Iran he will attend the protests. I consider it is speculative as to what protests may or may not be occurring in the foreseeable future if or when the applicant returns to Iran. I consider his level of political engagement in the past in Iran was non-existent, or possibly amounted to one attendance at a Green Movement protest, and his engagement in Australia has been low level and contained to a few anonymous online posts. I am not satisfied he would involve himself in protest activity in the foreseeable future such that his level of activity would give rise to a real chance of harm for doing so.

[Sport]

49. Whilst not included in his written TPV application, the applicant raised the issue of experiencing a lack of support and discrimination in his [sport] in both his entry interview and TPV interview. In the entry interview he said one of the reasons he left Iran was because the government did not support him in his sport, even though he received medals for matches he participated in. At the TPV interview he said been selected as part of a team going to [Country 2] for a competition. However, he was replaced on the team by another person who was related to a martyr. He felt this was an injustice and complained, but his coach warned him he should discontinue his protest against the decision or he may be in danger. When asked by the delegate when this happened the applicant said he could not say, but it was some time before his military service.
50. The applicant did not provide any more detail regarding this incident or his general unhappiness with what he perceived as a lack of support. There is no claim he would protest about this past incident should he return to Iran. He may be aggrieved over his perception of not being supported in his sport in Iran, but on the information before me I am not satisfied he faces a real chance of harm from anyone over his past complaints or protests about lack of support or being cut from the team.

Returnee

51. The applicant is now married with [children], and says his wife and [children] are Australian citizens. Although he says in his statement they will likely come with to Iran if he is forced to return, he also says in his statement that he doesn't want his [children] to have anything to do with Iran. If the applicant is returned to Iran it will likely be on a voluntary basis, as the Iranian Government has a longstanding policy of not accepting involuntary returns.²¹ I consider it is speculative as to whether if he returns to Iran that his Australian citizen wife and [children] would go with him, but his claims and the country information do not indicate his profile as a returnee may be different whether he is returning as a family man or as a single man.
52. DFAT reports the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. The *sur place* activities of Iranians are not routinely investigated, although Iranians with a public profile may have their social media tracked. The applicant does not have a public profile.

²¹ DFAT, Country Information Report Iran, 24 July 2023.

53. The applicant claims he will be perceived as a spy for departing Iran shortly after finishing his military service. Young men of age for military service are unable to obtain a passport until they have completed that service.²² The applicant applied after completing his service and was granted a passport without any delay or problems. I note that in recent submissions his representative said he fled Iran before obtaining a certificate confirming he completed national service, but I do not accept this. He in fact provided such evidence to the Department in the form of his military service completion card. At his TPV interview the applicant told the delegate how he applied for a passport, and said he could only apply after completing military service and that he had to provide evidence of this with his passport application. If he has since lost that evidence, it will be recorded in any event in the Iranian authorities records. When the applicant left Iran he was not questioned at the airport as to where he was travelling or why. He has not provided information that suggests during his military service he handled particularly sensitive material.
54. Millions of Iranians travel into and out of Iran each year, with large Iranian diaspora living in Western countries. Iranians have left the country in large numbers since the 1979 revolution and DFAT reports the Iranian authorities accept that many people will seek to live and work overseas. If the applicant is unable to renew his passport in Australia he may return on a temporary travel document called a *laissez-passer*. Returnees with a *laissez-passer* are questioned on the circumstances of their departure, but any check of the records would show the applicant had departed lawfully on his passport. DFAT reports arrest and mistreatment are not common during such processing, and as the applicant left lawfully I am not satisfied he would attract adverse attention on his return. Travel bans are routinely applied to Iranian citizens with ongoing charges, outstanding court matters, people released on bail, or known civil and political activists.²³ None of this applies to the applicant. The ease with which the family departed Iran, including his father and later his brother [Mr B], supports the conclusion the applicant and his family have no adverse record. I find the applicant does not face a real chance of harm as a voluntary returnee to Iran who departed Iran shortly after completing his military service.

Cumulative profile

55. The applicant's representative submits the delegate failed to consider the cumulative profile of his father's anti-government outburst in front of Sepah, his political views and activity, his actual or imputed Christian conversion, his past arrests by the authorities, his Christian tattoo, and living in Australia for over 10 years. I do not accept his father's alleged outburst over 11 years ago is an ongoing concern, if it even occurred. I have not accepted the applicant is an actual Christian convert and I consider the chance of him being imputed as such is too low to amount to a real chance. His 'past arrests by the authorities' were 3 occasions on which he was briefly detained by the morality police as a teenager. I do not accept the applicant has a profile of concern for these incidents, and certainly they were of no import when he was obtaining a passport or leaving Iran. I do not accept his political activity is at a level that he has or would attract attention from the Iranian authorities, and nor do I accept his non-practice or non-belief in Islam would attract attention in a country where at least 20% do not believe in Islam and many more do not practice it. I rely on country information referred to above regarding tattoos being common now amongst young people in Iran, and that the Iranian authorities pay little attention to returning Iranian asylum seekers without an existing profile, and the millions of Iranians who travel in and out of Iran after living in Western countries. Even considered cumulatively, I am not satisfied the applicant has a

²² IRBC, Iran: Military Service, 28 March 2014.

²³ DFAT, Country Information Report Iran, 24 July 2023.

profile that would attract adverse attention from the Iranian authorities. I find he does not face a real chance of harm for reason of his claimed cumulative profile.

Refugee: conclusion

56. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

57. 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

58. 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.
59. 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.
60. I have found the applicant does not face a real chance of harm in Iran for reason of his father's alleged arrest and detention in 2012, his tattoo, non-belief in Islam and engagement with Christianity in Australia, dressing in Western clothing or other perceived breaches of morality, his actual or imputed political opinions or social media posting, and returning from Australia, whether alone or with his family. 'Real chance' and 'real risk' has been found to equate to the same threshold. For the same reasons given above, I find the applicant does not face a real risk of significant harm for any of the reasons claimed

Complementary protection: conclusion

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

Decision

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

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.